

Forest Heath District Council

**DEVELOPMENT
CONTROL
COMMITTEE**

6 JULY 2016

DEV/FH/16/013

Report of the Head of Planning and Growth

**PLANNING APPLICATION DC/16/0317/VAR – LAND ADJACENT SMOKE
HOUSE INN, SKELTONS DROVE, BECK ROW**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT OFFICER

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Update Paper & Risk Assessment Report

App. No:	DC/16/0317/VAR	Committee Date:	16 May 2016
Date Registered:	15 February 2016	Expiry Date:	31 July 2016 (with agreement)
Case Officer:	Philippa Kelly	Recommendation:	APPROVAL
Parish:	Beck Row	Ward:	Eriswell and the Rows
Proposal:	Planning Application DC/16/0317/VAR: Variation of Condition 3 to enable occupation of Plot 151 before the completion of the Section 278 works, in association with planning application DC/14/1206/FUL: Proposed residential development of 166 no. market dwellings, including associated public open space, associated accesses, landscaping and ancillary works, including the part retrospective development of 24 residential units (as amended by drawings received 09 July 2015 which proposes 49 affordable housing units).		
Site:	Land adjacent Smoke House Inn, Skeltons Drove, Beck Row		
Applicant:	Persimmon Homes, (Anglia)		

Background and Summary

This application was deferred from consideration at the Development Control Committee meeting on 1 June 2016.

Members resolved they were 'minded to refuse' planning permission, contrary to the officer recommendation of approval. Members were concerned that the proposal would have an adverse impact on highway safety.

The previous Officer report for the 1 June 2016 meeting of the Development Control Committee is included as Working Paper 1 to this report.

This report sets out an update from the Officer report presented to the meeting of Development Committee on 1 June 2016, and includes a Risk Assessment of the potential reason for refusal.

In addition, this report provides an update regarding the Road Safety Audit and time frame for completion of the outstanding highways work.

The Officer recommendation, which is set out at the end of this report, remains that planning permission should be GRANTED.

APPLICATION DETAILS:

1. Members are directed to the Committee Report in Working Paper 1, in relation to the description of the development, site description, summary of representations received, etc. This is the report that was presented to Members at the 01 June 2016 meeting of Development Control Committee.

OFFICER COMMENT:

Planning Update:

2. Officers can confirm that the highway improvement work associated with the Section 278 application has progressed to the third iteration of a Safety Audit. This has been undertaken by third party consultants and submitted to Suffolk County Council as Highway Authority for review. The submission of the Stage 3 Safety Audit follows completion of all works to the highway as agreed by the Highway Authority.
3. Members are advised that the works to the highway relate primarily to the re-alignment of Holmsey Green Road, where it meets the new estate road which serves the Persimmon development. A new road junction has been created on Holmsey Green Road, which allows the estate road to take priority.
4. As part of the work to the new road junction on Holmsey Green Road, new road markings have been provided, and lighting columns have been relocated. The work also includes the build out of the kerb and pavement close to the Londis shop on Holmsey Green Road.
5. The Section 278 highway work also includes improvements to the junction of The Street/A1101 and Holmsey Green Road (including new road markings, works to the kerb and new tactile paving). Members are reminded that whilst the stopping up of this junction was proposed as part of a previous, historic planning application, it does not form part of the Section 278 work. The stopping up of this junction is not required by the Highway Authority.
6. The Stage 3 Safety Audit which has been submitted to the Highway Authority for review considers the acceptability of the highway work which has been carried out. The Safety Audit is a standard mechanism to ensure that no inherent road safety defects have arisen as a result of this work. The Safety Audit ensures full consideration of the design changes arising from the highway improvement scheme - including visibility issues, junction layout and carriageway markings.
7. Officers are informed that the Stage 3 Safety Audit has been considered by the Highway Authority Audit Team. This review has identified a small number of design issues which must be resolved prior to the next stage and eventual adoption of the works by the Highway Authority. The issues can be addressed by way of further highway work.
8. A meeting to discuss the exact details of the additional highway works to be carried was held on site on Wednesday 22 June. The meeting was attended by District Council and County Council Officers, and representatives from Persimmon Homes. At the meeting, it was agreed that a further design revision would be submitted as an addendum to the Stage 3 Safety Audit. Following agreement of the design amendments by the audit team, it is anticipated that the works on site will be undertaken during a two week period.

Attendees at the meeting were confident that the outstanding work could be finished by mid August 2016.

9. Officers have prepared a Risk Assessment as part of this update report. The Applicant is in a position that if a decision is not made at this committee meeting, then they could appeal 'non determination' on the grounds of the failure of the Authority to determine the application within the prescribed timeframe.
10. If Members are minded to refuse this application, there are potential risks to the Council. Officers consider it helpful to set such risks out in the report below.

Highway Safety:

11. This application seeks the variation of condition, to enable the occupation of Plot 151 (which is now in private ownership), before highway work associated with the Section 278 highways application has been carried out in its entirety. The application proposes alternative car parking for Plot 151, as a short term temporary arrangement.
12. The owner of Plot 151 has stated that the alternative parking arrangements are being used. This has been confirmed by officer site visit. Members are advised that off road car parking at Plot 151 cannot presently be achieved without some difficulty and risk of damage to vehicles, given that the kerbs to this property have not been lowered.
13. Members are reminded that the highway improvement scheme identified in the Section 278 application has already been carried out. The Stage 3 Safety Audit has identified a limited number of alterations to the highway improvement scheme, which will need to be addressed before the works can be adopted by the Highway Authority. None of the proposed alterations to the design of the highway improvement scheme are in the immediate vicinity of Plot 151, or have an impact on this property.
14. In assessing the application to vary the condition, Suffolk County Council as Highway Authority has confirmed the principle of the alternative car parking arrangement is acceptable and raises no objection on highway safety grounds. The consultation comments of Suffolk County Council as the Highway Authority are set out within Working Paper 1 (Paragraph 20). However, the following point is repeated below for clarity:

'The proposal to temporarily locate the parking for Plot 151 at Plot 149 is acceptable to the Highway Authority as a short term solution'.
15. The alternative car parking arrangement offers an alternative to off road car parking at Plot 151. Officers acknowledge that the occupant of Plot 151 could still park on the roadside to load and unload his vehicle. Yellow lines prevent vehicular parking on the roadside outside this property.
16. Whilst the occupant of Plot 151 could still park on the roadside to load and unload his vehicle, officers consider that this does not represent a significant risk to highway safety.

17. The National Planning Policy Framework states that planning applications should only be refused on transport grounds if the residual cumulative impacts of the development are severe. Officers are satisfied that the alternative car parking arrangements proposed by this application are acceptable. The application does not raise significant highways issues such as to refuse the application to vary the condition.
18. In reaching this decision, it is material that Suffolk County Council as the Highway Authority has raised no objection to the application. The Highway Authority is a statutory consultee in relation to the proposal and, as such, its expert advice in relation to highway matters can reasonably be given considerable weight.
19. Whilst Members have raised concerns regarding local traffic conditions and highway safety, there is no technical evidence to support these concerns. There are no compelling reasons to find against the application. The highway improvement scheme has been completed almost in its entirety (subject to design changes arising from the Stage 3 Safety Audit and final handover to Suffolk County Council), and officers are confident that these changes will be implemented by the middle of August 2016. It is therefore unlikely that the Council will pursue enforcement action, should this application be refused.
20. The application to vary this condition has the full support of the Highway Authority. The application was submitted by Persimmon Homes on the advice of District Council and County Council Officers, following the serving of a Breach Of Condition notice by the District Council. There are considered to be no material technical grounds for refusal of the application on highways grounds. When assessed on this basis, it must be concluded that the proposal will not have an adverse impact upon highway safety, such that a refusal could be justified.
21. Accordingly, and for the reasons set out in the original Committee report (Working Paper 1), it remains the Officer's firm and considered recommendation that planning permission be granted.
22. If Members remain minded to refuse the application, then they must be satisfied that the implications upon highway safety will be significant, such that they justify a refusal of planning permission.

RISK ASSESSMENT:

23. If Members remain of the opinion that this application should be refused then they must be aware of any potential risks that may arise. A significant risk is that the applicant will lodge a successful appeal which, if the Authority is unable to defend its reason for refusal, may leave it vulnerable to an award of costs.
24. The Local Planning Authority is required to defend any reason for refusal at appeal and this is clearly outlined in the National Planning Practice Guidance. This states that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay.

25. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
- failure to produce evidence to substantiate each reason for refusal on appeal.
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

26. For the reasons set out above, and in particular, the comments given by the Highway Authority (which indicate that there are no technical grounds for refusing this application), it is officer opinion that any appeal would have a very reasonable prospect of success. Furthermore, it is considered that an award of costs against the Authority is likely on the basis that it is unable to objectively and robustly defend its reason for refusal. To refuse on the basis of highway safety impacts, when it is considered conclusively by the relevant Authority that there are no grounds for such would most likely lead, in the opinion of Officers, to only 'vague' and 'generalised' concerns being given through any appeal, and which would be 'unsupported by any objective analysis'. For this reason Officers' advice to Members is to proceed with care in this regard.

27. The other risk to the Authority from a refusal is considered to be reputational, particularly if an application for costs against the Council is awarded, which is considered likely in this case.

28. Taking all the above factors into account, the overall risk to the Authority of a refusal is considered to be significant in this case.

CONCLUSION:

29. It remains the opinion of Officers that the application to vary the planning condition is acceptable, when considered on objective technical grounds. Any such approval would be subject to the conditions set out within the original Officer report.

30. However, should Members remain of the opinion that the proposal is unacceptable, it is suggested that the following reason be used:

'The proposal would not result in a safe form of car parking and vehicular loading/unloading. Accordingly, the proposal will lead to material harm to matters of reasonable highway safety at the application site. This is contrary to the requirements of Paragraph 32 of the National Planning Policy Framework and Policy DM2 of the Joint Development Management Policies Document, which seek to ensure the safety of the highway network is not compromised.'

31. It must be reiterated that this is not a reason that Officers consider would withstand the scrutiny of a planning appeal. Officers further advise that an award of costs against the Authority would be likely on the basis that it is

unable to objectively defend this reason. Within this context, the recommendation below remains.

RECOMMENDATION:

32.It is **RECOMMENDED** that planning permission be **APPROVED** subject to the conditions outlined within Working Paper 1.