

**12. SECTION 73 APPLICATION FOR THE REMOVAL OF CONDITION 58 ON NP/DDD/0815/0779 FOR DEMOLITION OF EXISTING INDUSTRIAL BUILDINGS, DEVELOPMENT OF 55 DWELLINGS (C3), ERECTION OF 6 INDUSTRIAL STARTER UNITS (B1), CAR PARKING, LANDSCAPING AND DRAINAGE ATTENUATION WITH ACCESS FROM NETHERSIDE (STARTER UNITS) AND BRADWELL HEAD ROAD (RESIDENTIAL), AT FORMER NEWBURGH ENGINEERING CO LTD, NEWBURGH WORKS, BRADWELL. (NP/DDD/0719/0825 JK)**

**APPLICANT:**

1. MR STEPHEN HOLMAN – CAMSTEAD HOMES LTD

**Summary**

2. The application seeks removal of a planning condition on an approved housing development requiring that a pedestrian link be provided from the development to Soft Water Lane before a number of the houses can be occupied. The report recommends approval because the land required to secure the pedestrian link lies outside the approved application site area. Furthermore, having been sold to a neighbouring homeowner, the land required for the link is outside the ownership and control of the applicant. The link cannot therefore be delivered and the condition, being unenforceable, fails the legal test for conditions.
3. The application is brought to committee because of a contrary view from the Parish Council to the officer recommendation.

**Site and Surroundings**

4. The application site is the former Newburgh Engineering works premises in the centre of Bradwell village. It lies to the east of the main street; Netherside, and is currently undergoing redevelopment under a 2016 planning consent for a mixed housing and industrial scheme.
5. The industrial business, which previously owned and occupied the whole of this large site, has now relocated into the new factory unit constructed in the south western corner of the site and has sold the remainder of the site to the current applicant who is building the housing scheme. The housing site has now been cleared of all the redundant factory sheds in preparation for the construction of the 55 houses. To date only the drainage has been installed.
6. The factory unit continues to use the main site access off Netherside which is also, temporarily, being used as the construction access for the housing development. Once constructed the new housing estate will be accessed solely off Bradwell Head Road.
7. In addition to the two former main accesses industrial site; off Netherside and via Bradwell Head Road, there was a further little used access to Soft Water Lane (it is a single width lane, with poor surfacing and generally unsuitable for large vehicles). This comprises of a short section of driveway between the boundary of the former Newburgh Works site which bridges over the Bradwell Brook before joining Soft Water Lane. This driveway also serves as the only residential access to an adjacent house 'Willowbrook'.
8. On the approved layout for the housing estate a pedestrian path is shown leading from

the new public open space to link with this former access just before the bridge and therefore in principle allow for access on to the driveway and thereby on foot onto Soft Water Lane.

9. It should be noted that none of this secondary access driveway was shown to be within the application site area for the redevelopment scheme. Furthermore, when the scheme was approved, whilst it was in the then applicant's ownership he subsequently sold it to the owner of the house 'Willowbrook'.

### **Proposal**

10. The removal of condition 58 imposed upon main planning permission for the redevelopment of the whole site planning ref; NP/DDD/0815/0779.
11. Condition 58 states:
12. *"The dwellings on plots 12-22 and 26-34 shall not be occupied until the pedestrian link has been provided to Soft Water Lane, designed, laid out and constructed, in full accordance with details which have been agreed with the National Park Authority in writing."*
13. The reason for condition states:
14. *"To ensure the pedestrian link to Soft Water Lane is provided and at an appropriate stage in the construction process."*

### **RECOMMENDATION:**

1. That the application be **APPROVED** subject to conditions to cover the following areas as set out in decision NP/DDD/0815/0779 with the exception of condition 58 which shall be deleted; and
2. That the precise wording of the conditions to reflect conditions already discharged or part-discharged shall be delegated to the Head of Development Management, in consultation with the Chair of Planning Committee.
  1. Define approved plans
  2. Phasing of development.
  3. Withdraw PD rights on the housing scheme
  4. Restate archaeological condition 5 and 6 from the previous consent to secure appropriate archiving of results.

5. **Implement the approved construction management plan.**
6. **Implementation of drainage details (former condition 9); plus Details to be submitted in respect of the timescale for the completion of the detention basin along with full details of the management and maintenance plan.**
7. **Implement in accordance with flood risk assessment.**
8. **Scheme to be agreed demonstrating no raising of ground levels in flood risk outline.**
9. **Implementation of agreed details in contamination and remediation report along with submission of a verification plan have been completed.**
10. **Noise levels from industrial units to be maintained in accordance with details agreed under previous condition 15.**
11. **Delivery vehicle times maintained**
12. **Environmental management scheme for the industrial unit**
13. **Maintain industrial unit sheeting/doors in agreed materials and colour**
14. **Maintain landscaping scheme on industrial unit.**
15. **Remove of PD rights for the industrial unit**
16. **No outside storage.**
17. **Lighting scheme**
18. **Maintain outside parking, delivery and manoeuvring areas.**
19. **Travel Plan for industrial unit**
20. **Implement agreed sound proofing scheme to mitigate noise from garage.**
21. **Implement agreed levels of dwellings**
22. **Submit and agree environmental management scheme for dwellings**
23. **Submit roofing sample and sample panel.**
24. **Minor architectural detailed design matters**
25. **Travel plan for housing scheme**

26. **Implementation of Bradwell Head Road Improvement scheme**
27. **Phasing of road construction before occupation of dwellings**
28. **Implement visibility splays.**
29. **Agree bin storage area**
30. **Surface water drainage/disposal scheme to be agreed from plots**
31. **Implement agreed turning facilities**
32. **Submit revised scheme for parking spaces/bike garage details.**
33. **Submit and agree landscaping details/implementation as appropriate requirement if agree.**
34. **Construction environment management plan and species protection plan.**
35. **Submit lighting scheme**
36. **Restate Highway conditions (former Nos 59-61) re size and controls over use of individual house parking plots, visibility splays and control over gates,**

### **Key Issues**

15. Whether condition 58 is still necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects in order to meet the test for conditions set out in the NPPG.

### **Relevant Planning History**

16. 2016 – Approval for the redevelopment of the site for 55 houses and 6 industrial starter units. NP/DDD/0815/0779. The application site area did not include the secondary rear access onto Soft water Lane.

### **Consultations**

17. Highway Authority - Condition 58 was not imposed at the request of the Highway Authority, therefore, no further highway comments.
18. District Council - No response to date.
19. Bradwell Parish Council - The Council can only support the application with the following condition....” An alternative egress is provided allowing safe access to the Schools, Church and Shops. It is not sufficient to have the only exit via Bradwell Head

Road.”

**20. Representations**

21. No representations on this application have been received to date.

**22. Main Policies**

**23. National Planning Policy Framework**

24. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect. The Government’s intention is that the document should be considered to be a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the East Midlands Regional Plan 2009, the Authority’s Core Strategy 2011 and saved policies in the Peak District National Park Local Plan 2001. Policies in the Development Plan provide a clear starting point consistent with the National Park’s statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and more recent Government guidance in the NPPF with regard to the issues that are raised.’

25. Para 172. Of the NPPF states that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads.

26. Para 55. Of the NPPF says that planning conditions should be kept to a minimum and only be imposed where they are:

1. Necessary;
2. Relevant to planning;
3. Relevant to the development to be permitted;
4. Enforceable;
5. Precise; and
6. Reasonable in all other respects.

**27. Peak District National Park Core Strategy**

28. Policy GSP1 sets out the broad strategy for achieving the National Park’s objectives having regard to the Sandford Principle, (that is, where there are conflicting desired outcomes in achieving national park purposes, greater priority must be given to the conservation of the natural beauty, wildlife and cultural heritage of the area, even at the cost of socio-economic benefits). GPS1 also sets out the need for sustainable development and to avoid major development unless it is essential, and the need to mitigate localised harm where essential major development is allowed.

29. Policy GSP3 sets out development management principles and states that all development must respect, conserve and enhance all valued characteristics of the site and buildings, paying particular attention to, amongst other elements, impact on the character and setting of buildings, scale of the development appropriate to the character and appearance of the National Park, design in accordance with the National Park Authority Design Guide and impact on living conditions of communities.
30. GSP4 sets out that the Authority will use planning conditions and or legal agreements to achieve the spatial outcomes in the plan.
31. Transport Policy T6 A safeguards the rights of way network and wherever possible seeks enhancements to improve connectivity, specifically stating that this may include facilitating attractive, safe pedestrian and cycling routes between new residential development and the centre of settlements.
- 32. Peak District National Park Development Management Policies**
33. Policy DMC3 requires the detailed treatment of development to be of a high standard that respects, protects and enhances the natural beauty, quality and visual amenity of the landscape, including the wildlife and cultural heritage that contribute to the distinctive sense of place. DMC3 B. (iii) says particular attention will be paid to the use and maintenance of landscaping to enhance new development, and the degree to which this makes use of local features, colours, and boundary treatments and an appropriate mix of species suited to both the landscape and biodiversity interests of the area.
34. Policies DMT3 and DMT8 require the provision of safe access and adequate parking as a pre-requisite for development.
35. Policy DMT5 continues the thrust of Core Strategy Policy T6A in seeking under DMT5B that 'where development occurs, opportunities will be sought to provide better facilities for users of the rights of way network, including where appropriate, providing links between the development and the rights of way network...'

### **Bradwell Neighbourhood Plan**

36. Transport Policy T1: Provision of footpaths and cycle ways states that ...'Proposals to redevelop the Newburgh site must give consideration to the development and improvement of routes and facilities for pedestrians and cyclists.'

### **Variation or removal of conditions**

37. Section 73 of the Town and Country Planning Act 1990 provides that an application may be made for planning permission without complying with conditions applied to a previous permission. It is stated that local authorities may decide whether to grant permission subject to differing conditions (this can include imposing new conditions), remove the conditions altogether or refuse to alter conditions.
38. Therefore it is possible to apply for conditions to be struck out, or for their modification or relaxation. The section makes it clear that in considering such an application a Local Planning Authority may only consider the question of the conditions and not revisit the principle of the development.

39. Therefore, only the acceptability of the proposal in the context of the reasons for the imposition of the condition falls to be considered in the determination of the current application. However, in terms of decision making, a section 73 application should be treated just like any other application, and due regard paid to the development plan and other material considerations.

#### **Applicant's supporting statement**

40. The applicants statement, prepared by their consulting engineers does not refer to the 'six tests' set out by paragraph 55 of the NPPF and concentrates on setting out the applicants 'concerns at the implications of providing such a pedestrian link', and assesses the impact of flooding, highway safety and accessibility upon the suitability of the proposed link.
41. In respect of the flooding concern the report sets out that sections of Soft Water lane are in the flood zone and will flood up to 2m deep in a 1 in 100yr flood event making it impassable. Recent regular flood events of a smaller scale have also made the lane difficult to access and the agent concludes that apart from blocking the route the flood risk is a safety issue particularly given evidence of recent flooding and icing of the route which would be an added danger to pedestrians.
42. In respect of highway safety the report notes there are no segregated footways on this narrow lane where there are pinch points where vehicles and pedestrians would clash. It also points out that although a minor side lane the route affords access to working agricultural land and buildings and is therefore used by farm vehicles and large contract machinery. Furthermore there is concern from the resident of Willowbrook about the access drive off Soft Water Lane is narrow and only one car width. The neighbour also raises concerns over cyclists and pedestrian exiting onto the lane. Officers note too that the first section of the lane is unlit.
43. In respect of the final point the report assesses accessibility and refers to a plan showing resident destination points from the site to illustrate that depending where the starting point is within the new estate, it would be as convenient and indeed closer for some residents to use the Bradwell Head Road route. It recognises that for those residents in the SE corner the Soft Water Lane route might be shorter for some destinations but this has to be balanced against the condition and nature of the lane and its suitability.
44. The engineers report concludes that notwithstanding the fact that the access is outside the applicant and local authority's ownership and control, there are high safety implications of a pedestrian route onto Soft Water Lane which cannot be improved upon. It recommends that the link is not provided given that these safety concerns outweigh the convenience that shorter distance to certain destinations might bring. For these reasons it concludes that the condition should be released.
45. **Assessment**
46. Condition 58 was designed to secure a pedestrian link between the completed housing development and Soft Water Lane. The aim being to achieve increased connectivity for residents and visitors between the housing site and the rest of the village. Without it the housing estate will only be served by the main access off Bradwell Head Road off which there is a pedestrian link; Springfield Close, which provides a shorter route to the main road and the village centre than going all the way round via Bradwell Head Road. Such connectivity would enhance the development and meet the aims of the Bradwell Local Plan Policy T1 and PDNPA Core Strategy Policy T6A and Development

### Management Policy DMT5 (B).

47. The condition was worded to prevent the occupation of some of the houses until such a link has been provided, in accordance with details which have first to be agreed in advance with the Authority. It was clearly expected that the link would be along the existing 'rear' entrance drive from Soft Water Lane into the former works site, although this is not described in the wording of the condition. At that time both the site and the 'rear' entrance drive were in the same ownership.
48. The approved housing layout shows a footpath to be formed across the proposed public open space within the development site to link the internal estate road to this former works access drive, just before the bridge which carries it over the Bradwell Brook to Soft Water Lane. However, the edge of the application site area coincides with this junction meaning the whole of the secondary former industrial access and bridge is outside of the approved application site area.
49. When the Authority approved the redevelopment application the secondary access drive and the main site were owned by the same industrial operator. Whilst at that time implementation of the link was still technically possible, unfortunately the then owner subsequently sold the housing site and the secondary access separately.
50. The current applicant, who is building the housing site, therefore has no ownership or control over that drive. Whilst a path to the boundary can still be constructed to comply with the approved layout, the consent of the adjoining homeowner would now be required to complete the link to Soft Water Lane. Understandably the homeowner who has bought that piece of land, has now made it clear to officers on site and in correspondence prior to the current application, that he would not wish to grant such access down what is now effectively his private driveway.

### Applying the legal test for conditions

51. Officers have taken the above facts and the applicants supporting statement into account in applying the tests in NPPF for conditions to determine if the condition can be removed
52. We consider that the condition meets most of the tests because it was necessary to achieve planning policy objectives set in the Development Plan and by achieving better access was clearly relevant to planning and to the development which was permitted. It is also precisely worded and clear on its face what was required. Furthermore it was a reasonable requirement in other respects such as scale, design and the detail being proportionate to the nature of the development and the need to achieve greater footpath connectivity.
53. The condition is however unenforceable and therefore fails the legal test for conditions because it requires action on land which is wholly outside the application site area and also the ownership and control of the applicant. Therefore due to circumstances beyond this applicants control the link cannot be delivered as envisaged. No changes to wording are possible to achieve its aim and therefore it fails the legal test and should be removed.

### Conclusion

54. The condition seeking delivery of a pedestrian link to Soft Water Lane is unenforceable and fails the relevant tests for conditions because it relies on land outside the application site area and which is also outside the ownership and control of the



applicant. We therefore conclude that it should be removed. As approval will result in the grant of a new planning permission for the development without condition 58, the remaining conditions have been updated and/or re-stated where they remain appropriate taking into account any approval of details already agreed.

### **Human Rights**

55. Any human rights issues have been considered and addressed in the preparation of this report.

### **List of Background Papers** (not previously published)

56. Nil

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