

Application No: W 23 / 1689

Town/Parish Council: Hatton
Case Officer: Dan Charles

Registration Date: 23/11/23
Expiry Date: 22/02/24

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Land on the North-East Side Of, Birmingham Road, Hatton

Variation of Conditions 14 and 17 of Planning Permission ref: W/19/0933
(Erection of 150 dwellings with all ancillary works) to allow for the use of the temporary access for up to 40 residential occupations FOR Taylor Wimpey Midlands

This application is being presented to Planning Committee as it is recommended for approval and more than 5 objections have been received.

RECOMMENDATION

That Authority be delegated to Officers to grant the Section 73 application to W/19/0933, subject to the relevant conditions upon the expiry of the consultation period on 22 December 2023.

DETAILS OF THE DEVELOPMENT

This application is made under section 73 of the Town and Country Planning Act 1990 that relates to the determination of applications to develop land without compliance with conditions subject to which a previous planning permission was granted, subject to the revised/new conditions meeting the requirements of 'Use of Planning Conditions' (ID: 21a Updated 06.03.2014) of the PPG.

In deciding an application under Section 73, the Local Planning Authority must only consider the disputed condition that is the subject of the application – it is not a complete re-consideration of the application (PPG Paragraph 031 Reference ID: 21a-031-20140306). In this case the applicant is seeking a variation to the wording of a condition through the use of a Section 73 application (PPG Paragraph 13 Reference ID: 17a-013-20140306).

On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

This application seeks the variation of Conditions 14 and 17 which relate to the design and use of the temporary access. The proposal seeks to allow for the use of the temporary access for up to 40 residential occupations prior to the delivery of the main access junction from Birmingham Road. This requires some works to be carried out to the access to allow for the additional use.

The current Condition 14 states;

*The development shall not be occupied until the public highway A4177 has been improved so as to provide for the site access in accordance with a scheme approved in writing by the Local Planning Authority in consultation with the Highway Authority, as shown on plan 890193 10-09 P3. **Reason:** In the interests of vehicular and pedestrian safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.*

The current Condition 17 refers to the time limit imposed on the temporary access. The original wording is set out below:

*The temporary construction/sales access shall be constructed strictly in accordance with the details as shown on plan reference 0102/2000 Rev B. The access shall be used for a maximum period of three years from the commencement of the development or the substantial completion of the primary access (whichever is the sooner) and thereafter, the land shall be restored to its former condition. Any new planting shall be carried out within the first planting season following the cessation of the use of the access. **Reason:** The access is only proposed for a temporary period and is not proposed to be a permanent vehicular access to serve the site.*

The revision seeks to reword Condition 14 to reflect the revised access plan that shows the access improved to allow for the use by residential occupations in addition to the current sales and construction traffic. The changes include works within the limits of the public highway which are subject to a Section 184 Agreement under the Highways Act.

The revised wording to Condition 14 is proposed to be:

*The development shall not be occupied until the public highway A4177 has been improved so as to provide for the site access in accordance with a scheme approved in writing by the Local Planning Authority in consultation with the Highway Authority, as shown on plan 0102-S278-100 Revision R. **Reason:** In the interests of vehicular and pedestrian safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.*

The revised wording to Condition 17 is proposed to be:

*The temporary access shall be constructed strictly in accordance with the details as shown on plan reference **Reason:** The access is only proposed for a temporary period and is not proposed to be a permanent vehicular access to serve the site.*

The justification provided for the change states that the works for the new junction have been delayed due to the complex nature of the works and delays in the allocation of road space for the required time to complete the access works.

No other changes to the scheme are proposed and the temporary access will still be closed once no longer required.

THE SITE AND ITS LOCATION

The application site forms allocated site H28 as set out in Policy DS11 of the Local Plan 2011-2029 and as illustrated on the Policies Map. It is therefore allocated for housing development and associated infrastructure and uses. The site is currently under construction in pursuance of the approved application for residential development.

The proposal is flanked by the Birmingham Road to the south, the existing residential development to the east with open countryside to the east beyond Ugly Bridge Road. To the north lies an area of woodland known as Smiths Covert that bounds the site. An area of residential development sweeps around the top of Smiths Covert and to the North-East of the application site.

Overall, the site is approximately 7.5 hectares. The land rises from the public highway to the south towards Smiths Covert to the north. This topography is similar to the existing residential development to the east of the site.

PLANNING HISTORY

W/23/0928 - Retrospective permission for the display of 8 x 6m non-illuminated flagpoles, 1 x double sided non-illuminated totem sign and 5 x non-illuminated freestanding signs – GRANTED 18.08.2023.

W/20/1176 - Application for Variation of Condition 2 (approved plans) and Condition 14 (Access Layout) and Removal of Condition 10 (Provision of Footpath/Cycle Link) of planning permission W19/0933 – REFUSED 28.10.2020. APPEAL ALLOWED 06.09.2021.

W/19/0933 - Full Planning Application - 150 Dwellings (Class C3); New Vehicular Access from Birmingham Road; New Temporary Vehicular Access for Sales and Construction from Birmingham Road; & Associated Works – GRANTED 19.02.2020.

W/17/2415 - Full planning application for construction of 150no. dwellings (Class C3); a new vehicular access from Birmingham Road; a new temporary access for sales and construction from Birmingham Road; associated drainage and infrastructure; public open space; landscaping and all other ancillary and enabling works – WITHDRAWN 24.04.2018.

RELEVANT POLICIES

- National Planning Policy Framework
- Warwick District Local Plan 2011-2029
- DS1 - Supporting Prosperity

- DS2 - Providing the Homes the District Needs
- DS3 - Supporting Sustainable Communities
- DS4 - Spatial Strategy
- DS5 - Presumption in Favour of Sustainable Development
- DS6 - Level of Housing Growth
- DS7 - Meeting the Housing Requirement
- DS11 - Allocated Housing Sites
- PC0 - Prosperous Communities
- H0 - Housing
- H1 - Directing New Housing
- H2 - Affordable Housing
- H4 - Securing a Mix of Housing
- H10 - Bringing forward Allocated Sites in the Growth Villages
- SC0 - Sustainable Communities
- BE1 - Layout and Design
- BE2 - Developing Strategic Housing Sites
- BE3 - Amenity
- TR1 - Access and Choice
- TR2 - Traffic generation
- TR3 - Parking
- HS1 - Healthy, Safe and Inclusive Communities
- HS3 - Local Green Space
- HS4 - Improvements to Open Space, Sport, and Recreation Facilities
- HS5 - Directing Open Space, Sport, and Recreation Facilities
- HS6 - Creating Healthy Communities
- HS7 - Crime Prevention
- CC1 - Planning for Climate Change Adaptation
- CC2 - Planning for Renewable Energy and Low Carbon Generation
- FW1 - Development in Areas at Risk of Flooding
- FW2 - Sustainable Urban Drainage
- FW3 - Water Conservation
- FW4 - Water Supply
- HE1 - Protection of Statutory Heritage Assets
- HE4 - Archaeology
- NE1 - Green Infrastructure
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets
- NE3 - Biodiversity
- NE4 - Landscape
- NE5 - Protection of Natural Resources
- DM1 - Infrastructure Contributions
- Guidance Documents
- The 45 Degree Guideline (Supplementary Planning Guidance)
- Distance Separation (Supplementary Planning Guidance)
- Residential Design Guide (Supplementary Planning Document- May 2018)
- Open Space (Supplementary Planning Document - April 2019)
- Parking Standards (Supplementary Planning Document)
- Affordable Housing (Supplementary Planning Document - January 2008)
- Warwickshire Landscape Guidelines SPG

SUMMARY OF REPRESENTATIONS

Hatton Parish Council: No comments received.

WCC Highways: No objection - The proposal for an amendment to the temporary access has been previously agreed with the Section 184 Engineer and the proposal has been supported by a Stage 2 Road Safety Audit which has been reviewed by the Safety Engineer.

Public Response: 12 objections received making the following comments:

- Original conditions imposed for safety reasons in order to avoid the risk to residential occupiers of the development until proper access had been constructed.
- Current access does not work particularly well.
- Arrangements should have been in place prior to works commencing.
- Should not be granted as it incentivises developer to benefit.
- Mud on road is already a concern and adding residents into the access particularly in winter months will exacerbate this.
- One banksman is insufficient to be responsible for the access.
- How will the 40 occupancies be policed?
- Will add additional traffic into the existing roadworks.
- Already dangerous to cross the road.
- Existing situation with roadworks is making pedestrian movements difficult.
- Not acceptable to put lives at risk.
- Not convinced the left-in-left-out arrangement is practical and could lead to more vehicles attempting to turn at the Shell garage.
- Existing disruption is already significant, and this proposal will make it worse.

ASSESSMENT

History/Background

The principle of development has been established through the grant of full planning permission W/19/0933 for the erection of 150 dwellings and associated development. The construction of these dwellings is currently underway.

This application relates to Conditions 14 and 17 that relate to the delivery of the main site access and the operation and alteration of the current temporary construction and sales access to allow for the use for up to 40 residential occupancies to be serviced from the temporary access point.

No other changes are proposed, and the final development will be in accordance with the approved layout.

The reason for the change is that due to delays in the scheduling process for the roadworks on Birmingham Road, the schedule has been delayed for the delivery of the access to this housing site. As a number of dwellings are near completion or have been completed, access needs to be provided before the units can be occupied.

In order to prevent the undue delay of occupation of the dwellings, including much needed affordable housing, the proposal seeks to vary the condition to allow up to 40 residential occupancies to be allowed from the temporary access before the delivery of the main Birmingham Road access point.

On the basis of the above, the only relevant consideration in this case is the impact on Highway Safety.

Highway Safety

Policy TR1 of the Warwick District Local Plan requires all development to provide safe, suitable and attractive access routes for all users that are not detrimental to highway safety. Policy TR3 requires all development proposals to make adequate provision for parking for all users of a site in accordance with the relevant parking standards.

As existing, the site benefits from a temporary access point that has been installed to allow for construction traffic and sales uses prior to the formation of the primary access to the site. This access point fronts onto the Birmingham Road.

The main access to the site is proposed to be delivered through a Section 278 Highways Agreement. These works are due to commence imminently and are scheduled to be completed by the 4th Quarter of 2024. Under the current conditions, the site cannot be occupied until this main access is completed and operational.

Due to delays with the Section 278 process, the applicants currently have completed properties on the development which have been purchased but are unable to be occupied.

This application therefore seeks to vary the existing access conditions to allow for up to 40 residential occupations to be served from the temporary access point. As part of this proposal, the temporary access is to be improved to provide an acceptable access point to accommodate the additional vehicle movements.

The revisions to the temporary access include minor widening and the creation of a left-in-left-out only arrangement. This includes the provision of bollards to the centre line of the road to prevent vehicles turning right either into or out of the access point. Appropriate highways signage is also proposed to be provided to make road users aware of the restriction.

The proposal has been submitted with a Stage 2 Road Safety Audit which has reviewed the access point and the final submitted drawing has addressed the concerns that the auditor has raised. The Road Safety Audit has been assessed by the County Highways Road Safety Engineer as part of the assessment of the proposal and no objection is raised to the proposed access as identified on the submitted plans.

Officers are satisfied that the existing access arrangements are such that the revision to the occupancy rate would not result in any harm to highway safety. Officers note that works form the main access are imminently about to begin and once carried out, would allow for 100% occupation of the development and the use of the temporary access would cease and the land required to be restored to its former condition. It is therefore likely that the temporary requirements of the revised condition would only be a short-term requirement and upon completion of the main junction with Birmingham Road, the conditions would require the access to be closed.

Officers are therefore satisfied that the proposal is acceptable having regard to Policies TR1 and TR3.

Assessment of previously imposed conditions

The granting of a Section 73 application grants a new planning permission for the development. Therefore, an assessment of previously imposed conditions is required to determine if they are still relevant to the application. Any conditions considered still relevant shall be carried forward and amended if necessary to reflect the updated planning permission.

The conditions attached to the original permission have been predominantly discharged and these shall be updated to compliance conditions to reflect the approved details. Other conditions that are for compliance only will remain as written.

Conclusion

The applicants have demonstrated that the temporary arrangements can provide an acceptable form of access for site users without being detrimental to highway safety and this has been considered by the Warwickshire County Council Highways Team who have raised no objection to the revised proposal.

Officers are satisfied that revisions would not result in any material change to the overall scheme and the limited period of the contingency highway measures is temporary and would have no resultant harm. The proposal is therefore recommended for approval.

CONDITIONS

- 1 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing(s):
 - 0102/1000 Rev C, 0102/2000 Rev B, 0102-116A, 0102-118, 0102-119, 10-05-01-P9, 10-05-02-P9, 10-05-03-P6, 10-06-P8, 10-07-P8, 20142-DG-PL, 20142-DSG-PL, 20142-SG-PL, AA11, AA24, AA32, AA42, BU2, The Devonford – Plan, The Devonford – Elevations, The Devonford – Elevations (Plots 64&65 only), The Keydale – KE, The Keydale – KE (Plot 57 only), The Keydale – KE (SP), The Keydale – KE (SP) (Plot 131 only), The Beauford – NA21, The Byford – NA32, The Ransford – NA46 – Plans, The Ransford – NA46 – Elevations, The Ransford – NA46 – Elevations (Plot 52&63 only), The Stanford – NA47 – Plans, The Stanford – NA47 – Elevations, The Ruston – NB52 – Elevations, The Rushton – NB52 – Plans, The Canford – PA25, The Gosford – PA34, The Lavenham – PD51 – Elevations, The Lavenham – PD51 – Plans, The Teasdale – PT45 – Elevations and The Teasdale – PT45 – Plans, and specification contained therein, submitted on 29 May 2019.
 - 20142/PL/01E, c-1562-07 Rev B and c-1562-08, and specification contained therein, submitted on 27 August 2019

- 890193-10-07-P8, 1562-01J, 1562-02J, 1562-03J, 1562-04L, 1562-06K and 20142-EP-01 Rev D, and specification contained therein, submitted on 18 October 2019 1562-05J, and specification contained therein, submitted on 24 October 2019.

REASON: For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies BE1 and BE3 of the Warwick District Local Plan 2011-2029.

- 2 The tree and hedgerow protection measures approved in pursuance of Condition 3 of planning permission shall remain in full accordance with the details set out in the document titled Stage 1 & 2 Arboricultural Impact Assessment and Method Statement Report (Rev.9) dated August 19. The protective fencing shall remain in place for the full duration of any construction work. In addition no excavations, site works, trenches or channels shall be cut or pipes or services laid, no fires shall be lit within 10 metres of the nearest point of the canopy of any protected tree(s); no equipment, machinery or structure shall be attached to or supported by a protected tree(s); no mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area or any other works carried out in such a way as to cause damage or injury to the tree(s) by interference with their root structure and that no soil or waste shall be deposited on the land in such a position as to be likely to cause damage or injury to the tree(s).

REASON: In order to protect and preserve existing trees within the site which are of amenity value in accordance with Policies BE1 and NE1 of the Warwick District Local Plan 2011-2029.

- 3 The development (including any works of demolition) shall be carried out in strict accordance with the construction method statement submitted to and approved in writing by the local planning authority on 9 February 2023 in pursuance of planning permission W/19/0933 and the addendum construction method statement received by the Local Planning Authority on 22 November 2023.

REASON: In the interests of highway safety and the amenities of the occupiers of nearby properties, the free flow of traffic and the visual amenities of the locality in accordance with Policies BE3, TR1, TR4 and NE5 of the Warwick District Local Plan 2011-2029.

- 4 The development hereby permitted shall be carried out in accordance with the details of hard and soft landscaping works submitted to and approved in writing by the Local Planning Authority on 5 January 2023 in pursuance of W/19/0933.

The hard landscaping works shall be completed in full accordance with the approved details within three months of the first occupation of the development hereby permitted; and all planting shall be carried out in accordance with the approved details in the first planting and seeding seasons following the first occupation.

Any tree(s) or shrub(s) which within a period of five years from the completion of the development dies, is removed or becomes in the opinion of the local planning authority seriously damaged, defective or diseased shall be replaced in the next planting season with another of the same size and species as that originally planted. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 - Transplanting Root-balled Trees and BS4428 - Code of Practice for General Landscape Operations.

REASON: To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies BE1, BE3 and NE4 of the Warwick District Local Plan 2011-2029.

- 5 The development hereby permitted shall not be occupied until the scheme for the provision of adequate water supplies and fire hydrants submitted to and approved in writing by the Local Planning Authority on 1 June 2023 in pursuance of W/19/0933 has been implemented to the satisfaction of the Local Planning Authority.

Reason: In the interests of Public Safety from fire, and the protection of Emergency Fire Fighters.

- 6 The development shall be carried out strictly in accordance with the detailed surface water drainage scheme for the site submitted to and approved in writing by the Local Planning Authority on 22 September 2022 and the scheme shall be fully implemented in accordance with the approved details before the development is completed.

Reason: To prevent the increased risk of flooding; to improve and protect water quality; to improve habitat and amenity in accordance with Policies FW1, FW2 and NE3 of the Warwick District Local Plan 2011-2029.

- 7 The development hereby permitted shall be carried out strictly in accordance with the details of the contaminated land survey and remediation strategy as set out in the following documents submitted in pursuance of W/19/0933;

- Supplemental Site Investigation Report 252601-R01(00), December 2021, prepared by RSK Geosciences received on 21.01.2022.
- Remediation Method Statement 252791-R01 (01), August 2022, prepared by RSK Geosciences received on 23.11.2022.

If during development, contamination not previously identified, is found to be present at the site then no further development shall take place (unless otherwise agreed in writing with the planning authority for an addendum to the method statement). This addendum to the method statement must detail how this unsuspected contamination shall be dealt with and shall be submitted to and approved in writing by planning authority. The site shall not be occupied until the approved addendum has been complied with.

Upon completion of the remediation detailed in the method statement a report shall be submitted to the planning authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved method statement. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.'

REASON: To safeguard health, safety and the environment in accordance with Policies BE3 and NE5 of the Warwick District Local Plan 2011-2029.

- 8 The development shall be carried out in accordance with the detailed surface water drainage scheme for the site submitted to and approved in writing by the Local Planning Authority on 22.09.2022 and shall be fully implemented in accordance with the approved details before the development is completed.

Reason: To prevent the increased risk of flooding; to improve and protect water quality; to improve habitat and amenity; and to ensure the future maintenance of the sustainable drainage structures in accordance with Policies FW1 and FW2 of the Warwick District Local Plan 2011-2029

- 9 The development hereby permitted shall not be occupied unless and until the pedestrian/cycle link has been fully delivered to connect the development with Ebrington Drive. The pedestrian/cycle link shall be constructed in accordance with the scheme submitted to the Local Planning Authority in pursuance of W/19/0933.

REASON: To ensure that the development has acceptable permeability with the existing residential development in accordance with Policies SC0 and TR1 of the Local Plan 2011-2029.

- 10 The development shall be carried out in accordance with the details of external facing materials submitted to and approved in writing by the Local Planning Authority on 9 March 2022 in pursuance of W/19/0933.

REASON: To ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the locality in accordance with Policy BE1 of the Warwick District Local Plan 2011-2029.

- 11 The development hereby permitted shall be carried out strictly in accordance with the Landscape and Ecological Management Plan reference CSA/2684/05 (updated April 2019) received on 29 May 2019 submitted in pursuance of W/19/0933.

REASON: To safeguard the presence and population of a protected species in line with UK and European Law, the National Planning Policy Framework and Policy NE3 of the Warwick District Local Plan 2011-2029.

12 The development hereby permitted shall be carried out strictly in accordance with the Construction and Environmental Management Plan (CEMP) reference CSA/2684/06 (updated April 2019) received on 29 May 2019 submitted in pursuance of W/19/0933.

REASON: To safeguard the presence and population of a protected species in line with UK and European Law, the National Planning Policy Framework and Policy NE3 of the Warwick District Local Plan 2011-2029.

13 The development shall not be occupied until the public highway A4177 has been improved so as to provide for the site access in accordance with the scheme approved in writing by the Local Planning Authority in consultation with the Highway Authority, as shown on plan 0102-S278-100 Revision R.

REASON: In the interests of vehicular and pedestrian safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.

14 The layout of the estate roads serving the development [including footways, verges and footpaths] shall not be designed other than in accordance with the principles and guidance as set out in 'Transport and Roads for Developments: The Warwickshire Guide 2022' and constructed in accordance with the Highway Authority's standard specification.

REASON: In the interests of vehicular and pedestrian safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.

15 No dwelling shall be occupied until the estate roads [including footways] serving it have been laid out and substantially constructed to the satisfaction of the Highway Authority in accordance with the details approved in writing by the Local Planning Authority.

REASON: In the interests of vehicular and pedestrian safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.

16 The temporary access hereby permitted shall be constructed in accordance with the details as shown on plan reference 950-S184 Ref G. The use of this access shall be limited to purposes for construction/sales and for a maximum of 40 residential occupations only. The use of the access shall cease at either the substantial completion of the primary access or within 18 months from the date of this decision, whichever is the sooner. Thereafter, the land shall be restored to its former condition within 6 months from the cessation of use of the temporary access. Any new planting shall be carried out within the first planting season following the cessation of the use of the access.

REASON: The access is only proposed for a temporary period and is not proposed to be a permanent vehicular access to serve the site.

17 The Developer shall ensure that all the measures to ensure that mud and debris will not be deposited on the highway as result of construction traffic leaving the site submitted to and approved in writing to the Local

Planning Authority on 9 February 2023 in pursuance of W/19/0933 are maintained and operational for the duration of all construction works on the site.

Reason: In the interests of vehicular and pedestrian safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.

- 18 The lighting scheme shall be carried out in accordance with the details submitted on plan reference 10-06 P8 received by the Local Planning Authority on 29 May 2019 in pursuance of W/19/0933.

REASON: To safeguard the presence and population of a protected species in line with UK and European Law, the National Planning Policy Framework and Policy NE3 of the Warwick District Local Plan 2011-2029.

- 19 The development hereby permitted shall not be occupied until a scheme which satisfies the requirements set out in the Council's adopted Air Quality and Planning Supplementary Planning Document (January 2019) has been submitted to and approved in writing by the Local Planning Authority and implemented in full accordance with the approved details. The approved scheme shall be retained and maintained as such at all times thereafter.

REASON: To ensure mitigation against air quality impacts associated with the proposed development in accordance with Policy NE5 of the Warwick District Local Plan.

- 20 The development hereby permitted shall be carried out strictly in accordance with the methodology set out in the Stage 1 & 2 Arboricultural Impact Assessment and Method Statement Report (Rev.9) dated August 19 and received by the Local Planning Authority on 27 August 2019 in pursuance of W/19/0933.

REASON: In order to protect and preserve existing trees within the site which are of amenity value in accordance with Policies BE1 and NE1 of the Warwick District Local Plan 2011-2029.