

Application No: [W 18 / 0995](#)

Town/Parish Council: Kenilworth
Case Officer: Lucy Hammond
01926 456534 lucy.hammond@warwickdc.gov.uk

Registration Date: 29/05/18
Expiry Date: 28/08/18

Land North of Common Lane, Kenilworth

Variation of condition no. 4 (approved plans) of planning permission W/14/1340 (Erection of up to 93 dwellings together with open space, drainage infrastructure and access from Common Lane [outline application including details of access - resubmission of W/14/0618]) to remove the reference to an advanced stop line for cyclists which is no longer required as part of the highway works. FOR Mr Bryan

This application is being reported to Planning Committee because it is recommended that planning permission be granted subject to the completion of a Supplemental Deed further to the original legal agreement and subsequent Deed of Variation.

RECOMMENDATION

That, subject to the completion of a Supplemental Deed to reflect the new planning application reference, planning permission be approved subject to the conditions set out at the end of this report.

Should a satisfactory Supplemental Deed not have been completed by 30 October 2018, Planning Committee are recommended to delegate authority to the Head of Development Services to REFUSE planning permission on the grounds that, without the Supplemental Deed, there would be no link between this latter permission reference (which proposes the latest variation) and the original provisions set out within the S.106 Legal Agreement.

DETAILS OF THE DEVELOPMENT

Permission is sought to vary condition 4 of previously approved planning application ref. W/14/1340. This permission gave outline approval, with all matters reserved except for access, for the erection of up to 93 dwellings together with open space, drainage infrastructure and access from Common Lane.

The variation sought does not alter the nature of the development, which is still for the erection of 93 dwellings and for which the associated reserved matters has since been approved (W/17/1552). The proposed variation simply seeks to remove specific wording from condition 4 (*italic/underlined text below*) because those specified works are no longer required, as confirmed by the Highways Authority.

The condition as originally worded stated:

4. The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing(s) (B.0292_13, B.0292_13-2 461095-003 Rev.H, 461095-014 submitted on 25 September 2014 and 10 November 2014. Tree removal and tree protection plan Figure 2 submitted on 25 September 2014), and advanced stop line for cyclists as shown on diagram 1001.2 submitted on 12 December 2014 and specification contained therein.

The proposal to remove the wording which is italicised and underlined above, has been brought about during the S.278 highway works being carried out by the developers, during which time it has transpired the advanced stop line for cyclists is no longer required. The rest of the condition would remain the same and no other changes to the development are sought as part of this application. The remaining details of the development remain as per the originally approved outline and subsequent reserved matters submission.

THE SITE AND ITS LOCATION

The site adjoins the north-eastern side of Kenilworth and forms a triangular piece of land between the railway cutting to the east and Kenilworth Greenway to the west. The Greenway is a linear country park, permissive bridleway, and Sustrans route 52. The southern corner of the site adjoins Common Lane.

On the opposite side of the railway are dwellings on Highland Road, and on the opposite side of the Greenway are dwellings on Woodland Road. The application site adjoins the residential curtilage of one dwelling on Redthorne Grove where there are TPO oak and horse chestnut trees close to the site boundary. There are two further TPO oak trees towards the north-eastern corner of the site.

The entire site is within Flood Zone 1. The site slopes in a north easterly direction from the south, from 92m AOD to 79m AOD towards the Canley Brook. The site is within the Feldon Parklands local landscape character area. The safeguarding route of HS2 lies 320m to the north-east of the site.

The site forms part of a housing allocation in the local plan and is largely outside of the Green Belt. The exception is a parcel of land in the north-east corner of the site where the attenuation pond is proposed. All of the housing plots and roads are outside of the Green Belt.

PLANNING HISTORY

W/14/1340 - Erection of up to 93 dwellings together with open space, drainage infrastructure and access from Common Lane (outline application including details of access) (Resubmission of W/14/0618) – Approved 23.12.2014

A subsequent application to vary the renewables condition on the above outline consent was granted in 2016 (Ref. W/16/1724).

Another application to vary the condition relating to the mix of market housing was granted in 2017 (Ref. W16/1542).

The associated reserved matters were more recently approved under ref. W/17/1552.

RELEVANT POLICIES

- National Planning Policy Framework

The Current Local Plan

- DS5 - Presumption in Favour of Sustainable Development (Warwick District Local Plan 2011-2029)
- DS11 - Allocated Housing Sites (Warwick District Local Plan 2011-2029)
- H0 - Housing (Warwick District Local Plan 2011-2029)
- H1 - Directing New Housing (Warwick District Local Plan 2011-2029)
- H2 - Affordable Housing (Warwick District Local Plan 2011-2029)
- H4 - Securing a Mix of Housing (Warwick District Local Plan 2011-2029)
- H10 - Bringing forward Allocated Sites in the Growth Villages (Warwick District Local Plan 2011-2029)
- SC0 - Sustainable Communities (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- BE1 - Layout and Design (Warwick District Local Plan 2011-2029)
- BE3 - Amenity (Warwick District Local Plan 2011-2029)
- TR1 - Access and Choice (Warwick District Local Plan - 2011-2029)
- TR2 - Traffic generation (Warwick Local Plan - 2011-2029)
- TR3 - Parking (Warwick District Local Plan - 2011-2029)
- HS1 - Healthy, Safe and Inclusive Communities (Warwick District Local Plan 2011-2029)
- HS4 - Improvements to Open Space, Sport and Recreation Facilities (Warwick District Local Plan 2011-2029)
- CC1 - Planning for Climate Change Adaptation (Warwick District Local Plan 2011-2029)
- FW2 - Sustainable Urban Drainage (Warwick District Local Plan 2011-2029)
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets (Warwick District Local Plan 2011-2029)
- NE3 - Biodiversity (Warwick District Local Plan 2011-2029)
- NE4 - Landscape (Warwick District Local Plan 2011-2029)
- NE5 - Protection of Natural Resources (Warwick District Local Plan 2011-2029)
- DM1 - Infrastructure Contributions (Warwick District Local Plan 2011-2029)

Guidance Documents

- Affordable Housing (Supplementary Planning Document - January 2008)
- Parking Standards (Supplementary Planning Document)
- Open Space (Supplementary Planning Document - June 2009)

- Residential Design Guide (Supplementary Planning Document- May 2018)
- Distance Separation (Supplementary Planning Guidance)
- The 45 Degree Guideline (Supplementary Planning Guidance)
- Warwickshire Landscape Guidelines SPG
- Garden Towns, Villages and Suburbs - A prospectus for Warwick District Council (Consultation document - May 2012)

SUMMARY OF REPRESENTATIONS

Kenilworth Town Council: No objections

WCC Highways Authority: No objections

ASSESSMENT

The one main issue relevant to the consideration of this application is access, parking and highway safety

The Principle of the Development

This is an application to vary a condition attached to the previous permission for the residential development of the site. Condition 4, which stipulates the approved drawings in accordance with which the development should be constructed, is to be varied to omit the reference to the advanced stop line for cyclists shown on a specific drawing. In deciding such an application the Local Planning Authority must only consider the specific amendments being sought, i.e. the impact on highway, pedestrian and cyclists' safety. The principle of development cannot be re-considered as this remains acceptable as per the original approved permission.

The previously approved permission is extant and since there is no requirement to re-assess the principle of development it is therefore intended to address the sole key issue of highway safety and parking and any other relevant matters in this report.

Access, parking and highway safety

Both the access and the parking arrangements remain unaffected and unchanged by this latest variation proposed. The sole purpose of this variation application is to remove the reference within the approved plans condition to the advanced stop line for cyclists and thus remove the requirement for this specific aspect of the highway works to be undertaken.

The Highways Authority has advised that the inclusion of an advanced stop line for cyclists was not requested by them when assessing the original planning application. Having consulted with their Design Services Team who have been responsible for approving the Section 278 Agreement (highway) works at the proposed site access and along Common Lane, it appears that Common Lane has insufficient width to include an advanced stop line that meets the necessary

design standards. It is therefore considered that the provision of an advanced stop line could have more of a detrimental impact to public highway safety than not providing one, as it would not meet the design standards. For this reason the provision of an advanced stop line has therefore been removed from the proposed site access works.

It is important to acknowledge however that the proposed variation affects only the highway works themselves, i.e. works in closest proximity to the site access. The internal layout of the development therefore remains the same and similarly the approved footpath and cycle provisions for pedestrians and cyclists throughout the approved development remain unaffected.

Other Matters

Given the nature of the proposed variation there are no other impacts arising from this development that might have a detrimental impact on neighbour amenity, or the visual appearance and character of the surrounding area.

There are no other material changes in policy since the original decision that would lead me to reach a different conclusion on any of the key issues in the report attached to W/14/1340.

Issuing any permission under Section 73 of the Act is tantamount to issuing a new permission for the entire development. As a consequence, any decision notice must replicate all previous conditions which are still relevant. Where no longer applicable, previous conditions have not been carried forward (for example, the renewables condition) and where some conditions have been discharged and are therefore no longer pre-commencement, these have been re-worked accordingly and the order of conditions re-worked so that all pre-commencements are listed first.

The applicant must also enter into a supplementary planning agreement the purpose of which is to legally bind the existing section 106 agreement to the new permission granted under Section 73.

It is not considered there are any other new material considerations since the original permission which are relevant to this decision.

SUMMARY/CONCLUSION

The original planning permission was granted under an outline application reference W/14/1340 and the reserved matters pursuant to this outline were subsequently approved under application reference W/17/1552. The policies and material considerations that are relevant to both the outline and the reserved matters decisions are set out in the associated officer reports.

The variation of condition 4 to remove the reference to the advanced stop line for cyclists would not result in any detriment to the access and parking arrangements nor would there be any harm to highway safety in more general terms. There would be no other resulting harm to the visual amenity of the site

and surroundings or the amenity of residential properties surrounding the site. Furthermore, there are no material changes in planning policy that would lead officers to a different conclusion to that which was reached previously through the assessment and determination of the previous application. It is therefore considered that the development remains in accordance with the relevant provisions of the Development Plan.

CONDITIONS

- 1 This permission is granted under the provisions of Article 4(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 as amended, on an outline application. Details of the layout, scale, appearance and landscaping shall be carried out in accordance with the reserved matters approved by the Local Planning Authority on 13 March 2018 under ref. W/17/1552. **REASON:** To comply with Section 92 of the Town and Country Planning Act 1990 as amended.
- 2 The development to which this permission relates shall begin within three years of the date of planning permission ref: W/14/1340, i.e. 23 December 2014 or within two years of the final approval of the reserved matters, whichever is the later. **REASON:** To comply with Section 92 of the Town and Country Planning Act 1990 (as amended).
- 3 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing(s) (B.0292_13, B.0292_13-2, 461095-014 submitted on 25 September 2014 and 10 November 2014. Tree removal and tree protection plan Figure 2 submitted on 25 September 2014), and specification contained therein. **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.
- 4 No part of the development hereby permitted shall commence until a scheme has been submitted to and approved in writing by the local planning authority indicating how and when the 'Secured by Design' standards will be incorporated into the development. The scheme shall be implemented in accordance with the approved details and shall be retained at all times thereafter. **REASON:** To ensure Secured by Design standards are met, in accordance with Policy HS7 of the Warwick District Local Plan 2011-2029.
- 5 No part of the development hereby permitted shall be commenced and nor shall any equipment, machinery or materials be brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on site has been submitted to and approved in writing by the local planning authority and has been put in place. The scheme must include details of the erection of stout protective fencing and be in

accordance with British Standard BS5837: 2012, a Guide for Trees in relation to construction. Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the ground levels be altered or any excavation take place without the prior consent in writing of the local planning authority. The approved scheme shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed. **REASON:** In order to protect and preserve existing trees within the site which are of amenity value in accordance with Policy NE4 of the Warwick District Local Plan 2011-2029.

- 6 The development hereby permitted shall not commence until: -
- 1) (a) A site investigation has been designed for the site using the information obtained from the desk-top study and any diagrammatical representations (conceptual model). This should be submitted to and approved in writing by the local planning authority prior to that investigation being carried out. The investigation must be comprehensive enough to enable:
 - a risk assessment to be undertaken relating to human health;
 - a risk assessment to be undertaken relating to groundwater and surface waters associated on and off site that may be affected;
 - an appropriate gas risk assessment to be undertaken;
 - refinement of the conceptual model; and
 - the development of a method statement detailing the remediation requirements.(b) The site investigation has been undertaken in accordance with details approved by the local planning authority and a risk assessment has been undertaken.
(c) A method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters using the information obtained from the site investigation, has been submitted to the local planning authority. The method statement shall include details of how the remediation works will be validated upon completion and shall be approved in writing by the local planning authority prior to the remediation being carried out on the site.
 - 2) All development of the site shall accord with the approved method statement.
 - 3) 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 local planning authority for an addendum to the method statement). This addendum to the method statement must detail how this unsuspected contamination shall be deal with.

- 4) Upon completion of the remediation detailed in the method statement a report shall be submitted to the local 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, NE4 and NE5 of the Warwick District Local Plan 2011-2029.

- 7 The development hereby permitted shall not commence until a scheme detailing arrangements to protect residents of the development from excessive traffic noise entering habitable rooms and the provision of quiet garden areas shielded from road noise shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and shall be retained thereafter. **REASON:** To protect residents of the development from the adverse effects of traffic noise from outside the development in accordance with Policies BE3 and NE5 of the Warwick District Local Plan 2011-2029.
- 8 The development (including any works of demolition) shall proceed only in strict accordance with a construction method statement which has been submitted to and approved in writing by the local planning authority. The approved statement shall be strictly adhered to throughout the construction period and shall provide for: the parking of vehicles of site operatives and visitors; the loading and unloading of plant and materials; the storage of plant and materials used in constructing the development; the erection and maintenance of a security hoarding including decorative displays and facilities for public viewing where appropriate; wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway; measures to control the emission of noise, vibration, dust, dirt and light during construction; and a scheme for recycling / disposing of waste resulting from demolition and construction works, unless otherwise agreed in writing by the local planning authority. **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, TR3 and NE5 of the Warwick District Local Plan 2011-2029.

9 No development shall take place unless and until a Low Emission Strategy addressing the requirements of the guidance for a medium scheme under the LES guidance and confirmation from the developer to provide EV charging points has been submitted to and approved in writing by the local planning authority. The Low Emission Strategy shall thereafter be implemented in strict accordance with the approved details. **REASON:** To ensure mitigation against air quality impacts associated with the proposed development, in accordance with Policy NE5 of the Warwick District Local Plan 2011-2029 and the aims and objectives of national guidance within the NPPF 2012.

10 The development hereby permitted shall be carried out in strict accordance with a drainage scheme and details of the following that shall have been submitted to and approved in writing by the local planning authority:

- The applicant is to provide detailed design plans showing the existing and proposed foul & surface water drainage systems for the site, showing the location of yard and road gullies, manhole's, soak ways, septic tanks, cess pits and pipes including size, shape, material, fall and level in relation to ground and building levels. This should include a manhole schedule.
- The applicant is to provide detailed engineering drawings of the proposed attenuation pond and any other SUDS features incorporated into the design of the site. This should include vehicle and pedestrian access to the proposed attenuation pond to allow for maintenance crews to access the area to maintain control structures and the pond.
- Where works are located within 8m of the watercourse the applicant must obtain land drainage consent from the Environment Agency
- The applicant is to obtain discharge consent from the Environment Agency as part of the application.

REASON: To ensure that adequate drainage facilities are available for the satisfactory and proper development of the site in accordance with Policy FW2 of the Warwick District Local Plan 2011-2029.

11 The development hereby permitted shall proceed only in strict accordance with the Written Scheme of Investigation (WSI) for a programme of archaeological evaluative work dated 11 January 2017 and the Mitigation Strategy approved in writing by the Local Planning Authority on 15 January 2018 in pursuance of part (c) of condition 5 of planning permission W/14/1340.

A programme of evaluative archaeological work and associated post-excavation analysis, report production and archive deposition detailed within the approved 'Written Scheme of Investigation for an

Archaeological Excavation at Land North of Common Lane, Kenilworth, Warwickshire' (version 3) shall be completed within 6 months of commencement of the development.

The development, and any archaeological fieldwork post-excavation analysis, publication of results and archive deposition detailed in the approved Mitigation Strategy shall be undertaken and completed within 6 months of commencement of the development.

REASON: In order to ensure any remains of archaeological importance, which help to increase our understanding of the Districts historical development are recorded, preserved and protected where applicable, in accordance with Policy HE4 of the Warwick District Local Plan 2011-2029.

- 12 The development hereby permitted shall be carried out in accordance with the detailed lighting scheme approved by the local planning authority on 1 May 2018. Such works, and use of that lighting and/or illumination, shall be carried out and operated only in full accordance with those approved details. **REASON:** To ensure that any lighting is designed so as not to detrimentally affect the amenities of the occupiers of nearby properties and to ensure that appropriate measures are taken in relation to protected species in accordance with Policies BE3, NE2, NE4 and NE5 of the Warwick District Local Plan 2011-2029.

- 13 The development hereby permitted (including demolition) shall be carried out strictly in accordance with the Construction and Environmental Management Plan approved in writing by the local planning authority 6 September 2017. In addition appropriate working practices and safeguards for other wildlife dependent of further survey work, are to be employed whilst works are taking place on site. The approved measures set out in the CEMP shall be implemented in full. **REASON:** To ensure that protected species are not harmed by the development in accordance with National Planning Policy Framework (NPPF), ODPM Circular 06/2005 and Saved Policy NE2 of the Warwick District Local Plan 2011-2029.

- 14 The development hereby permitted shall be carried out strictly in accordance with the Landscape and Ecological Management Plan approved in writing by the local planning authority 28 February 2018. The approved measures set out in the LEMP shall be implemented in full. **REASON:** To ensure a net bio-diversity gain in accordance with the National Planning Policy Framework (NPPF) and in accordance with Policy NE2 of the Warwick District Local Plan 2011-2029.

- 15 The development hereby permitted shall be carried out in accordance with the agreed scheme for the provision of adequate water supplies and fire hydrants, necessary for fire fighting purposes at the site approved in writing by the Local Planning Authority on 12 April 2018. The development shall not be occupied until the scheme has been implemented to the satisfaction of the Local Planning Authority.
REASON: In the interests of fire safety.
- 16 The development hereby permitted shall be carried out strictly in accordance with the full details of the design and appearance, including materials, of the bridge access into the site approved in writing by the Local Planning Authority on 12 September 2017. The approved details shall be implemented in full prior to the occupation of the development.
REASON: To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policy BE1 of the Warwick District Local Plan 2011-2029.
- 17 The development hereby permitted shall be carried out in accordance with the details of the rain water harvesting scheme approved in writing by the local planning authority on 1 May 2018. This phase of the development shall not be first occupied until the works within this scheme have been completed and thereafter the works shall be retained at all times. **REASON:** To ensure that the re-use and recycling of rain water is facilitated within this phase of the development in accordance with the provisions of Policy FW2 in the Warwick District Local Plan 2011-2029.
- 18 Any landscaping (other than the planting of trees and shrubs) approved under condition 1, including boundary treatment, paving and footpaths, shall be completed in all respects for that phase of development, with the exception of tree(s) and shrub(s) planting, within the first planting season following the first use of the dwellings within that phase and the tree(s) and shrub(s) shall be planted within six months of that first use. Any tree(s) or shrub(s) removed, dying, or becoming in the opinion of the local planning authority seriously damaged, defective or diseased within five years from the substantial completion of the scheme shall be replaced within the next planting season by tree(s) or shrub(s) of similar size and species to those originally required to be 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.

- 19 The existing tree(s) and shrub(s) indicated on the approved plans to be retained shall not be cut down, grubbed out, topped, lopped or uprooted without the written consent of the local planning authority. Any tree(s) or shrub(s) removed without such consent or dying, or being severely damaged or diseased or becomes, in the opinion of the local planning authority, seriously damaged or defective, within five years from the substantial completion of development shall be replaced, as soon as practicable with tree(s) and shrub(s) of such size and species details of which must be submitted to and approved by the local planning authority. All 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 (excluding hard surfaces). **REASON:** To protect those landscape features which are of significant amenity value and which ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies BE1 and BE3 of the Warwick District Local Plan 2011-2029.
- 20 The mix of type and size of market dwellings submitted as part of any reserved matters application is to be agreed with the Local Planning Authority within the following parameters: 2 bed houses - 10-20%, 3 bed houses - 30-40%, 4 bed houses 55-65%. **REASON:** To ensure that the housing meets, as closely as possible, the needs of the District as required by Policy H4 of the Warwick District Local Plan Review 2011-2029 and the NPPF as closely, taking into account the viability of the development.
- 21 No construction will be undertaken until a Construction Management Plan, which must contain a Construction Phasing Plan and HGV routing plan has been submitted and approved by the local planning authority. **REASON:** In the interests of highway safety, in accordance with Policy TR1 in the Warwick District Local Plan 2011-2029.
- 22 Prior to the commencement of the development (not including alterations to the bridge structure), the access to the site from Common Lane shall be constructed, located and laid out in general accordance with drawing number 461095-003 Rev 1 (*Minor alterations may be required during the detailed design process*). **REASON:** In the interests of highway safety, in accordance with Policy TR1 in the Warwick District Local Plan 2011-2029.
- 23 No infill material system material (soil) shall be imported to the site unless and until analytical test results for the material have been submitted to and approved in writing by the District Planning Authority.

The analytical results shall demonstrate that the soil is suitable for its final use. Once the material is in place a further report shall be submitted to and approved in writing by the Local Planning Authority to confirm that the soil cover meets or exceeds the agreed capping depth. **REASON:** To protect the health and safety of future occupiers, and to satisfy the requirements of Policy NE5 of the Warwick District Local Plan 2011-2029.
