

PLANNING COMMITTEE - 22ND NOVEMBER, 2007

Amendment sheet

5 **48/2005/072**

PROPOSED MIXED USE URBAN EXTENSION DEVELOPMENT COMPRISING RESIDENTIAL, EMPLOYMENT, LOCAL CENTRE, NEW PRIMARY SCHOOL, A38 RELIEF ROAD, GREEN SPACES AND PLAYING FIELDS AT MONKTON HEATHFIELD AS AMENDED BY MASTERPLAN AND PHASING PLAN RECEIVED 31ST OCTOBER, 2006, AS AMPLIFIED BY TRANSPORT ASSESSMENT RECEIVED 16TH JANUARY, 2007 AND AS AMENDED BY LETTER DATED 20 APRIL 2007 WITH ACCOMPANYING AMENDED MASTERPLAN (REV L), RESIDENTIAL PHASING & DENSITY PLAN (REV E), PROPOSED ROUNDABOUT PLAN 1313.66B AND EASTERN RELIEF ROAD 1313.65G

LETTER FROM HOOKIPA DATED 21ST NOVEMBER, 2007

We understand that the Applicant, the Monkton Heathfield Consortium, has stated that they have not been able to negotiate the acquisition of the Former Hatchery land. As a result, their application proposes a different alignment to that shown on the Local Plan. I confirm that I am a joint-owner of the Hatchery land, and both myself and my co-owner, Andrew Bailey, are indeed landowners willing to sell the land to the Consortium, so to implement this proposed mixed-use allocation with the highways in accord with Council policies and requirements. I take this opportunity in writing to you with a schedule of communications and events that we have had with the Consortium to date. You will see that despite numerous attempts, the Consortium have not bothered to contact us since January 2007.

1. We acquired the land of the Former Hatchery in May 2002 with a view to applying for planning permission for a mixed use (some houses and employment space) development.
2. We consulted the Council on our proposal, and the Council advised us to hold back on a planning proposal until the outcome of the Local Plan was confirmed. Ever since, we have followed guidelines and policy from the Council in supporting (a) the Local Plan proposal: and (b) the forthcoming discussions and negotiations with the Consortium housebuilder.
3. Contact was made with the Consortium of housebuilders in early 2003 (at that time Westbury Homes, Prowting Homes and Redrow Homes), and I

enclose a letter of 13 February 2003 from Redrow Homes agreeing the principle of co-operation between the parties, to bring the scheme and the highways forward.

4. Discussions continued, and I enclose a copy letter from Redrow Homes dated 27 March 2003 saying that there had not been any progress made on the design of the relief road.
5. The Council facilitated a meeting on 18 March 2003 with the aim to bring about a co-ordinated and comprehensive development. I enclose a copy letter from Jubb Consulting Engineers (31 March 2003) which sets out the frustrations we had with the Consortium since the initial dialogue back in February.
6. A copy of Westbury Homes (Westbury and Prowting Homes have subsequently been acquired by Persimmon Homes) letter of 3 April 2003 is attached, which indicates their willingness to negotiate and agree heads of terms and legal contract on the Hatchery land.
7. On 5 August 2003. Clarke Willmott Clarke, the Consortium's solicitor, e-mailed details of the proposed heads of terms. I acknowledged receipt by return on 6 August - copies enclosed.
8. On 19 August 2003, Clarke Willmott Clarke sent a draft of the proposed Option contract, and my acknowledgement to say I was on holiday - copies enclosed.
9. On 9 September 2003 we received a Notice from Mason Richards Planning on behalf of the Consortium, which served notice on us to say that the Consortium had lodged a planning application. Copy enclosed.
10. This planning application (48/2003/) indicated a number of departures from planning policies and guidelines, which Included the Eastern Relief Road. This application was subsequently refused by the Council.
11. The Consortium recommenced their contact, with us, and put toward a revised offer on 17 September 2003, a copy of which is attached.
12. From the beginning of January 2004 to March 2004 further discussions took place between ourselves and the Consortium, a copy of our letter of 22 March 2004 accepting the terms of their offer is enclosed.
13. On 24 August 2004, the Consortium's lawyer, Clarke Willmott Clarke sent us conditional contract a copy of which is enclosed.
14. During September 2004, the Consortium chose not to progress any further with the contract.
15. The Consortium is now represented by Persimmon Homes' office in Exeter. My co-owner, Andrew Bailey wrote to Persimmon Homes in Exeter on 25

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May 2005, copy enclosed, the content of which is self-explanatory. We were concerned to hear that Persimmons Exeter were saying that the previously agreed price for the Hatchery was too high. We subsequently engaged a firm of chartered surveyors to give us valuation advice. A copy of our letter of 28 July 2005 is attached. You will note that the figure is very similar to the figure agreed with the Consortium. There can be no suggestion, therefore, that we are trying to extract an unreasonably high price for the land or claim ransom land value.

16. We did not receive any communication from the Consortium in the following year. and we wrote again in the following year, 7 April 2006. A copy of that letter is enclosed.
17. We met with Persimmon Homes Exeter on 10 May 2006 in order to progress agreement between Hookipa and the Consortium, We outlined a land swap proposal, that the Consortium could secure the necessary Hatchery land for the highways and in return provide us with a certain area of employment land, so that we could pursue employment development. We were committed to the proposal we had put forward, and we appointed Alder King, Chartered Surveyors, to progress matters. See Alder King e-mail to Persimmon Homes of 23 June.
18. Persimmon wrote to us on 4 July 2006. This letter says "We would be keen to explore with you the possibility of exchanging land within the commercial areas of the site based on us both being able to agree suitable values to generate the land swap although we would wish to have this agreed at an early stage so that the Consortium could call on the Hatcheries land if required and to "demonstrate to Taunton Deane Borough Council that we had an agreement with yourselves". A copy of this letter is enclosed.
19. Alder King reported to us on 18 July, keeping us advised that they were still awaiting plans from the Consortium, before they could progress matters. Copy letter attached.
20. There was a meeting on 18 October with Persimmon Exeter, and agreement in principle was reached over the price of the Hatchery Land and an understanding over the principle for development of the industrial land.
21. We tried to contact Persimmon Exeter on several occasions, to no avail. I attach a copy email of 31 October 2006.
22. Alder King managed to speak to Persimmon Exeter on 30 November 2006, and this is covered in an email of the same date to Persimmon, copy enclosed.
23. An in principle' agreement was reached at the meeting on 16 October 2006 between Hookipa and the Consortium. This was confirmed in correspondence between Alder King and Persimmons on 4 December 2006 emails attached.

24. Alder King emailed Persimmon on 13 December, chasing a response, Copy attached.
25. Persimmon responded on 18 December 2006, Copy attached.
26. Alder King attempted to make a number of contacts with Persimmon, see copy emails of 8th and 10th January 2007.
27. Further attempts at contact by our surveyor were made on 2 and 30 March 2007.
28. Contacts were again made by our surveyor on 2 and 3 April 2007 to no avail.

In addition to the above. Alder King have tried to make contact by telephone on numerous occasions, but those calls have not been returned.

I think you will see from the above that quite clearly we are willing sellers of the land at a fair and competitive price, and despite all our attempts since 2003, the Consortium has chosen not to secure the Hatchery land to implement the development set clearly in the adopted Local Plan.

There is absolutely no justification for departing from the Local Plan into the very sensitive Green Wedge.

As you will know, we have submitted an application on our land for a roundabout in the 'correct' Local Plan position in order to try to move the process constructively forward.

I note that the Consortium have now submitted a new application showing the road in the correct alignment and allowing for it to 'knit' together with our land/roundabout. I can draw no other conclusion than to expect the Consortium, to seek to acquire our land shortly,

Quite clearly there is no need for an expensive and time-consuming planning appeal to take place when we are willing sellers.

I intend to attend the Planning Committee meeting on 22 November and will therefore be able to answer any questions that you or any Members of the Committee might have in respect of the above.

Note: Documents provided to substantiate claims in this letter have been provided but contain financial details and are therefore confidential.

LETTER FROM KING STURGE DATED 20TH NOVEMBER, 2007

I am instructed by Hookipa Limited to make further representations in respect of the Monkton Heathfield Consortium application on land to the east of the A38 Bridgwater Road, following our recent meeting and having regard to the Committee Report on the site.

I would ask you to have regard to the letter sent to you direct by my Clients, Hookipa, which deals directly with issue related to the sale/purchase of the former hatchery land.

Hookipa own the former hatcheries site adjacent to the A38 at the southern end of the proposed development area. The hatchery site is identified as lying within the development area in the adopted Taunton Deane Local Plan and in the adopted Monkton Heathfield Development Guidelines. Crucially, in both documents, the line of the eastern relief road proposed as part of the development is shown running through the southern part of the hatchery site so as to provide a connection to Milton Hill to the west and prevent encroachment into Green Wedge.

Hookipa have submitted a planning application for a roundabout on their land in accordance with the Local Plan and Development Guide. This shows the willingness of Hookipa to work with the Council and the Monkton Heathfield Consortium to deliver the Local Plan objectives.

Regrettably, despite this position, the Consortium have not made any positive proposals to acquire the site in recent months and instead continue to pursue proposals that are in conflict with the Local Plan, are generally illogical.

There are a host of issues in relation to Monkton Heathfield proposals which are subject to a more detailed comment below.

The proposed southern Eastern Relief Road roundabout

I deal with issues related to the proposed dualling of the Eastern Relief Road (ERR) and the impact of the Western Relief Road (WRR) on the green wedge below, but in terms of legal points I must stress again that the Consortium are simply not able to “duck” the issue of dualling of the Eastern Relief Road.

The adopted Development Guide, which carries full statutory weight, makes it quite clear that the Eastern Relief Road must be capable of being dualled in the context of the adopted Local Plan allocation. This has nothing to do with any future proposals for additional development to the north which may, or may not come through the RSS process.

This is a material consideration in the context of the current planning application and consortium must be required to provide a drawing showing that the Eastern Relief Road and all of the proposed roundabouts, including the roundabout to the south of the Hatchery, can accommodate a dualled road.

Notwithstanding this procedural point, the County Council have confirmed that they wish to see drawings of the Eastern Relief Road (ERR) roundabouts, and particularly the southern roundabout, showing that it can accommodate a dualled road.

I have previously submitted a copy of a drawing prepared by Hookipa (PB Drawing HHT 91240A/014) which indicates the effect of dualling the roundabout if based on

the alignment being proposed by the Consortium. Simply such a roundabout would be technically flawed and wholly unsafe.

County Council officers have acknowledged in a meeting with them that if the roundabout were proposed in the form shown, it would not work and would not be acceptable. Whilst there may be alternatives, the Consortium have to date provided no information on this critical issue. The Consortium simply say that this is a temporary roundabout and this issue can be resolved later. Clearly this is wholly unacceptable.

Similarly, the Consortium have made it clear that one of the reasons why they believe the roundabout should be to the south of the Hatchery is so as to provide for a "better" alignment of the Western Relief Road. This alignment however would be through the green wedge south of Milton Hill, contrary to the adopted Development Guide and the Local Plan.

This would be a further significant Departure from the Local Plan.

Again, the consortium cannot simply ignore this but must be required to provide a plan showing where they propose the Western Relief Road to go so as to allow the impact of this to be considered in the context of the current scheme.

Hookipa remain of the view that the southern roundabout should be located on their land, in accordance with the planning application they have submitted. This would allow for a continuation of the road to form the Western Relief Road (WRR) on an alignment based on Milton Hill. This would be fully in accordance with the Development Plan and Development Guide.

It goes without saying that if the roundabout to the south of the Eastern Relief Road were located in the location shown in the adopted Local Plan and Development Guide, this would not be a Departure, and would allow for the alignment to continue across to Milton Hill, again in accordance with the development plan.

This is shown in the Hookipa planning application.

Landscape Issues

The location of the road proposed by the Monkton Heathfield Consortium encroaches into an area designated as Green Wedge in the adopted Local Plan. The Development Guidelines make it clear that it will be unacceptable to build within the Green Wedge if there are no overriding reasons for doing so.

It is understood that there remains an in principle objection to the location of the road within the Green Wedge from landscape officers at Taunton Deane Council. Hookipa fully support this position. No convincing justification has been submitted in support of breaching a clearly established Local Plan policy.

The Consortiums landscape consultants have submitted plans which helpfully clearly indicate the extent of the intrusion into the Green Wedge and the extent of

the 'deviation' from the correct road position set in the Development Guidelines/Local Plan.

The consultant's conclusion that the location of the road as proposed would be of no greater visual impact is fundamentally flawed. The Green Wedge exists to deliver not only visual but clear physical separation and maintain the openness between settlements. The road effectively severs the Green Wedge virtually eliminating the perception of separation which it seeks to protect.

It is noteworthy that the Consortiums planning consultants can offer nothing in terms of a justification for encroachment into the Green Wedge beyond claiming that the roundabout as proposed is better located in relation to a future Western Relief Road, extending from it. They claim support for this position from the County Council and Highways Agency.

Neither party has given such support. Both parties have set out that there are a number of options for the location of the western part of the Relief Road which include online improvement in whole/in part of Milton Hill.

The underlying issue remains that the reason the roundabout is in the location it is, is not because of highway reasons but because the designers have been instructed to avoid land owned by Hookipa. The retrospective attempts to justify this fail.

In this matter, I would urge you to have close regard to the visual appraisal of the Green Wedge submitted in February by Hookipa which identifies the sensitivity of the Green Wedge in the Monkton Heathfield area and the need to prevent development encroaching into it.

Land Use Budget

I would draw to your attention the issue of the proposed land use budget. The Consortium have 'imposed' a land use on my clients land despite this not being a part of the red line of the application. If my Clients are to have this use imposed we must be a part of the application red line. Otherwise we should be excluded from the masterplan. I remain unclear legally how the Council can contemplate granting a permission which imposes planning land uses on land beyond the scope of the red line.

Environmental Statement

I note your correspondence to the Consortium regarding the submitted Environmental Statement. It is suggested that there have been a significant number of changes to the proposals since their submission in 2005 and your view is that the ES needs to be updated to reflect these changes.

I was very surprised therefore to see the Consortium response to this which effectively seeks to down play the significance of changes, and effectively refuses to undertake further survey work or analysis despite these changes. Instead it sets out little more than a sheet of typographical updates to the submitted information.

In my view such an approach is wholly contrary to the EIA Regulations which require a proper updating of material and proper cross referencing of the effects of changes with regard to the impact and mitigation. This simply has not been done. It appears to leave the ES as a fundamentally flawed document contrary to the EIA Regulations. This must place the document at significant risk of challenge.

Legal Issues

Hookipa have previously set out a number of concerns with regard to the legality of the approach being proposed by the Consortium in respect of their land. No answers have been received to a series of issues which are repeated below:

- The Consortium has submitted a masterplan which seeks to impose a land use on the hatchery site, an area beyond the red line of the planning application. Such an approach appears to rely on the agreement of Hookipa to such uses. It is unclear as to the legality of this position and if the Council can grant permission.
- This is not simply an academic point, but critical to the implementation of the full suite of policies for Monkton Heathfield as set out in the adopted Local Plan. The Local Plan requires the delivery of 4 hectares of employment land within the development area as well as 10 hectares of land at Langaller. The Consortium relies on land outside of their control – the hatchery - to deliver part of this 4 hectare requirement. In simple terms, if Hookipa do not deliver this, the Consortium's proposals are clearly in contravention of the adopted Local Plan because the mix of land uses required by its policies has not been met. This must be properly addressed.
- Hookipa have previously set out that they wish to be kept informed of the progress of any issues related to the S106 Agreement being progressed for the development. This has not happened. It is understood, following discussions, that the draft S106 Agreement contains Obligations on the Consortium related to the hatchery land. These obligations are understood to contain financial provisions which have a clear and direct bearing on Hookipa, and the value of their land. Despite this, Hookipa have had no involvement in this process and, as a matter of law, it is unclear if such Obligations, which include financial liabilities, can be imposed on a third party which is not a part of the red line or the legal agreement.
- Hookipa have read with interest the legal opinion provided by the Consortium with regard to the issue of Departure provisions. Whilst the legal opinion appears to have been hastily withdrawn from the Council's website, Hookipa's copy is helpful in showing that there are a number of areas where the Consortium appear to be progressing matters which are clearly a Departure – the road and playing fields in the Green Wedge in particular. The opinion seems to give virtually no mention to the adopted Development Guidelines for the site which are adopted SPG, and carry full statutory weight. That document sets out clearly that encroachment into the Green Wedge is a Departure and will be required to be advertised as such.

- Whilst the consortium seeks to argue that this is a matter of judgement, a failure to follow the Departure proceedings could lead the proposals to be subject to Judicial Review proceedings on this point.

Conclusions

The proposals submitted by the Monkton Heathfield Consortium are flawed. They have been advanced on a deliberate approach of seeking to exclude Hookipa's land despite Hookipa being willing sellers.

This means that the Consortium's road line encroaches into Green Wedge, contrary to policy. It breaches clear principles established in the adopted Local Plan and adopted SPG. It proposes a roundabout which is unsafe if dualled.

In addition to the issues concerning the road, roundabout, and Green Wedge, a number of the Consortium's proposals appear to be legally questionable as detailed above.

Hookipa fully support the decision of the Council to oppose the Consortiums application at the forthcoming appeal.

LETTER FROM CLARKE WILLMOTT DATED 21ST NOVEMBER, 2007

Thank you for your letter of 20 November 2007 in connection with this application and the Planning Committee meeting tomorrow (22 November).

I note that you will arrange for a copy of my letter of 16 November, your letter of 20 November and a copy of the Memorandum of Agreement to be circulated to all Committee Members prior to the meeting.

In addition, however, I would like to address the first point made in your 20 November letter. You have accepted that the Memorandum of Agreement has been agreed between the Consortium and the Council as the mechanism for delivery of the Western Relief Road. When the Memorandum of Agreement was signed, the Monkton Heathfield application was before the Council and, therefore, the line of the Eastern Relief Road as shown in that application was known. In addition, in May 2007, the Consortium provided plans illustrating the link between the re-aligned Eastern Relief Road and Milton Hill and the Western Relief Road (John Milverton emails to Tim Burton dated 29 May and 4 June 2007 attaching Plan refs 1313.114 and 1313.115 respectively. You are asked to note again the basis on which those plans were provided.) Those plans set out the line of the link and allowed the Council to assess the "worst case scenario" in visual impact terms of that link. Somerset County Council were consulted on the plans and confirmed that they showed the maximum amount of land-take which would be necessitated by the link.

Accordingly, it is incorrect to say that detail on the line of the proposed link to Milton Hill from the Eastern Relief Road has not been provided by the Consortium.

In signing the Memorandum of Agreement, the Council accepted phased provision of the Eastern and Western Relief Roads. The Consortium has since provided the detail which the Council has sought illustrating the connection between the two roads.

I note your reference to Clause 3 of the Memorandum of Agreement. Again, what you say is not correct. The Consortium has kept the Council informed of its dealings with the owners of land required for the Western Relief Road and has therefore complied with the obligation set out in Clause 4 (not 3, as you state) of the Memorandum of Agreement.

Whilst I am mindful of the short amount of time available before the Planning Committee meeting, I should be grateful for your confirmation that this letter will also be circulated to all Committee Members either before or at the meeting.

Again, we reserve the Consortium's right to draw this letter to the attention of the Inspector at any Inquiry into the submitted appeal, should this be deemed necessary.

RE THE LETTER FROM CLARKE WILLMOTT OF 21 NOVEMBER 2007 - THE SENIOR SOLICITOR COMMENTS AS FOLLOWS:-

1. Whilst the proposed line of the Relief Road was known at the time that the Memorandum was signed, the deviation from the Local Plan line has never been agreed.
2. A plan was submitted to the Development Manager in May 2007 showing the possible area of land take for the link between the new roundabout and Milton Hill. It did not show the proposed line of the link, and was specifically stated not to form part of the application.
3. The plan does not show the line of the link and therefore does not allow an assessment of the visual impact. Further, the SCC view is that they are unable to say whether the area of land shown on the plan would accommodate the carriageway only or whether it could accommodate the carriageway and associated embankment. This is because there is no detail of vertical alignment. It is therefore impossible to assess what type of embankment might be required, any additional potential land take of such an embankment and its visual impact.
4. The Council would strongly disagree with the Consortium's statement that the detail of the line of the proposed link to Milton Hill has been provided.
5. The Council has not received any information as to the Consortium's dealings with the owners of land required for the Western Relief Road.

FURTHER LETTER OF OBJECTION has been received raising the following issues:-As you will be aware, the existing ATS site is located within the heart of the Monkton Heathfield development area on the stretch of the A38 Bridgwater Road that is proposed to be traffic calmed and downgraded as part of the above

developments, Whilst it is appreciated that the downgrading of the A38 forms part of the criteria to policy T8 of the adopted Taunton Deane Local Plan and is also a requirement of the Monkton Heathfield Development Guide, these proposals are likely to have a serious impact upon the operation and future of the ATS premises on Bridgewater Road. At present the premises are highly accessible as they are located on a busy A-road, benefit from passing trade from the 10,000 plus cars that pass the site on a daily basis, and are directly accessible from Taunton on the A38. A significant part of ATS trade is generated by passing trade. The applications submitted by The Monkton Heathfield Consortium and Hookipa Ltd obviously include the provision of relief roads and mention traffic calming to the ASS but no details are provided of the detailed traffic calming measures or how the restricted access to the A38 will operate. I note that the comments from Somerset County Council Highways dated 28th March 2007 on the Monkton Heathfield Consortium application recommend that consent be granted subject to traffic calming, a Bus Gate and further consultation. The provision of traffic calming works and bus gates will result in ATS being isolated from the main road, no longer on a direct route from Taunton, located within a village centre and without the benefit of passing trade. This will be likely to result in a significant impact on the future of the business. I note that a similar objection has been submitted on behalf of the nearby Jaguar and Land Rover Car Dealerships who are also concerned that the proposal for Bus Gates and closing of this stretch of the A38 to through traffic will have a serious impact upon the business.

AMENDMENTS TO REPORT

Section 3.0 page 3 - masterplan revision M is the latest version Not N as stated.

Section 11.0 part M page 98 applicant has confirmed that B1a uses are to be restricted to 600 sq m as required.

Section (E) Environmental Statement.

The submitted application requires the full provision of the improvements to Milton Hill and the new Western Relief Road to link the eastern relief road to the A3259 following the occupation of 650 houses (+ 23,250 sq m employment development) and prior to the completion of the 900 houses (+ the remaining employment development). If permitted, the new Western Relief Road and works to Milton Hill are likely to have significant effects on the environment of the area. At present the submitted Environmental Statement has not assessed the impact of the road works, which lie outside of the application boundary.

As a result of the above I amend the recommendation to include an additional point of objection: - Insufficient information has been submitted to enable a full and proper assessment of the impact of the improvements to Milton Hill and the new Western Relief Road on the environment as required by The Environmental Impact Legislation (DETR Circular 02/99)

Copies have been circulated relating to exchange of correspondence between Applicants solicitors and the Council's solicitor, and a copy of the Memorandum of Agreement referred to therein.

Copies to:
CHAIR/NTN/TB/JM/CDW/AG/DA/JH/KM/JLH/IC/TAB/CJW/HM/H&L/RWF/
Planning Reception/JJ/RB/17 Committee Members/15 Public