

24/14/0002

WEST OF ENGLAND DEVELOPMENTS (TAUNTON) LTD

CHANGE OF USE OF LAND TO PUBLIC FOOTPATH WITH ASSOCIATED FENCING AND SURFACE ON LAND BETWEEN NINE ACRE LANE AND OVERLANDS, NORTH CURRY

Location: LAND BETWEEN NINE ACRE LANE AND OVERLANDS, NORTH CURRY

Grid Reference: 332029.125136

Full Planning Permission

RECOMMENDATION AND REASON(S)

Recommended Decision: Conditional Approval

RECOMMENDED CONDITION(S) (if applicable)

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

2. The proposal hereby granted shall be carried out strictly as specified in the recommendations proposed in the 'Ecological survey', prepared by Michael Woods Associates, and dated January 2014. This document forms part of the permission hereby granted and the further survey work it requires will need to be carried out in full as stated under the supervision of a competent and suitably qualified expert.

Reason: To ensure that all ecological matters are appropriately addressed and taken account of as required by European and National legislation and to ensure accordance with the National Planning Policy Framework and the adopted Taunton Deane Borough Council Core Strategy Policies CP8 and DM1 (c).

3. Before the hard surfaced areas hereby approved are constructed and used, or at such other time as may have been agreed in writing with the Local Planning Authority, full details of the colour, type and texture shall be submitted to and approved by the Local Planning Authority. The development shall then be completed strictly in accordance with these approved details and retained as such at all times thereafter, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To allow the Local Planning Authority the opportunity to assess this element of the proposal and ensure that it is appropriate in accordance with Policy DM1 of the adopted Taunton Deane Core Strategy (2011 - 2028).

Notes to Applicant

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission.

PROPOSAL

Permission is sought to create a public footpath with hardsurfacing and fencing on land in between Overlands and Nine Acre Lane, and continuing along Nine Acre Lane itself to the public highway at Greenway (by the Health Centre). Although an access way currently exists along Nine Acre Lane, it is unofficial and unadopted and little more than a muddy track. It currently ends at the back of Spring Cottage. This application proposes a formal walkway from the Health Centre to Overlands by continuing the line of Nine Acre Lane over the fields to the rear of Canterbury Drive, Manor Farm and Longs Field, linking to the existing Public Right of Way at Overlands. The proposal is for a new bound gravel surfaced path approximately 2 metres wide, and with stockproof fencing at 1.2 metres high at appropriate locations.

SITE DESCRIPTION AND HISTORY

The existing accessway known as Nine Acre Lane appears to be unofficial and it is certainly unadopted but is known to be used by pedestrians and some vehicular traffic. It runs in a east-west direction from the village Health Centre at Greenway along the rear garden areas to some properties, some open land and ending at Spring Cottage. The fields to the rear of Canterbury Drive, Manor Farm and Longs Field are laid with grass and have an agricultural use. Both parts of this proposed footway are located to the south of the village of North Curry and are outside of the existing adopted settlement boundary.

Two planning applications were made last year for residential developments on the field adjacent to Overlands. The first sought 30 dwelling houses and ancillary facilities, to be developed in two phases. The second sought permission for 20 dwellings and ancillary facilities. Both were refused permission by the Development Management Committee, ostensibly on the grounds of prematurity. The first application has now been appealed and the outcome is pending.

CONSULTATION AND REPRESENTATION RESPONSES

Consultees

NORTH CURRY PARISH COUNCIL -

The Parish Council supports the granting of permission subject to

- the path where it crosses the open field not being hardsurfaced and having a grass surface;
- the path where it crosses the open field having no stock fencing; and

- substantial drainage works along the side of Nine Acre lane particularly along its eastern half.

SCC - RIGHTS OF WAY -

Observations awaited.

SCC - TRANSPORT DEVELOPMENT GROUP -

Observations to follow.

HERITAGE -

No impact upon heritage assets.

LANDSCAPE -

No significant landscape impacts.

DIVERSIONS ORDER OFFICER -

The line of the proposed path crosses the existing public footpath T17/11 at a point approximately 50 metres from its proposed junction with the existing footpath T17/12. At the point of intersection the proposed path is shown as bound on both sides by stock proof fencing and therefore imposes limitations on the existing path T17/11.

Representations

9 letters of representation have so far been received. 6 are against the proposal, 2 in support and 1 is neutral seeking further clarification.

Of those letters **against** the proposal, the following concerns have been expressed.

- The proposal appears to be another attempt by the developer to gain a foothold on the land in order to secure planning permission for housing, which has already been refused twice.
- This application will not lead to the provision of such a footpath, but is a thinly veiled attempt to influence the LPA to grant permission for residential development.
- This application does nothing to further the development for which it is really intended.
- The footpath link only becomes deliverable when planning permission for development is granted and satisfactory title is proved to enable the applicant to provide the footpath.
- The applicant will first need to establish whether anyone has possessory title which would preclude the applicant from exercising the grant of any permission.
- The Borough Council will need to satisfy itself that conditions of any planning permission can be performed by a developer.
- It would appear that the applicant considers any development of land adjoining Overlands to be significantly defective without such an access.
- As the layout of the current housing stands, there is absolutely no need for an additional footpath on this side of our village. Those we have are quite sufficient.
- There is already a footpath that links this site to Greenway. I see no reason why another footpath needs to be created.
- The proposal would only save a few minutes over using a perfectly safe and acceptable route through the village.

- This lane is used for vehicular access to a privately owned field adjoining Nine Acre Lane. There is concern that if this lane is changed to a public footpath, vehicular access to the field would be prevented. There is no other access to the field.
- It would be very difficult for pedestrians and vehicles to pass each other along Nine Acre Lane making it dangerous to use.
- Part of the footpath line is in an area where considerable flooding occurs every year. Therefore a substantial culvert or bridge would be required to make the new path usable all year round.
- Vehicular and pedestrian access has been enjoyed along Nine Acre Lane for approximately 50 years.
- The lane is the only access for Spring Cottage and other landowners to access their property.
- The North Curry Carriage company operates from land which involves the driving of horses and carriages and the movement of lorries down Nine Acre lane. The introduction of pedestrians would only lead to complications.
- The Lane has been maintained by occupiers of property here over many years, and it seems extremely unfair that anyone should contemplate taking over our lane.
- The lane is narrow with a ditch either side and is not suitable for extra traffic (foot or otherwise).
- This application is a futile attempt to usurp other peoples rights and entitlements.

Of those representations in **support**, the following comments have been made.

- I am concerned about the dangers of walking from White Street, Overlands, Longs Field and Barton Way along Stoke Road which is busy, particularly for the elderly.
- The footpath should be made suitable for pushchairs, wheel chairs and bikes.
- The footpath would be a major benefit to the residents of North Curry
- It would provide a much safer route to the village facilities for those who live at the White Street end of the village.
- Residents would no longer be forced to use Stoke Road.
- The new path would provide a safer option, encouraging people to walk rather than drive to the village facilities.
- There would be no lighting, but there isn't on Stoke Road either.
- Minimal impact on households. Would only really impact upon 1.
- Drainage improvements would be needed to keep the path useable and this would benefit properties currently threatened by flooding.
- Approving this proposal would allow the application for development off Overlands to proceed with real evidence about future footpath provision.
- Would transform pedestrian access on the southern side of the village, creating a much safer and pleasant route for residents for most of the year.

The one **neutral** representation received wishes to be kept informed of any proposal that may affect access to the field which that person owns adjacent to and accessed from Nine Acre Lane.

PLANNING POLICIES

DM1 - TD CORE STRATEGY - GENERAL REQUIREMENTS,
ROW - Rights of Way,

LOCAL FINANCE CONSIDERATIONS

The development of this footway would not result in payment to the Council of the New Homes Bonus, as no dwellings are involved.

DETERMINING ISSUES AND CONSIDERATIONS.

The Town and Country Planning Act 1990 makes no provision for path creation. Therefore new public rights of way are usually dealt with under the Highways Act 1980, sections 25 and 26. Section 25 of the Act provides for the creation of a public path by agreement, whereas section 26 provides for compulsory creation by order. Local Highway Authorities should only use their statutory powers where there is a demonstrable public need. New paths can also be created by Parish and Community Councils under s30 of the Highways Act 1980. In this instance however, the fencing and surfacing involved is not considered to be permitted development under the Town and Country Planning Act, and so the applicant has applied for planning permission. Whilst this is an unusual way around the issue, it is clear that the proposal amounts to development in that there are engineering operations and there is also a change of use from agricultural land to footpath on part of the site. It is not permitted development for a private individual to change the use of land and the surfacing is not considered to be permitted development under Part 2 of Schedule 2. The erection of the fencing in itself could be permitted development, but the action of erecting the fencing and enclosing the footpath results in the change of use. Such works would normally be secured through a S106 agreement appended to any formal planning permission, but this proposal is a stand alone application.

The main issues are considered to be whether or not the proposal would unduly impact upon the qualities of this largely rural location outside of the settlement boundaries. It is clear that there is not a good footpath lineage between the south of the village and the facilities of the village such as the Health Centre, the school, the allotments, the childrens play facility and other village facilities. Currently access would be along roads which are well used and have sections without pavements. This does not make pedestrian access a quick or safe option, particularly for children, the elderly, wheelchair users, parents with buggies or the disabled. This makes the proposal a good benefit for the community. However, need is not an issue in planning terms. That would be considered by the Highway Authority if they were to adopt the scheme.

On impact grounds, the prime consideration is that of visual and wildlife amenity. The only real concern is that part of the proposed new footpath that crosses the open fields to the south and west of Canterbury Drive and Longs Field. As this is at the edge of the built environment and is finished with a fence appropriate to a rural location, it is not felt that the proposal would be unduly prominent or unsightly, such as would justify refusal. The section of the proposal along Nine Acre Lane, would be improving and updating an existing thoroughfare which is not a Public Right of Way, but nevertheless has been giving access and passage for some considerable time.

The choice of surface is a bound gravel. This is an appropriate surface for the passage of pedestrians, and subject to seeing a sample to check the form and colouring should be a suitable choice. It is not considered therefore that there will be any adverse visual amenity issues.

On wildlife grounds, an ecological survey has been submitted by a competent professional. The conclusions of this report are that there would be limited impact upon designated sites, habitats, badgers, bats, amphibians, reptiles or birds. Some mitigating measures are suggested and these can form a condition of any approval.

It is noted that the proposed alignment for this new footpath will cross an existing Public Right Of Way in the south-eastern field. Where it does, the applicant will need to be made aware that the Rights of Way section of the County Highway Authority will need to be contacted to see whether any diversion orders, changes or other requirements will be needed.

It appears that this footpath will serve a much better and more clearly defined purpose if the development previously proposed to the Local Planning Authority was progressed. Both previous schemes have been refused, although one (at the time of writing) is currently under appeal. However, consent does not currently exist for any new residential development on the open fields off Overlands, and so this application must be considered on its own merits. It is considered that there are no justifiable reasons for turning down the proposal on planning merit.

In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1998.

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