

25/06/0020

BREACH OF CONDITIONS AND UNILATERAL UNDERTAKING (S106) AT THE OLD CIDER FACTORY, NORTON FITZWARREN

OCCUPIER/DEVELOPER: BARRATT HOMES, BELLWAY HOMES, STRONGVOX

OWNER: BARRATT HOMES, BELLWAY HOMES, STRONGVOX

PURPOSE OF REPORT

To consider whether it is expedient to take enforcement action to remedy the ongoing breaches of conditions and likely imminent breach of the unilateral undertaking (S106) at the above development site, granted planning permission on 23rd August 2007 under reference 25/06/0020.

RECOMMENDATIONS

In the event that either:

A: a timetable for the delivery of works agreed between the developer and your officers is not adhered to; or

B: in the event that no agreement over an acceptable timetable for the outstanding works is reached by 14th October 2011:

1. That the Solicitor to the Council be authorised to serve an Enforcement Notice(s) and take prosecution action in the event that it is not complied with in respect of the following outstanding works:
 - a. The raising of the B3227 to reduce the risk of flooding (required by condition 40);
 - b. The provision of a pedestrian crossing over the B3227 (required by condition 52).
2. That the Solicitor to the Council be authorised to institute injunction proceedings over failure to deliver the local centre in the event that 50% occupations are reached.
3. That the Growth and Development Manager uses his delegated authority to serve Breach of Condition Notices in respect of conditions 12, 32, 34, 38 and 50.
4. That no action be taken at the present time in respect of conditions 36 and 54.
5. That no further action be taken in respect of conditions 26 or 53.

SITE DESCRIPTION

The site is a residential development site in the centre of Norton Fitzwarren. Permission was granted in 2007 for the redevelopment of the former cider factory to provide 389 dwellings, a village centre, part of the Norton Fitzwarren relief road and employment buildings. To date, two of the developers, Barratt and Bellway are believed to have constructed 192 dwellings, with 171 understood to be occupied.

BACKGROUND

In 2008, following the commencement of development, various breach of condition notices were served in respect of the development. Those relevant conditions have since been complied with, insofar as the relevant required information has been submitted.

Over the last few years, your officers have worked closely with the developers in order to seek to secure delivery of the remaining outstanding matters, in particular:

- Delivery of the Local Centre
- Provision of a formalised junction for the estate with the B3227
- Provision of a pedestrian crossing over the B3227
- Various on and off site flood works.

To date, these matters are currently outstanding. It is true that there have been various delays in the developer agreeing the required highway works with Somerset County Council as part of a Section 278 (Highways) agreement. For some time, each party blamed the other for the lack of progress and given that the delay appeared to be partly with the County Council, your officers felt that it was inappropriate to formally push the developers for compliance when they could not legally implement the works. It does now, however, appear that agreement between the developers and the County Council has been reached and the current delay is with technical legal matters.

DESCRIPTION OF BREACH OF DEVELOPMENT CONTROL

At the present time, there is a breach of the following conditions:

12 – Provision of children's play facilities.

26 – Details of the design and appearance of bridge abutments.

32 & 34 – Agreement of design and implementation of on-site flood management works.

36 – Submission of a flood management manual.

38 – Agreement of details and provision of a flood wall to existing properties on Station Road.

40 – Raising of the B3227 (off-site) to reduce the risk of flooding.

50 – Submission of an ecological management plan.

52 – Provision of a pedestrian crossing over the B3227.

54 – Provision of a trespass resistant fence adjacent to the railway.

Although at the present time, there appears to be no enforceable breach, your officers are concerned that there will soon be a breach of the Unilateral Undertaking (S106) that requires the local centre to be built prior to occupation of 50% of the dwellings.

RELEVANT PLANNING HISTORY

Planning permission was granted for the development in 2007 under reference 25/06/0020.

A new, stand alone, permission for the local centre was granted earlier this year under reference 25/10/0031. Although this is a stand alone permission, the S106 obligations on the main site are still binding over the delivery of the centre.

There have been various revisions to the layout of the site, which have reduced the total number of dwellings to be built to 367.

RELEVANT PLANNING POLICES

National Policy, Guidance or Legislation

PPG18 – Enforcing Planning Control

PPS25 – Planning and Flood Risk

PPS9 – Biodiversity

Taunton Deane Local Plan 2004

S1 – General Requirements

EN3 – Local Wildlife and Geological Interests

C4 – Public Open Space provision

T4 – Norton Fitzwarren Major Site Allocation

Somerset and Exmoor National Park Joint Structure Plan Review

STR1 – Sustainable Development

Policy 49 – Transport Requirements of New Developments

DETERMINING ISSUES AND CONSIDERATIONS

These matters are considered in respect of the 4 different 'main issues' in identified in the Background Section of this report.

Local Centre

The Parish Council and Local Ward Members have made clear that the provision of the local centre and, in particular, the doctor's surgery that is part of it is the most important element of the proposed development in terms of its wider community benefits and necessary provision for the needs of the occupiers of the new development. Its provision is a clear requirement of Policy T4.

It would appear that, at the present time, delivery of the Local Centre is held up pending delivery of the outstanding highway works to provide a junction to the B3227, together with an estate road layout that allows the manoeuvring of large vehicles around the site. Your officers have been made aware by the Parish Council (following discussions that they have had with the PCT) that the surgery must be delivered imminently in order to secure funding. This is largely hearsay and your officers have struggled verify matters as precise details of any contractual arrangements are not available for business confidentiality reasons. However, it does appear that there is now a sense of urgency to deliver the local centre, to prevent failure to deliver the doctor's surgery.

The trigger point for delivery of the local centre is enshrined within the S106 planning obligation and requires that the centre is delivered prior to the occupation of 50% of the dwellings. The latest occupancy information from developer indicates that 171 dwellings are occupied. This is only 46.6%.

At the present time, therefore, it is not possible to take formal action against this breach. However, given the urgency noted above, it is clearly expedient that action be pursued as soon as possible.

Due to the reduction in plot numbers from the original permission, there would be a breach once occupations reach 184. It is considered that this is sufficiently close for your officers to justify seeking authority to take injunctive proceedings against the developer in the event that a breach occurs. There need, then, be no delay in securing any necessary action and any requests made by your officers will carry greater weight.

Junction works and pedestrian crossing

The planning permission for the local centre requires that the junction is remodelled to accommodate the large vehicles that will service the site on a regular basis, although there is no such condition on the main application. However, there is a requirement to provide the pedestrian crossing and there is a clear breach as this should have been provided prior to any occupations.

It is true that the crossing cannot be provided until the S278 agreement has been signed with the County Council, but SCC has now confirmed that it is happy with the proposed works and it is considered that the prospect of formal enforcement action should ensure that the facility is delivered in a timely manner. It is likely that the completion of the crossing will be tied up in the provision of the remodelled junction, so taking action over the crossing should also ensure that the junction as a whole is delivered. These works should also enable the local centre to be developed.

The provision of a safe access to the site is clearly desirable in terms of highway safety and in accordance with Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review. The local centre issue aside, as occupations increase, it is clearly necessary to provide improved pedestrian crossing facilities over the B3227 for occupiers of the new development, so that they may easily and safely access the primary school and other facilities.

It would be possible to serve breach of condition notices in respect of these breaches. However, this would not necessarily secure delivery. It is, therefore, recommended that an Enforcement Notice is served to require the pedestrian crossing to be delivered.

Flood works

Following a recent meeting on site with the Environment Agency, it appears that most of the on-site flood works have been completed, albeit that the conditions have not been formally discharged. This has occurred because the EA have approved flood defence consents for most of the works. Following the meeting, it appears that discharging these outstanding conditions should, largely, be a formality although the information is still required to be submitted in some respects.

In terms of the ongoing maintenance manual, required by the EA (condition 36) this cannot be agreed until 'as built' drawings have been provided. Clearly this cannot occur until the development is nearly complete. It is, therefore, considered that it is not expedient, or reasonable, to pursue compliance with that condition at this time. In terms of the bridge abutments (condition 26), these are in place for all 3 bridges and appear to be acceptable. It is, therefore, not considered to be expedient to pursue these matters at this time.

In terms of the other outstanding on-site flood related matters (conditions 32, 34, 38 and 40), most of the works appear to have been carried out. However, the EA still wish to verify that the works are acceptable in terms of the planning permission (not just the flood defence consents). It is considered that a breach of condition notice would be the most effective way of securing agreement over the final details.

Flood works are also required to be carried out to the B3227, comprising the raising of the carriageway by 200mm in order to reduce overland flow. As with the highway works, this relates to work that still needs to be done (as

opposed to the other flood-related works, which are largely complete). Therefore, it is considered that an enforcement notice would be the appropriate mechanism to secure the delivery of these works.

Other breaches

The other outstanding matters relate to the provision of a trespass resistant fence adjacent to the railway, the onsite children's play facilities, an ecological management plan and surface water disposal to prevent discharge onto the highway.

In terms of the fencing, the condition was presumably imposed at the request of Network Rail, the reason being to reduce the incidence of trespass and vandalism on the railway track. To date, Network Rail have not raised any concerns over the non-provision of this fence and the railway remains secured by the developer's own compounds. At this stage, therefore, it is not considered expedient to take this matter further, although it may need to be revisited in the future.

In terms of play facilities, in total there are 3 play areas that should be delivered when the housing surrounding those areas is occupied. The housing in area 'E' of the development surrounding one of the spaces has been complete, but provision of the related play space is still outstanding. There is not yet a breach in respect of provision of the two other areas.

It is understood that the delivery of the place spaces is imminent, the developers having recently progressed purchase of the equipment from a new supplier. It is, therefore, considered that that a breach of condition notice would be the most appropriate course of action.

In terms of the ecological management plan, this is mainly a document to guide future management of the new river channel from an ecological perspective. There is nothing that needs to be done imminently and, therefore, a breach of condition notice that would likely trigger the submission of the document is considered the most appropriate course of action.

Condition 53 requires that surface water is disposed of so as to prevent discharge onto the highway, in accordance with details that should first be submitted to and agreed with the Local Planning Authority. This condition has been imposed in addition to the requirements of condition 35 (requiring a detailed surface water drainage strategy to be approved), which has already been discharged. It is considered that sufficient surface water information has been submitted and approved and no further action should be taken in respect of this condition.

Conclusions and timings

It is clearly in the public interest to ensure that the local centre and necessary facilities for the new residents are provided. It is also clearly in the public interest to ensure that the new development is safe from flooding and has a

safe means of access to the public highway. It is, therefore, recommended that authority is given to the Solicitor to the Council to institute injunction proceedings in the event that over 50% of the dwellings become occupied. It is also recommended that the Solicitor to the Council be authorised to serve enforcement notices in respect of the outstanding highway works and that breach of conditions are served in respect of the outstanding on site flood-related conditions.

In all of these respects your officers have been given assurances that the outstanding works are imminent and will be carried out following the signing of the S278 agreement with the County Council. However, this has been the case for the last 12 months or so.

Your officers are aware of the advice in Planning Policy Guidance note 18 that enforcement action and time for compliance must be proportional to the breach. It is considered that an injunction to stop the developers occupying more houses carries with it a certain risk that all development (including the local centre) would stop on the site. However, this is ultimately the only course of action available to the Council to secure delivery and it is considered that the risk is low. It is true also, that the delivery of the highway works does still require some approvals from the County Council and, therefore, Taunton Deane Borough Council must remain reasonable in its approach.

In light of the above, it is considered that the most appropriate course of action is to secure the relevant authorities to take action and then agree a timetable for delivery of the outstanding works with the developer. Your officers should then be authorised to take the necessary action in the event that the timetable is not adhered to. At the time of writing, the first draft of a timetable is being prepared, with input from Highways Officers in respect of the highway works. This will be available at the time of Committee and it is hoped that it may be agreed with the developer by this time. Members will be updated at the meeting.

In preparing this report the Enforcement Officer has considered fully the Implications and requirements of the Human Rights Act 1998

CONTACT OFFICER: Mr Matthew Bale.