

3/14/1860/FP – Re-siting of existing allotments (pursuant to Condition 4 of the granted appeal for 3/13/1000/FP) at Land North of Hare Street Road, Buntingford, Herts for Taylor Wimpey (North Thames)

Date of Receipt: 21.10.2014

Type: Full – Minor

Parish: BUNTINGFORD

Ward: BUNTINGFORD

RECOMMENDATION:

That subject to the applicant or successor in title entering into a Deed of Variation pursuant to Section 106 of the Town and Country Planning Act 1990 to make reference to this amended application, the Director of Neighbourhood Services be authorised to **GRANT** planning permission subject to the following conditions:

1. Three year time limit (1T12)
2. Approved plans (2E10 - PLOC 01, TWNT18550-16A Sheet 1 of 2, TWNT18550-16A Sheet 2 of 2)
3. All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage as a result of works on the site, to the satisfaction of the Local Planning Authority and in accordance with BS5837: 2012 Trees in relation to Design, Demolition and Construction, for the duration of the works on the site. In the event that trees or hedging become damaged or otherwise defective during such period or within five years following contractual practical completion of the approved development, the Local Planning Authority shall be notified as soon as is reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season following its death or removal, with trees of such size, species and in such number and positions as may be agreed with the Local Planning Authority.

Reason: To ensure the continuity of amenity afforded by existing trees and hedges, in accordance with policies ENV2 and ENV11 of the East Herts Local Plan Second Review April 2007.

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4. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to first use of the allotments or in accordance with a programme agreed with the Local Planning Authority.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscaping in accordance with the approved designs, in accordance with policies ENV1 and ENV2 of the East Herts Local Plan Second Review April 2007 and national guidance in section 7 of the National Planning Policy Framework.

5. No construction shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Maintenance shall be carried out in accordance with the approved schedule.

Reason: To ensure the provision of amenity afforded by the proper maintenance of existing and/or new landscape features, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

6. The recommendations to retain and enhance the biodiversity of the site, highlighted in Sections 6.0 and 7.0 of the Ecological Assessment (ACD) reference TWNT 18027 Rev fca, dated August 2012, shall be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the habitats of protected species in accordance with Policy ENV16 of the East Herts Local Plan Second Review April 2007.

Directive:

1. Other legislation (01OL)

Summary of Reasons for Decision

East Herts Council has considered the applicant's proposal in a positive and proactive manner with regard to the policies of the Development Plan (Minerals Local Plan, Waste Core Strategy and Development Management Policies DPD 2012 and the 'saved' policies of the East Herts Local Plan Second Review April 2007) the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2012 (as amended). The balance of the

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considerations having regard to those policies and permission 3/13/1000/FP is that permission should be granted.

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1.0 Background

- 1.1 The application site is shown on the attached OS extract. It comprises a hectare of land located to the northeast of the 160 dwelling development allowed at appeal under reference 3/13/1000/FP. The site is bordered by The Causeway to the north, and existing agricultural fields to the east and south. The site is located to the east of Buntingford, and within the Rural Area Beyond the Green Belt. Vehicular access is proposed through the approved residential site to Hare Street Road to the south.
- 1.2 The application proposes 42 new allotments each measuring some 125 square metres. 12 no. car parking spaces and cycle parking facilities are also proposed, along with a new cycleway to connect the new development with The Causeway to the North. Well landscaped boundaries are proposed on all sides.

2.0 Site History

- 2.1 Planning permission was granted on appeal in January 2014 for 160 dwellings under reference 3/13/1000/FP. In allowing the appeal the Inspector added a number of conditions, including Condition 4 worded as follows:

“In the event that a cemetery is not transferred to the Town Council in accordance with Schedule 8 of the Deed made under Section 106 of the Town and Country Planning Act 1990 and dated 20 December 2013, a scheme for the re-siting of the allotments, including suitable access, boundary landscaping and the control of incidental structures, shall be submitted as a revised application for the approval of the Local Planning Authority. Thereafter all land not required for use as a cemetery, allotments or landscaping incidental to the development shall be retained in agricultural use.”
- 2.2 The condition refers to the previously proposed cemetery, and Schedule 8 of the signed Section 106 legal agreement which set out the requirements to deliver a new cemetery and transfer it to the Town Council. However, in allowing the appeal, the Inspector clearly stated in his decision that “To expect this development to provide or finance a cemetery to meet the needs of the whole community is disproportionate, particularly when no contribution appears to have

been requested from a development at Appeal site C [South Hare Street Road]. As proposed I do not consider the provision of a cemetery within the development or the amount of the proposed contribution towards the provision of one elsewhere, to be fair and reasonable or necessary to make the development acceptable in planning terms. It is not compliant with the requirements of Circular 05/2005 or the CIL Regulations 2010” (paragraph 63).

- 2.3 The Inspector also stated in paragraph 11 that “The Deed includes a clause that says that the covenants and obligations shall not apply or be enforceable if I state in the decision letter that such obligations are unnecessary or otherwise fail to meet the relevant statutory tests.” Given that the Inspector had clearly stated in paragraph 63 that the requirement for a cemetery did not comply with the statutory tests, the obligations related to the cemetery cease to apply. The requirements within Schedule 8 to offer to transfer the cemetery to the Town Council therefore no longer apply and Officers do not consider it necessary for the developer to make a formal offer to the Town Council for the cemetery provision. This application therefore assesses the second part of Condition 4 which requires a scheme for the re-siting of the allotments, including suitable access, boundary landscaping and control of incidental structures to be submitted.

3.0 Consultation Responses

- 3.1 The Council’s Landscape Officer recommends consent. He comments that the landscape proposals are acceptable in both layout and detailed considerations.

4.0 Town Council Representations

- 4.1 Buntingford Town Council have no objections to the siting and access to the proposed allotments. However they have concerns with the proposed car park in that it is likely to be used by future residents as an overspill car park and by walkers accessing the countryside. They propose relocating the chain link fence and providing a coded entrance gate across the access. They also note that allotment holders have vacated the existing allotments following notice to leave some four months ago meaning they will have lost two growing seasons. They ask if it is possible for the new allotments to be prepared and available following occupation of the 43rd dwelling. They also seek assurance that the remaining land will be retained for agricultural use.

5.0 Other Representations

- 5.1 The application has been advertised by way of discretionary site notice and neighbour notification.
- 5.2 No letters of representation have been received.

6.0 Policy

- 6.1 The relevant saved Local Plan policies in this application include the following:

GBC3 Appropriate Development in the Rural Area Beyond the Green Belt
TR2 Access to New Developments
TR7 Car Parking – Standards
TR12 Cycle Routes – New Developments
TR13 Cycling – Facilities Provision (Non-Residential)
ENV1 Design and Environmental Quality
ENV2 Landscaping
ENV11 Protection of Existing Hedgerows and Trees
ENV16 Protected Species
LRC9 Public Rights of Way
IMP1 Planning Conditions and Obligations

- 6.2 The National Planning Policy Framework and National Planning Practice Guidance are also material considerations in determining this application.

7.0 Considerations

- 7.1 Given that there is no longer a requirement to provide a cemetery within this part of the development site, the Inspector agreed that there would be an opportunity to achieve a better design to the siting and layout of the allotments. This revised layout positions the allotments adjacent to the eastern boundary of the residential development in a more linear form so that it no longer projects out so far into the agricultural field. The allotments now sit more comfortably in relation to the surrounding topography and retain a greater proportion of land in agricultural use. The overall size of the allotments remains similar to that previously approved and is in accordance with the Council's adopted Open Space, Sport and Recreation Supplementary Planning Document which requires new allotments to be a minimum of 0.5 hectares in size.
- 7.2 Extensive native planting is proposed on all sides of the allotments to assist in integrating the allotments into the wider landscape and

mitigating their visual impact. The Council's Landscape Officer is satisfied with the details of the landscaping scheme and raises no objection. It is noted from the previous appeal decision that the Inspector had concerns over the provision of a vehicular access through the existing tree belt that divides the two fields. In paragraph 54 of the appeal decision he stated that "The proposed vehicular access through the tree belt would also open up views of the dwellings to the detriment of the appearance of the Wyddial Plateau and views from the roads and footpaths to the east of the site, which are currently rural. This would also be harmful." He therefore sought to improve, extend and maintain the tree belt through Condition 11 which was worded as follows:

"No construction shall take place until a scheme for the replacement, reinforcement and where appropriate the extension of screen planting on the eastern boundary of the residential development hereby approved has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the replacement of the existing coniferous trees with other evergreen species, the timings of its initial implementation and the management and maintenance arrangements that are to be implemented whilst ever the residential development hereby permitted remains."

- 7.3 This application continues to propose vehicular access through the existing gap in the field boundary tree belt and this will therefore have some landscape and visual impact. It is not possible for the developer to secure vehicular access from The Causeway due to part of the land being registered as Common Land, and Officers would also be concerned over increased traffic movements along this narrow single track lane. Vehicular access through the residential development is therefore considered to be the best option and in order to mitigate the harmful visual impact of the access, the road has been designed to curve to the north with an enhanced tree buffer to minimise its visual impact. Officers are satisfied that this is an acceptable approach and given that no objection has been raised by the Landscape Officer, the proposal is considered to be in accordance with Local Plan policy ENV2. Planting details required by Condition 11 have already been submitted and are under consideration by Officers.
- 7.4 It is noted that there are a number of protected trees to the north of the site, adjacent to The Causeway; however the allotments are proposed at an acceptable distance, and no vehicular access is proposed in this area. There will therefore be no harm to the root protection areas or future growth of these trees.

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- 7.5 The layout also makes provision for 12 no. car parking spaces adjacent to the field boundary on a lower land level that would minimise their visual impact, and reduce the extent of hard surfacing required. The Council has no adopted car parking standards for allotments and Officers consider that 12 spaces would be appropriate in this location. Cycle parking is also provided adjacent to the site entrance, along with a new cycleway that will run along the field boundary and connect the residential development to The Causeway. Overall Officers consider the revised layout to be acceptable and providing good connections for pedestrians and cyclists.
- 7.6 The comments from the Town Council are noted. In terms of delivery, Schedule 7 of the signed Section 106 Agreement requires the completion of the allotments prior to occupation of the 38th free market dwelling. Whilst Officers can encourage the developer to deliver in advance of this threshold, it would not be reasonable to amend this requirement.
- 7.7 The Legal Agreement also requires an 'Allotments Works Specification' to be submitted, and this additionally includes details of any services and fencing, the proposed management regime, and details of the legal rights to be granted to any allotment holders, along with a commuted sum for maintenance should the allotments be transferred to the Town Council or District Council. Details of management of the car parking area can therefore be considered within this specification.
- 7.8 In respect of the retention of the remaining land to the east of the site within the applicant's ownership, this is proposed to be retained in agricultural use in accordance with condition 4 of permission 3/13/1000/FP. Any alternative use of the land would require planning permission and therefore the Council retains control over that use.
- 7.9 Finally it is noted that Condition 4 also requires details of the control of incidental structures. No such information has been submitted with this application but Officers consider that this can be reasonably controlled through the Section 106 Allotments Works Specification. Sheds and greenhouses are likely to require planning permission regardless, and it would not be reasonable to place excessive controls over ancillary structures.
- 7.10 In terms of ecology, the site comprises of arable land and therefore the key ecological features are the existing field boundaries which are to be retained and enhanced. An Ecological Assessment has again been submitted which concludes that, provided the development incorporates suitable design and mitigation measures, there would be no harm to

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protected species. A condition is therefore recommended (similar to condition 17 of 3/13/1000/FP) to require the recommendations of the Ecological Assessment to be implemented as approved. The development will have no impact on any statutorily protected wildlife sites.

8.0 Conclusion

- 8.1 Overall Officers are satisfied that the amended design and layout of the allotments will provide for a high quality scheme that will have no harmful impact on the wider landscape. The revised scheme minimises encroachment into the countryside and retains a larger proportion of land in agricultural use. Although vehicular access will continue to be provided through the existing tree belt, Officers consider that the layout of the access and parking area, and the extensive planting proposed in mitigation will serve to minimise any landscape impact. Access to The Causeway is not possible and would not be considered acceptable for increased vehicular movements.
- 8.2 The application is therefore recommended for approval subject to the conditions set out above.