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1. **3/09/1405/OP – Demolition of 39 and 41 Haymeads Lane to provide access and residential development at land to the rear of 37-57 Haymeads Lane, Bishops Stortford for European Land Holdings Ltd.**

Date of Receipt: 14.10.2009

Type: Outline (Major)

Parish: BISHOP'S STORTFORD

Ward: BISHOP'S STORTFORD-ALL SAINTS

RECOMMENDATION

That subject to the applicant entering into a legal obligation pursuant to S106 of the Town and Country Planning Act 1990 to cover the following matters:-

- (a) A financial contribution of £625 per one bed units, £750 per two bed unit, £1125 per three bed units, and £1500 per four+ bed units index linked by SPON from July 2006, which shall be payable upon commencement of the development towards sustainable transport schemes and measures in the vicinity of the site.
- (b) The provision of Primary Education, Secondary Education, Youth Services, Childcare Services and Library Services contributions, in accordance with the current HCC Contributions Table within the Planning Obligations Guidance-Toolkit for Hertfordshire.
- (c) The provision of up to 40% affordable housing, the type and tenure of which (including the provision of homes to Lifetime Homes standard) is to be agreed with the Council and
- (d) The provision of fire hydrants.

The Director of Neighbourhood Services be authorised to **GRANT** outline permission subject to the following conditions:

- 1. Outline permission time limit (1T03)
- 2. Outline – submission of details (2E02)
Delete "*means of access*"
- 3. Prior to commencement of the development, details of the internal site layout and all materials to be used for hard surfaced areas including roads, cycle ways, footpaths and car parking areas shall be submitted to and

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approved in writing by the local planning authority in consultation with the Highway Authority.

Reason: To ensure that all highway areas are built to adoptable standards

4. Wheel washing facilities (3V251)
5. Prior to the first occupation of the development, the access road to it and the parking spaces to the rear of 37 Haymeads Lane (as shown on the approved plan no; 1024/01AB or any other arrangement that may otherwise be agreed in writing by the LPA) shall be constructed in accordance with that agreed plan or other arrangement and thereafter retained for those purposes.

Reason: To ensure that the access is constructed to Highway Authority specification in the interest of Highway safety and alternative parking provision is made for the dwelling at 37 Haymeads Lane.

6. Prior to the first use of the access to the site from Haymeads Lane, visibility splays of 2.4m X 43m shall be provided and permanently maintained in each direction within which there shall be no obstruction to visibility between 600mm and 2 m above the carriageway level.

Reason: To provide adequate visibility for drivers entering or leaving the site.

7. Prior to the commencement of the development, details of the closure of the existing vehicular access from Haymeads Lane to no 37 Haymeads Lane shall be submitted to and agreed in writing by the LPA. Those details to include details of the reinstatement of the front garden in place of the former access and parking/driveway areas. Once agreed, those details shall be thereafter implemented as such prior to the first use of the new access to the site from Haymeads Lane and thereafter retained.

Reason: In the interests of highway safety

8. Approved access only (3V04)

Reason: in the interests of highway safety

Directive:

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1. All work undertaken on the highway should be constructed to the Highway Authority's current specification, to an appropriate standard and by a contractor who is authorised to work in the public highway and in accordance with Hertfordshire County Council publication "Roads in Hertfordshire – A Guide for New Developments" before proceeding with the proposed development, the applicant should contact the East Herts Highways Area Office (01992 526900) to obtain their permission and requirements.

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and East Herts Local Plan Second Review 2007), and in particular SD1, SD2, ENV1, IMP1, TR1, TR2, HSG1, HSG3, HSG4 and HSG7. The balance of the considerations having regard to those policies is that permission should be granted.

_____ (140509OP.NB)

1.0 Background

- 1.1 The application site is shown on the attached OS extract.
- 1.2 The site comprises of the entire plots at Nos. 37, 39 and 41 Haymeads Lane and the rear gardens of Nos. 43-57.
- 1.3 On the north east side of Haymeads Lane, the surrounding area comprises of a mix of relatively low density residential properties, with semi detached dwellings, and some detached. The cul-de-sac Haycroft comprises mostly detached dwellings. Adjacent to the site and southwest of Haymeads Lane is the new development of Cavell Drive.
- 1.4 The proposal is for outline permission for the demolition of the existing dwellings at Nos. 39 and 41 Haymeads Lane and the construction of an access to enable residential development. The application seeks the approval of the access to the site alone, with all other matters remaining reserved for consideration at a later date.
- 1.5 The proposed access to the site would be off Haymeads Lane, in the approximate position of No.39, which is proposed to be demolished along with No. 41.
- 1.6 Although the layout of the development remains as a reserved matter an

indicative site plan has been submitted to show 13 dwellings that could form a cul-de-sac within the site. With regards to scale the Design and Access Statement that accompanies the application suggests that the dwellings would be 2 storeys with eaves heights of 4.8-5.4metres and ridge heights of 7.5-8metres.

2.0 Site History

- 2.1 Members will recall that planning permission for the same development that is currently proposed, submitted under lpa reference 3/08/1761/OP, was refused permission by the Development Control Committee on the 11th February 2009 for the following reason:

The proposed access would result in the loss of two properties of good condition which, in combination with adjacent dwellings, contribute to the distinctive character and appearance of the street scene. The loss would result in the disruption to the regular pattern of development which establishes that character. It would thereby be contrary to policies HSG7 and ENV1 of the East Herts Local Plan Second Review April 2007.

This decision was challenged at appeal and dismissed in August 2009. The Inspector did not agree with the above reason for refusal, and dismissed the appeal only due to the absence of a completed obligation for contributions towards sustainable transport and other local services.

3.0 Consultation Responses

- 3.1 County Highways have stated that the principle of this development is acceptable in a highways context. In his report the Inspector was of the opinion that highway safety and capacity issues were not of material consideration. However there is continued local concern regarding the impact of additional traffic on the already congested junctions in the vicinity of the site. Whilst a residential development on this site will undoubtedly add to that congestion at peak times the volume of traffic generated will not be significant in relation to the existing movements on the highway network. The proposal is not of sufficient size to require a transport assessment or even a transport statement. It is located within an existing urban area with good accessibility to jobs, shopping, schools, leisure facilities and access to public transport thereby reducing the need to travel by private car in accordance with national land use policies. Notwithstanding the above it is not unreasonable for the development to make a contribution to sustainable traffic initiatives and other measures to mitigate against the impact of the resulting additional traffic movements. This issue was recognised by the

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Inspector as being fundamental to the acceptability of the development and, from the submitted information, the principle of contributions appears to be accepted by the developer. In this respect the Highway Authority, in line with the aims and objectives of PPG13 and in compliance with Circular 05/05 seek contributions based on a cost per unit basis. As the application is for outline approval for an unspecified number or type of dwelling a precise value of contribution cannot be determined at this stage. In conclusion, given the location of the site there is no justifiable reason to raise a highway objection and therefore the principle of the development is acceptable subject to appropriate conditions and a S106 financial contribution.

- 3.2 The Environment Agency has no comments on the application.
- 3.3 The County Planning Obligations Unit have requested financial contributions for primary education, secondary education, youth services, childcare services and library services and fire hydrant provision.
- 3.4 The Hertfordshire Constabulary comments that the use of good quality fencing and a lighting scheme would be beneficial in the interests of crime prevention for the proposed dwellings and the existing neighbours to the site.
- 3.5 Environmental Health have recommended conditions that relate to construction hours of working and soil contamination.
- 3.6 Thames Water comment that with regards to sewerage infrastructure they would not have any objection to the planning application. With regards to surface water drainage this is the responsibility of the developer.
- 3.7 The Councils Engineer has advised that the development would be within 20 metres of a culvert and therefore precautions should be taken when devising the south west drainage system.

4.0 Town Council Representations

- 4.1 Bishop's Stortford Town Council object to the proposal for the following reasons:
 - Loss of two sound residential properties of the type required by the town;
 - Contrary to paragraph 3.14.2 of the Local Plan (referring to town cramming and damage to the character and amenity of established residential areas and that dwellings of economic repair should , in most cases, be retained in the interest of sustainability).

5.0 Other Representations

5.1 The applications have been advertised by way of press notice, site notice and neighbour notification. 7 representations from local residents have been received; their comments can be summarised as follows:

- Objection to the demolition of existing dwellings;
- Impacts upon local infrastructure;
- Risks to highway safety;
- Added road congestion;
- Overdevelopment ;
- Increased pollution;
- Infringement of privacy;
- Applicant does not own the land and owners are unwilling to sell;
- Developing back gardens is contrary to Conservative policy;
- The proposal will effect the potential sale of the existing dwellings;
- The draft Section 106 submitted with the application is misleading.

5.2 In addition to the letters received from local residents, a representation has been received from the Bishop's Stortford Civic Federation who object to the application and identify the following concerns:

- Ongoing traffic congestion;
- Contrary to Policy HSG1 (Site not in the Local Plan);
- Lack of affordable housing provision (HSG3);
- Potential for cramming (HSG7);
- Invalid Section 106 (IMP1);
- Lack of sustainability statement (SD1);
- Insufficient examination of site for land contamination (SD5);

6.0 Policy

6.1 The relevant policies of the East Herts Local Plan Second Review (April 2007) are:

SD1	Making Development More Sustainable
IMP1	Planning Conditions and Obligations
SD2	Settlement Hierarchy
ENV1	Design and Environmental Quality
HSG1	Assessment of Sites not Allocated in this Plan
HSG3	Affordable Housing
HSG7	Replacement Dwellings and Infill Housing Development
TR1	Traffic reduction in New Developments
TR2	Access to New Developments

7.0 Considerations

- 7.1 The application seeks permission for the access to the site and for residential development with all other matters remaining reserved. The considerations in this case are therefore the acceptability of the proposed access together with the principle of residential development at this site and whether there are any changes in circumstances since the appeal Inspectors decision in August 2009.
- 7.2 The previously refused application and the Inspector's decision on the dismissed appeal are fundamental to the consideration of the current proposal.
- 7.3 The Inspector in his decision confirmed that the site was in a sustainable location and in principle residential development is acceptable at this site.
- 7.4 In terms of the proposal for back land development at the site the Inspector stated that *'this would continue a pattern of development that reflects the trend over time for the increasingly efficient use of land for housing which is supported by PPS3'* (Para. 8).
- 7.5 With regards to the Council's reason for refusal due to the loss of Nos.39 and 41 Haymeads Lane the Inspector stated that *'Although their loss would change the street scene 4 pairs of similar dwellings would remain, and so the dominant character and appearance of development along this part of the eastern side of the lane would remain largely in tact'* (Para. 9).
- 7.6 The Inspector agreed with the conclusions drawn by the Council and County Highways that there are no objections to the proposal on highway safety and congestion grounds.
- 7.7 It was confirmed by the Inspector that although a planning condition to require the provision of affordable housing would be acceptable, the financial obligations that are required towards local services and sustainable transport would need to be settled through a legal agreement.
- 7.8 The Inspector's decision concludes that; *'The proposal would not harm the character and appearance of the area and would result in additional housing that would contribute towards meeting housing need in the District. Nevertheless, the absence of a completed obligation means that the increased demand on local services would not be addressed. This would result in unacceptable harm to these services and so the appeal should be dismissed'* (Para. 18). The Inspector, in summary, considered that the

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proposal was acceptable, but was unable to allow the appeal as there was no legal agreement in place for the financial obligations that were required.

- 7.9 Costs were awarded to the appellant by the inspector as he concluded that *'the Council acted unreasonably in failing to substantiate its reasons for refusal and in failing to produce evidence to substantiate a decision taken contrary to officer advice'* (Para. 7 of the cost decision).
- 7.10 Officers concur with the Inspector's decision that the principle of the residential development at the site is acceptable, together with the demolition of the 2 dwellings and the proposed access to the site.
- 7.11 Policy IMP1 states that as part of development schemes, developers will be required to make appropriate provision for affordable housing and other services including education, libraries, childcare and infrastructure improvements.
- 7.12 The appeal inspector was unable to allow the appeal against the Council's recent decision at this site as a completed legal agreement was not submitted with the appeal. The current situation with the proposal is that there is still not a suitable legal agreement in place; however, Officers do not consider that this should prevent Members from resolving to grant planning permission subject to the completion of a suitable legal agreement, as would normally be the case in applications where a legal agreement is required.
- 7.13 The concerns raised by the Town Council, local residents and the Civic Federation are duly noted. However, due to the Inspectors decision little weight can be given to the issues that have been raised. The majority of the points raised by local residents and the Town Council were considered and dismissed by the Inspector at the appeal. Officers considered that there are no grounds for refusal of the application therefore on the issues that have been raised.
- 7.14 The concerns raised by neighbours in relation to the draft Section 106 agreement which identifies the owners of Nos. 39 and 41 as parties to the agreement without their consent is understood. However, the agreement that has been submitted is in a draft form and has not been dated or signed by any of the parties. As the applicant does not own all of the land, Officers take this document to be indicative of the type of agreement that the applicant would hope to produce should authorisation be given for the grant of permission. Clearly no party can be required to enter into such a legal agreement without their consent.

8.0 Conclusion

- 8.1 The principle of residential development at this site is considered to be acceptable and accords with the aims of Policies SD2 and ENV1 of the Local Plan. The proposed access to the site is considered to be acceptable and would not be to the detriment of highway safety.
- 8.2 The appeal Inspector found the proposed development to be acceptable and there are no changes in circumstances to justify a different conclusion to be made for this application, subject to the achievement of a suitable legal agreement for the required financial obligations to be paid, and affordable housing provision.
- 8.3 Having regard to the above considerations it is recommended that planning permission is approved subject to the conditions at the head of this report and to a satisfactory legal agreement being achieved.