

5g 3/09/1405/OP - Demolition of 39 and 41 Haymeads Lane to provide access and residential development at Land at 37-57 Haymeads Lane, Bishop's Stortford, CM23 5JJ for European Land Holdings Ltd.

Date of Receipt: 14.10.2009

Type: Full – Major

Parish: BISHOP'S STORTFORD

Ward: BISHOP'S STORTFORD – ALL SAINTS

RECOMMENDATION

That planning permission be **REFUSED** for the following reasons:-

1. The proposal fails to make adequate provision for affordable housing on the site or financial provision for infrastructure improvements to support the proposed development and mitigate against its impact on the area. It is thereby contrary to policies IMP1 and HSG3 of the East Herts Local Plan April 2007.

_____ (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 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.
- 1.4 The full background to the site is outlined within the previous Committee report which is attached at Appendix A to this report.
- 1.5 Members will recall that in December 2009 the Development Control Committee authorised that planning permission be granted subject to the conditions and 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

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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;
- (d) The provision of fire hydrants.

1.6 The S.106 agreement has not, however, been signed and therefore no decision has been issued in this respect.

2.0 Site History

2.1 Planning permission for the same development that is currently proposed, submitted under lpa reference 3/08/1761/OP was dismissed on appeal in August 2009 due to the absence of a completed obligation for the applicant to provide contributions towards sustainable transport and other local services.

3.0 Consultation Responses

3.1 No further public consultation has taken place since that carried out prior to the December 2009 Development Control Committee meeting.

3.2 No further consultation responses have been received to those detailed within the previous Committee report.

4.0 Town Council Representations

4.1 No further representations from the Bishop's Stortford Town Council have been received to those detailed within the previous Committee report.

5.0 Other Representations

5.1 No further representations have been received to those detailed within the previous Committee report

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6.0 Policy

- 6.1 The relevant 'saved' Local Plan policies in this application remain the same as those outlined within the previous Committee report.

7.0 Considerations

- 7.1 The considerations in respect of the proposed residential development at the site were set out in the previous Committee report, which is attached as Appendix A. It is not proposed to re-iterate these considerations within this report, but only to consider the outstanding issue of the Section 106 agreement for adequate financial provision for infrastructure improvements and for a contribution toward affordable housing.
- 7.2 Members may recall that at the time of the submission of the application in September 2009, the applicant owned only a small part of the land within the application site, which comprised of land to the rear of No. 43 Haymeads Lane and it appears that this is still the case.
- 7.3 The Council's Solicitor has advised the applicant's agent on numerous occasions that a Section 106 agreement cannot be entered into without all land owners being party to the agreement.
- 7.4 It appears that the applicant has failed to acquire the remaining land that is within the application site or to achieve the agreement of the existing land owners to be a party to the Section 106 agreement.
- 7.5 On the 7th October 2010, given that a considerable amount of time had passed since the authorisation of consent by the Development Control Committee in December 2009, Officers contacted the applicant's agent to request an update on the progress that they were making with the Section 106 agreement. Following a response from the agent which suggested that no progress had been made, the Council's solicitor emailed the agent to confirm that the matter could not be progressed until all parties with an interest in the land to be developed were in a position to sign the Section 106 agreement.
- 7.6 On the 25th October Officers emailed the agent to inform them that as it appeared that no progress had been made on the signing of the Section 106 that the application would be reported back to the next available Development Control Committee meeting with a recommendation to refuse planning permission. No further response has been made on behalf of the applicant.

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- 7.7 In accordance with Policy IMP1 the provision of financial contributions are necessary to mitigate against the impact that a development would have upon local services. The Planning Obligations SPD outlines that the Council expects applicants to enter into a Section 106 agreement to commit to the provision of planning obligations for all Major development sites of 10 or more dwellings or on sites that are 0.5 hectares or more.
- 7.8 Policy HSG3 requires the inclusion of up to 40% affordable housing on sites of 15 or more dwellings or over 0.5 hectares. The application site appears to be over 0.5 hectares, and therefore falls within the threshold for affordable housing.
- 7.9 There have been no special circumstances demonstrated in this case to allow the Council to depart from its usual requirements for financial contributions towards local services and affordable housing. As such, Officers consider that the proposal would result in additional and unreasonable infrastructure costs to the community.

8.0 Conclusion

- 8.1 Since the resolution to grant planning permission at the December 2009 Development Control Committee meeting, no progress has been made on the required Section 106 agreement. Furthermore, the applicant is not in a position to progress the agreement until all of the land owners for the application site are willing to be bound by it.
- 8.2 The planning obligations agreed by the Committee in December 2009 are a necessary and reasonable requirement to mitigate any possible environmental impact from the development and without those obligations in place, the development would be unacceptable.
- 8.3 Having regard to the above considerations it is recommended that planning permission is refused.