

ITEM:		RECOMMENDATION:	APPROVAL
REF NO:	3PL/2018/1559/VAR	CASE OFFICER	Carl Griffiths
LOCATION:	BRADENHAM Victory Court Bradenham	APPNTYPE:	Variation of Cond's
APPLICANT:	Clayland Estates Ltd The Glass House Lynford Gardens	POLICY:	Out Settlemnt Bndry
AGENT:	Clayland Architects The Glass House Lynford Gardens	ALLOCATION:	N
PROPOSAL:	Variation of Condition No 2 & 14 on 3PL/2010/1333/F (Development of 6 open market homes & 5 local needs homes inc. 1 special needs home) - Revised trod footpath		
		CONS AREA:	N
		LB GRADE:	N
		TPO:	N

REASON FOR COMMITTEE CONSIDERATION

The application represents a variation to a major planning application and is referred to Planning Committee for this reason.

KEY ISSUES

- The highway and pedestrian safety implications of the proposed footpath
- The deliverability of the consented footpath

DESCRIPTION OF DEVELOPMENT

Victory Court was approved under 3PL/2010/1333/F and has since been fully implemented with the exception of Conditions 2 and 14 which relate to the provision of an off-site footpath which would link the development to the village green and public house to the east. Since the approval of the application and the implementation of the permission, the applicant has encountered difficulties with fulfilling the requirements on Conditions 2 and 14 due to a combination of issues with third party approvals and in terms of the financial viability of the delivering the footpath to adoptable standards.

The current application therefore seeks to vary the conditions to allow for a reduced specification footpath to be delivered to a reduced length. The proposed footpath would span the length of the frontage of the Victory Court development as well as the frontage of adjoining development. Importantly, the footpath would terminate at the boundary of the public house. The footpath would be built as a 'trod' footpath with a crushed limestone sub base.

SITE AND LOCATION

The application site comprises a recently implemented residential development, Victory Court, to the south side of Hale Road within the settlement of Bradenham. Specifically, the application relates to the land to the

front of the development, adjacent to the highway.

EIA REQUIRED

No

RELEVANT SITE HISTORY

3PL/2010/1333/F - Development of 6 open market homes & 5 local needs homes including 1 special needs home. Approved subject to conditions including the following:

2. The development must be carried out in strict accordance with the application form, plans, drawings, and other documents and details submitted or provided by the applicant, as amended by the documents referred to above.

14. No works shall commence on site until a detailed scheme of off-site highway improvements has been submitted to and approved in writing, in consultation with the Highway Authority. This scheme shall include the construction of a new footway and localised road widening along Hale Road (as outlined on drawing no.CC230/09/18A) and the erection of speed reactive signs. The approved scheme shall be implemented in accordance with an agreed timescale.

The following application relates to the land adjoining the site and adjacent to the Lord Nelson Public House:

3PL/2016/0405/VAR - Variation of condition 5 on 3PL/2013/0399/F (to allow implementation of highway works after occupation). Approved subject to conditions including the following:

2. Prior to the first occupation of the development hereby permitted the proposed new access / closure of the existing access / on-site car parking / turning shall be laid out in accordance with the approved plan and retained thereafter available for that specific use.

Reason for condition:

To ensure the permanent availability of the parking / manoeuvring area, in the interests of highway safety.

6. Following the expiry of six months from the grant of planning permission 3PL/2016/0405/VAR, and where the footway and road widening works to the application site frontage agreed under permission 3PL/2010/1333/F have not been completed, the applicant shall undertake off site highway works in accordance with a scheme that has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority prior to the expiry of 8 months from the date of the grant of this permission. The scheme shall include full details off the off site works including and timescales for their completion. The works shall thereafter be carried out in accordance with the approved scheme.

Reason for condition:-

In the interests of highway safety and to provide satisfactory footpath provision.

7. Prior to the first occupation of the development permitted, a visibility splay measuring 2.4m x 43m shall be provided to either side of the access where it meets Hale Road and such splays shall thereafter be maintained all times free from any obstruction exceeding a height of 1.05 metres above the level of the adjacent carriageway.

Reason for condition:-

In the interests of highway safety.

POLICY CONSIDERATIONS

The following policies of the adopted Breckland Core Strategy and Development Control Policies and the adopted Site Specific Policies and Proposals Document, including the Proposals Maps, have been taken into consideration in the determination of this application. The provisions of the National Planning Policy Framework and National Planning Policy Guidance have also been taken into account, where appropriate

CP.01	Housing
CP.04	Infrastructure
DC.01	Protection of Amenity
DC.02	Principles of New Housing
DC.12	Trees and Landscape
DC.16	Design
DC.19	Parking Provision
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

OBLIGATIONS/CIL

Not Applicable

CONSULTATIONS

BRADENHAM P C

The Parish Council strongly object to this application as it overrides Planning Approval 3PL/2010/1333/F, specifically condition 14. Failure to adhere to this condition 14 will have a detrimental impact on the wider village community. The interaction of the Lord Nelson along with the Road Junction Hale Rd / Church St / Mill St is an identified hazard for pedestrians and road traffic. A clear continuation and termination of the footpath opposite the Village Green is an overriding principal of the original planning permission.

NORFOLK COUNTY COUNCIL HIGHWAYS

Whilst the current submission extends pedestrian provision along the frontage of the applicants former site up to the boundary of the Lord Nelson Public House, it does not include the frontage of the pub nor the minor carriageway widening adjacent to it as originally approved.

The only acceptable scheme for off-site works is that which was promised as part of the original application 3PL/2010/1333 and I would therefore reiterate previous advice.

The consented improvements were key to the development receiving approval and without which this Authority would have maintained its objection on highway safety grounds.

The loss of a footway to link with local amenities, such as the village hall, school bus pick up point and play area, will result in pedestrians, including more vulnerable pedestrians such as children, those with mobility impairments and those pushing prams or buggies, being forced to walk in the carriageway of an unlit, well

used highway which is designated as a Local Access Route in the County Council's adopted Route Hierarchy.

The current proposal will also prevent the rectification of the carriageway pinch point adjacent to the pub which was also promoted as part of the original scheme and pedestrians would consequently be directed to walk in the carriageway at its narrowest point and where no level verge exists to enable them to stand clear of on-coming traffic.

It was known at the time of the original application that the off-site highway works were reliant on third party land and we were advised that the two third parties involved were happy to dedicate the necessary land as highway.

I am aware that the applicant experienced difficulty in reaching agreement with one of the third party owners. In order to assist the applicant in moving the matter forward, this Authority negotiated the dedication of the relevant section of land directly with the land owner and a formal dedication agreement has now been concluded. I am therefore satisfied third party land ownership does not form a stumbling block to the completion of the off-site works.

In order to assist the applicant in delivering the scheme, this Authority agreed to a reduction in the width of the footway and also agreed to a section of footway, proposed to the south east of the village green, being omitted from the scheme to reduce costs. In summary, the footway and minor carriageway widening works were secured to mitigate against concerns regarding potential vehicular / pedestrian conflict and were intended to provide an important pedestrian link between the site and the wider village amenities as acknowledged by the applicant at the time. These works were key to the applicant gaining support for the development.

The omission of a section of footway, and minor widening, fronting the pub will result in pedestrians, including more vulnerable groups, having to walk in the carriageway of an unlit classified highway designated as Local Access Route, at its narrowest point, increasing the potential for collision and personal injury accident.

The proposed construction specification, as an informal trod rather a surfaced footway, will not ensure the availability of the pedestrian provision in the long term and will result in an undue maintenance burden on the public purse.

In light of the above I have no option but to recommend the application be refused.

REPRESENTATIONS

Two letters of representation have been received, their comments have been summarised as follows:

- I note that the submission is for a pathway of temporary construction (limestone chippings edged with timber). This appears to be completely different to the original construction approved by the main planning application which state "to highways specification".
- I further note that the original drawings also promised that hedging and trees would screen the development from the opposite properties and from the roadway. The original submissions contained specific drawings devoted to sight line assurances. These have been completely disregarded. No hedging or substantial trees exist as specified by the original submissions.

- Attention is drawn to previous committee meetings where it was resolved to enforce against non compliance with Condition 14 of permission 3PL/2010/1333/F. Should the Council be minded to approve then it should also ensure compliance with the outstanding conditions associated with permission 3PL/2016/0405/VAR or enforce against it.

ASSESSMENT NOTES

1.0 Principle

1.1 The application seeks to vary Condition 14 of 3PL/2010/1333/F which states that a footpath shall be provided in accordance with a drawing submitted and approved with the 2010 application. Since the approval of the 2010 application, the applicant has encountered difficulties in delivering the consented footpath in accordance with Condition 14 through a combination of third party difficulties and financial viability constraints. As the dwellings have been constructed with conditions not discharged, there is a current breach of planning control. In order to resolve this breach, the applicant has submitted the current application. This application seeks approval for a reduced specification footpath which the applicant contends is commensurate with the scale of the consented development and is financially deliverable.

1.2 In assessing the application, the key issue to consider is whether the requirements of the original condition are reasonable and deliverable. At the time of the application being determined in 2010, it is considered that the requirements of Condition 14 accorded with paragraph 55 of the NPPF which sets out the tests which dictate the use of conditions:

- necessary;
- relevant to planning and;
- to the development to be permitted;
- enforceable;
- precise and;
- reasonable in all other respects.

1.3 Nevertheless, officers must also consider the altered circumstances associated with the delivery of the footpath and to this end, the applicant has sought to demonstrate that the financial viability of the scheme has materially changed since the determination of the 2010 application. Financial viability information has been submitted by the applicant demonstrating the post approval realised costs and additional costs that have rendered the delivery of the consented footpath financially unviable. The Council instructed independent viability assessors DVS to review the viability information and it was found to be sound and robust.

1.4 Having established that the requirements of the consented condition are not financially viable to deliver, it is then necessary to consider whether the proposed variation to provide a reduced length, 'trod' footpath adequately mitigates the impact of the consented development in terms of highway safety and accessibility. The proposed footpath would consist of a 1.5 metre wide 'trod' footpath with timber edging and a crushed limestone base and would terminate at the boundary of the public house rather than continue beyond and linking with the village green as with the consented scheme.

1.5 The Highways Authority has objected to the proposal. They raise significant concerns about the variation of this application and the non-provision of the footway, which they consider necessary to make the development acceptable in accessibility terms, to the services and facilities within Bradenham. Their concerns are shared by objectors and are duly noted.

1.6 Of note is the Council's current position with regards to the lack of a five year housing land supply. Policy 11 of the NPPF requires:

- c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed*
 - or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

Whilst the concerns of the HA are recognised and shared by the local authority, they have been weighed against the viability and potential deliverability of the footway, as well as a lack of a five year housing land supply.

1.7 Whilst clearly the reduced length and specification of the trod does not provide the same level of mitigation as the consented scheme, officers are fully cognisant that there is little realistic prospect of the consented footpath being delivered due to the financial viability constraints and the third party difficulties.

1.8 A pragmatic and realistic solution is being proposed by the applicant which would provide a new footpath for the length of the application site as well as the adjoining residential site. Whilst the proposed footpath would not provide a pedestrian link to the village facilities further to the east, the footpath would improve pedestrian safety adjacent to the site and there would be betterment over and above the current situation, providing some level of mitigation.

1.9 Given that it has been established through an independently verified financial viability report that the consented footpath is financially unviable, officers consider that it would be unreasonable for the Council to continue to seek to enforce its delivery. In addition, a trod will be delivered across the frontage of the application site and the adjacent site, with a small section across the frontage of the public house not being delivered. It is considered that the delivery of 11 dwellings (which have been constructed and occupied), would significantly and demonstrably outweigh the loss of this small section of footway, in light of the viability and deliverability information submitted and paragraph 11 of the NPPF, with regard to the Council's current lack of a five year housing land supply.

2.0 Conditions

2.1 The development has been constructed. The relevant conditions from the earlier consent will be updated and applied to this consent, taking into consideration the commencement of development and the approved details. A time condition will not be applied, as is usual practice as variation consent can not be used to extend a time limit and in this instance works have already commenced.

2.2 One of the representations is in relation to landscaping, specifically to the front boundary of the site. One of the conditions relates to this. Members will be updated with regards to this at the Planning Committee.

2.3 A further representation relates to enforcement of conditions. If members choose to grant approval for this application, this would indeed remove the requirement for enforcement as the condition(s) they would be in breach of would have been varied to allow the development, as constructed. If members are minded to refuse consent then appropriate action will be considered.

2.4 An updated list of conditions will be provided to members via the supplementary report at the Planning Committee.

3.0 Conclusion

3.1 Having regard to all of the above, and particularly bearing in mind the absence of any realistic prospect of the consented footpath being delivered, officers consider that the application should be approved.

RECOMMENDATION

That the application be approved subject to conditions.

CONDITIONS

- 1** **In accordance with submitted plans NEW 2017**
The development must be carried out in strict accordance with the application form, and approved documents and drawings as set out in the table at the end of this notice.
Reason for condition:-
To ensure the satisfactory development of the site.
- 2** **Non-standard condition**
The footpath, hereby approved, shall be completed in accordance with the details shown on the drawing reference CC230 301 B within 6 months of the date of the planning permission, unless otherwise agreed in writing by the local planning authority.
Reason for condition:-
In the interests of highway safety