

DEVELOPMENT MANAGEMENT COMMITTEE

13 November 2018

Additional Information Report

PJ – S18/0937

Proposal: Reserved matters application for 174 dwellings and associated infrastructure pursuant to SK94/0125/12

Site Address: Elsea Park - Zone 9, Land East Of A151, Raymond Mays Ways, Bourne

Summary of Information Received:

Further representations from neighbours have been received raising concerns about the proposed surface water drainage ponds to the south of Harvey Close. Following these concerns the applicant has submitted a further statement regarding the ponds as follows:

“The reserved matters application for 174 dwellings on Zone 9 of Elsea Park includes two proposed ponds, located within Zone 8, to accommodate the surface water drainage and attenuation for Zone 9. They are identified in the application as ponds B and C. Pond A is an existing pond located outside the application site, to the east of ponds B and C. Pond A was constructed to serve zones 10a and 10b and has an outfall to the dyke to the northern boundary. This dyke lies to the rear of properties on Harvey Close and Westwood Drive.

Pond B is designed to take flows from Zone 9 and part of Zone 8 and will discharge to Pond C (once constructed), which will also take flows from the remainder of Zone 8 before discharging to the dyke to the northern boundary. In the short term, before Pond C is constructed, Pond B will have a temporary outfall to the dyke to the northern boundary.

Ponds B and C have been designed to accommodate storm water up to and including a 1 in 100 year storm event and factoring in a 30% additional allowance for climate change. The rate of discharge to the dyke will be restricted to the Greenfield runoff rate of 34.5 litres per second. The Environment Agency, Lead Local Flood Authority and Internal Drainage Board have all been consulted on these proposed arrangements and find them acceptable and in accordance with Government guidance. The restricted rate of discharge to the dyke means that the development will not increase the risk of flooding elsewhere.

The ponds will have a permanent water depth of up to 1 metre and the side slopes have been designed to allow easy escape in the event of an emergency and easy access for future maintenance. The ponds will be landscaped with species to create wildlife habitat and will form part of a wider landscaped area. Existing trees surrounding the site of the ponds have been surveyed and plans submitted for their retention and protection during construction. The area of the proposed ponds has also been subject of an ecology survey.

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In terms of ownership, the submitted Land Registry Plan clearly shows that the dyke to the rear of 22-34 Harvey Close and 35-45 Westwood Drive is fully within the ownership of the Landowners Trust. Both the temporary outfall (proposed behind 34 Harvey Close) and permanent outfall (proposed behind 54 Harvey Close) are in areas where the discharge point is in total ownership of the Landowners Trust. Although local residents have referred to generic guidance which suggests that they might have riparian ownership up to the middle of the dyke (and therefore their consent is required to discharge to it) this is not the case. The Landowners Trust have full ownership of the stretch of dyke as described above and therefore have a right to discharge to it. Although residents report having been asked to clear their side of the dyke, presumably based on an incorrect assumption that they have riparian ownership, we would confirm that the Landowners Trust are wholly responsible for maintenance of the stretch of dyke as described above.

Following development, the ponds, dyke and surrounding open space will be transferred to the Elsea Park Community Trust (EPCT), which will be responsible for future maintenance. The EPCT currently owns and maintains the Arena Pond and the habitat and wildlife ponds within Elsea Meadows. The Trust will only accept the legal transfer of areas that have been brought up to a suitable standard by the developer. Until that legal transfer takes place, the developer remains wholly responsible for such areas."

Officer comments:

Following receipt of the representations from local residents, the Local Planning Authority has carried out further consultation with Lincolnshire County Council (acting as Lead Local Flood Authority and the Highway Authority), the Welland and Deepings Internal Drainage Board and Elsea Park Community Trust (the body that will ultimately be responsible for maintaining the ponds). Those discussions resulted in the future management of the open spaces, drainage infrastructure and foot/cycle paths being discussed in some detail. Following those discussions a number of additional conditions are considered reasonable and necessary in order to ensure those pieces of essential infrastructure are provided in a timely manner and to an appropriate specification.

A letter has also been sent to even nos. 22 – 76 Harvey Close and other interested parties that provides a comprehensive response from the Local Planning Authority to all of the issues (both material and non-material) in relation to the surface water drainage ponds that have been raised by local residents. A copy of that letter is appended to this paper.

Recommendation:

The following additional conditions are recommended should Members be minded to grant planning permission. The reasons for each condition are set-out below each condition.

- 1 No development consisting of construction of the highways proposed for adoption, as well as any shared private roads/drives and foot/ cycle paths shall be commenced until full engineering, drainage, street lighting and construction details of these works have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details

Reason: In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the development; and to safeguard the visual amenities of the locality and users of the highway.

- 2 Before the works to provide the drainage ponds hereby permitted are commenced, a plan indicating the heights, positions, design, materials and type of any safety fencing around the ponds and any boundary treatment to the north of the pond area shall have been submitted to and approved in writing by the Local Planning Authority.

Reason: To provide a satisfactory appearance to any boundary treatments and by screening rear gardens from public view, in the interests of the privacy, amenity and safety of the occupants of the proposed dwellings and in accordance with Policy EN1 of the adopted South Kesteven Core Strategy (July 2010).

- 3 The foot/ cycle paths as shown on the following plans shall be completed in accordance with the details approved by condition 15 of this permission before occupation of the 50th dwelling:

- i. Drawing No. 18-017-10 received 23rd October 2018
- ii. Drawing No. 18-017-04 Rev A received 23rd October 2018
- iii. Drawing No. 18-017-05 Rev A received 23rd October 2018

Reason: To ensure the development has appropriate connectivity for the future occupiers of the dwellings hereby approved.

- 4 No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets and foot/ cycle paths within the development have been submitted to and approved by the Local Planning Authority. The streets shall be maintained in accordance with the agreed details.

Reason: To ensure that the future maintenance of the streets serving the development thereafter, are secured and shall be maintained by the Local Highway Authority under Section 38 of the Highways Act 1980 or via an established private management and maintenance company.

- 5 Before each dwelling (or other development as specified) is occupied the roads and/or footways providing access to that dwelling, for the whole of its frontage, from an existing public highway, shall be constructed in accordance with the approved details, less the carriageway and footway surface courses.

The carriageway and footway surface courses shall be completed within three months from the date upon which the erection is commenced of the penultimate dwelling.

Reason: To ensure safe access to the site and each dwelling/building in the interests of residential amenity, convenience and safety.

- 6 No dwelling shall be occupied until details of the timetable for and any phasing of the implementation for the drainage scheme have been submitted and approved by the Local Planning Authority. The drainage scheme shall be implemented in strict accordance with any such details as may be approved.

To ensure that the development hereby permitted is adequately drained without creating or increasing flood risk to land or property adjacent to, or downstream of, the permitted development.

- 7 Before any part of the drainage ponds hereby permitted are brought into use, any works to provide the safety fencing around the ponds and any boundary treatment to the north of the pond area shall have been completed in accordance with the approved details.

Reason: To provide a satisfactory appearance to any boundary treatments and by screening rear gardens from public view, in the interests of the privacy, amenity and safety of the occupants of the proposed dwellings and in accordance with Policy EN1 of the adopted South Kesteven Core Strategy (July 2010).

APPENDIX – COPY OF LETTER SENT TO RESIDENTS AND INTERESTED PARTIES RE S18/0937

Dear Resident of Harvey Close

During the process of assessing reserved matters application S18/0937 a number of concerns have been raised by local residents, particularly relating to the proposed surface water drainage system involving attenuation ponds and discharge of water into the watercourse at the rear of your properties.

As well as written representations and email correspondence, various discussions have taken place involving myself, the case officer Phil Jordan, Bourne Town Council, the local SKDC Ward Members and other interested parties. A face-to-face meeting with myself, attended by a number of residents took place at Bourne Community Access Point on 30/10/18. An open forum also took place at the Bourne Town Council meeting on 06/11/18 at which I was present.

The purpose of this letter is to clarify the situation and provide answers to the concerns and questions raised by local residents. Please be assured that we welcome any representations made by the public and we do take the issues raised seriously.

Key Issues Raised

The key issue that has been raised is the concern that the development proposed under reserved matters application S18/0937 would lead to an increased risk of flooding, either from the attenuation ponds or water discharged into the watercourse to the rear of Harvey Close. Other concerns raised include:

- Notification/publicity of the application
- Impact on wildlife where the ponds are proposed
- Ownership of the watercourse and adjacent land
- Existing flooding
- Riparian rights and responsibilities
- Current and future maintenance
- Whether an alternative proposal should be looked at?
- Impact on property values and insurance costs

These concerns can be split into those which are material planning considerations i.e. matters that have to be taken into account when determining the current application S18/0937 and matters which are not material planning considerations which may be of concern to residents but which case law has determined cannot be taken into account when determining a planning application.

Background to Application

Outline planning permission (ref: SK.94/0125) was granted for the whole Elsea Park development in 2001. A flood risk assessment (FRA) and drainage strategy for Elsea Park was approved as part of the outline permission which proposed a sustainable drainage Additional Information Report (Version 1)

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system (SUDS) involving directing surface water run-off to a series of attenuation ponds throughout the site with eventual controlled discharge to local watercourses. An updated drainage strategy was approved in 2015 following consultation with the Environment Agency (who were a statutory consultee at the time – a role now taken over by Lincs County Council as Local Lead Flood Authority) which included attenuation ponds to the rear of Harvey Close to serve the north western part of Elsea Park. The current application is a “reserved matters” application which seeks approval of the detailed access, design, layout, scale, appearance and landscaping for part of the north-west section of Elsea Park within Zones 8 and 9 including the detailed design of the attenuation ponds which have already been approved in principle as part of the wider drainage strategy.

Planning Application Publicity

Concerns were raised that the application was not sufficiently publicised.

The Town and Country Planning (General Development Procedure) Order 2015 sets out the legal requirements for publicising applications. It requires that the local planning authority must publicise applications:

- (a) (i) by site display in at least one place on or near the land to which the application relates for not less than 21 days; or
- (ii) by serving the notice on any adjoining owner or occupier; and
- (b) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated.

The Council’s adopted Statement of Community Involvement also sets out how the Council publicises applications – <http://www.southkesteven.gov.uk/CHttpHandler.ashx?id=14102>

Whilst publicity was carried out fully in accordance with the above regulations, we acknowledge that communication could have been improved had site notices been placed along Harvey Close and letters sent to those residents further along Harvey Close who would be potentially affected by this development. Following the submission of amended plans, taking on board the concerns raised about notification we did notify these additional residents and we will continue to include them in any future notifications involving this application. We therefore consider that all interested parties have been made aware of the application and had sufficient time to make representations.

Material Planning Considerations

Drainage and Flood Risk - This is an important material planning consideration and when assessing any application where there are drainage/flood risk implications, the local planning authority has to be satisfied that: any proposal will be in accordance with the relevant planning policies; any proposed drainage system is fit for purpose; and that flood risk is minimised. The capacity of existing watercourses to accept surface water run-off and the existence of appropriate management of such watercourses is also a material consideration.

The National Planning Policy Framework (Section 14) and South Kesteven Core Strategy (Policy EN2) seek wherever possible to direct development to areas with the least probability of flooding and implement SUDS drainage where possible to minimise the risk of flooding from surface water run-off. The site is in Environment Agency flood zone 1 and therefore relatively low risk. However, Environment Agency surface water flood risk maps show some areas where there may be localised surface water flooding on the paddocks adjacent to the watercourse.

The principle of residential development of Elsea Park has already been established under the extant outline planning permission SK.94/0125, granted in 2001. Furthermore, the general drainage strategy, has also been approved by the Local Planning Authority in consultation with the Environment Agency. The principle of development or the approved overarching drainage strategy cannot be revisited at this stage.

Reserved matters applications are detailed applications but are required to be in accordance with the overarching requirements of the outline planning permission including the approved drainage strategy. The approved drainage strategy provides a framework for surface water drainage for this part of Elsea Park via a SUDS system involving a system of attenuation ponds to the south of Harvey Close with a controlled outfall to the stream which runs along the back of the properties on Harvey Close. This part of the SUDS system is designed to manage surface water from the north-western part of Elsea Park.

The surface geology of this area is clay with an underlying limestone aquifer so currently surface water from rainfall does not easily infiltrate and makes its way to the watercourse. This sometimes results in standing water adjacent to the watercourse as shown on the Environment Agency maps. Once this part of Elsea Park is developed, the same amount of rainfall and therefore surface water run-off will occur, but because run-off from roofs and hard surfaces is much quicker than over fields, the SUDS system is designed to collect the surface water and direct it to the relatively shallow attenuation ponds where it will be held rather than discharging direct into the stream. Some of the water in the ponds will evaporate and some will infiltrate into the land. The remainder will be stored and eventually discharged into existing watercourses at a controlled rate that does not exceed the existing greenfield run-off rate. The rate is controlled by a hydrobrake which is a valve controlling the rate of flow. This system avoids watercourses being overwhelmed by sudden large quantities of water in storm or high rainfall conditions, thereby reducing the risk of flooding both on-site and downstream.

The current reserved matters application includes the detailed design of the SUDS which is in accordance with the already approved drainage strategy. As previously mentioned, the principle of this drainage system has already been accepted and cannot be revisited in this application. The total amount of water discharged into the stream will not exceed that which currently runs off into the stream at “greenfield run-off rate” although it will enter via a single outfall and at a more regulated rate. Furthermore the ponds have been designed to deal with a 100 year extreme rainfall event with additional 30% capacity to allow for climate change. The system has been designed by qualified engineers who are governed by their codes of practice and professional organisations.

The Local Lead Flood Authority (LCC), who are a statutory consultee for this type of application have advised that there is no reason to doubt that the proposed design will not be safe or work effectively and they advise that it will not result in any additional risk of flooding either on the site or beyond. The proposal will actually result in an improvement as it will act as a control for extreme rainfall events and will prevent the existing problems of standing water.

Future Maintenance - There are arrangements in place to ensure that the drainage infrastructure is adequately maintained to ensure flood risk continues to be minimised.

All of the SUDS features and public open space on Elsea Park, once completed will be transferred to Elsea Park Community Trust (EPCT) who then take on responsibility of ownership and maintenance. They are then obliged to maintain the infrastructure in accordance with the approved landscape management scheme and terms of the Section 106 legal agreement which was entered into as part of the outline planning permission. The ongoing maintenance of the watercourse into which the surface water will discharge is the responsibility of the riparian owners of the watercourse who have a legal duty to keep it maintained and fit for purpose. The watercourse falls within the extended area of Welland and Deepings Internal Drainage Board who have legal authority to ensure that maintenance is carried out and take enforcement action if necessary. There is no reason to doubt that ECPT, as a competent and responsible body, will ensure that those parts of the dyke within their future ownership will be regularly maintained and cleared of obstructions.

Ecology - Arboricultural and ecological survey work has been carried out in both the residential part of the development site and the area where the ponds would be located by professional consultants in those respective fields. Following this survey work, reports were submitted as part of the planning application that contain a series of recommendations to mitigate the impact of the development on trees and ecology which are recommended to be included as a condition upon any planning permission which may be permitted.

Matters Which Are Not Material Planning Considerations

In summary, issues such as ownership, property rights (e.g. rights of way, riparian rights, rights to light), impact on property values, increased insurance costs etc. are not material planning considerations and cannot be taken into account when determining applications. This is a principle that has been well established through case law.

Who owns the land? - there does appear to be some conflicting information regarding who actually owns the land through which the watercourse runs. Some local residents have stated that the boundary of the properties along Harvey Close is the centre of the watercourse. The applicant (Taylor Wimpey) have sent us a land registry plan which appears to show the boundary on the north side of the watercourse which would mean the entirety of the watercourse where the discharge point would be is in the ownership of the Elsea Park land owner. It is our understanding that Taylor Wimpey have not yet purchased the land and that it remains in the ownership of the trustees of the original landowners (Cooke, Turner etc).

Whilst this is obviously a matter of concern for residents, the ownership of the land is a separate legal matter and is not a planning issue or reason to refuse or defer a planning application. We would advise that if in doubt it will be necessary for residents to check the deeds of their property and if the matter is still unresolved, we advise that legal advice is taken.

Existing Flood Issues - from observations on-site as well as photographs provided by local residents, there would appear to be an existing problem with water backing up during periods of heavy rainfall. However, this appears to be the result of a lack of proper maintenance along parts of the watercourse. There is no reason to believe that the watercourse, if properly maintained is not capable of coping with current flows. Whilst the capacity of the watercourse and existence of a maintenance regime is material, current lack of maintenance of the watercourse is not a planning matter and is capable of being resolved under separate legislation outlined below. I have forwarded the photographs to the Welland and Deepings Internal Drainage Board (IDB) for their consideration. I would strongly urge property owners to contact the IDB with evidence if they are aware of any specific blockages of the stream that are beyond their property boundaries.

Riparian Rights/Responsibilities - the principle of riparian rights is that landowners adjacent to a watercourse have various rights and responsibilities over that body of water. Permission must be sought from the riparian owners to discharge additional flows (over and above existing) into a riparian watercourse. Equally riparian owners are responsible for maintaining the watercourse to ensure free flow of water. As already mentioned above, the IDB have legal authority to enforce maintenance of this watercourse where it is not properly maintained. The IDB do not carry out regular inspections and will only enforce if evidence is presented to them by interested parties of lack of maintenance causing blockages. On-going maintenance of riparian watercourses is a therefore a matter which is beyond the scope of planning and is controlled by separate non-planning legislation.

In terms of discharge, the current planning application proposes a controlled discharge rate of surface water into the watercourse which would not exceed existing greenfield run-off rate. The Local Lead Flood Authority (LLFA), as the statutory consultee for flood risk matters, advise this is equivalent to that which would already find its way into the watercourse under existing conditions. In other words no additional flows will be discharged into the watercourse. The actual proposed maximum discharge rate is 34.5 l/s which is the equivalent to current maximum greenfield run-off rates albeit condensed into a single outflow and at a constant standardised rate rather than the highs and lows associated with rainfall/storms. I understand that one resident's solicitor has advised that permission of the landowner is required although in this case it would appear that discharge points are in the sole ownership of the Elsea Park landowner (land to be sold to the developer Taylor Wimpey). The LLFA have stated that they have taken their own legal advice and that if the applicant's expert consultant engineers have calculated that the discharge will be equivalent to greenfield run-off then there is no reason not to accept that this is the case. Either way, based on the advice we have been given by the LLFA, no permission to discharge surface water into the watercourse is required.

If residents consider that this is not the case it would be a legal matter that individual landowners would have to pursue independently with the eventual landowners of the ponds i.e. Elsea Park Community Trust and strong evidence would need to be presented to prove the case.

Can the outfall be rerouted? – it has been suggested that the Local Planning Authority requests that the proposal is amended with the outfall from the ponds discharging into the watercourse further down stream. The Local Planning Authority has a duty to assess the current reserved matters application as submitted and whether or not it is acceptable in planning terms. Case law has established that applications cannot be refused on the grounds that other equally acceptable alternative schemes may be possible. It can only be refused if it is not acceptable in planning terms. In this case the proposal is in line with the already approved overarching drainage strategy and the LLFA have advised that it is acceptable in flood risk terms and will in fact be an improvement over the existing situation as flows will be regulated rather than subject to fluctuations in weather conditions. I understand that Taylor Wimpey do not have an option on the land where it has been suggested that the outflow be re-routed. It would be a matter for the applicant/landowner, outside of the current application should they choose to re-route the outfall as suggested.

Deferral/Withdrawal from Committee - residents have requested determination of the application is deferred pending a further public meeting. Whilst we acknowledge the concerns raised, we consider that all the matters relating to the planning application have been resolved or made clear since the previous deferral. The issues have been fully covered in the officer report to committee - <http://planning.southkesteven.gov.uk/SKDC/S18-0937/1665802.pdf>, together with the information above, at the meetings already held and via numerous emails and other correspondence. Furthermore we will be publishing a formal “Additional Items Paper” supplement to the committee report prior to the Development Management Committee meeting which will contain a summary of any additional information received since publication of the original report and any further officer comments on that information.

Whilst residents concerns are noted, taking the above into account we do not consider that a further public meeting is necessary prior to determination of the planning application or that there are any planning grounds to justify withdrawal of the application from the November Development Management Committee meeting. Members of the public will have the opportunity to speak at the committee, as will the applicant. Members of the Committee will also have the chance to ask questions of the speakers and the case officer. The Committee also has the power to defer the application if they think there are reasonable grounds to do so.

It may be possible that a further meeting could take place involving local residents, the applicant, Elsea Park Community Trust and other interested parties to discuss the outstanding matters not directly associated with the current planning application, such as ownership. These issues are beyond the remit of the Local Planning Authority and need to be addressed separately to the planning application. I understand that Bourne Town Council have already approached the developer Taylor Wimpey with a view to arranging an informal meeting along these lines.

I trust this information is of assistance

Regards

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Proposal: Construction of 49 Dwellings, construction of new vehicular access – Outline Application with the matter of access included for consideration

Location: Land East of Low Road Barrowby

Additional comments received not in the report

Persimmon Homes

Persimmon Homes who have an interest on the land adjacent to the site to the east have requested an amendment to condition 5 to ensure that there is no ransom strip to prevent connectivity between the site and their land that may be the subject of a future planning application.

Barrowby Parish Council

Have confirmed that they have no immediate plans to upgrade the adjacent playing field and request the flexibility that open space provision is either on site or in the form of a commuted sum for off-site improvements.

Officer Comments

As the matter of access is for consideration as part of this application it is considered appropriate to ensure that every endeavour is made to ensure good connectivity to the adjacent land that may be the subject of a future planning application.

Accordingly it is suggested that both condition 5 and 6 are amended.

It is not unusual to include within a S106 legal agreement to have either on site equipped play provision or an equivalent off-site contribution.

As an update to Section 7.5 Open Space and Section 10 Developer Contributions of the Officer Report the open space requirements for the site would be:

On site open space provision of 2350m² of which 350m² would be equipped children's play area or an off-site contribution of £32,810 towards new provision or enhancement of facilities at Barrowby Playing Fields.

Plus an additional maintenance contribution or an appropriate management company would be required for on-site provision. These requirements would form the S106 agreement along with the for affordable housing, education and fire hydrant provision.

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Alterations/Additional Conditions

That Condition 5 amended to the following:

Notwithstanding the submitted Indicative Master Plan drawing number. LNBU 390793003D, pedestrian, vehicle and bicycle connectivity must be provided to and abut land to the east of the site prior to the occupation of the 25th dwelling, in accordance with details to have been submitted to and approved in writing by the Local Planning Authority.

That Condition 6 amended to the following:

Notwithstanding the submitted Indicative Master Plan drawing number. LNBU 390793003D, pedestrian, and bicycle connectivity must be provided to and abut Thorold Road to the north of the site prior to the occupation of the 25th dwelling, in accordance with details to have been submitted to and approved in writing by the Local Planning Authority.

Changes to Recommendation

No change to recommendation.