

HAMBLETON DISTRICT COUNCIL

Report To: Planning Committee
13 November 2014

From: Director of Environmental and Planning Services

Subject: **IMPLEMENTATION OF HIGHWAY CONDITIONS – SOWERBY GATEWAY DEVELOPMENT (10/02373/OUT)**

Sowerby Ward

1.0 PURPOSE OF THE REPORT:

1.1 To inform the Committee that the highway improvements related to the Sowerby Gateway development are not being delivered as required by the planning conditions, to report the reasons why and to agree what actions the Council should take.

2.0 BACKGROUND:

2.1 Sowerby Gateway is a strategic mixed use development allocated in the LDF Allocations Development Plan Document (Policy TH2). It is the main allocation for the Thirsk sub-area and is also important in terms of district-wide housing and employment land supply. Outline planning permission was granted on 21st August 2012 for 925 dwellings, a neighbourhood centre, extra-care facility, primary school and various community uses (10/02373/OUT). Phase I comprising 107 dwellings and commercial development was granted detailed permission at the same time. In both drafting the LDF policy and deciding on the planning application the traffic impact was a key consideration.

2.2 Highway issues and the ability of the highway network throughout Thirsk and Sowerby to cope with the additional traffic from the development were amongst the main concerns of residents in comments made on the planning application.

2.3 The planning permission included conditions requiring highway improvements and these were to be “triggered” at specific points in the construction of the development. The conditions are set out in full in Annex A, but 3 main conditions required that within 6 months of occupation of the first house or 1500sqm of commercial development (which ever occurred first):

- Improvements to the A168 / B1448 junction to allow “northbound on” and “southbound off” movements.
- Improvements to B1448 Topcliffe Road including toucan crossing, parking bays adjacent to Melbourne Place and “Keep Clear” road markings adjacent to Sowerby Road.
- Widening at the Topcliffe Road / Station Road / Westgate mini-roundabout to provide 2 approach lanes from Topcliffe Road and Westgate.
- Widening at the Kirkgate / A61 junction to provide 2 approach lanes from Kirkgate.

2.4 It is relevant to note that the trigger point referred to in the conditions did not come from the findings of the modelling work or the Traffic Assessment submitted with the application. Rather it arose from assurances given by the original developer about how soon the junction could be delivered and a desire from Members to achieve an early delivery in response to concerns from Sowerby residents. The specific highway improvements, however, were derived from the Traffic Assessment and modelling.

- 2.5 The first house was occupied on 28 March 2014 and so the highway works should have been completed by the end of September, but they have not been started. Twelve homes had been occupied at the time of writing this report, 7 private and 5 affordable.
- 2.6 The construction of the A168 / B1448 junction was the subject of a separate planning application, submitted in July 2011. Planning Committee originally resolved to grant permission in December 2011, but the Highways Agency placed a Holding Direction preventing a decision being issued until it was satisfied with the detailed design of the junction. It took a further two years of discussion between the applicant and the Highways Agency and significant amendments to the application before the Holding Direction was lifted on 26 November 2013. Planning Committee reconsidered the application ten days later and planning permission was granted on 6 December 2013.
- 2.7 It was apparent earlier this year that there would be slippage with the A168 / B1448 junction improvements as a consequence of Highway Agency approval for the design and construction and that this would delay completion. At this point the delay was thought to be a maximum of 6 months. Mulberry Homes had agreed a 6 month construction window with the Highways Agency from September 2014 to March 2015, but believed it could be completed sooner.

3.0 CURRENT POSITION:

- 3.1 Mulberry Homes went to tender on the A168 / B1448 junction on 7 March 2014 with a view to starting construction in September 2014 and completing by March 2015 at the latest. Mulberry budgeted £2.3m for all the costs associated with the junction. However, the tender price, the need to purchase additional land, and contingencies increased the cost to £7.5m.
- 3.2 This has caused Mulberry Homes to defer construction of the junction and re-appraise the timing of its delivery. Mulberry maintain that because of the increased cost the income generated by the development is not sufficient to deliver the junction in the timescale set by the planning condition.
- 3.3 To help find a solution to funding the junction the Council encouraged Mulberry to discuss with the LEP the potential of a bid for Growth Deal Funding and it was agreed that a business case should be developed for an anticipated second call Growth Deal bids in early 2015. However, it became clear that the Growth Deal funds were only going to be available to projects unsuccessful in the first round; no new projects were to be included.
- 3.4 Mulberry Homes believes the local highway network can accommodate more development than specified in the condition before the junction is required and has commissioned work on updating and reworking the traffic modelling undertaken for the original planning application to assess the highways impact of increasing quantum of development. This will also include different mixtures of housing, employment and commercial development. They intend to submit a planning application as soon as possible to vary the condition regarding the junction, enabling more dwellings to be constructed before it is required. The number of dwellings the application will include is not known at this stage. The outcome of the modelling work would be submitted as evidence to support the planning application.
- 3.5 Mulberry Homes has stated that it intends to complete the other highway works required to junctions in town and Topcliffe Road in the near future. Designs for these works have been submitted to North Yorkshire County Council for approval. The modelling work described above will assume that these works are completed.

4.0 OPTIONS AVAILABLE TO THE COUNCIL:

4.1 The conditions placed on the application were considered necessary at the time to enable the development to proceed and specifically to make the highway effects acceptable in planning terms. There must therefore be a serious consideration of what actions the Council should take in respect of non-compliance with the highway conditions. However, it should also be recognised that the trigger point in the conditions was not based on evidence from the traffic modelling work and that conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness if challenged.

4.2 Non-compliance with planning conditions can lead to the instigation of formal enforcement action. This may be through the service of a Breach of Condition Notice, an Enforcement Notice or a Stop Notice accompanied by an Enforcement Notice. These are considered below:

Breach of Condition Notice

4.3 A Breach of Condition Notice can be served where a condition imposed on a planning permission has not been complied with, the notice sets out which conditions have not been complied with, states what action is required and gives a period for compliance. It takes effect immediately from when it is served and it is a criminal offence not to comply with any requirement. The validity of the notice, the decision to serve a notice and the decision to prosecute can be challenged in the High Court. In the event of non-compliance the Council can take legal proceedings in the Magistrates Court which can impose a fine of up to £2,500.

4.4 Because of the relatively small scale of the fine in relation to the development and because it does not address the fundamental issues, ie getting the junction built and controlling development until the junction is complete, it would not be an effective remedy. Also, as set out below, the decision to serve a notice could be unreasonable if an application to vary the condition supported by modelling is submitted.

Enforcement Notice

4.5 An Enforcement Notice would be appropriate if the Council is confident that the breach of planning control was unacceptable and causing harm. The Enforcement Notice would detail the breach of planning control, what action needs to be taken to remedy the breach and how long the owners have to remedy the breach. In this case the remedy could be stopping the development until the junction has been built, although legal advice would be needed on this. As Members are aware, there is a legal right of appeal against the enforcement notice and therefore it would be necessary to have clear expert advice from the Highway Authority supporting service of the notice. If an appeal is made (or a planning application submitted) the Council cannot require that the notice is complied with until the appeal is decided.

4.6 An Enforcement Notice is not appropriate at this time because the point at which the junction becomes necessary is not clear and the Council knows that a planning application is pending.

Stop Notice and Enforcement Notice

4.7 A Stop Notice can be issued in conjunction with an Enforcement Notice to secure the cessation of a development before the period specified for compliance in the Enforcement Notice; ie before the enforcement notice takes effect.

- 4.8 Stop Notices are used rarely and usually in extreme circumstances. Inappropriate use of a Stop Notice can result in the Council's incurring claims for compensation, so they are used only when other measures have, or are likely to, prove unsuccessful in dealing with a breach of planning control that has very serious consequences. The full support of the Highway Authority would be essential because of the risk of compensation.
- 4.9 Failure to comply with a Stop Notice can result in summary conviction and substantial fines.
- 4.10 The validity of a stop notice and the propriety of the local planning authority's decision to serve a notice can be challenged in the High Court.
- 4.11 For a Stop Notice to be a proportionate approach the local planning authority must be satisfied that the activity which amounts to the breach must be stopped immediately. As set out above, until the updated modelling work is completed and assessed by the Highway Authority, the evidence for stopping the development has not been established.

Submission of an Application to Vary the Condition

- 4.12 Therefore in respect of the enforcement options, irrespective of the conditions, the Council could be on weak ground to take enforcement action until North Yorkshire County Council has come to a view on the modelling work described in paragraph 3.4.
- 4.13 Mulberry Homes has stated that it intends to submit a planning application as soon as possible based on the updated modelling work.
- 4.14 In view of the above, the best way forward is to await the submission of the application which is thought to be imminent, and determine this having regard to the new modelling work, the recommendations of the Highway Authority and the outcome of consultation on the application. The appropriateness of enforcement action could be reconsidered after this if necessary.

5.0 RECOMMENDATION

5.1 It is recommended that:

- (1) Mulberry Homes be pressed to submit an early application for a variation of the highway conditions 34 and 35 for the Sowerby Gateway development; and
- (2) the need for enforcement action be deferred until the outcome of the application is known.

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Background papers: None

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HIGHWAY CONDITIONS SOWERBY GATEWAY

- 34** No further development shall take place within the application site unless, within 6 months of the occupation of the first dwelling on the site (or 1,500sqm of commercial floor space has been occupied, whichever occurs first), the highway improvement scheme on the A168/B1448 junction, to allow “northbound on” and “southbound off” movements is constructed, and brought into use.
- 35** No further development shall take place within the application site unless, within 6 months of the occupation of the first dwelling on the site (or 1,500sqm of commercial floor space has been occupied, whichever occurs first) the highway improvement works listed below have been completed and made available for use. The required highway improvements shall include:
- (a) improvement works to B1448 Topcliffe Road including:
 - i access roundabouts
 - ii drainage
 - iii lighting
 - iv footways
 - v pedestrian islands
 - vi toucan crossing
 - vii zebra crossing
 - viii bus infrastructure
 - ix parking bays adjacent Melbourne Place
 - x Keep Clear road markings adjacent Sowerby Road
 - xi provision of missing footpath link on western side of road railway bridge and “Thorpefield”
 - (b) widening at the Topcliffe Road/Station Road/Westgate mini roundabout to provide two dedicated approach lanes from Topcliffe Road and Westgate
 - (c) widening at the Kirkgate / A61 junction to provide two dedicated approach lanes from Kirkgate

The works shall be undertaken in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority and following the completion of an independent Stage 2 Safety Audit which has been carried out in accordance with HD 19/03 – road Safety Audit or any superseding regulations.