

HAMBLETON DISTRICT COUNCIL

Report To: Planning Committee
11 December 2014

From: Director of Environmental and Planning Services

Subject: **IMPLEMENTATION OF PUBLIC RIGHT OF WAY RISK ASSESSMENT & MITIGATION CONDITION – FORMER YORK TRAILERS SITE, YAFFORTH ROAD, NORTHALLERTON (13/01956/FUL)**

Northallerton North Ward

1.0 PURPOSE OF THE REPORT

- 1.1 To advise the Committee of: (i) the current position with details required by the planning condition imposed in response to concerns about public safety relating to use of a Public Right of Way (PRoW) crossing the East Coast Main Line (ECML) close to the development site; (ii) the options available in the event of a breach of the condition; (iii) and to seek endorsement of the action initiated under delegated authority.
- 1.2 This report is brought before the Committee as a matter of urgency because of the concern about safeguarding future residents that provided the justification for the condition and because it is anticipated that its requirements may be breached in the near future.

2.0 BACKGROUND

- 2.1 The site is allocated for housing in the Allocations Development Plan Document (2010) with an anticipated 300 dwellings and planning permission had previously been granted for a layout comprising 283 dwellings in December 2011 (09/00795/FUL). The current developer took on the site after securing planning permission for a change of house types in May 2013 (12/01521/MRC).
- 2.2 A new application for 241 dwellings was submitted in September 2013 (13/01956/FUL). Planning Committee resolved to grant planning permission in December 2013 and permission was issued in May 2014 on completion of a legal agreement. The scheme is now under construction and the first dwelling is expected to be occupied before Christmas.
- 2.3 The permission included a condition, number 16, requiring a risk assessment and mitigation measures in respect of a nearby PRoW crossing the ECML:
16. *PROW Level Crossing – Risk Assessment & Mitigation*
- Prior to occupation of the first dwelling, a full risk assessment of the impact of the development hereby approved upon the public right of way level crossing with the East Coast Mainline. Any mitigation measures identified within the risk assessment shall be implemented and maintained in accordance with the approved details prior to occupation of the first dwelling.*
- Reason: To safeguard the amenity of the future residents and other users of the PROW level crossing in accordance with the aims of Policies CP1, CP2, DP1, DP3 and DP4 of the Hambleton Local Development Framework.*
- 2.4 A site layout showing the development and the PRoW is attached at **Annex A**.

3.0 CURRENT POSITION

- 3.1 The risk assessment required by condition 16 was submitted on 4 December 2014. On receipt it was found to be inadequate because there had been no input from the Rights of Way Authority, North Yorkshire County Council. The applicant has requested advice from NYCC in order to review and amend the risk assessment as necessary. Officers have also advised the applicant to seek advice from a body concerned with safety, potentially the Health & Safety Executive or the Royal Society for the Prevention of Accidents.
- 3.2 The developer has advised that the first houses at the northern end of the site will be sold later this month, with occupation before Christmas a possibility. It is not expected that the risk assessment will have been revised and approved by then and implementation of any approved mitigation measures would inevitably take longer. A breach of the condition is therefore anticipated.

4.0 OPTIONS AVAILABLE TO THE COUNCIL

- 4.1 There was no requirement for closure or diversion of the crossing but condition 16 was considered necessary at the time to enable the development to proceed and specifically to mitigate any enhanced risk to the public in the continued use of the PRow crossing the ECML. There must therefore be a serious consideration of what actions the Council should take in respect of non-compliance with the condition. However, the nature of planning conditions and the context in which condition 16 was imposed should also be considered, along with other relevant considerations in order that the likely risk arising from non-compliance can be assessed. These factors are:

- Planning controls, including conditions, cannot require developers to resolve problems that already exist, unless they are a direct barrier to the development going ahead. The PRow and its crossing of the ECML have been in place for many years.
- Planning conditions cannot apply to land outside the control of the developer. The PRow and its crossing of the ECML lie outside the development site and are not under the control of the developer.
- Therefore the condition cannot require the developer to stop up or divert the PRow. However, it can require the developer to undertake reasonable mitigation of any identified risk arising from the development taking place in close proximity to it. The risk assessment is intended to assist in this.
- The phasing of development was not known when the condition was devised. The Public Right of Way runs alongside the southern boundary of the site and development has begun at the northern end of the site, some distance away.
- The majority of the site is undeveloped and is an active construction site; as such it does not currently permit direct public access between the housing that will soon be occupied and the Public Right of Way.
- The developer has advised that it does not intend to create the pedestrian link between the site and the Public Right of Way until development occurs in the adjacent southern part of the site; this is not expected to be until late 2015 at the earliest.

- 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, i.e. having the risk assessment carried out and any approved mitigation measures implemented, it would not be an effective remedy until such time as a risk to the public can clearly be identified. As noted above, the new dwellings are currently separated from the PRoW by a secure construction site and there is no prospect of access being made from the site to the PRoW until late 2015.

Enforcement Notice

- 4.5 An Enforcement Notice would be appropriate if the Council were confident that the breach of planning control is unacceptable and causing harm. The Enforcement Notice would detail the breach of planning control, what action needs to be taken to remedy it and how long the owners have to remedy the breach. In this case the remedy could be stopping the development until appropriate mitigation measures have been implemented, although legal advice would be needed on this. As Members are aware, there would be a legal right of appeal against an enforcement notice and therefore it would be necessary to have clear expert advice from the Rights of Way Authority supporting service of the notice. If an appeal was made (or a planning application submitted) the Council could not require compliance with the notice until the appeal is decided.
- 4.6 An Enforcement Notice is not appropriate at this time because the point at which any harm that might arise through public access from the development site to the PRoW has not been reached.

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; i.e. 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 Rights of Way 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, the possibility of harm can only arise when the developer creates a connection between the development site to the PRoW and that is not expected until late 2015.

Temporary Stop Notice

- 4.12 A Temporary Stop Notice can be served independent of an Enforcement Notice. It can only be served once and is only effective for 28 days. In view of the likely time scale for the

creation of a connection between the site and the PRow this measure is premature at present.

- 4.13 Therefore in respect of the enforcement options, the Council could be on weak ground to take enforcement action unless and until NYCC, in its capacity as Rights of Way Authority, or the HSE or RoSPA advise that an unacceptable public risk is imminent and directly attributable to the development. It is not considered that any risk associated with use of the PRow could justify enforcement action until the PRow can be directly accessed from the development site. The developer should be asked to confirm when that would occur.
- 4.14 In view of the above, the best way forward is to require the developer to submit an improved risk assessment and to seek firm assurances about the time scale for implementation of any mitigation measures that are approved following consultation with the Rights of way Authority and other relevant consultees. The submission of a revised risk assessment is anticipated soon and the conditions that would allow residents of the new development to access the PRow will not exist for some time. The appropriateness of enforcement action could however be reconsidered as necessary as the development proceeds.

5.0 RECOMMENDATION

5.1 It is recommended that:

- (1) Barratt/David Wilson Homes be pressed to submit a revised risk assessment as required by condition 16 before the end of January 2015.
- (2) Barratt/David Wilson Homes be pressed to confirm (a) the time scales for (i) creation of a direct pedestrian access from their site to the PRow; and (ii) implementation of any mitigation measures approved under condition 16; and (b) the arrangements for preventing public access to the PRow from their site until (a) (i) occurs.
- (3) Further consideration of the options for enforcement action be deferred subject to the early submission of (i) a revised risk assessment; and (ii) satisfactory information identified in (2) above.

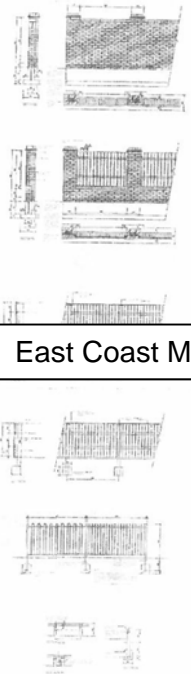
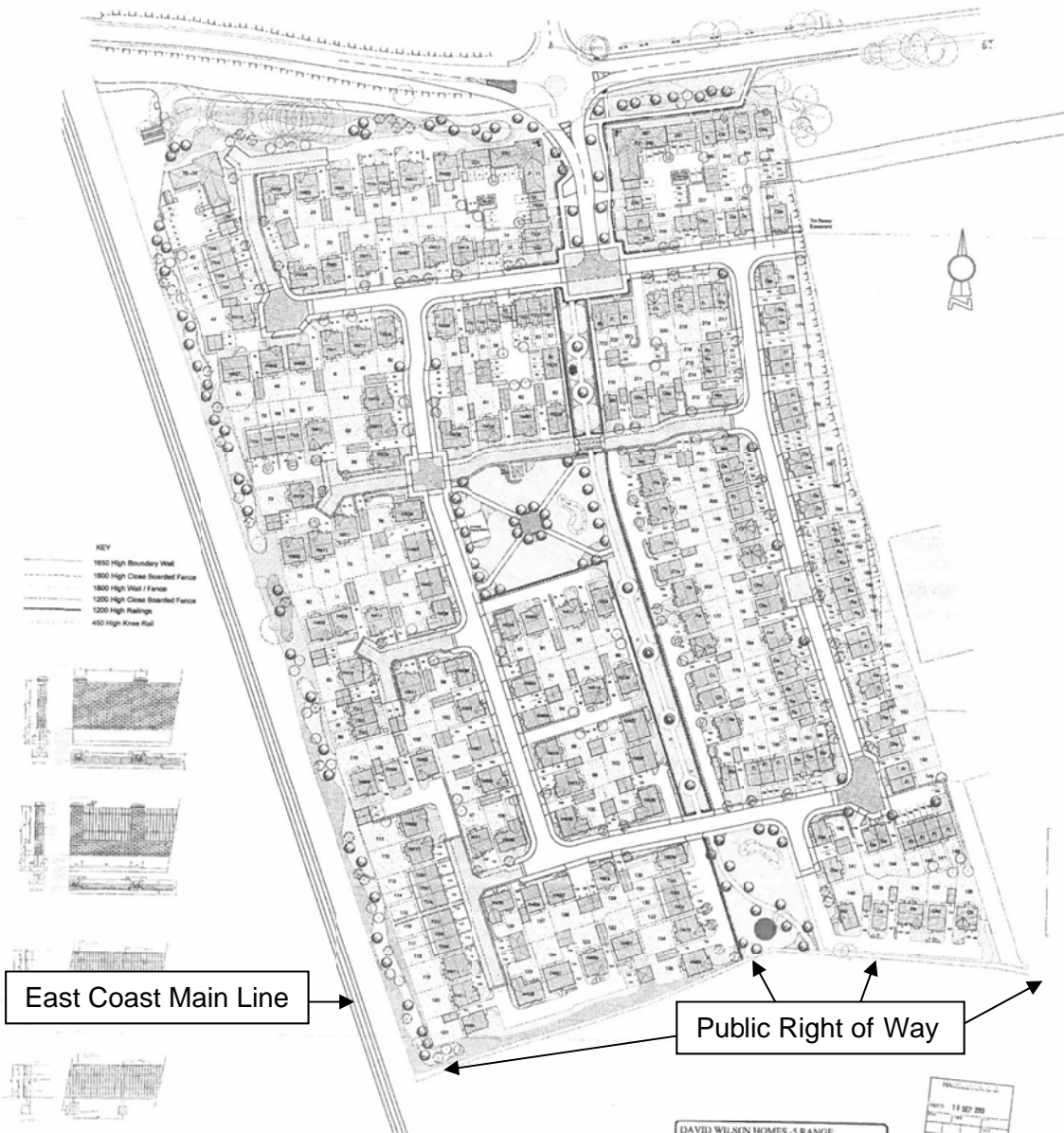
MICK JEWITT

Background papers: None

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CASTLE GATE & MOWBRAY PARK, NORTHALLERTON



CONSUMER TO BEWARE - IMPORTANT INFORMATION
 Please read the following information carefully before you purchase any property. This information is provided for your information only and does not constitute an offer of any property. It is intended to provide you with information about the property and the developer. It is not intended to be a substitute for a professional survey or other independent advice. It is intended to provide you with information about the property and the developer. It is not intended to be a substitute for a professional survey or other independent advice. It is intended to provide you with information about the property and the developer. It is not intended to be a substitute for a professional survey or other independent advice.

DO NOT SCALE, IF IN DOUBT ASK.

SCHEDULE OF HOUSE TYPES

NAME	BEDS	No	Sq Ft
GENIAL	2 BEDS	14	656
BEVERLY	3 BEDS	19	798
INDICLY	3 BEDS	23	834
MARKSMITH	3 BEDS	3	952
ROSETH	3 BEDS	19	951
TOPAZ	3 BEDS	6	1086
STANHAM	4 BEDS	18	1128
STAVROLD	4 BEDS	7	1281

TOTAL UNITS: 98 No

DAVID WILSON HOMES - 5 RANGE
SCHEDULE OF HOUSE TYPES

Type	Name	Spec	BEDS	No	Sq Ft
507	Witchet	A3	2 Bed	30 No	653.4
P220-5	Sturston	A3	2 BED	3 No	704
7174-D-5	Parfield	A3	2 Bed	1 No	704
1122-5	Greenwood	A2	3 BED	10 No	1188
1123-5	Park	A2	4 BEDS	2 No	1278
1440-5	Irving	A2	4 BEDS	5 No	1347
1511-5	Milford	A1	4 BEDS	19 No	1125
7335-5	Highgate	A2	3 Bed	18 No	1248
1816-5	Bethune	A2	4 BEDS	8 No	1406
1848-5X	Hallen	A1	4 BEDS	18 No	1536
1816-5X	Leven	A1	4 BEDS	10 No	1591
1847-5	Chiswick	A1	4 BEDS	10 No	1783
1834-5	Maiden	A1	5 BEDS	9 No	1797

TOTAL: 149 No

18 SEP 200

CASTLE GATE
 MOWBRAY PARK
 NORTHALLERTON

PLANNING LAYOUT

1:500 @ A0

JULY 13

12.1088.01

PLANNING LAYOUT