

Parish: Northallerton

Committee date: 17 August 2017

Ward: Northallerton North & Brompton

Officer dealing: Mr P Jones

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13/01956/DIS16

Discharge of Condition 16 (level crossing) relating to planning approval 13/01956/FUL

At Castlegate and Mowbray Park Development, Yafforth Road, Northallerton

For David Wilson Homes Yorkshire (East) Division

This application is referred to Planning Committee in recognition of significant concerns expressed by Members.

1.0 SITE, CONTEXT AND PROPOSAL

1.1 The former York Trailers site was allocated for housing by Local Development Framework policy NH1. Part iii of the policy required “contributions from the developer towards improvements to the local footpath and cycleway network towards the town centre and areas of employment, particularly the route crossing the Northallerton – Middlesbrough Railway line”. The allocation made no reference to the pedestrian crossing of the East Coast Main Line (ECML).

1.2 Planning permission for 283 dwellings was originally granted in December 2011. However, that permission was not taken up and the site was marketed to other developers. The applicant secured two further permissions: 12/01521/MRC, which amended the drawings to place their house types on the previously approved layout, in May 2013; and 13/01956/FUL, which altered the layout and reduced the number of dwellings to 241, in May 2014.

1.3 The latter of those permissions is being implemented and included condition 16 which states:

“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.”

The stated reason for the condition is:

“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.”

1.4 At the time of the original submission for the discharge of the condition, the applicant’s safety consultant advised that works be carried out to the steps and safety refuge on the rail crossing. Those works have since been carried out by Network Rail.

1.5 The applicant now proposes to place additional signage at the entry point of the footpath at the south side of the estate comprising one sign warning footpath users of fast trains and a finger post direction sign to the town centre. The applicant also proposes to distribute rail safety literature to residents of the estate incorporating wording provided by Network Rail.

2.0 RELEVANT PLANNING AND ENFORCEMENT HISTORY

- 2.1 09/00795/FUL - Revised application for the layout of land and construction of 283 dwellings, associated garages and landscaping; Granted 13 December 2011.
- 2.2 12/01521/MRC - Application to vary condition 2 of planning approval 09/00795/FUL to amend the design of the 283 dwellings; Granted 5 January 2013.
- 2.3 13/01956/FUL - Construction of 241 dwellings and associated works; Granted 14 May 2014.

3.0 RELEVANT PLANNING POLICIES

- 3.1 The relevant policies are:

Core Strategy Policy CP1 - Sustainable development
Core Strategy Policy CP2 - Access
Development Policies DP1 - Protecting amenity
Development Policies DP3 - Site accessibility
Development Policies DP4 - Access for all
Allocations Policy NH1 - York Trailers, Yafforth Road, Northallerton
National Planning Policy Framework - published 27 March 2012

4.0 CONSULTATIONS

- 4.1 Highway Authority – Advice awaited.
- 4.2 British Transport Police – Expressed concerns about the likelihood of increased anti-social behaviour in the vicinity of the railway crossing.
- 4.3 Network Rail – Consider that the works carried out to the railway crossing in recent months bring the crossing up to currently acceptable standards.
- 4.4 Public comments – A petition signed by over 120 residents requests the immediate provision of a footpath link to the town centre.

5.0 OBSERVATIONS

- 5.1 The main issue to consider in this case is whether with the proposed signage and safety information are sufficient to allow the discharge of condition 16, taking account of the works already carried out to the level crossing by Network Rail.
- 5.2 Members will recall previous formal reports on this matter in December 2014 and January 2015, when a breach of the condition was anticipated, in April and July 2015, and regular briefings since. The developer submitted a risk assessment with mitigation measures in December 2014 but it lacked input from the Rights of Way Authority and was therefore revised and resubmitted in January 2015. Members expressed a wish to see more ambitious mitigation measures than the developer had proposed and officers sought advice from the Health & Safety Executive and the Royal Society of Prevention of Accidents (RoSPA). Neither organisation had a statutory duty to comment on the submission and both declined to do so. However, RoSPA recommended a specialist safety consultant, TMS Consultancy, and TMS was engaged to review the risk assessment and mitigation measures.
- 5.3 The submitted risk assessment has not yet been approved or refused. In line with the reports and briefings mentioned above, it was decided to defer any decision and to refrain from enforcement action whilst there was no connection from the site to the public footpath, thereby avoiding any increased public risk, and to allow Network Rail

to pursue a diversion of the footpath that would allow the pedestrian level crossing to be closed.

- 5.4 TMS identified additional measures in the form of traffic lights that would warn pedestrians crossing the ECML when a train was approaching. However, Network Rail has advised that it will not allow this to be implemented because of concerns that it would make the pedestrian crossing more dangerous. The reasoning is that, in order to give adequate warning, a northbound though train would need to trigger the signal as it passed though Northallerton Station, which meant that a stopping train would also trigger the signal. Network Rail believes this would result in the red light being on for such a long period whenever a northbound train stopped at Northallerton that people using the crossing would lose patience and be tempted to ignore the signal and enter the crossing when a southbound train might be approaching.
- 5.5 During this period, Network Rail undertook maintenance and improvement works to the pedestrian crossing and advises that the further work to the crossing proposed in the developer's submission is therefore no longer necessary. However, scope still remains for the developer to raise public awareness of the risk of using the crossing, by means of signage and by notifying occupiers of the new houses, as now proposed.
- 5.6 Much of the above was considered by the Committee in a confidential report on 27 April 2017. The Committee's resolution was "the developer is invited to amend their submission under condition 16 (13/01956/DIS16) to include warning measures and is brought before the Planning Committee for decision at the earliest opportunity".
- 5.7 In response to that resolution, and following discussions with officers and Network Rail, the applicant has submitted an up-dated submission in terms of signage at the entry point of the footpath. This has been kept as simple as possible at the request of Network Rail which was concerned that a proliferation of signage would cause confusion.
- 5.8 Two new signs are now proposed at the entry point of the footpath. One sign would warn of the presence of high speed trains and a second sign would give direction to Northallerton town centre. The warning sign would be in black on yellow, to maximise its visibility, and contain a hazard symbol and the words "CAUTION High speed trains 100 metres", with an arrow pointing towards the level crossing.
- 5.9 Rail safety advice, relying on wording provided by Network Rail, would also be circulated to residents of the new estate. The proposed wording is:

We write further to recent consultations with Hambleton District Council with specific reference to future access to the public footpath, which runs adjacent to the southern boundary of the development and facilitates access to both Northallerton Town Centre and the unmanned pedestrian crossing over the East Coast High Speed Main Railway Line.

Presently access to said footpath is closed off from the development, at the request of Hambleton District Council, due to concerns regarding the proximity of the railway crossing and the potential danger this could pose to our customers should you choose to use it. However, following our recent discussions with Hambleton District Council it has been agreed that the link from the development to the public footpath is to be opened up on (insert date). Mindful that the adjacent open space, currently accommodating building materials, will not be finalised until February 2018, said access to the public footpath will be provided by means of a temporary footpath in the location indicated on the attached plan.

Mindful of the potential dangers associated with the unmanned pedestrian crossing over the East Coast High Speed Main Railway Line, we would request that you exercise caution and vigilance at all times with the knowledge that this is a busy high speed railway line serving the East Coast. Signage, as indicated on the attached plan, will be placed adjacent to the junction of the POS footway and public footpath in order to reinforce the potential danger.

It is our intention to write to you in the very near future to confirm our intentions with regards to the resurfacing works to the existing public footpath.

- 5.10 In conclusion, the applicant seeks the discharge of condition 16 on the basis of the additional signage, the circulation of rail safety advice along with the physical works already carried out to the rail crossing by Network Rail.
- 5.11 Outside the scope of Condition 16, Network Rail continues to monitor the rail safety situation at the rail crossing and will seek to address any additional risks that it identifies over the course of time.
- 5.12 The measures described above cannot prevent a person accessing the pedestrian crossing if they wish to do so and officers are mindful of the strong feelings that the issue of rail safety can give rise to. Other options have been considered, including the possibility of a diversion of the public footpath, and the following advice from the report considered by the Committee in April 2017 remains pertinent:

“The assessment of options relating to condition 16 must be mindful that planning controls cannot require a developer to resolve a pre-existing problem. The pedestrian level crossing of the ECML has been in place for many years and therefore it is the likelihood of increased use by residents of the development, and the particular impact arising from that increased use rather than any pre-existing issues, that must be addressed. It must also be borne in mind that planning conditions cannot require a developer to do anything on land they do not control.

Furthermore, consideration must be given to the reasonable limits of control that may be exercised by a means of planning condition. If stopping up or diversion of the footpath were required as mitigation, it would make the entire development dependent on the success of a stopping up or diversion order under rights of way legislation, which cannot be guaranteed. Condition 16 is worded negatively (a Grampian condition) and Government guidance is clear that “Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission”. The time limit was before the occupation of the first dwelling on the site, which has passed and therefore a decision to refuse a submission under condition 16 because it falls short of stopping up or diverting the footpath would be unlikely to survive challenge through an appeal.”

- 5.13 Taking that advice into account, along with the limited options available to the developer and the input of Network Rail into the current proposal, it is considered to be a reasonable form of mitigation in the circumstances that apply, subject to all measures being implemented in full before pedestrian access from the site to the public footpath is reinstated.

6.0 RECOMMENDATION

- 6.1 That subject to any outstanding consultation, the details submitted for discharge of condition 16 are agreed on the understanding that they will be implemented in full before pedestrian access from the site to the public footpath is reinstated.