

Planning Committee Update Sheet – 20th June 2017

Item 7

Planning Application 07/2017/0621/FUL – Land at Olive Farm and Land North of Methuen Drive, Methuen Drive, Hoghton

1. Amended plans have been received omitting the proposed footpath connection to FP 108 in between Plots 42 and 43 following a land ownership issue highlighted by an objector. The inclusion of this second footpath connection was made at the request of County Highways however there is a strip of land between the northern boundary of the site and the drawn line of FP 108 that is in third party control. Representations have also been made by objectors raising concern that the footpath link would be in close proximity to a blind bend on an access road used by farm traffic. County Highways have raised no objections to this change.

As a result of the Site Layout and Landscaping plans being amended to omit the second footpath connection, the reference to plan numbers '938 A 002 Rev. G', 'D6225.002B' and 'D6225.004B' within recommended condition 2 are required to be updated to state '938 A 002 Rev. H', 'D6225.002C' and 'D6225.004C'.

2. The Chartered Surveyor acting on behalf of the owners of Cuerdale Hey Farm has submitted additional comments highlighting concerns that noise from the occupancy of the new development may lead to dogs housed within the commercial kennels at the farm to bark excessively. The concern, in turn, is that the noise from the dogs barking could impact on the occupants of the development. As stated within paragraph 7.9.13 of the committee report, Environmental Health have assessed this relationship and have raised no objections subject to the imposition of a condition requiring the submission and agreement of an acoustic survey.

Concern is also raised at the potential for occupiers of Plots 33-43 to form gated accesses onto the public footpath from the rear boundary of their properties. Due to the line of FP 108 along the access road to Cuerdale Hey Farm, any such future access would likely result in trespassing over a strip of third party land which would be a private legal matter. If the Committee are minded to approve the application and have highway/pedestrian safety concerns over the potential for such access being created then an additional condition could be included to prevent the insertion of gates/points of pedestrian access along the northern (rear) boundaries of the aforementioned plots.

3. A meeting has taken place between Officers and representatives of some of the objecting neighbouring properties. Whilst a number of the points raised replicate issues previously identified by objectors and commented on within the committee report, other points raised require comment/further comment in the form of this update to the Planning Committee.

i) Objectors argue that there is a land ownership issue, in the form of the 'hedge and ditch rule', which renders the application invalid. The hedge and ditch rule states that when land of adjoining owners is separated by a hedge alongside a ditch then, in the absence of any evidence to the contrary, both the hedge and ditch will belong to the owner of the land on the same side as the hedge.

The applicant affirms that the judgement that forms the basis for the hedge and ditch rule is not planning judgement but is a potential boundary dispute, which they would refute. The Land Registry title plan has been submitted by the applicant detailing the application site as being fully in the ownership of the individual that they have submitted the required notice on as part of the application process. A solicitor acting on behalf of the applicant has provided written advice, asserting that "*The Land Registry mapping system is not itself a definite map of the location of land boundaries between properties, it is the source on which the planning notice system relies*", with any dispute needing to be determined by a Court.

The Council's Legal Department have investigated the claim made by objectors and conclude that the objection is irrelevant in terms of questioning the validity of the planning application as the judgement related to a boundary dispute rather than a comparable scenario for the purposes of planning law. It is also the view of the Council's Legal Department that even if the hedge and ditch rule is applied to this case, the physical sequence of the ditch, boundary and hedge on the site would benefit the applicant rather than the adjacent land owner. Having taken the appropriate legal advice the Council is therefore of the opinion that sufficient notice has been provided as specifically required by Article 13 of the Town and Country Planning (Development Management Procedure) Order 2015 and the application is therefore valid.

ii) Objectors have argue that 4 of the proposed housetypes (Wye, Ribble, Clyde and Dene) do not meet the recommended minimum internal dimensions for garages set out on in the Joint Lancashire Structure Plan "Car Parking Standards". County Highways have identified 3 of the housetypes as not meeting the recommended minimum internal dimensions for garages (Clyde, Ribble and Wye) in their consultation response.

It should be noted that the internal dimensions for garages set out on in the Joint Lancashire Structure Plan "Car Parking Standards" are recommendations and the applicant has submitted amended plans confirming garden sheds and external access to the rear of the plots which have garages that do not meet the recommended internal dimensions. This has been considered acceptable on other developments in the Borough as the increase in internal dimensions sought by County Highways is to allow the storage of household items in garages (e.g. bicycles) and this potential storage need can be met by the provision of garden sheds.

The applicant has also affirmed that the housetypes, including internal garages, proposed are the applicant's standard housetypes and have been successfully built with the garage dimensions proposed at numerous sites across the country.

iii) Objectors have highlighted that an appendix letter to the Flood Risk Assessment refers to the proposal of 42 dwellings on the site and are concerned that the Flood Risk Assessment was prepared with a lesser number of units in mind than proposed. The main body of the Flood Risk Assessment does however refer to the proposal of 78 dwellings throughout, with the applicant confirming that the Flood Risk Assessment was commissioned on the basis of 78 dwellings being proposed and have also supplied confirmation from United Utilities that the number of dwellings proposed is not relevant to the Flood Risk Assessment as the necessary calculations are based on the site area.

4. As of the 16th June, three additional letters of objection have been received which raises policy, design, highway safety and congestion concerns that are already detailed within the report to Committee.