

DELEGATED

AGENDA NO . 3

UPDATE REPORT

**PLANNING COMMITTEE
29th AUGUST 2007**

**REPORT OF CORPORATE DIRECTOR
OF DEVELOPMENT AND
NEIGHBOURHOOD SERVICES.**

**07/0857/FUL
RAMSEY GARDENS AND NEVERN CRESCENT, INGLEBY BARWICK,
STOCKTON ON TEES
EXTENSION OF ROADWAYS TO BOUNDARY OF BETTY'S CLOSE
FARM/PROPOSED RESIDENTIAL DEVELOPMENT
EXPIRY DATE: 21ST JUNE 2007**

Summary:

Since the original report to Members further comments from Ward Hadaway have been received on behalf of both Bellways and Yuills.

Recommendations:

RECOMMENDED that application 05/3273/FUL be approved subject to the conditions laid out in the previous report;

Consultations;

Comments from Ward Hadaway;

My client has asked me to contact you regarding the committee report and in particular the need for a section 38 agreement.

I note from paragraph 15 of your report you appear to agree that such an agreement is necessary. However, there does not appear to be any such condition recommended.

I note from other recent approvals by Stockton such conditions have been imposed, such as condition 11 for 07/0226/OUT ("Notwithstanding the details hereby approved, prior to occupation a scheme detailing the provision of a footpath, highway marking and other additional works shall be submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall be implemented before the approved dwellings are brought into use.") and condition 21 for 06/0709/OUT ("Prior to the commencement of development a Section 278 Agreement shall be entered into for highway works to be provided to the access on to Bridge Road to accommodate only left in and left out traffic movements and be adopted to the tangent point approximately 10 metres back from Bridge Road."). I would therefore ask you to please add the following condition and reason:

The development shall be constructed in accordance with plans and particulars previously approved in writing by the Local Planning Authority and both roads shall be dedicated as highways maintainable at the public expense before the dwellings approved under permission 06/1064/OUT have been occupied or before the public car park approved under permission 06/1064/OUT is brought into use (whichever is the sooner).

Reason: In order to ensure the development is constructed to an acceptable standard in the interests of users' safety and convenience, its future maintenance is provided for and the purpose of the development (providing vehicular and pedestrian access to the neighbouring development) is delivered when needed.

I should point out that not having such a condition may leave the Council open to a complaint to the Local Government Ombudsman from future users, which is what happened to East Northamptonshire DC and Northamptonshire CC in a case reported at <http://www.lgo.org.uk/highways.htm#Highway%20management>

I have also been asked to write you regarding Circular 05/2005 tests for section 106 agreements. I consider that an agreement in this instance would meet those tests:

- It is necessary, as otherwise access might not be provided in time or to an appropriate standard
- It is relevant to planning
- It is directly related to the proposed development as it would simply regulate when the roads would be provided
- It is fairly and reasonably related to the proposed development and reasonable in all other respects as the landowners are offering the benefit of their own volition and the agreement does no more than close a loop-hole from the existing permission

Material Planning Considerations

1. In reference to the conditions referred to in other planning application, issues relating to highway works are generally addressed via negatively worked planning conditions or conditions restricting occupation of the units/building until highway works are in place. In one of the cases mentioned a section 38 agreement was required although no legal agreement was entered into to secure this because as explained in the previous report this runs separate from planning legislation.
2. The second case required a section 278 agreement which is essentially a financial mechanism for the Local Highway Authority to secure monies to carry out the required highway improvements and is a different requirement of the highway act to a section 38 agreement, which relates to adoption.
3. The Council's attention is drawn to a similar case involving East Northamptonshire and Northamptonshire CC in which the Local Government Ombudsman assessed a road in a new housing development was not brought up to adoptable standard.

Within the Local Government Ombudsman report it is stated that the claim was against East Northamptonshire Council in that they had failed to attach

the appropriate planning conditions to the permission granted for the development, causing the road and street lighting to remain unfinished.

It is however important to note the Ombudsman **did not** find fault by East Northamptonshire Council over the wording of the planning condition, but in not notifying the County Council of the building regulations approval for the development to enable the issuing of an advance payment code (APC) notice to the developer (The APC notice system is meant to provide householders with protection in the event that the developer does not complete the road to an adoptable standard).

In light of the above Ombudsman case it is still considered that it is not justified to require a condition or a section 106 agreement for the adoption of the road. Protection to future residents in case the road is not constructed to an adoptable stand would therefore come through an advance payments code notice.

4. Although it is not considered that there should be a requirement for the applicant to enter into a section 106 agreement, the Council's Planning Solicitor has however received verbal confirmation from the applicant that after receiving legal advice he would be willing to enter into a section 106 agreement for the adoption of the roads, members must therefore determine whether they consider this to be necessary or not as part of any approval that may be issued.

Conclusion;

5. In conclusion it is considered that the proposed roadway extensions would have a minimal impact on the surrounding residents and would not pose any significant impacts on the highway network. Issues in relation to road adoption can be satisfactorily addressed by a section 38 agreement which is separate from planning legislation. The proposal is considered to be in accordance with policy GP1 of the adopted Stockton on Tees Local Plan, subsequently the development is recommendation for approval remains.

Corporate Director of Development & Neighbourhood Services
Contact Officer: Simon Grundy
01642 528550