

BATH AND NORTH EAST SOMERSET COUNCIL

Development Control Committee

18 January 2012

**OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN
AGENDA**

ITEM 11

ITEMS FOR PLANNING PERMISSION

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| 01 | 11/02674/EFUL | The Bath Press, Lower Bristol Road, Bath | 49 |

The Health and Safety Executive (HSE) Objection

In order to overcome the objection to the application that has been made by the HSE, the applicant has recently proposed Heads of Terms for a legal agreement and a Grampian condition with a view to ensuring that the risks associated with the existing Windsor Gas Holder Station a short distance to the north of the appeal site are appropriately managed. The HSE themselves raised the possibility of using a Grampian condition in their original letter of objection.

A Grampian condition is a negatively worded condition which prevents the development (or its occupation) from taking place until a specified action has been taken: for example, such a condition might prevent the commencement or occupation of a development until certain off-site roadworks have been carried out, or until a particular highway has been stopped up. They are generally used in relation to works that need to be carried out on land outside of the applicant's control, and can allow planning permission to be granted for development which would otherwise be unacceptable. The nature of this approach means that care must be taken to ensure that any Grampian condition actually secures what is necessary, and it is important that such conditions are drafted on a case-by-case basis.

In the present case, the primary purpose of a Grampian condition and/or planning obligation would be to prevent the occupation of the proposed Tesco store, and other elements of the development, until the Gas Holder Station has been decommissioned.

It is the Secretary of State's policy, as set out in paragraphs 39-41 of Circular 11/95 relating to Planning Conditions, that there should be a reasonable prospect of the action required by any such condition being undertaken within the lifetime of the permission. The converse is that, if there is no reasonable

prospect of the condition being fulfilled within that timeframe, then (whilst it would not be unlawful to grant permission subject to such a condition) the condition should not be imposed and the planning application should be refused.

Similar considerations would in the view of officers apply regarding the provisions of any S106 obligation which sought to achieve the same objective. The principal underlying purpose of the Secretary of State's policy is to avoid the accumulation of unimplemented planning permissions, so it would be reasonable for members to consider whether there is a reasonable prospect of the Gas Holder Station being decommissioned within the lifetime of the permission both in the context of a proposed planning condition and a proposed planning obligation.

The Grampian Condition proposed by the Appellants is: "St James Investments and Tesco Stores limited will not commence development of the Bath Press Site until it has entered into a binding contract with Crest Nicholson/ Wales and West Limited to give effect to the decommissioning works to the Windsor Bridge gas tanks holders".

The Heads of Terms suggested by the Appellants propose that:

1. "Tesco stores and St James Investments will not commence work on the Bath Press Site until they have entered into a binding contract with Crest Nicholson to pay for the Decommissioning Works with a view to bringing forward the redevelopment of the gas holder site and any other Bath Western Riverside redevelopment sites and such contract has become unconditional."; and
2. "Tesco stores will not open for trade until the gas holder is lowered to the ground, purged of gas, and the gas delivery pipe is removed for a length of at least 1 metre".

As previously mentioned, the HSE have also said that a Grampian condition could be acceptable to them, and have now suggested the following condition: "No occupation of any habitable development, or development of any permanent building designed for occupation shall take place within the Inner or Middle Consultation Zones shown on the attached plan provided by the Health and Safety Executive entitled "Windsor House Holder Station reference HSE HID CI5 Ref: H 1596" until Windsor Gas Holder Station has been permanently decommissioned to the satisfaction of the local planning authority and the hazardous substances consent applicable to the three gas holders has been removed". The imposition of this condition could meet the HSE's public safety concerns.

The above condition is based very closely upon a Grampian condition agreed with the HSE and imposed by this Council in respect of the Bath Western Riverside development.

Officer response

The key considerations in relation to the above are whether either the Grampian conditions and/or the Heads of Terms suggested by the Appellants

are sufficient in this case to ensure the decommissioning of the Gas Holder Station prior to the occupation of the appeal scheme. The Appellants' proposed Heads of Terms relate only to the non-occupation of the retail store, and it is not yet clear whether the HSE would be prepared to agree to other parts of the scheme (e.g. the residential units) being occupied in advance of the decommissioning of the Gas Holder Station. Further discussions will be needed with the HSE in order to clarify their approach to this mixed use development in this regard.

The Tesco Condition and Heads of Terms

The wording of the Heads of Terms and Condition proposed by the Appellants' team is flawed and fails to meet the relevant tests. Firstly it only relates to named companies ("Tesco stores and St James Investments"), and would not seem to prevent occupation by anyone else. Secondly, the trigger proposed is inadequate as it only requires a contract to have been entered into for the decommissioning works, and that contract might (for instance) specify a date for the decommissioning of the Gas Holder Station that is so far in the future that the development will already be occupied before it happens. The second of the Heads of Terms quoted above goes further in that regard as it refers to the store not opening for trade. Thirdly it would appear that there is land owned by other third parties that would be required in order to secure the decommissioning of the Gas Holder Station, and the planning implications of any such involvement remain unknown. Fourthly it is not certain that there are no other potential developers who may in due course be capable of bringing forward the decommissioning benefit. These latter two points are considered further below.

The Grampian condition suggested by the HSE

The Condition suggested by the HSE is an improved version to that proposed by the Appellants as it refers to No Occupation which is considered to be the correct trigger in this case. As indicated above, it is a similar condition to that used in respect of the Bath Western Riverside Development. However Members are advised that the wording of the Condition in this case would not bring about the same level of certainty and it is in this regard relevant that the Gas Holder Station (unlike with Bath Western Riverside) is outside the current application site. In the present case, if the development were ready for occupation and the decommissioning had not taken place, there could be considerable pressure on the Council to agree to a relaxation of the relevant condition/obligation, especially if any perceived delay in the decommissioning is outside the Appellants' control. The risk of this happening would be mitigated to a degree by the first of the obligations proposed by the Appellants, but again it should be noted that the Appellants' Heads of Terms relate only to a specific named occupier ("Tesco stores"), and would not appear to cover occupation by any other organisation.

The precise wording of any planning condition(s) and/or planning obligations is not however a critical consideration, since this may prove capable of resolution in discussions between the Appellants, the HSE and the Council. Of greater significance are:

- (i) Whether there is a reasonable prospect of the Gas Holder Station being decommissioned before the expiry of any planning permission that may be granted for the appeal development;
- (ii) What weight should be given to the Appellants' offer in part to fund the decommissioning through an agreement between themselves, Wales and West Utilities (the gas supply company) and Crest Nicholson (the developers of BWR).

As to (i), little information has been provided by the Appellants to assist the LPA with this judgment. The provision of an alternative gas supply infrastructure to replace the Gas Holder Station would appear to require the provision of new equipment both on that site and (it is understood by Officers) on land owned by the Council at the current waste management site between Midland Road and Upper Bristol Road, as well as the laying of considerable lengths of additional pipework and potentially other works under or on land owned by other third parties. The limited information provided by the appellant renders it impossible to be clear as to exactly what works might be required or what consents might be needed (and from whom) for those works to take place. As things stand, therefore, Officers are of the view that the Council cannot be satisfied that there is a reasonable prospect that the decommissioning of the Gas Holder Station will take place - thus enabling the occupation of the appeal development to take place - before the expiry of any planning permission granted in that behalf.

As to (ii), the Appellants argue that, without their proposed contribution to the costs of the decommissioning works and the provision of the necessary new infrastructure, the decommissioning works are unlikely to take place for the foreseeable future. However, again, the Council has been provided with little information on the basis of which an informed judgment can be made. There are no details of the proposed agreement with Wales and West Utilities and Crest Nicholson, and it is possible in any case that the decommissioning works will be undertaken without the need for a financial contribution from the appeal development. The completion of BWR has always been dependent on the decommissioning of the Gas Holder Station, and the current proposals for the appeal site have only come along more recently. In these circumstances, it is difficult to give significant weight to the Appellants' argument in deciding whether or not to grant planning permission.

Conclusion

Officers maintain their recommendation that planning permission would have been refused on grounds of risk to public safety. Your Officers' view is that the imposition of a negative condition and/or planning obligations would not, on present information, overcome this objection to the development. However, Officers intend to continue to work with the HSE and the Appellants in the period leading up to the public inquiry in order to see whether the provision of further information will enable this issue to be satisfactorily resolved.

Highways

Members are advised that at the Appellants' request Officers met to discuss outstanding objections with the applicant on the 11th January 2012. At this stage there remain 2 areas of highway concern as reflected within the reasons for refusal.

Issue 1 – servicing for the creative workshop units at the western end of the site, adjacent to the A36 Lower Bristol Rd/A3604 Windsor Bridge Rd junction. There are currently proposals to service the creative workshop units from a service bay accessed from Brook Road. This is unacceptable for reasons identified within the main report. Officers however do consider that there is a potential solution to this issue which would be to service the units from the basement car park via loading bays, and this was put to the Appellants' representatives at the meeting on 11th January. The Appellants are considering this option, but no proposals have been received at the current time.

Issue 2 – Junction improvements. There are more complex concerns with regard to the operation of the A36 Lower Bristol Rd/A3604 Windsor Bridge Rd junction, which is currently one of the most congested junctions in Bath. It is Officers' view, as outlined within the main report, that the Appellants' proposals would increase the demand on this junction to unacceptable levels and create further congestion problems.

In recognition of the current congestion difficulties that will worsen once the Bath Western Riverside development is complete, the Council has sought funding for junction improvements to be made. That funding was secured as part of the Bath Transportation Package in December 2011. This means that funding will be committed subject to conditions, including any statutory procedures. It is advised by highway colleagues that following full approval, anticipated to be obtained in July 2012, the works would take place during 2013. Additional land is required in order to carry out those improvements and that land is currently in the control of third parties.

At the recent meeting the Appellants presented new traffic modelling information with a view to demonstrating that their scheme for the junction is acceptable. Regarding that information, it is to be noted that at the time of its presentation it was incomplete. Prior to officers being able to consider that information it will therefore need to be completed and accompanied by adequate information to enable it to be checked and validated. That checking and validation process may require taking advice from external consultants. At this stage, therefore, it remains the view of officers that the proposals for the junction which are put forward as part of the appeal application are unacceptable. It is possible that further progress will be made on this issue in the period leading up to the public inquiry, and officers intend to continue to co-operate with the Appellants in considering this matter.

It is also advised that the Appellants will need to consider the performance of the junction with both the development and the Council's improvement

scheme in place at 2020 (which is the relevant assessment year), and demonstrate that it will operate satisfactorily.

Conclusion

Officers continue to recommend that planning permission would have been refused on the highway grounds identified in the main report.

Housing Services Consultation

Strategic Housing Services have commented to advise that they cannot support this application as it fails to address B&NES adopted Planning Policy HG.8 in terms of the lack of provision of affordable housing.

Planning Officers Response

The comments made are reflected in the report on the main agenda.

Third Party representations

Objections made by the Federation of Bath Residents Associations (FoBRA) are listed in the main report as objections made by an individual. Further objections have now also been made by the FoBRA. In this regard it is advised that the FoBRA object to the scheme on the basis that traffic problems at the junction are acute and the proposals are so inadequate that they barely scratch the surface. Additional representations made are on the basis that the latest changes are difficult to understand as they consist of technical and individual alterations to several earlier documents, with no overall explanation or glossary, thus undermining the democratic process.

Officer response

It is usual practice to report the objections of an organisation representing many individuals separately to the representations made by an individual as they have been reported. The objections made are therefore reported as those of an organisation in this update report. The highway objections made have already been considered as part of the main agenda report. Regarding the complexities of the technical submissions Officers advise that it is the nature of complex applications that they require specialist information to be submitted for assessment. Specialist advisors may be required to interpret and advise the Local Planning Authority on that information and that is unavoidable. Third parties are open to seeking their own specialist advice also. It is agreed that the applicant has not always provided sufficient clarity with regard to their submission and Officers have raised this with them repeatedly. Notwithstanding the applicant has fulfilled statutory requirements with regard to the submission as it is now made and the application must be considered in that light.

A letter of support for the application has been received on the basis that further retail choice should be provided and suggesting Moorland road would be unaffected.

Officer response

Both of these issues have already been addressed in the main agenda.

Recommendation

Members are advised there is no change to the recommendation on the main agenda.

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| 02 | 11/01772/FUL | Site of Alcan Factory, Nightingale Way, Midsomer Norton | 71 |

Corrections

The title page of the Committee report refers to 176 dwellings however the application has been amended to provide 169 dwellings.

The Plan List (Condition 32) should refer to:

10031(L)521 Revision F (Apartment Block 5 – Elevation)
2154_100_Rev C (Landscape Masterplan)
2154_101_Rev D (Town Centre Link Layout)
2154_102_Rev A (Public Realm Adoption Strategy)
2154_200_Rev B (Planting Plan)
2154_300_Rev A (Town Centre Link Sections)
LS19401_4 (Lighting Project: Horizontal Levels)

Consultation Responses

A written response has been received from Strategic Housing Development.

Strategic Housing Services support the application as planning Policy HG.8 is being maintained with the assistance of HCA grant aid. They support the use of HCA grant and the proposed 70/30 tenure split. They request a number of recommendations are included in the report to Development Control Committee and that if the Committee resolves to grant permission that these should be included as Heads of Terms in the s.106 Agreement. In summary they recommend that:

1. 35% of the overall residential provision is affordable, with a 70/30 split between Affordable Rent Tenure and Intermediate Market housing.
2. The affordable housing mix to be confirmed by Strategic Housing Services within the associated s.106 planning document.
3. The affordable housing obligation is secured in perpetuity within the section 106 Agreement.
4. Lift the stair casing restrictions for New Build Homebuy Lessees and instead ring fence the released equity.
5. The Council has full nomination rights as set out in the s.106 Agreement.
6. All the affordable housing units must fully comply with the current Homes & Communities Agency (HCA) 'Design and Quality Standards' and that the Code for Sustainable Homes (CSH) 3 will be achieved.
7. All the affordable housing units must fully comply with the B&NES SPD design, layout & construction standards.

8. To transfer the units to an approved partnering Registered Social Landlord (RSL) or other Affordable Housing Provider (AHP) as approved by the Council.
9. The affordable housing land is transferred to a RSL or AHP at nil cost.
10. Public subsidy (grant) will only be made available in the event that the RSL's or AHP's supportable deficit is insufficient to pay for the build costs. Grant will be subject to a comprehensive financial viability assessment.
11. A 'pepper potting' strategy in line with the B&NES PD requirements is included in the s.106 Agreement and that the development is tenure blind.
12. Phasing conditions on affordable housing triggers to be set out in the Section 106 Agreement.
13. The rent levels of the Affordable Rent tenure products to be capped to the Local Housing Allowance Limits or not more than 35% of the tenants outgoings to be spent on Housing related cost, whilst taking account of the affordability criteria of the Ark report`

Officer Comments

The support of Strategic Housing Services to the application is noted. The specific recommendations generally relate to detailed matters, some of which are already addressed in the application proposals/Heads of Terms, and these will be taken into account by officers in the negotiations with the applicant during the drafting of the s.106 Agreement.

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| 03 | 11/04325/FUL | Land at rear of 2-20 High Street, Keynsham | |

An objection has been received from Keynsham Town Council with the following comments.

The proposed application constitutes an over development of the site. The proposed development is out of keeping and the disproportional height is of an overbearing nature.

Concerns were raised in respect of problems of over shadowing, privacy and overlooking that it is envisaged that this development will create for adjacent properties in St. John's Court.

Highways issues as followings were highlighted as points of concern:

- On revised plan Drawing 1101 Revision D – there is no vehicular access shown to service parking spaces no. 19, 20, 21, 22 & 23.
- Provision of parking in terms of positing and sizing raises concerns for safety, as there is limited space for parking manoeuvres into the proposed bays.
- The most southerly vehicular access from the proposed development parking is positioned right next to a pedestrian crossing area and on the edge of a prioritised single traffic flow section of highway.

- The proposed development will restrict the sight line of motorists leaving the car parking area of the Tesco Store.

Concerns have been raised regarding the transparency of information provided by the applicants as:-

- They have chosen not to show the proximity of neighbouring residents' properties or the nearby listed buildings of The Old Manor House and Milward House.
- Scaled measurements provided on the plans (especially the revised plans) are of size impossible to read without the use of a magnifying glass.

Comments have been received from the Historic Buildings Officer who considers this is not the most context sensitive scheme in terms of either the design or use of materials. At three storeys it will tend to look overbearing in relation to the established townscape with a potentially adverse impact on the setting of nearby listed buildings.

Officers Response

The proposal is considered to be an appropriate development in terms of its scale and mass in this urban location taking account of the context. The context in this case is the back of the High Street which comprises the rear of historic buildings and an eclectic and random series of spaces that are not well kept and unmanaged parking, a scattering of residential properties and in particular the large modern and recently completed Tesco store and its car park/access. It is considered that in this location a contemporary building, that backs onto the existing unkempt rear spaces enclosing those and which addresses the access and creates the opportunity for a new street frontage is an appropriate response to context. The Urban Design Officer comments that the creation of an urban block to enclose the rear courtyards of historic properties and create a new street edge is a robust approach to creating a new layer of development behind the Historic High Street. Those views are agreed with. Materials would be secured by planning condition.

Access to all parking spaces is available and the scheme was amended to satisfy the Highway officers concerns and there no Highway objections to the scheme.

Regarding the Town Councils objections on grounds of overdevelopment (which follows from previous support of the application), the development is unchanged in terms of its overall size and scale. The building has been re-positioned but relative to the scale of the development that repositioning is very minor and will be shown on plan for Members consideration and to provide clarity. It is considered that the repositioning would not have a greater adverse effect on shadowing privacy or overlooking taking account of the relationships of the existing and proposed development.

Regarding the submission made the plans as submitted by the applicant are fully compliant with planning requirements. The applicant is not required to

show the surrounding development as part of the proposals although that information is clearly shown on the OS plan submitted with the application. In addition the applicant did submit a drawing that responded to an objection letter which specifically showed the relationship of the development with properties off site to add further clarity to the situation. The drawings are to scale therefore there can be no ambiguity as to what is being considered. It is also to be noted that the applicant submitted amended drawings in response to the concerns of the Highway Officer and Urban Design Officer and this is not unusual practice.

Recommendation

As per the main agenda.