

TWC/2016/0284

Land rear of 10 - 21 Frome Way, Donnington, Telford, Shropshire

Variation of condition 14 of outline planning permission W2008/0705 to remove the requirement for the provision of a footpath to St. Georges Road

APPLICANT

Keepmoat, Mr Peter Stambrook

RECEIVED

31/03/2016

PARISH

Wrockwardine Wood and Trench

WARD

Priorslee

OFFICER Matthew Thomas

CLLR VERONICA FLETCHER HAS REQUESTED THAT THIS APPLICATION BE DETERMINED BY MEMBERS OF THE PLANNING COMMITTEE

OBJECTIONS RECEIVED: Yes

1.0 THE PROPOSAL

- 1.1 This planning application seeks the variation of condition No.14 following the grant of planning permission W2008/0705, in November 2014 for residential development off Frome Way in Donnington, to remove the requirement for the provision of a footpath from the site to St Georges Road. The reasoning behind this application is that such a condition would require works to third party land, thereby making it ultra vires.
- 1.2 Condition 14 reads: *“Unless otherwise agreed in writing, prior to the commencement of development the detailed design of the highway works proposed, including the provision of a footpath to connect the proposal to St. Georges Road shall be supplied to an approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to the first occupation of the dwellings. Reason: In the interests of highway safety and sustainable travel.”*
- 1.3 Specifically this application seeks to remove the wording *“including the provision of a footpath to connect the proposal to St Georges Road”*. The applicant requires the wording of condition 14 to be amended to ensure that the requirement for what would be unlawful works across third party land is removed.

2.0 SITE AND SURROUNDINGS

- 2.1 The site is an irregular shaped site of some 2.4 hectares located north-east of Telford Town Centre and half a kilometre north of Oakengates. To the east of the site is the existing residential development of Frome Way and Kenway Drive.
- 2.2 Around the north, west and southern boundaries is mature and semi-mature woodland forming part of Donnington Wood. Whilst the main part of the site is

relatively flat, there are steep changes in level around the boundaries of the site. Beyond the woodland to the south and west are the industrial/storage development off Rookery Road and the housing along Moss Road.

3.0 RELEVANT PLANNING HISTORY

- 3.1 W2008/0705 – Residential development (outline) – Outline Granted (21/11/2014)
- 3.2 TWC/2015/0028 – Reserved matters application for the erection of 79no. dwellings with associated access, roads and landscaping – Reserved Matters Granted (04/11/2015)

4.0 PLANNING POLICY CONTEXT

- 4.1 National Planning Guidance:
National Planning Policy Framework
- 4.2 Core Strategy:
CS1 Homes
CS15 Urban Design
- 4.3 Wrekin Local Plan:
UD2 Design Criteria
- 4.4 Telford & Wrekin Local Plan (Publication Version)
C1 Promoting alternatives to the car

5.0 SUMMARY OF CONSULTATION RESPONSES

Standard consultation responses

- 5.1 Wrockwardine Wood & Trench Parish Council: Objection.
 - The Parish Council objects to the removal of the condition to provide a footpath from the site to St. Georges Road, as this will mean residents will not have access to public transport that runs down St. Georges Road/Moss Road and which is the only public transport service in the area
- 5.2 Highways: Comment – No objection.
 - At outline application stage the Highway Authority recommended that a pedestrian footpath be secured between the site and St Georges Road in order to link the development to the nearest bus services on St Georges Road near to Donnington Asda Superstore. The proposed footpath was intended to follow the existing alignment of the Definitive Right of Way N53 within the vicinity of the development boundary. However it was always unclear and highlighted by the Highways Authorities consultation at outline stage whether a link from the development to the Right of Way could be provided within land under the applicant's control. At reserved matters

stage land ownership detail was submitted which confirmed that a link from the proposed development to the PRow could not be achieved.

- A safe pedestrian route from the site via the footway adjacent to Kenwray Drive/ Wrockwardine Way / St Georges Road can be used as an alternative to the proposed route. This route is approximately 650 metres long and therefore acceptable as a walking distance according to Manual for Streets Guidance (less than 800m). The originally proposed footpath along the Public Right of Way would have created a pedestrian route of approximately 520 metres long.

5.3 Cllr Veronica Fletcher: Objection.

- The relevant condition 14 is to have a footpath from the site through to Moss Road/St Georges Road. This will allow the residents access to the bus services within 400 metres that run down that road which is the only service in the area. Removal of this condition will mean that residents will not have access to the public transport service in satisfaction with the Council's policies

Neighbour consultation responses

5.4 No further representations received

6.0 PLANNING CONSIDERATIONS

6.1 Having regard to the development plan policies and other material planning considerations, including comments received during the consultation process, the main issue in the consideration of this planning application is the impact the proposed loss of the pedestrian connection from the site to St Georges Road would have on the future occupants of the approved new homes.

6.2 The site is sustainably located in terms of access to the existing infrastructure, services and facilities and forms a natural extension off Frome Way via Kenwray Drive. Existing off-road cycle paths can be accessed off Kenwray Drive and these run alongside the main highways, providing safe cycle links throughout Donnington and to the surrounding settlements. The nearest bus stop to the site is located adjacent to the Asda superstore, situated approximately 480m (0.3miles / 7 minute walk) from the end of Frome Way. This can be accessed via dedicated and clear pedestrian and cycle links. The number 5A bus runs regularly from this stop in both directions, providing a service through Donnington to Telford town centre bus station.

6.3 The next closest bus stops to the site are located along Moss Road and it is these stops that the footpath was intended to provide a link to. Bus routes 5 and 5A run from these stops, with route 5 providing a service from Telford town centre to Stafford. These stops are located approximately 800m from the site (approx. 11min walk). The nearest train station is Oakengates which can be accessed via the regular 5A service towards Telford town centre that operates from Asda, Donnington.

- 6.4 Within the applicant's supporting statement, reference is made to The Chartered Institution of Highways and Transportation (CIHT) publication 'Guidelines for Planning for Public Transport in Developments'. This documentation recommends that the maximum walking distance to a bus stop should not exceed 400m, which is in accordance with Telford's local planning policies; however it continues to state that the frequency of the service should take precedence over proximity. The applicant confirms that the nearest bus stop (adjacent to the Asda superstore) is situated just over this recommended maximum walking distance but as the service provided is of a high frequency, the distance would appear to be entirely in accordance with the CIHT guidelines. This being said, a further CIHT publication, 'Guidelines for Providing Journeys on Foot' (2000), states that the preferred maximum walking distance for public transport is 800m. Therefore, the distance of 480m to the nearest bus stop is significantly within these guidelines.
- 6.5 Sections 70, 72, 73 and 73A of the Town and Country Planning Act 1990 are the main powers relating to local planning authority use of conditions. Section 72(1)(a) states that conditions may be imposed on the grant of planning permission, *"for regulating the development or use of any land under the control of the applicant"*. Clearly, in this instance, condition 14 of the approval is not in accordance with this guidance as the footpath link would need to pass over land that is not in the ownership of the applicant.
- 6.6 The National Planning Policy Framework (NPPF) sets out 6 tests which any planning conditions must accord with in order for it to be imposed. They should be;
- necessary
 - relevant to planning and,,
 - to the development to be permitted
 - enforceable
 - precise
 - reasonable in all other aspects
- 6.7 The applicant contends that it would not have been inappropriate to grant planning permission without the requirement for a new footpath connecting the development to St Georges Road and thus the condition fails the test of necessity. Similarly the applicant contends that the condition would fail to meet the test of reasonableness as they consider the requirement to build over third party land would place an unjustifiable and disproportionate burden upon them. The applicant raises the question of whether the Local Planning Authority could enforce the condition and how this would be achieved given that they have no control over the land in question and thus places doubt on whether the condition is precise. As the footpath would have to be constructed on thirds party land, this party would inevitably be the holder of a ransom strip, preventing any development coming forward on site without their release of the land, or consent for works. For these reasons the applicant asserts that the condition does not pass the required tests.

- 6.8 The provision of the footpath link would be a positive feature, however it is considered that the condition requiring it is ultra vires and does, on balance, fail the 6 tests set out in the National Planning Policy Framework. The Local Highways Authority have confirmed that it was never clear when the outline planning application was approved whether the Public Right of Way could be achieved due to land ownership issues. The Local Highways Authority does not objection to the application as the site forms a natural extension off Frome Way, via Kenwray Drive, where all existing cycle and pedestrian routes are currently provided. These links provide safe access for both pedestrians and cyclists to the nearest bus stop at the Asda superstore. The walking distances are in line with the Manual for Streets Guidance as well as CIHT documentation referred to in the applicant's supporting statement. Officers are satisfied that the removal of the requirement for the link connection will not prejudice accessibility for future occupants of the approved dwellings and will not compromise highway safety.
- 6.9 On balance therefore the Local Planning Authority is satisfied that this application to vary condition 14 is justified in that the developers are unable to comply with the condition in its current form.
- 6.10 Officers acknowledge the objections received by the Parish Council and Cllr Fletcher. The issues raised predominantly relate to providing future occupants with adequate connections to public transport. Officers are satisfied that the future occupants of the new dwellings will not be disadvantaged as a result of the variation of this condition. The closest bus station at the Asda superstore is within walking distance.

7.0 CONCLUSIONS

- 7.1 Following a review of national planning legislation, policy and guidance, it is considered that the relevant condition fails the tests as set out in the NPPF that allow conditions to be imposed to planning permissions, specifically failing on two tests in particular, these being 'necessary' and 'reasonable in all other aspects'. Moreover, as the applicant has no control over the land in question, the conditions is ultra vires.
- 7.2 The Local Planning Authority is satisfied that future occupants of the approved dwellings will not be disadvantaged by the variation of condition No.14 and they will still be able to have easy and safe access to the local bus stops providing connections to the wider area. The proposed variation will also ensure the approved development is deliverable and compliant with policy.

8.0 RECOMMENDATION

- 8.1 Based on the conclusions above, it is recommended that the Committee **APPROVES THE VARIATION OF CONDITION 14 OF PLANNING APPROVAL W2008/0705.**