F/YR21/0022/VOC

Applicant: Mr Peter Moules Agent :

Village House Ltd

South Of Gorefield House, Cattle Dyke, Gorefield, Cambridgeshire

Variation of condition 11 (1.8m footway) of planning permission F/YR14/0690/F (Erection of 4 x 2-storey 4-bed dwellings with double garages) to require the delivery of a footway solely to the frontage of the development site.

Officer recommendation: Refuse

Reason for Committee: Parish Council comment contrary to Officer

recommendation

1 EXECUTIVE SUMMARY

- 1.1 This submission seeks to vary a condition imposed on the original application which permitted 4 x 2-storey 4-bed dwellings with double garages in order to relax the requirement for a footway to be delivered across the frontage of the development site to connect with the established footway to the north, a footway length of circa 140 linear metres. This link having been secured by condition 11.
- 1.2 The alternative scheme proposal put forward is to deliver the footway solely to the frontage of the development site; a footway length of circa 49 metres as opposed to the full length originally secured by the condition (circa 140 metres). It is noted that the full frontage of the development site is circa 70 metres however it is not necessary to extend the footway the full extent of the site frontage as it is not considered necessary for it to extend beyond the entrance to the most southerly plot.
- 1.3 The developer has put forward a viability case which seeks to evidence that the scheme is unviable should the full extent of footway be delivered, given the associated highway works that are required to the existing carriageway. Even in accepting the viability argument put forward the LPA must give due regard to the potential impacts of non-delivery of the full extent of the footway.
- 1.4 It is contended that the condition was imposed to safeguard highway and pedestrian safety and as such the footway is an integral part of the scheme as approved. The condition was legitimately applied having due regard to the Fenland Local Plan (2014) which placed a greater emphasis on sustainable and well-integrated developments. The footway was considered essential to provide the development with a safe pedestrian connection into the village and without it the development was considered isolated and disaggregated from the built form. The site itself is situated within a 60 mph zone with the 30mph zone beginning some 73 metres from the common boundary of the development site.

1.5 Whilst the LPA has some sympathy with the challenges faced by the applicant in seeking to deliver a viable scheme it is not considered that this should be to the detriment of highway safety. Whilst it is accepted that viability may be given weight when scoping more general planning obligation requirements as outlined in the Local Plan it should not be the overriding influence when matters of highway safety are under consideration as is the case in this instance.

2 SITE DESCRIPTION

- 2.1 The site comprises an area of land situated to the east of Cattle Dyke on the periphery of the settlement. There is an extant consent for the development outlined in the above description.
- 2.2 The 30 mph zone for the village approach is signed immediately to the north of the access to No 45 Cattle Dyke and the existing footway terminates just to the north of the side boundary to No 39, there are 4 intervening frontage properties between the application site and No 39, along with two further dwellings set back from Cattle Dyke.

3 PROPOSAL

- 3.1 This submission seeks to vary condition 11 of the original approval relating to the proposed development, the original condition requires that a 1.8 metre wide footway is provided to the frontage of the approved development site to extend to the existing footway provision which is located just north of No 39 Cattle Dyke.
- 3.2 This submission outlines the viability challenges faced in bringing forward the development and requests that the condition be varied to require the provision of a footway solely to the front of the development site, circa 49 metres of footway provision as opposed to the circa 140 metres required by the condition. This will result in an intervening area between the proposed footway and the existing provision being devoid of a footway for a length of circa 73 metres. It is acknowledged that there would be no purpose in the new footway extending south of the access to the most southerly plot of the new development, hence the discrepancy in linear metres quoted.
- 3.3 Detailed plans have been provided which outline the full extent of the highway works required under this condition.
- 3.4 In addition a viability case has been put forward in approved format which seeks to demonstrate that the scheme is unviable when the associated highway works are factored in, it is also shown that even in providing a footway solely to the front of the development site the developer would still attract a profit margin of less than the accepted figure of 20%.
- 3.5 Full plans and associated documents for this application can be found at:

https://www.publicaccess.fenland.gov.uk/publicaccess/simpleSearchResults.do?action=firstPage

4 SITE PLANNING HISTORY

F/YR18/0976/ ENQDIS	Application to seek confirmation of compliance with Condition 01 relating to planning permission F/YR14/0690/F	Complied with Condition 06.12.2018
F/YR17/3133/ COND	Details reserved by conditions 2, 3, 6, 8, 10 of planning permission F/YR14/0690/F	Approved 31.10.2017
F/YR14/0690/F	Erection of 4 x 2-storey 4-bed dwellings with double garages	Granted 05.11.2014
F/YR11/0728/F	Erection of 2 x 3-storey 5/6-bed dwellings with detached double garage/store and 1 x 3-storey 5/6-bed dwelling with attached garage/store	Granted 21.11.2011

5 CONSULTATIONS

- Parish Council: 'Gorefield Parish Council supports this application they agreed that it seems reasonable for the developer to extend the footpath only as far as the 30mph sign. At some date in the future the Parish Council may be able to fund completing the rest of the footpath'.
- 5.2 **Councillor Michael Humphrey, Roman Bank Ward**: 'While I appreciate the Ward Member consultation date has passed, I would like to make the following observation.

The application to remove condition 11 does still provide the footpath to beyond the site boundary which although this is not as far as condition 11, I do feel it is reasonable and in line with the appraisal submitted to support the application. Having read the appraisal documents and the senior officer's comments I am at odds with the suggested increase which will require resale values in excess of £420k per property which given the location is unlikely.

I do feel a compromise would allow the applicant to deliver the 4 properties while a refusal may well jeopardise any prospect of the site moving forward in its present format as it will not be viable.

I am aware the Parish Council support this application and I concur with that view'.

5.3 **Section 106 Services (FDC):** Originally requested that the applicant submit a viability appraisal summary to support their statement. On receipt of the Senior Planning Obligations Officer has advised that the submitted appraisal includes assumptions regarding the land value and build costs, the latter being below the current BCIS figures. In addition, provision is made for external works and infrastructure costs, including the off-site works. Design and professional fees are also included which are below the industry standard and no contingency has been allowed. The appraisal includes a Gross Development Value of £1,450,000 based on property valuations ranging between £350,000 - £375,000 with a profit of 20% included.

The submitted HCA DAT (including the requirement to deliver Condition 11) delivers a Deficit of £222,996.

The Senior Planning Obligations Officer notes that 'having reviewed comparable evidence of new build properties I believe that there is scope to increase the Gross Development Value of the scheme which would go some way to reduce the deficit resulting in a scheme that would deliver the requirements of Condition 11 whilst also providing a reasonable return for the developer.'

The applicant has submitted additional evidence in response to the above consultation response which has been duly considered; however the Senior Planning Obligations Officer remains of the opinion that there is scope to increase the GDV.

With regard to the comments made by the applicant regarding the LPVA (Local Plan Viability Assessment) values and those adopted in his HCA DAT the Senior Planning Obligations Officer notes that 'The purpose of the LPVA is to provide high level advice to assist FDC in assessing the deliverability of the Local Plan and consequently viability submissions for specific sites will always include different inputs than those included in the LPVA that have been adopted to reflect a typical or average site and as such are subject to a margin of uncertainty'.

5.4 Cambridgeshire County Council Highways Authority: 'In my opinion, without a footway the development becomes unsustainable and fails to satisfy LP15/16 of the adopted Local Plan. Occupants will be forced to travel by private motor vehicle or walk along a 60mph road into the settlement of Gorefield, which will be particularly dangerous for vulnerable user groups, especially during inclement weather and or at night-time. Given Gorefield amenity is within walking distance of the development, I think the footway planning condition is perfectly fair and reasonable.

I recommend the application is refused on both highway safety and policy grounds.

Following up on the above consultation response and mindful that it was still the intention of the applicant to provide a footway within the 60mph zone further clarification was sought from the LHA to which the following response was received:

'I feel there is a strong policy argument for the footway link to be formed, which is why the condition was imposed in the first place. Vulnerable pedestrian user groups being forced to a share a road in this location is likely to deter sustainable travel trips by this user groups which is contrary to the aims of the Local Plan.

The highway safety argument is more subjective. The probability of a pedestrian being struck by a vehicle clearly increases exponentially when you force pedestrians to share carriageway space with vehicles. Cattle Dyke is not heavily trafficked, and the development will not produce a large amount of pedestrian movements. In daylight and in good weather conditions the probability of pedestrians being struck being a vehicle is relatively low. It will be when visibility is poor, due to inclement weather condition or reduced daylight, that I feel that

there will be unacceptable to risk to highway safety. It is unreasonable to expect a motorist to be driving along Cattle Dyke in poor visibility conditions expecting a pedestrian (wheelchair user or parent with a pushchair) to be walking in the carriageway in this location i.e. because of the street transition into a rural road environment /national speed limit.

As I am sure you can appreciate, highway safety is often a balance of risk/probability in the pre-development scenario. For the reasons set out above, I am happy for you to recommend refusal on highway safety grounds as well as conflict with LP policy. You need to make it clear in your report that the applicant has a more viable scheme in the way of an internal footpath available to them, of which would address the policy conflict and design out any unacceptable risk to highway safety'.

5.5 **Local Residents/Interested Parties:** One letter of representation has been received which may be summarised as follows:

'We write regarding the removal of the proposed footway which would run in front of our house. We do not object to this application however we did understand there would also be work to the road and crossover to our property. This was to address problems caused by the camber resulting in large puddles forming and the uneven surface increasing large vehicle vibration and noise. Could you please advise if this will be addressed'.

6 STATUTORY DUTY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan for the purposes of this application comprises the adopted Fenland Local Plan (2014).

7 POLICY FRAMEWORK

7.1 National Planning Policy Framework (NPPF)

Para 34 - Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan. Para 54 - Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

Para 55 - Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

Para 56 - Planning obligations must only be sought where they meet all of the following tests:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development. Para 57 Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

7.2 National Planning Practice Guidance (NPPG)

Paragraph: 008 Reference ID: 10-008-20190509: The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, and site circumstances including any changes since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment.

7.3 National Design Guide 2019

Movement: M1 – an integrated network of routes for all modes of transport

7.4 Fenland Local Plan 2014

- LP1 A Presumption in Favour of Sustainable Development
- LP2 Facilitating Health and Wellbeing of Fenland Residents
- LP3 Spatial Strategy, the Settlement Hierarchy and the Countryside
- LP12 Rural Areas Development Policy
- LP13 Supporting and Managing the Impact of a Growing District
- LP14 Responding to Climate Change and Managing the Risk of Flooding in Fenland
- LP15 Facilitating the Creation of a More Sustainable Transport Network in Fenland
- LP16 Delivering and Protecting High Quality Environments across the District

8 KEY ISSUES

- Principle of Development
- Justification and viability
- Highway safety and sustainability

9 BACKGROUND

- 9.1 Planning permission was originally granted for 3 dwellings at this site in 2011. This was a committee decision which endorsed the officer recommendation of approval. The proposal, whilst a departure from the development plan in force at that time, received support as it was considered that the proposal was in keeping with the character of the area. It is acknowledged that there was no requirement for the delivery of a footpath link associated with the grant of this consent.
- 9.2 Subsequent to the above approval a revised proposal for 4 dwellings was submitted in 2014; this proposal falling to be considered against the Fenland Local Plan (2014) which had superseded the earlier Fenland District-Wide Local Plan 1993. This application was approved as a delegated item and gave due regard to the recommendations of the Local Highway Authority which in turn aligned with the policy framework of the then newly adopted FLP, i.e.

'Note the site history F/YR11/0728/F granted permission for 3 dwellings with detached double garages/store. Since this application FDC has an adopted local plan which places a greater emphasis on developments integrating with communities and creating safer places for pedestrians and cyclists with an overarching aim to promote more sustainable developments. The development is proposed without any footway connection to the site. Without a suitable pedestrianized connection the development has little integration with Gorefield and its public amenity. A footway connection to the site is therefore essential to provide the development with a safe pedestrianized connection into Gorefield.

By doing so the development will have sustainable travel choice options available for non-car borne user groups who want to access the school, shop and bus service within Gorefield. Without it the development is in isolation and disaggregated from the built form. Therefore a 1.8m footway should be secured by a Grampian condition linking the proposed development with the existing footway along Cattle Dyke. The details should be submitted and approved prior to the commencement of development. Details should include surface finish level, drainage, kerbing and street lighting. Without a safe footway connection to the application site the application is recommended for refusal due to its unsustainable poor integration with the built form to the north.

APP/D0515/A/14/2214269 was an appeal for a similar type of development that had poor integration with its neighbouring built form. The Inspector dismissed the appeal because the development didn't promote a sustainable pattern of development.'

10 ASSESSMENT

Principle of Development

10.1 The principal of housing development on this site has been firmly established by virtue of the earlier grant of consent, the matter at issue solely relates to the provision of the full extent of footway secured as part of the approved scheme.

10.2 The National Planning Policy Framework under Paragraph 55 highlights that 'local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations'; it is contended that in the case under consideration the condition requiring the delivery of the footway was one such occasion, whereby development that was not deemed sustainable and represented issues of highway safety was 'made acceptable' by the condition as imposed and any reconsideration of the scheme should be made having given due consideration to this.

Justification and viability

10.5 Within the original statement submitted by the applicant in support of the current application it is noted that:

'The road adjacent to the footpath is substandard in terms of lateral profiling and is prone to standing water. The footpath construction incorporates a drainage system but CCC Highways is demanding that 300 sq mtrs of road surface be reprofiled and relaid in order to integrate the footpath with the road. In short, Condition 11 has grown from the provision of new infrastructure to include reparation of existing sub standard infrastructure. The total cost of meeting Condition 11 is now forecast to be £120k'. [..]

The central problem is the extension of the footpath from the site frontage to the existing footpath to the North, at the front of No 39 Cattle Dyke. The length involved (160mtrs total) produces a cost totally out of proportion to the value of a four dwelling site. The basic footpath cost including construction, drainage, design fees, administration fees and Drainage Board Infrastructure fees is £110K. Furthermore, the proposed footpath is not compatible with the existing substandard carriageway. CCC Highways has previously advised local residents that the highway is substandard along their frontage and that remedial works are required to the carriageway lateral profiling to alleviate a problem with standing water. These repair works are now being loaded onto Condition 11, taking the projected cost figure £10k higher to £120K.

In simple terms, the scheme as currently designed lays the cost of a footpath for eight properties and carriageway repairs/improvements on the value of just four dwellings. Six years have proven that the sums cannot be made to work. Condition 11 is neither fairly nor reasonably related in scale and kind to the permitted development.'

- 10.6 Whilst the Senior Planning Obligations Officer has largely accepted the viability scheme put forward there has been some questions raised regarding the Gross Development Values for the scheme, with particular reference to the likely market values of the new dwellings. The applicant has provided further commentary in this regard and provided sales estimates to support the original findings of their viability assessment. Support has also been proffered by the Ward Councillor with regard to the assertions made with regard to property values in the locality.
- 10.7 The additional sales information provided by the applicant, along with some more general observations from the applicant regarding how the costs of the development compare to those which have been utilised in the Local Plan and CIL Viability Assessment (LPVA) commissioned by the District Council have

been reviewed by the Senior Planning Obligations Officer who remains of the opinion that there is scope to enhance the GDV of the scheme. As part of his evaluation of the additional information tabled by the applicant the Senior Planning Obligations Officer has identified two other comparable properties for sale elsewhere within the district and also made observations regarding those properties which form part of the applicant's submission to demonstrate comparable house sales. In response to the comments made regarding the development costs utilised in his assessment compared to the amounts contained in the LPVA the Senior Planning Obligations Officer responds as follows:

'The purpose of the LPVA is to provide high level advice to assist FDC in assessing the deliverability of the Local Plan and consequently viability submissions for specific sites will always include different inputs than those included in the LPVA that have been adopted to reflect a typical or average site and as such are subject to a margin of uncertainty.'

- 10.8 The applicant has strongly rebutted the further observations of the Senior Planning Obligations Officer noting that the evidence he has provided is based on achieved figures during the last few months, 'based on hard facts' and that the 'asking' prices quoted may or may not be realistic. Furthermore he challenges the comparisons made relating to the individual properties quoted and gives an overview as to the length of time the quoted properties have been on the market and their marketing history noting that the observations made on potential comparables are based the expert advice of local agents.
- 10.9 Notwithstanding whether the viability case has been made, it is still necessary to assess whether it is indeed appropriate to relax the requirements for a footway in this location.

Highway safety and sustainability

- 10.10 The LHA have given their unequivocable view that the full extent of footway is required on the grounds of highway safety as captured in their consultation responses above.
- 10.11 Recognising the financial challenges in providing the footway the LHA suggested that consideration be given to delivering the element of footway serving the 4 new properties within that site and then delivering the remainder of the footway on highway land. In response to this the applicant has clarified that this would impact in two areas. The first being a reduction in the ultimate plot value as it would result in both solicited and unsolicited visitors having access over private land and the second concerning how this would manifest with regard to viability.
- 10.12 The applicant contends that it is not the section of footpath to the front of the development site which is contributing to the viability issue, noting that this is a shorter section of footway less 'than the long expanse from the speed limit sign to the existing footpath outside of No 39' and that it is that section which will 'always be the real source of savings to achieve viability'.
- 10.13 Given that the LHA are resolute that the scheme should make provision for the full extent of the footway on highway safety grounds and in the absence of such provision the scheme is unacceptable in terms of Policy LP15 of the FLP (2014)

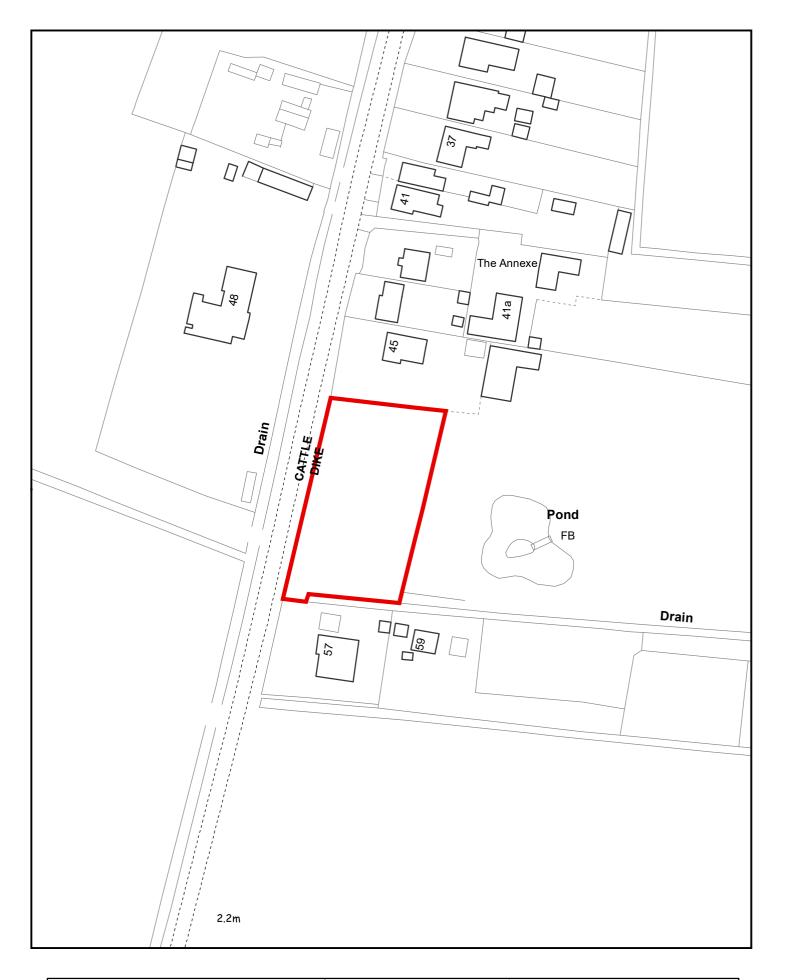
11 CONCLUSIONS

- 11.1 The National Planning Policy Framework under Paragraph 55 highlights that 'local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations'. It is contended that in the case under consideration that the highway safety matters identified by the LHA in their consultation response are of sufficient severity to outweigh the provisions of Paragraph 57 of the National Planning Policy Framework (2019) with regard to viability.
- 11.2 This is not a case where the scheme is not able to make 'contributions' to other infrastructure and should therefore be allowed under the provisions of Para 57 of the NPPF with no real 'harm' arising; it is a case where bona fide requirements for a footway provision, justified to make the development safe and sustainable as required by policy are being thwarted. The question that must be asked is whether the scheme would have been favourably recommended without the footway provision identified and it is the contention that the highway safety issues identified are such the scheme would not have met the requirements of Policy LP15 and would therefore not have been supported.
- 11.3 The LPA is not unsympathetic to the case made regarding the financial challenges faced by the applicant in delivering the site as these appear to be clearly expressed; however it is not considered that the solution proposed is the only one available to 'un-lock' the site for development. In this regard it is noted that there have been no alternative proposals for the site regarding the numbers or types of dwellings put forward and this is, it is considered, worthy of further consideration.

12 RECOMMENDATION: Refuse

Reason for refusal

The removal of a section of the previously agreed footway provision will have an unacceptable impact on highway safety and would result in a form of development which is also unsustainable in the context of the settlement; accordingly the scheme is contrary to Policies LP15 and LP16 of the Fenland Local Plan (2014).



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