

## REPORT TO THE STRATEGIC PLANNING COMMITTEE

<b>Date of Meeting</b>	<b>26 August 2020</b>
<b>Application Number</b>	<b>17/07793/FUL</b>
<b>Site Address</b>	<b>Wavin Ltd, Parsonage Way, Chippenham, Wiltshire</b>
<b>Proposal</b>	<b>Works to existing road to provide new road link connecting B4069 Langley Road and Parsonage Way, including the provision of a footway/cycleway and new landscaping. Construction of new double roundabout junction on Langley Road and single roundabout on Parsonage Way. Stopping up of existing section of Parsonage</b>
<b>Applicant</b>	<b>Roger Taylor Wavin Ltd</b>
<b>Town/Parish Council</b>	<b>Chippenham Town Council/Langley Burrell Parish Council</b>
<b>Division</b>	<b>Chippenham Monkton/Kington</b>
<b>Grid Ref</b>	<b>392671 174687</b>
<b>Type of application</b>	<b>Full Planning</b>
<b>Case Officer</b>	<b>Lee Burman</b>

### Reason for the application being considered by Committee

#### 1. Purpose of Report

The report is to update the Committee with respect to its resolution at the meeting of 15 August 2018 on the application and seek approval for a revised refusal reason. The original report to committee is copied at Appendix A alongside a copy of the reported supplemental items. Minutes of the meeting are copied at Appendix B.

#### 2. Report Summary

At the meeting of 15 August 2018, the Committee resolved in accordance with the officer recommendation to approve this application subject to the signing of a Section 106 agreement, or to refuse the application in the event that the agreement was not completed.

Since the meeting, the Council has worked with the applicant on drafting of an agreement but both parties have reached an impasse whereby the provisions the Council has tabled are not agreed by the applicant. Despite repeated requests in writing the applicant has not confirmed that they will enter into and complete the agreement and continues to dispute the provisions that the Council has tabled to ensure that the development of the strategic allocation at Rawlings Green is not put at risk. As such the agreement cannot be completed in accordance with the Council's requirements and so the application must now be refused.

Since the resolution was reached and following the discussions with the applicant it has become clear that the wording to the refusal reason previously reported and agreed did not fully reflect all of the relevant material considerations that now apply; also there has been a

change in material circumstances with revisions to the NPPF, which is referenced in the refusal reason and so revisions to that wording are also required as set out below. The Committee's approval of the revised wording of the refusal reason is required as it cannot be approved by officers under the Council's scheme of delegation.

### **3. Site Description**

See report to Committee at appendix A

### **4. Planning History**

See report to Committee at appendix A but updated as follows:-

18/02037/FUL Land at Rawlings Farm and Upper Peckingell Farm, Chippenham

Construction of Bridge Over the Great Western Railway and Accommodation Works, Including Temporary Haul Road from Upper Peckingell Farm; Construction Compound; Bridge Beam Storage Compound; Cocklebury Link Road (Phase 1), and Associated Drainage Arrangements; Highway and Associated Landscaping. **Approved**

### **5. The Proposal**

The description of development is set out above and in the report to Committee at Appendix A. It has been revised since registration of the application to more accurately reflect the proposals, which were revised after submission to include a roundabout at the eastern extent of the existing haul road in order to provide a safe highway link with the permitted Rawlings Green Rail bridge.

Effectively the scheme seeks to reorder the existing road layout in the locality and make use of the previously permitted and constructed internal haul road at the Wavin site as part of the local public road network. Two new road junctions at the western and eastern ends of the haul road/existing Parsonage Way are required to facilitate this, as are some minor improvements to the haul road as constructed. This would allow the existing Parsonage Way to be stopped up and its use changed to outdoor storage thereby creating a single, undivided site for Wavin facilitating improved site management and operation. A crossover of the watercourse running through the centre of the site and undergrounding of overhead electricity cables was required to facilitate this arrangement also and work on that element of the scheme was commenced and partially undertaken during 2018.

### **6. Planning Policy**

See report to Committee at appendix A, no update required in the context of this report.

### **7. Consultations**

See report to Committee at appendix A, no update or further consultations required in the context of this report.

### **8. Publicity**

See report to Committee at appendix A, no update or further consultations required in the context of this report.

## 9. Planning Considerations

The resolution and minutes of the previous meeting which considered this application are appended to this update report but in summary the key intention and purpose of the Section 106 agreement was to ensure that the development to be permitted did not hinder or prevent delivery of the Rawlings Green rail bridge. This position reflects the fact that the Rawlings Green site is a strategic allocation site for Wiltshire identified in the Chippenham Sites Allocation Plan. The Rail bridge is a key piece of strategic infrastructure fundamental to the Council's development strategy for Chippenham and the northern area of Wiltshire. In this regard and following advice from the Council's Highways department the scheme proposals had to be amended to include a roundabout at the eastern end of the Haul Road/Parsonage Way junction to provide a safe highway connection to the Rail bridge and facilitate the safe movement of vehicles and pedestrians through the sites and locality.

The Rail bridge and the haul road necessary to facilitate its construction now benefits from permission as determined by the Strategic Planning Committee meeting of 13 November 2019. The applicant on that development is currently in the process of discharging conditions attached to that consent with a view to commencement of development at the earliest opportunity.

The Council has led drafting of the S106 agreement required to support this proposal and has sought to include various provisions that ensure that the development to be permitted is constructed in a way and to a design and timeframe that will not frustrate or prevent construction of the rail bridge. The applicant has consistently over the intervening period since the Committee resolution disputed the need for such provisions and continues to do so. The applicant also disputes other elements of the agreement and proposes provisions that the Council does not support. The key matters in this respect are set out in further detail below but it should be noted that there are a range of minor elements of dispute between the parties which ultimately may not be defensible in appeal situation and so do not form the basis for the recommendation now being made. These however are desirable elements and provisions that should not be contentious but are disputed by the applicant. As such the applicant's position in these respects is considered to be indicative of the applicant's refusal to enter the agreement.

The basis for the dispute by the applicant arises from dispute as to landownership at the site and in respect of the western "landing" point for the bridge. Wavin assert ownership, the Council asserts the land is part of the public highway. This matter has been considered previously through the preparation of the CSAP and it is not appropriate or necessary to rehearse that dispute here. The critical point is that the Council in drafting the S106 agreement has revised its proposed provisions and wording at the request of the applicant to ensure that the agreement does not seek to address or override land ownership considerations in any way and deals solely with ensuring that the physical works are compatible and delivered in a manner that does not frustrate construction of the bridge.

The Council has confirmed to the applicant that is the case and is the purpose of the agreement in writing multiple times and does so again here in this report. The applicant refuses to accept that as being the case and continues to dispute necessary provisions within the agreement whilst repeatedly seeking inclusion of unnecessary provisions. As such the agreement cannot be completed and it is now necessary to proceed to refusal.

### Matters of Dispute

- The agreement includes provisions for the submission and approval of technical details for the construction of the "eastern roundabout" which links the Wavin haul Road/Parsonage Way to the Rail bridge. The Council proposed provisions that require

the confirmation by the Council that the roundabout has been constructed in accord with those technical details to its reasonable satisfaction.

The Applicant objects to and refuses to accept a requirement for the Council's approval on the basis that this is a duplicate consenting procedure that is unnecessary and inappropriate as the technical details are required for approval by the agreement.

Officers assert this is essential to ensure that the roundabout is constructed appropriately and in manner that does not frustrate or restrict delivery of the bridge. For instance that all of the approved technical details and engineering works for the roundabout are completed in full in a timeframe that does not prevent construction of the western elements of the bridge. Such a situation could arise if only part of the works were completed.

- The agreement and many of its provisions are contingent upon a trigger and that is typically defined as the commencement of development in many s106 agreements. That is not possible in this instance as development has commenced – works in respect of the “crossover”. The Council has therefore proposed an alternative wording for the trigger centred on the remaining works to take place.

This matter of unauthorised development was the subject of extensive correspondence between applicant and the Council's Enforcement Team during 2018. The applicant now denies all knowledge of this position and so disputes the proposed provisions as to the trigger wording proposing instead the use of commencement of development. This would render the agreement unenforceable and so cannot be agreed.

#### Refusal Reason Wording

The Minutes of the meeting held on 15 August 2018 are contained at Appendix B. The resolution of the Committee based on the officer recommendation was to refuse the application in the event that the applicant did not enter into the section 106 agreement for the following reason:-

*The proposed development without the required planning obligation fails to deliver the necessary highways works and enhancements required to secure a safe and appropriate development and thereby conflicts with Wiltshire Core Strategy (Jan 2015) CP3 CP34(ix) CP57 (ix) CP60 CP61 CP62; and paragraphs 11 and 108 (b) 109 110 of the National Planning Policy Framework (July 2018)*

As noted above the discussions and matters of dispute focus specifically on the delivery of the rail bridge which is required to meet the provisions of the CSAP DPD policy CH2 and as such this also requires referencing in the refusal reason for clarity and certainty for all interested parties. This is particularly the case as it is considered highly likely that the applicant will appeal a decision to now refuse the proposals. Additionally, the NPPF has been revised several times since the decision was reached and this reference also requires updating.

As such the revised wording for the refusal reason is as follows:-

**The proposed development without the required planning obligation fails to deliver the necessary highways works and enhancements required to secure a safe and appropriate development and the specific requirement of the Council's Strategic Planning Committee resolution not to prejudice delivery of the permitted Rawlings Green Rail bridge and thereby conflicts with Wiltshire Core Strategy (Jan 2015) CP3**

**CP34(ix) CP57 (ix) CP60 CP61 CP62; Chippenham Sites Allocation Plan (May 2017) CH2; and paragraphs 11 and 108 (b) 109 110 of the National Planning Policy Framework (July 2019)**

## **10. Conclusion**

The Council has sought to agree and complete a reasonable and necessary S106 planning obligation that responds to the applicant's concerns and requirements whilst comprehensively and soundly addressing the requirements of the previous committee resolution. The Council has fully and repeatedly explained its position and reason for the disputed elements and provisions of the draft agreement and has done so over an extended period. The position has been reached whereby the applicant disagrees with the Council's position and statement and disputes matters of fact regarding the Council's stated position. The Council has undertaken and completed these actions over an extended period of almost 2 years and offered the applicant repeated opportunities to complete the agreement. However, the applicant has made it clear that despite 2 years of negotiation, and the Council conceding various points of contention, they continue to set out various objections to suggested amendments which is taken as confirmation of their intention not to enter into the agreement as tabled. As such it is now necessary to proceed to refusal.

## **RECOMMENDATION**

The application be refused for the following reasons: -

**The proposed development without the required planning obligation fails to deliver the necessary highways works and enhancements required to secure a safe and appropriate development and the specific requirement of the Council's Strategic Planning Committee resolution not to prejudice delivery of the permitted Rawlings Green Rail bridge and thereby conflicts with Wiltshire Core Strategy (Jan 2015) CP3 CP34(ix) CP57 (ix) CP60 CP61 CP62; Chippenham Sites Allocation Plan (May 2017) CH2; and paragraphs 11 and 108 (b) 109 110 of the National Planning Policy Framework (July 2019)**

## **Appendices:**

**A – Report to committee 15 August 2018 and Supplemental Items**

**B – Minutes of the meeting 15 August 2018**

## **Background Documents Used in the Preparation of this Report:**

**Application documentation**

**Drafts of the S106 agreement**

**Correspondence with the applicant**

**Report to committee 15 August 2018**

**Minutes of the meeting of 15 August 2018**