

REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Date of Meeting	29th August 2012		
Application Number	11/02946/FUL and 11/03200/FUL		
Site Address	Land at Great Middle Green Farm, The Green, Dauntsey		
Proposal	11/002946/FUL – Construction of attenuation pond and associated drainage works 11/03200/FUL – Use of land as public open space and formation of pedestrian and vehicular access		
Applicant	Flower & Hayes Ltd		
Town/Parish Council	Dauntsey		
Electoral Division	Brinkworth	Unitary Member	Toby Sturgis
Grid Ref	399773 182103		
Type of application	FULL		
Case Officer	S T Smith	01249 706 633	simon.smith@wiltshire.gov.uk

Reason for the application being considered by Committee

These applications seek, in effect, the discharge of conditions and amendment of previously granted planning permissions for development (03/02654/OUT, 05/00612/REM and 05/00962/REM refer). Those earlier planning permissions were considered and granted by the Development Control Committee of the then North Wiltshire District Council. Since the two applications now under consideration seek to alter the expectations and provisions of the earlier permissions, Officers consider it appropriate for both to again be considered by the Development Control Committee.

1. Purpose of Report

To concurrently consider the above applications for development and recommend that both are GRANTED planning permission.

The Dauntsey Parish Council do not object in principle to the proposed location of the attenuation pond subject to suitable drainage details being agreed. The Parish Council object to the proposed arrangements for public open space.

2. Main Issues

- Background to applications
- Attenuation pond and drainage scheme
- Public open space

3. Site Description

The application relates to a development site accessed from the main road through Dauntsey. The development is split into two distinct sections: the housing site fronting The Green and the employment units site, positioned to its immediate rear. The former section is within the Settlement Framework Boundary and the latter outside.

Both sites are under construction. The housing site is substantially complete with almost total occupation. Conversely, the employment site to the rear remains uncompleted with only two of the permitted six units completed. Neither office unit is occupied.

4. Relevant Planning History		
Application Number	Proposal	Decision
03/02654/OUT	Residential development and new industrial premises	Granted 08/06/04
05/00962/REM	Residential development – reserved matters	Granted 34/01/05
05/00612/REM	Employment development – reserved matters	Granted 24/01/05
06/03091/FUL	Employment development of 6 office units, access road and open park land including attenuation pond (revision to details, including addition of 1 unit under 05/00612/REM)	Refused 01/03/07 Appeal dismissed 17/09/07
08/00294/FUL	Employment development of 4 office units, access road, attenuation pond and use of land as open space (revision to reserved matters 05/00612/REM resulting in total of six employment units)	Refused 29/09/08 Appeal upheld 19/05/09
09/01420/S106	Variation of s106 agreement associated with planning permission 03/02654/OUT to remove requirement for the provision of public open space	Void
10/02960/S106	Modification of legal agreement (phasing of employment floorspace)	Deed of Variation agreed 06/10/11
11/03146/FUL	Change of use of offices to eight flats	Refused 31/01/12
11/03237/FUL	Erection of dwelling and garage (change of house type)	Refused 31/01/12
11/03322/S106	Modification of legal agreement (public open space)	Refused 31/01/12 Appeal pending

5. Proposal

Two planning applications are under consideration. Effective and informed determination of the applications should be achieved through their concurrent consideration.

11/02946/FUL seeks the construction of a flooding attenuation pond on agricultural land between the housing and employment elements of the development. Informing this application a comprehensive scheme for the drainage of the entire development has now been prepared and submitted. The drainage details submitted should form part of the consideration of this application. A grant of planning permission would also have the effect of addressing the requirements of drainage conditions imposed under the original outline and reserved matters permissions.

11/03200/FUL seeks permission for the creation of public open space of 1260m² together with 140m² play area and associated access road for maintenance purposes. The application proposes a quantum of public open space that would be below that already agreed under the original outline permission 03/02654/OUT, being 3800m²

6. Consultations

Dauntsey Parish Council

In relation to 11/002946/FUL (attenuation pond)

“No Objection in principle to the actual location of the pond but would request that the drainage engineering team at Wiltshire Council confirm that the drainage system details submitted are adequate to comply with storm water requirements for the whole development site including the size of the attenuation pond, raised land levels and proposed un-attenuated drainage, to ensure that the results are no worse than the original green field run off to existing drainage culverts downstream of Old Sodom Lane before a decision is made on the application.

The Council would also like it noted that the drawings and details indicate that further proposals may be forthcoming relating to additional development and a reduction in the size of Public Open Space which will not be acceptable.”

In relation to 11/03200/FUL (public open space)

“The justification for this is that on the 12th May 2004 a Section 106 Legal Agreement was signed by all parties to set aside this area of land for the benefit of public use, in perpetuity, as a public open space. The land originally contained within a residential development proposal and following recognition that the land was an important flood prevention zone the land was separated from further development proposals and became a separate entity as part of the Section 106 Legal Agreement.

The Section 106 Legal Agreement became extremely important material consideration in the determination of the outline planning application. This was one of the material planning considerations at the time the outline planning application was being considered with all parties involved realising that the area of land proposed for the Section 106 was far in excess of what could have been requested as part of the Local Plan 2001 Policy as a percentage of the development site itself. Consequently, the Local Planning Authority set aside this area of land, of no development value, under a separate Legal Agreement for the benefit of the village as a whole prior to determining the outline planning application.

The Section 106 Legal Agreement is sacrosanct and was signed at the time when it was public knowledge that the whole area of land involved was of no benefit to the applicant and could be excluded from the development site and given over as a public open space. The situation still exists today and the application is in contravention of many of the obligations contained within the Section 106 relating to this matter alongside other issues that need to be addressed.

The Council continues to object to all proposals for any development or alteration of size on the Section 106 Legal Agreement land.

The developer now relies on the Policies contained in the North Wiltshire Local Plan 2011 to argue his case for a reduction in size of the Public Open Space, with great play on the fact that its provision is for the benefit of the development itself and not for the community as a whole.

Once again it shows the total disregard for this community, which has been the case from day one, the developer being well aware of the aspirations to create a Village Green at The Green as a major feature within the centre of the Village. In fact the developer himself has produced various unsatisfactory schemes to lay out the whole Section 106 land for this function but has always complicated the issues by including some development form that should have been accommodated on the development site itself.

If the Section 106 Legal Agreement had been adhered to, work carried out and now forming a pleasant scene, the developer could well have benefited as this would have clearly assisted in the sale of the houses on the adjacent land and, more importantly at this stage, the employment units that remain unsold and unoccupied and now the subject of alternative proposals that are un-acceptable to the community.

The Council is against the proposal in principle and the application should be refused. However, they did look at the details presented and although a small scale Public Open Space is shown its frontage is partially enclosed by a new hedgerow tight to what would be the highway footpath and so the open aspect required is lost. The open aspect is an important part of the Village Green concept. In addition this frontage hedge and its return in the north- westerly direction will form an obstruction to the highway view around the curve of the highway which was provided as part of a previous planning permission for 6 dwellings to the west of the site when a new hedgerow was planted allowing a visibility line to be formed.

The developer is also proposing to use the part of the Section 106 land that is the low point on the land for a fenced Play Area which was previously proposed for the adjacent development sites storm-water infrastructure by way of an attenuation pond. This position is not acceptable both from the open aspect and visibility point of view and the fact that in extreme conditions it could well be under water. If there is any possibility that the principle of these proposals are found acceptable by Wiltshire Council then the Play Area should be moved to the rear boundary of reduced Open Space where there is a access road being proposed, supposedly for maintenance purposes but undoubtedly for future development proposals.

I am asked to finish this letter with a re-statement of the Council's previously expressed views that if immediate enforcement action, possibly a Stop Notice, had been issued soon after it was noticed that the developer had commenced work on the adjacent site in contravention of the planning permission and legal agreement the developer would not be in a position to continue to apply for alternative planning permissions at this time as the Public Open Space would have been handed over to the Public Authorities and now an asset to the community.

The Parish Council trusts their observations will be taken into consideration when the application is determined."

Council Land Drainage Engineer

No objections.

Environment Agency

No objections subject to conditions. Support the pond now being located outside of Flood Zone 3 and the pond providing additional capacity to accommodate the 1 in 100 year flooding event. Note

that the drainage scheme will involve various features that will require a relatively high level of long-term maintenance to ensure proper function.

Wessex Water

No objections.

Public Open Space (Environment Services)

No objections subject to resolution over future adoption of infrastructure.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

Four (4) letters of objection received in respect of two applications and associated drainage scheme details combined :

Summary of key relevant points raised:

- Developers blatant disregard to the requirements of lawful development and planning
- Inadequate drainage of the site – development exacerbates existing drainage problems
- Development creates traffic problems
- Applicant has yet to fulfil requirements of earlier permissions – this further application simply delays the applicant's agreement that enabled them to begin the development in first place.

8. Planning Considerations

Background and parameters of the application

The original redevelopment site bisected the Settlement Framework Boundary of Dauntsey, with the 0.828ha residential element positioned inside of the policy boundary and the office development positioned outside (reference 03/02654/OUT refers given planning permission by the Development Control Committee on 07/06/04).

Under the terms of the outline planning permission, a section 106 agreement was entered into, which, *inter alia*, required the provision, laying out and maintenance of a defined area of public open space. Condition 04 of the outline permission also required the submission, agreement and implementation of a surface water drainage scheme.

Two reserved matters applications, respectively for the residential and commercial elements of the overall development, were subsequently submitted by the then new owners Flower & Hayes Developments. The residential proposal comprised a total of 19 dwellings including 4 affordable units, with the employment element consisting of six detached B1 units and car parking, approximating 1200m² of floorspace in total. Conditions relating to drainage were re-imposed on these two Consents, since no details were supplied as part of those applications.

Following several refusals, permission was granted via appeal (08/00294/FUL refers) for the creation of a surface water attenuation pond within the area of public open space identified by the original outline permission. In the Inspector concluding that the attenuation pond, which after all is drainage infrastructure serving the entire development site, could be sited within the area previously identified for public open space, the two issues (ie. drainage and public open space) became inextricably linked. In granting the permission the Inspector also imposed a nuanced planning condition, again requiring the submission and delivery of a full drainage scheme.

It is germane to the Committee's consideration that the applicant has not complied with several planning conditions and clauses within the legal agreement. Development has continued on site with most of the dwellings now being constructed and occupied, rendering the development as a whole, unlawful.

These applications seek to address the last remaining, and most concerning, elements of the unlawful situation: the required drainage scheme and delivery of public open space.

Attenuation pond and drainage scheme

Application 11/02946/FUL now under consideration proposes to relocate the attenuation pond away from the identified public open space to agricultural land, also under the control of the applicant, just outside of the development site. Under the proposal the pond would now be located in low risk Flood Zone 1 and would provide 400m³ of water storage capacity, thereby providing for a considerable buffer to long term storm events (ie. a 1 in 100 year, plus "climate change", event).

The nature, shape and likely appearance of the pond remains largely similar to that considered by the previous appeal Inspector under 08/00294/FUL (ie. a shallow excavation of the ground of 658m² area and approx. 2.5m depth, complete with lip and grass banks). It is likely to remain dry for much of the year.

In common with the conclusions of the previous appeal Inspector, the appearance of the attenuation pond is not thought to be objectionable. Clearly the proposal still constitute the insertion of a form of infrastructure into the countryside, but high levels of visual intrusion are likely to be avoided by the ameliorating effects of planting and landscaping. The proposed relocation of the pond will also remove the pond from the area of public open space, thus also addressing a concern that the Council fought (and lost) the previous appeal over.

The relocated pond is to be part of a wider Sustainable Urban Drainage System (SUDS) now submitted for consideration in respect of the wider development site – precisely that required by the variously imposed planning conditions since 2003. The system proposed is designed to collect surface water from roofs, driveways and the highway and discharge via pipework leading to Dauntsey Brook. A hydroslide chamber would redirect flows to the attenuation pond if exceeding 6.75 l/s (equating to a 1 in 30 year storm). The attenuation pond would then subsequently discharge at a similar rate until dry. The water is to finally discharge downstream of Dauntsey Bridge via new 450mm dia. pipework (which itself further increases flood capacity of the system), and is to be fitted with non-return valves at agreed positions.

Following significant negotiation with the applicant, the Environment Agency, Wessex Water and Wiltshire Council (via the Council's Land Drainage Engineer) have all signalled their satisfaction that the proposed drainage scheme will work. There is considered to be no justifiable reason to disagree with their consistent conclusions.

When in place the drainage scheme, like any other, will require regular maintenance, with the attenuation pond likely to be a little more particular and effectual upon Wiltshire Council than the average drainage infrastructure installation; though clearly this has been the case since the grant of planning permission at appeal under 08/00294/FUL. It has been suggested that Wessex Water would adopt infrastructure upstream of the hydroslide (inclusive) with Wiltshire Council adopting the pond and pipework downstream to Dauntsey Brook. Wiltshire Council should rightly expect their respective arrangements for adoption and maintenance to be controlled by a legal agreement under s106 of The Act. Contractual arrangements with Wessex Water are resolved outside of the planning system.

Despite previous requests and as required by previously imposed planning conditions, the scheme has not been submitted complete with a timetable for implementation of the drainage scheme. This must therefore be the subject of another planning condition if planning permission is granted.

Public open space

Application 11/03200/FUL seeks permission to create public open space and associated access. If granted, the permission would effect a reduction in the quantum of public open space coming forward as a result of the wider development.

The proposed public open space would be positioned in the Eastern corner of the land previously identified for open space under the 2003 outline and 2005 reserved matters permissions. It would, however, equate to 1400m² of public open space, compared to the (approx.) 3800m² previously expected. It is to be separated from the remainder of the land by hedgerow and fencing with a maintenance access retained from the new road serving the wider development. Although not stated on the supplied plans, the remainder of the land (ie. that previously identified as public open space by the existing permissions) would remain as agricultural, since that would be the lawful planning use, albeit probably not in actual active agricultural use.

Upon first consideration the area of public open space now proposed does seem irreconcilable with the existing permissions, since they require a substantially greater area of open space to be provided. Indeed, the Parish Council rightly point out that the public open space was originally secured by legally binding agreement with the applicant and that the open space formed an integral part of the development concept. Equally, it is the case that the legal agreement was willingly entered into by the original applicants and that the agreement is binding upon successive owners, who would presumably have been well aware of its existence before purchase.

Whilst the above may be true, it remains the case that the quantum of public open space originally secured in 2003 exceeds that which can be justified by local plan policy (be that the currently adopted North Wiltshire Local Plan 2011, or its predecessor the 2001 Local Plan under the auspices which the 2003 outline permission was granted). This is important because the NPPF, like Circular 05/05 before it, firmly advises that legal agreements should only be sought where they, *inter alia*, "fairly and reasonably" relate in scale and kind to the development. Public open space secured in this way emphatically cannot be viewed or utilised as a method of addressing a settlement's perceived existing shortfall of such.

The above was presumably a planning policy universal not lost on both the 2007 and 2009 appeal Inspectors (06/03091/FUL and 08/00294/FUL respectively refer), since both, in considering proposals to use a proportion of that open space for the attenuation pond, concluded similarly:

2007 – 06/03091/FUL:

"The Appellant has drawn my attention to Policy CF3 of the LP and the subsequent requirement of 0.14ha of public space for the residential development proposed.....It is my consideration that that the total minimum public space requirement could be provided within Area A without encroaching on the area which would be occupied by the stormwater attenuation pond."

2009 – 08/00294/FUL:

"There is no dispute between the main parties that the overall amount of POS to be provided exceeds the requirements of the open space policies of the current and former local plans.....In my view, even with the proposed pond, the part of the POS nearest the road has some amenity value as a green buffer, suitable in a village with a strong agricultural setting."

Although not a precisely analogous situation (since the previous Inspectors were considering proposals to retain the originally secured area of open space, albeit with an attenuation pond inserted into one corner of it, whilst this proposal seeks to significantly reduce that open space), the Inspectors' conclusions on what can be justified by local planning policy are relevant since the principles behind them remain the same. Indeed, Members of the Committee should be aware that since the second appeal came about as a result of the Northern Area Development Control Committees decision to refuse planning permission for exactly the same reason already concluded

upon by the first appeal, the Council actions were held to be unreasonable and was duly punished by an award of costs to the appellant.

In summary, the 1400m² amount of public open space now proposed has been arrived at by using the Council's own method of calculating how much public open space must be delivered in association with the new residential development. It is therefore thought to fairly and reasonably relate to the development it serves. The Council's own Technical Officers have considered the quantum and use-ability of the public open space and play area and consider it to be acceptable.

Delivery of the open space and its long term management would again be secured through a legal agreement under s106 of The Act. Other concerns raised by the Parish Council in relation to the boundary treatment of the open space and its ability to have visibility and accessibility in the central part of the village can be controlled through the imposition of planning conditions.

9. Conclusion

The respective applications for proposed attenuation pond, public open space and associated drainage scheme are interrelated to the extent that they require concurrent consideration by the Northern Area Planning Committee.

The relocation of the surface water attenuation pond to agricultural land to the north is considered to be acceptable, subject to conditions in relation to landscaping. The various experts agree that the associated drainage scheme devised for the wider site will be effective and preliminary agreement has been reached over future maintenance responsibilities. Delivery and maintenance arrangements should be controlled by an agreement under s106 of The Act.

Whilst regrettable, the proposed reduction in quantum of public open space would nevertheless accord with national and local planning policy. The Council's Technical Officer raises no objection to the positioning and usability of the open space, with the delivery and future maintenance arrangements controlled through a legal agreement under s106 of The Act. Planning conditions in respect of boundary treatments can be controlled via planning condition.

The grant of planning permission for the reduced area of public open space would also signal the Council's willingness to vary the terms of the original legal agreement in that respect and the intention to raise no case in respect of the recently submitted appeal under reference 11/03322/S106.

For clarity the applications cannot be considered in the context of any suspected precursor for alternative/additional development on the employment site, since that is not being proposed. The applicant is of course at liberty to submit a separate planning application for whatever development they chose to propose. Whatever the outcome of the current applications, the Council will not be prejudiced in considering any future application for development, should it ever be submitted.

10. Recommendation

That subject to all parties entering into an agreement under s106 of The Act in respect of the following matters:

- Timetable for the delivery of the public open space, play area (including play equipment), stormwater attenuation pond and associated drainage infrastructure for the entire development site
- Details of respective adoption of stormwater attenuation pond and associated drainage infrastructure by respective Authority's as well as transference of the public open space and play area to the Council
- Arrangements for future maintenance of the public open space, play area (including play equipment), stormwater attenuation pond and associated drainage infrastructure

Then:

Planning permission be GRANTED under references 11/02945/FUL and 11/03200/FUL for the following reason:

The proposed is considered to be an acceptable form of development that, subject to the imposition of planning conditions and all parties entering into an agreement under s106 of The Act, would accord with the provisions of Policies C3, NE21, NE22 and CF3 of the adopted North Wiltshire Local Plan 2011 as well as guidance contained in the National Planning Policy Framework.

And Subject to the following conditions:

To be advised.

Dauntsey

