

**Author: Adam Madge (Principal Planning Officer)**

**01722 434380**

**developmentcontrol@salisbury.gov.uk**

# REPORT

---

**PLANNING APPLICATION S/04/2055: LAND OFF DUCK LANE LAVERSTOCK (125) UNITS WITH ASSOCIATED PUBLIC OPEN SPACE AND INFRASTRUCTURE AND CONSTRUCTION OF NEW ACCESS TO HIGHWAY – AMENDMENTS TO CONDITIONS 14 AND 6. REVISIONS TO PLOTS 16,59,72 AND 71.**

## **Purpose of Report:**

To consider proposed amendments to condition 14 of S/04/2055 which relates to hours of working at the site and condition 6 which requires that a S278 agreement is entered into with Wiltshire Highways prior to the commencement of development at the site. Also to consider minor elevational changes to plots 16, 59, 72 and 71 of the proposed scheme.

## **Background:**

Further to the meeting of Southern area committee held on the 10<sup>th</sup> February 2005 when members resolved to grant planning permission for the above development subject to conditions and the signing of a S106 legal agreement, the applicants have asked that the committee reconsider the imposition of conditions 14 and 6 of the agreed scheme with amendments to modify the conditions.

## **The Proposal**

- 1) Amendments to plots 16, 59, 72 and 71
- 2) Amendments to the hours of working at site (condition 14)
- 3) Amendments to condition 6 which requires the applicants to enter into a S278 with Wiltshire County Council.

### 1) Amendments to plots 16,59,72 and 71

The applicants have proposed to move the first floor window of plot 16 to a more centralised position on the front elevation, above the front door of this dwelling. In addition it is proposed to insert a small window to the side elevation to serve the ground floor W.C. Neither of these changes are considered to be significant or result in any loss of amenity or overlooking to the proposed neighbouring properties and indeed the centralisation of the first floor window on the front elevation could be deemed to be an improvement in aesthetic terms on that which members resolved to approve.

It is proposed on plot 59 to insert 3 further windows to the ground and first floor side elevation of the plot and to delete one window to the front elevation. The three side windows overlook the footpath which runs along the southern boundary and could therefore said to be an improvement in surveillance terms for overlooking of this footpath as a deterrent to any anti social activities that may take place there. This amendment is therefore considered acceptable.

Plot 72 it is proposed to amend the elevation to include two further windows to the rear elevation at ground floor level a reduction by a similar number of windows to the side elevation and the introduction of a further window at first floor level and the enlargement of a ground floor level window. None of these alterations it is considered will have a significant effect on the amenity of any of the other proposed residential properties.

Finally the applicant has asked the council to consider changes to plot 71 which effectively mirrors the changes to plot 59 in introducing further windows to the elevations. It is not considered that this will have a significant effect in amenity terms upon the approved scheme.

In summary it is considered that the changes proposed are minor in their nature and unlikely to have a significant effect upon the previous resolution to grant planning permission or the amenity of future occupiers of the properties.

## **Recommendation**

### **Accept the amendments.**

#### 2) Amendment to the hours of working at site (condition 14)

The applicants have asked that the council consider relaxing condition 14 of the planning permission in order that the applicants contractors can start on site at 7.00am rather than the 8:00am as is members resolved. The original tabled condition read-

“The construction works hereby approved shall take place only between the following hours:-07:00 hrs to 21:00hrs on Mondays to Fridays; 08:00 Hrs –13:00 hrs on Saturday; and at no times on Sundays and Public Holidays. This does not apply to the internal fitting out of buildings.”

Members resolved that the tabled condition should be amended in order that works could not start on site before 08:00am because of concern expressed at the meeting about the proximity of neighbouring residential properties and the fact that many of the local residents were elderly and would suffer disturbance from such an early morning start.

The applicants have stated that *“We consider that an 8am start on site is totally impracticable and that contractors will inevitably arrive on site from 7am reflecting normal construction hours. Officers recommended a working day of 7am to 9pm and my client has stressed that they have no wish to work upon site so late into the evening. Members amended this condition to 8pm but this is still quite late, given that on the whole, people tend to return home from work by about 6pm and will not wish to have construction works continuing much beyond this time, especially if they are elderly or have young children. Therefore we ask that the Authority amend the condition to reflect the practicality (and reality) of a 7am start on site with a 6pm end to the working day. Given the 7am-9pm recommendation of officers and the 8am – 8pm decision made by members, this seems to be a reasonable compromise. No change is required to the Saturday working hours of 8am-1pm.”*

Officers previously recommended that the implementation of a condition requiring a start no earlier than 7am be imposed. In recommending such a condition officers accepted that such a 7am start was reasonable despite the proximity of neighbouring residential properties. None the less members decided through their own knowledge of the area that a later start time was needed given the proximity of the site to neighbouring properties and the large elderly population in the area. Environmental health officers have no objection to the 7am start although equally they are happy with a start of 8am and therefore they have no objection to the earlier start as proposed.

The applicants comments as regards the impracticality of the 7am start are noted but the notion that they will not be able to stop contractors working on site before 8am is implausible. The site and the contractors are entirely within the applicants control and if a later start time is required this is what the applicants will have to adhere to or they run the risk of enforcement action.

None the less given officers previous acceptance of a 7am start time for this development and the environmental health officers non objection to such a start time it is recommended on balance that the previously proposed start time of 7am together with an amended earlier 8pm finish on Mondays to Fridays is accepted.

## Recommendation

**Accept the amended condition to read: The construction works hereby approved shall take place only between the following hours:- 07:00 –20:00 on Mondays to Fridays; 08:00 – 13:00 on Saturday; and at no times on Sundays and Public Holidays. This does not apply to the internal fitting out of buildings.**

Amendments to condition 6 which require the applicants to enter into a S278 agreement with Wiltshire County Council.

The applicants have asked the council to consider amending condition 6 of the planning permission in order that the off site highway works which are to be secured through a section 278 agreement can be completed prior to occupation of the proposed dwellings rather than upon commencement of the development.

The applicants state *“This condition requires that the s.278 Agreement with Wiltshire County Council be signed before commencement of development. The s.278 covers the proposed highway works in and around Duck Lane. As”* the applicants *“do not have the power to make Wiltshire County Council, as a third party, sign the s.278 by any specified time and because this condition is unnecessary, in my opinion it fails the tests set out in Circular 11/95.”*

*“Wiltshire County Council have contracted out the preparation of s.278 Agreements to third party solicitors who are, apparently, not performing and delays are the result. My clients have proceeded with work to expedite the s.278 including a full technical submission to Wiltshire County Council at risk. This has been acknowledged by Wiltshire County Council (Rob Hannis) who has also confirmed that he does not require signing of the s.278 prior to commencement.”*

*“I believe that a more appropriate condition would secure provision of the actual works prior to occupation of any of the dwellings and I, therefore, suggest the following revised wording for your consideration:”*

*“Prior to occupation of any of the dwellings on site the off-site highway works to be included in a s.278 Agreement with Wiltshire County Council as the appropriate highways authority and as detailed on page 9 of the planning application statement dated September 2004 shall be completed.”*

It is accepted that the way the initial condition as previously proposed may have been unreasonable as it required the applicants to enter into an agreement with Wiltshire County Council which was not in their control. The condition therefore needs to be amended to reflect this. However the applicants are also additionally proposing that the off site highway works are complete prior to occupation of the first dwelling. This differs from officers recommendation that the works be completed prior to the commencement of development on site.

Wiltshire highways have indicated that they are satisfied for the works to be completed prior to the occupation of the first dwellings as this is what the works are supposed to serve. They have indicated that the works are not necessary for the construction traffic to access the site. Therefore from this point of view the amendment to the condition could be seen as reasonable.

There is however another issue with the change to this condition and this is the need to take enforcement action should the off site road works not take place. This would be more complicated if enforcement action had to be taken once the dwellings had already been built as it could lead to a situation of having to take action against individual owners of properties rather than the one developer which would make enforcement action although not impossible more difficult and far more complex for the council.

In view of this, whilst the developers reasons for not wanting to carry out the off site highway works prior to development are understood it is considered that it would be in the local authorities interest to require the off site highway works to be carried out prior to the commencement of development. This is not considered unreasonable as notwithstanding Wiltshire Highway officers comments the alterations will be of benefit to highway safety when construction traffic starts to access the site and it is more likely to secure the implementation of such works without “running the risk” of having to take enforcement action against individual householders.

## **Recommendation**

**Amend the originally tabled condition to read : “Prior to commencement of development on site, the off-site highway works to be included in a s.278 Agreement with Wiltshire County Council as the appropriate highways authority and as detailed on page 9 of the planning application statement dated September 2004 shall be completed.**

**Costs: None**

**Consultation Undertaken: Environmental Health  
Legal Services**

**Background Papers:** Letter and Plans received on the 7<sup>th</sup> March 2005 from White, Young Green Planning.

## **Implications:**

- **Financial: None**
- **Legal: None**
- **Human Rights:None**
- **Personnel: None**
- **Community Safety: None**
- **Environmental implications: None**
- **Council's Core Values: None**
- **Wards Affected: Laverstock and Clarendon Park**