



Late Observations Sheet
DEVELOPMENT CONTROL COMMITTEE
18 October 2012 at 7.00 pm

Late Observations

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DEVELOPMENT CONTROL COMMITTEE

18 October 2012

LATE OBSERVATION SHEET

Item 4.1 SE/12/00946/FUL 1-8 Becketts Field, Penshurst, Tonbridge

General matters

The Council has received a letter from the Becket Trust (the applicant) which makes a number of allegations relating to the treatment of its planning application. A response to this letter has been sent to the Becket Trust. Copies of the letters are attached to this report. The response is self explanatory.

It has been pointed out that the description of the development does not refer to the proposed housing as "affordable". This has now been added to the description for the purposes of clarity.

The Rural Needs Survey

Some Members have queried the number of units recommended in the Rural Needs Survey for Penshurst. I would advise that a maximum of 11 households were identified in the Survey as requiring affordable local needs housing within the Parish. However, the survey recommended that, in order to ensure local needs are met in perpetuity for local people, the number of units built should be approximately two to three times less than the identified level of need.. This concluded that a scheme for approximately 5 units would meet the needs of Penshurst residents.

This calculation to provide less units than the identified need is a recommendation of the survey, and Members are not bound by it. However, if Members consider that a greater number of units should be permitted, they should be aware that this would increase the risk that the units may not be occupied by local people. For example, if 11 affordable units were built and subsequently 3 of the 11 households identified in the survey chose not to take up the affordable accommodation on offer (this could be because they have moved away, or their circumstances have changed), then occupation of the units would "cascade" down through the S106 mechanism and could eventually allow persons within the wider District to occupy the units, rather than local persons specifically having a connection to Penshurst. This would go against the grain of the Council's rural exceptions policy. By effectively underproviding the number of units compared to the maximum need, this situation would be less likely.

Neighbour Representations

4 further letters have been received. 2 in support and 2 against the application. They do not raise any new issues.

Parking and amenity issues

Members will note in my report (para 77) that I considered the relationship between the proposed parking layout and existing units at 7-8 Becketts Field. I concluded that the parking arrangements, on balance, would not worsen the situation for occupants of these properties.

Supplementary Information

Having re-visited the site and the drawings I have reconsidered my original judgement on this matter.

The development proposes to incorporate 2 new parking spaces to the front of No.s 7 and 8 within the existing front gardens to these properties. This would result in the spaces being sited around 2 metres from the front elevations to these properties, and would obstruct the passage between the front doors and the adjoining pavement. My revised judgement is that this relationship is unacceptably close and causes access difficulties to the occupants of these properties and also harmful to their amenity as they will have to look out onto a parking area and conflict in vehicle movements with a high number of spaces in close proximity. As such, I consider that this relationship should be cited in the grounds of refusal.

Whether the development requires an Environmental Impact Assessment (EIA)

The development has been screened and it has been determined that the development does not raise significant environmental impacts that require an EIA.

Correspondence received:

Members may also have been in receipt of e mails from interested parties in regard to both applications, many of the issues such as the impact of the development, the comparison between the two sites, the provision of the Section 106 Agreement and the way in which the applications have been handled are addressed in the report and also in our response to the most recent letter.

In regard to the issue raised in regard to the funding it is the duty of the DC committee to consider the merits of both planning applications. Whilst one is publically funded and one is privately funded the Local Planning Authority could not discriminate against this or refuse a planning application due to the different method of funding. The only issue that should be considered in this regard, is for the Planning Authority to be assured that the dwellings are retained in perpetuity for local people, that they are correctly management and that the correct nomination procedure takes place through a sufficient Legal Agreement.

Recommendation

My recommendation to refuse the scheme remains unchanged. However I would recommend that reason two in the main report be amended to include the harmful impact of the proposed parking spaces on No. s 7-8 Becketts Field as follows –

The scale, height, siting and layout of the development would result in an unacceptable loss of light, privacy and outlook to existing bungalows at No.s 3, 4 and 5 Becketts Field, which would harm the living conditions of occupants of these properties. In addition, the siting of the two parking spaces to the front of the existing dwellings at 7 and 8 Becketts Field would harm the living conditions of occupants of these properties through loss of outlook, increased noise and disturbance, and ease of access to these properties. This would be contrary to Policy EN1 of the Sevenoaks District Local Plan and SP4 of the Sevenoaks Core Strategy.

Item 4.2 SE/11/02258/FUL Land SW of Forge Garage, High Street, Penshurst

Funding

Members will recall that timescales for the grant funding secured by the West Kent Housing Association were discussed at the July meeting. West Kent Housing have provided the following update with regard to funding –

Specificity of grant

The funding is not specific to Forge Field. Whilst the grant is intended for use on this project we are delivering homes on dozens of sites to meet our overall target and the grant can be allocated to other sites that meet HCA funding criteria.

Time Limitations

The HCA programme finishes in March 2015, delivery after this after will cause the scheme to lose its funding and will require the Housing Association to pay back any grant claimed. This could jeopardise the Association's ability to participate in future HCA programmes.

We would only proceed with the scheme if it is possible to sign a build contract with a completion in late 2014, to allow for unforeseeable delays, weather especially on such an exposed site.

The more specific question, raised by a KPG representative on 4th July, on when this scheme becomes unviable is not so set. We have not tendered the build contract yet so do not know contract timescales. Beyond the build programme we also have a large number of pre-start conditions to discharge, some of which will be done by the contractor. Given the sensitive nature of the site we would not expect the contractor to proceed at risk on any conditions, so this could add 3-4 months to the build programme.

Mark Leader has to actively manage this programme to ensure that we meet our targets in terms of delivery and grant spend. Mark will continue to support the site and work towards building the homes but, dependent on the result of committee on the 18th & any further legal challenges, will have to make a decision early next year whether to proceed with the development at Forge Field.

The Rural Needs Survey

Some Members have queried the number of units recommended in the Rural Needs Survey for Penshurst. I would advise that a maximum of 11 households were identified in the Survey as requiring affordable local needs housing within the Parish. However, the survey recommended that, in order to ensure local needs are met in perpetuity, the number of units built should be approximately two to three times less than the identified level of need. This concluded that a scheme for approximately 5 units would meet the needs of Penshurst residents.

This calculation to provide less units than the identified need is a recommendation, and Members are not bound by it. However, if Members determined that a greater number of units should be permitted, they should be aware that this would increase the risk that the units may not be occupied by local people. For example, if 11 affordable units were built and subsequently 3 of the 11 households identified in the survey chose not to take up the affordable accommodation on offer (this could be because they have moved away, or their circumstances have changed), then occupation of the units would “cascade” down through the S106 mechanism and could eventually allow persons within the wider District to occupy the units, rather than local persons. This would go against the grain of the Council's rural exceptions policy. By effectively underproviding the number of units compared to the maximum need, this situation would be less likely.

Supplementary Information

Correspondence received:

Members may also have been in receipt of e mails from interested parties in regard to both applications, many of the issues such as the impact of the development, the comparison between the two sites, the provision of the Section 106 Agreement and the way in which the applications have been handled are addressed in the report and also in our response to the most recent letter.

In regard to the issue raised in regard to the funding of the scheme, it is important to note that members cannot ensure with absolute certainty whether funding would materialise for either scheme, wherever the funding source maybe.

It is the duty of the DC committee to consider the merits of both planning applications. Whilst one is publically funded and one is privately funded the Local Planning Authority could not discriminate against this or refuse a planning application due to the different method of funding. The only issue that should be considered in this regard, is for the Planning Authority to ensure that the dwellings are retained in perpetuity for local people, that they are correctly management and that the correct nomination procedure takes place through a sufficient Legal Agreement.

Neighbour Representations

2 letters received re-iterating objections previously raised to the development of Forge Field. This includes an objection that the impact on the AONB was not properly considered by the Council in July.

Officer Comment – the impact on the AONB is set out in detail in the main report, as was the case in July

1 letter received objecting that the application has been reported back to committee instead of being approved as per the resolution in July.

1 letter received stating that the Forge Field development would improve visibility and highways conditions on the road, especially in relation to the school

Whether the development requires an Environmental Impact Assessment (EIA)

The development has been screened and it has been determined that the development does not raise significant environmental impacts that require an EIA.

Consultation Responses

The site lies partly within an Area of Archaeological Potential. The Council's archaeology advisor has recommended a condition to require a Watching Brief in order that excavation works can be controlled and inspected. This can be added to the conditions listed in the main report.

The Kent County Ecologist has recommended that lighting on site is controlled in order that protected species are not disturbed. This can be added to the existing ecology condition proposed as condition 18.

Recommendation

My recommendation to approve the scheme remains unchanged. I would recommend that the following conditions are amended / added –

18) No development shall take place until details of further ecological mitigation and enhancement measures have been submitted to and approved in writing by the Council. These details shall include all the mitigation measures detailed in the Thomson Ecology reports dated July 2011 and October 2011, and details of the design of any external lighting proposed, and shall include measures to ensure that the building works do not disturb protected species, and all enhancement measures proposed therein. The approved mitigation and habitat enhancement measures shall be implemented in full, in accordance with the approved details.

Reason: To ensure the long term retention of protected species on the site as supported by the National Planning Policy Framework.

23) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded, in accordance with Policy EN25A of the Sevenoaks District Local Plan..

Item 4.3 SE/11/03288/FUL 18-19 The Row, Main Road, Edenbridge

Removal of the existing Postbox

Members will note that the development involves removal of an existing post box set within the wall of the property (see para 49 of the main report).

This matter has been discussed further with the Post Office. They have advised that they do not object to the loss of the post box, provided notice is served to them by the developer prior to removal. Equally, the Post office would not object if a post box was to be accommodated within the new development.

Whilst I appreciate that there would be benefits in maintaining a post box in this location, the current design of the development does not provide an easily identifiable location for one to be sited. Members will note that the existing box is within a pillar which would be removed as part of the development, and to retain the pillar would worsen parking conditions as proposed.

On this basis, and given that the Post Office do not object to the removal of the box, I do not consider that the Council could insist on the retention of this facility.

Recommendation

My recommendation remains unchanged.

Supplementary Information

Item 4.4 SE/12/02072/HOUSE - 63 Redhill Wood, New Ash Green, Longfield

Additional Condition Proposed

4) Before the development, including any site clearance works, is begun, tree protection measures in accordance with BS 5837 2012 *Trees in Relation to Design, Demolition and Construction - Recommendations* shall be erected for each tree or group of trees to be retained on this site, or such measures as may be agreed with the Local Planning Authority shall be provided. The protection measures shall be retained in position at all times until the completion of the development, and the land so enclosed shall be kept clear of all contractors materials and machinery. The existing soil levels around the boles of the trees shall not be altered.

To ensure that the trees are not damaged during the period of construction in accordance with policies EN1 of the Sevenoaks District Local Plan.

THE BECKET TRUST
c/o GRAYLEAS
SMARTS HILL
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TN11 8EB

12th October 2012

BY EMAIL TO Andrew.Byrne@sevenoaks.gov.uk AND FIRST CLASS POST

Andrew Byrne, Esq.,
Principal Planning Officer
Sevenoaks District Council
Argyle Road
Sevenoaks
Kent
TN13 1GN

SUBJECT TO CONTRACT AND LEGAL ADVICE

Dear Mr Byrne,

Application 12/00946/FUL: Draft S.106 Agreement and Committee process/timescale

Thankyou for your email sent at 19:10hrs last evening and the attached Draft S.106 Agreement prepared by the Council's legal team. I have been out of the office this morning and have therefore not had an opportunity to get to grips with it, but I note that it seeks to account for the requirements of a financier.

Out of a desire to assist the Council, I attach the Draft S.106 Agreement (prepared this week) by the Becket Trust for your attention. The Trust wishes to take advice from its Solicitors, Warners, on this document, but it is submitted to you now to demonstrate the Trust's commitment to enter into an appropriate S.106 Agreement, subject to that advice. The draft is closely based upon the terms proposed by the Council itself at the meeting on 14th June attended by Mr Alan Dyer, Group Manager, Planning and Mr Aaron Hill, Manager, South Planning Team and Mr Gavin Missons of the Council's housing department, and the agreement reached on minor points in that discussion.

The Officers' report to the Development Control Committee of 18th October was published, I believe, on Wednesday afternoon of this week, the 10th October. Until publication of the report, Becket Trust had received no notice whatsoever of the objections listed by Officers therein¹. The Becket Trust is therefore disadvantaged by the Council's actions and I therefore register the Trust's strong complaint at the process adopted by Sevenoaks District Council, which is both unfair and unlawful. In particular, the report complains that there is no signed S.106 Agreement. The Trust, having reached agreement on the S.106 terms at the meeting on 14th June, believed that drafting of the S.106 Agreement would await the Development Control Committee's resolution to grant consent subject to a S.106 Agreement, as is the normal practice.

The Trust was entirely unaware that the Council sought to advance a draft S.106 Agreement until receipt of your Legal Services Department's letter to me dated 1st October, and also via correspondence addressed to the Trust's Secretary at the same time. The Trust notes that a requirement for a signed S.106 Agreement was not imposed on the applicant for the alternative proposal and is concerned at the Council's clear bias against the Becket Trust in this regard.

¹ Nor has the Becket Trust received any communication from the Highways Authority whatsoever in relation to its revised proposal, or on the points stated to be its comments in the Officers' report to the Development Committee. Nor is any such comment available on the planning portal.

Supplementary Information

Whilst the Officers' report to the Development Control Committee sets out objections to the Trust's proposals, it also incorporates statements to the effect that many (in fact the majority) of those points of complaint are actually satisfied, or not of sufficient importance to constitute a reason for refusal. These points are interspersed in the body of a lengthy report in such a way that its true meaning is difficult for Members to grasp. For that reason the report is unfairly written.

The Trust considers that many, and possibly all of the points of complaint recorded in the Officers' report to the Development Control Committee, could be resolved through discussion and refinement of the proposal with the support of, and in conjunction with Officers, as directed by the National Planning Policy Framework. The Becket Trust has been denied this opportunity by the Council's actions. The Trust therefore asks that the Council defer the Development Control Committee's consideration both of its application, and also the alternative proposal, for a few weeks to allow time for those points to be settled.

Yours sincerely,

Daniel R.E. Carter

cc: All Trustees
Simon Catton, Esq – Youmeheshe Architects

Daniel Carter
The Becket Trust

Direct Line: 01732 227196
Ask for: Alan Dyer
Your ref:
My ref: SE/12/00946
Email: alan.dyer@sevenoaks.gov.uk

Date: 18 October 2012

By Email

Dear Mr Carter

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
Re Beckets Field, Penshurst

Thank you for your letter received by email on the 12th October. I have forwarded your draft S106 agreement to our legal department for consideration. In response to the other points raised in your letter I would answer as follows.

The officer's report considers the Becket Trust's proposals against the policies which are set out in the statutory development plan and have at all times been publicly available to the Trust. The Trust should have been aware of these policies before submitting its application quite apart from any advice from Council officers.

Officers have in addition offered pre-application advice to the Beckets Trust as is recommended within the National Planning Policy Framework (paragraph 188). The Council responded to initial proposals presented by the Becket Trust in February, prior to the receipt of a formal planning application. The response raised a number of concerns over the proposed development, including the design and scale of the buildings and the relationship between the proposed units and surrounding existing dwellings. It also referred to the identified need as being for approximately 5 affordable units. The Trust therefore had a fair opportunity to design its proposals in the light of the Council's development plan policies, and to justify those proposals' degree of conformity with those policies as part of its application.

Following these comments, an application was formally submitted in April for a development of 11 new units. The decision when to submit a planning application and how far to refine it before doing so was a matter for the Trust.

Officers remained concerned over the design and scale of the proposed units and their relationship with neighbouring dwellings. In addition, the development of 11 new units was considered by officers to exceed the size of development necessary to respond to the identified need for the Parish. The Council arranged a meeting with the Becket Trust in June when these concerns were outlined.

Supplementary Information

The Council is required by law to determine planning applications within time limits. Members have to determine the acceptability of the proposals contained in the application that has been submitted to them. The Council is entitled to refuse planning applications which do not conform with development plan policies and require a fresh application to be submitted, without giving applicants additional opportunities to alter their proposals.

Nevertheless, the Council has in its discretion already allowed the scheme to be amended and re-consulted on. This was done in order to give the Trust a further opportunity to resolve officers' concerns should it wish to do so, and was done proactively as is encouraged by paragraph 187 of the NPPF.

The application was subsequently amended in July. The amended application reduced the proposal to 6 units. Having reconsidered the amended scheme, officers continue to raise concerns regarding the design and scale of the proposal and its impact on neighbouring residential properties. This is fully detailed in the report due to be presented to the Development Control Committee this evening.

I do not consider the report to be biased or unfairly written and I consider that it sets out the planning merits of the application in a clear manner for Members to consider.

No draft section 106 agreement was submitted until Friday of last week. Given that the application has been recommended for refusal and a S106 agreement has not been completed, it is the norm for the Council to include this as a ground of refusal as well. Doing so makes clear that in the absence of an effective set of planning obligations, the development would be unacceptable. However the Council does from time to time resolve to grant permission subject to amendment to or execution of a submitted draft agreement.

There would be no particular benefit in delaying matters further to complete a S106 agreement for an application that is in any case recommended for refusal. The Forge Field application was materially different, in that the recommendation to committee in July was to approve the development, subject to the completion of a S106 which had, unlike the case with your proposal, been submitted in draft form with the application.

I do not consider that this position relating to the S106 agreement represents any bias towards the Forge Field scheme. Should Members decide that the Becket's Field scheme is otherwise acceptable they could resolve that permission should be granted subject to the completion of a satisfactory legal agreement within a specified timescale.

The NPPF says that local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. The Council has worked proactively with the Trust, which has had a fair and reasonable opportunity to rework its plans. I do not consider that the concerns raised in the committee report could be easily amended to overcome the planning concerns raised – and in my opinion it has not been demonstrated that the number of affordable housing units proposed can be accommodated on this site to meet the identified need without causing harm to the surrounding area, including the amenities of neighbouring properties. In my view, the proposal is not an improvement to the conditions of the area.

However this is only my professional opinion, and it is ultimately a matter for Members to determine at the Planning Committee.

The purpose of publishing committee reports in advance of committee meetings is to give interested parties an opportunity to make representations to Members responding to officers' opinions. I would encourage the Trust to take this opportunity at the committee meeting.

Overall, I do not consider that the Beckets Field application has been handled or treated in a biased or unfair manner. I note that you are requesting that the consideration of both your application and the Forge Field application be deferred. I do not consider that the Council should defer either this application or the Forge Field application to a later committee. The committee has sufficient information before it on both proposals to determine each of them on its own merits.

Yours sincerely,

Alan Dyer
Group Manager Planning

