

Parish:	Terrington St John	
Proposal:	Variation of condition 8 of planning permission 15/01499/OM to allow occupation of 1st phase of development before completion of footway works along Old Church Road (Units 1-22)	
Location:	Land On The North West Side of Old Church Road Terrington St John Norfolk PE14 7XA	
Applicant:	Coparek Ltd	
Case No:	21/01836/F (Full Application)	
Case Officer:	Mr K Wilkinson	Date for Determination: 12 November 2021 Extension of Time Expiry Date: 14 January 2022

Reason for Referral to Planning Committee – The views of the Parish Council are contrary to the Officer recommendation and at the instruction of the Planning Committee Sifting Panel (17/11/21).

Neighbourhood Plan: No

Case Summary

This application relates to an estate development of 46 houses between Old Church Road, slip road off the A47 and Church Road, to the NW of the village. Initially outline permission was granted under application ref: 15/01499/OM when the Council had an issue with the 5-year supply of housing land. This was followed with reserved matters approval under application ref: 18/02176/RMM and development has commenced.

The outline permission included condition 8 which stated:

“Notwithstanding the details indicated on the submitted drawings no works shall commence on site unless otherwise agreed in writing until a detailed scheme for the off-site highway improvement works to provide a continuous footway on Old Church Road as indicated on drawing number 36480/5501/SK01 rev A have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

The approved off-site highway improvement works shall be completed to the written satisfaction of the Local Planning Authority prior to the first occupation of any dwelling hereby permitted.”

This application seeks to vary that condition to allow Plots 1-22 to be constructed and occupied prior to the footpath link being completed.

Key Issues

Procedural matters
Previous permission
Proposed variation
Impact upon delivery of development
Other material considerations

Recommendation

APPROVE

THE APPLICATION

This application relates to an estate development of 46 houses between Old Church Road, slip road off the A47 and Church Road, to the NW of the village. Initially outline permission was granted under application ref: 15/01499/OM when the Council had an issue with the 5-year supply of housing land. This was followed with reserved matters approval under application ref: 18/02176/RMM and development has commenced. The infrastructure is being implemented and 3-4 house shells are constructed but some time away from the prospect of completion/occupation.

The outline permission included condition 8 which stated:

“Notwithstanding the details indicated on the submitted drawings no works shall commence on site unless otherwise agreed in writing until a detailed scheme for the off-site highway improvement works to provide a continuous footway on Old Church Road as indicated on drawing number 36480/5501/SK01 rev A have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

The approved off-site highway improvement works shall be completed to the written satisfaction of the Local Planning Authority prior to the first occupation of any dwelling hereby permitted.”

This application seeks to vary that condition to allow Plots 1-22 to be constructed and occupied prior to the footpath link being completed.

Technically the applicants are in breach of condition as the pre-commencement part of the condition has not been discharged. It is however recognised that a discharge of condition application was submitted in a timely fashion (ref: 15/01499/DISC_A) but Condition 8 was not finalised at that point. Since then the applicants have been undertaking prolonged negotiations with the Local Highway Authority’s contractors to resolve the issue, which is still on-going.

SUPPORTING CASE

The agent has submitted the following statement in support of this application:

“The developer is requesting this relaxation in the condition to enable the first phase properties (Plots 1-22) to be sold before the off-site footpath works have been completed.

Bingham Hall Associates are the appointed highways consultant to prepare and obtain the technical approval for the off-site highway works relating to the footpath provision/improvements. They have been working with Norfolk County Council for almost 2 years now to resolve implications.

There have been delays with obtaining the technical approval of the footpath provisions due to working restrictions/staffing levels over the difficult global pandemic period and anomalies with third party boundary positions along Old Church Road together with previous developments not fulfilling highway obligations which are now being included with these works.

The developer is a relatively small scale business working within the borough, and would like to emphasize that they are not trying to avoid providing the footpath. It is merely a point of practicality with the first phase being furthest from the access point onto the new footpath and any user of the first phase would only be able to access the path through the second phase construction site.

We feel this would be a safety concern with construction traffic and unnecessary, when there is an accessible public footway from the entrance to the site that links to the village facilities.

The developer is required to pay a financial bond to secure the satisfactory completion of the footpath works which is usually valued at the cost of the works. If the developer fails to complete the works, or the works are not to the satisfaction of the highway inspectors, the bond funds are there to finance the corrections.

The developer would like to reiterate that they are fully committed to providing the footpath but simply would like to be able to sell/occupy some of the properties on the development to aid the progression of the development.”

PLANNING HISTORY

15/01499/DISC_B: Discharge of Condition final letter: 24/11/20 - DISCHARGE OF CONDITION 7 of Planning Permission 15/01499/OM: Residential development to 2.07 hectares (Delegated decision)

15/01499/DISC_A: Discharge of Condition final letter: 13/05/20 - DISCHARGE OF CONDITIONS 6, 8, 13, 14, 15, 16 AND 18 of Planning Permission 15/01499/OM: Residential development to 2.07 hectares (Delegated decision)

18/02176/RMM: Application Permitted: 13/09/19 - Reserved Matters Application for construction of 46 dwellings (Delegated decision)

15/01499/NMAM_1: Application Permitted: 11/09/19 - NON-MATERIAL AMENDMENT TO PLANNING PERMISSION 15/01499/OM: Outline application, residential development to 2.07 hectares (Delegated decision)

15/01499/OM: Application Permitted: 19/05/16 - OUTLINE APPLICATION ALL MATTERS RESERVED: Residential development to 2.07 hectares (Committee decision)

RESPONSE TO CONSULTATION

Parish Council: OBJECT - The members of Terrington St John Parish Council do not support the variation as this should have been agreed upon at the pre-construction plan

Planning Committee
10 January 2022

stage. This is a strong objection as this variation does not meet the condition relating to this and there is a legal obligation to build the footpath to meet the requirements of the condition.

Highways Authority: NO OBJECTION - As stated by the applicant, plots 1 - 22 would have no direct access to Old Church Road and can access village services via existing provision to the west. Therefore, it would be my view that the County Council would not be able to substantiate a highway related objection to proposed amendment.

REPRESENTATIONS One item of correspondence from 47 Old Church Road stating: "We at this address have no strong feelings either way."

LDF CORE STRATEGY POLICIES

CS01 - Spatial Strategy

CS08 - Sustainable Development

CS11 – Transport

CS14 - Infrastructure Provision

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016

DM1 – Presumption in Favour of Sustainable Development

DM15 – Environment, Design and Amenity

NEIGHBOURHOOD PLAN POLICIES

Policy 1: Village Development Boundary

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)
National Design Guide 2019

PLANNING CONSIDERATIONS

The key issues in determining this application are as follows:

- Procedural matters
- Previous permission
- Proposed variation
- Impact upon delivery of development
- Other material considerations

Procedural matters

Section 73 of the 1990 Town and Country Planning Act provides that applications may be made for planning permission without complying with conditions applied to a previous permission. Planning authorities may decide whether to grant permission, subject to differing

Planning Committee
10 January 2022

conditions, remove the conditions altogether or refuse to alter conditions. Thus it is possible to apply for conditions to be fully removed or varied/modified (as in this particular case).

Section 73 makes it clear that in considering an application to remove or modify a condition or conditions, a Local Planning Authority may only consider the question of the condition/s. However, just like the determination of any other application due regard must be paid to the development plan and other material considerations.

Ministerial advice, on the question of the planning considerations to be applied when dealing with an application for the 'removal' or 'modification' of existing conditions is found in the Planning Practice Guidance (Paragraph: 013 Reference ID: 17a-013-20140306).

Thus the key issue in the consideration of this application is whether there are sound and clear-cut reasons for Condition 8 of planning permission 15/01499/OM to be retained in its current format.

Previous permission

There is a Section 106 agreement associated with the permission granted under application ref: 15/01499/OM which contains a clause (8.10) allowing for applications made under Section 73 of the Act. The affordable housing provision, SUDS management, education and library contributions would remain unchanged by the determination of this application.

Proposed variation

Accompanying the application, the agent gives the following reason for pursuit of the variation of condition:

"The reason for this is a practical and Health & Safety Issue. Access to the footpath along Old Church Road from the first phase will need to be across the 2nd phase construction area which causes a Health & Safety issue with plant and machinery using the area. In practical terms, the 1st phase completed units are more likely to use the main entrance to the site utilising the existing highway footpaths rather than through a construction site."

This has been embellished by the Statement of Support covered earlier in this report.

The Local Highway Authority have responded to this application to the effect that they have no objection to this proposal as plots 1 - 22 would have no direct access to Old Church Road and can access village services via existing provision to the west. They add that the County Council would not be able to substantiate a highway related objection to proposed amendment. Your officers concur with this opinion.

The condition can be varied to state that no more than 22 dwellings can be occupied until such time as the off-site works are agreed and completed. This could read as follows:

"No more than 22 dwellings shall be occupied prior to a detailed scheme for the off-site highway improvement works to provide a continuous footway on Old Church Road (as indicated on drawing number 36480/5501/SK01 rev A) has been agreed and completed to the written satisfaction of the Local Planning Authority."

The Council is also conscious that in response to the pandemic, the Local Highway Authority has contracted out a large portion of its technical design work for off-site works as in this case. This has also created a delay in the agreement of Section 278 (Highways Act 1980) works. Discussions with both parties indicate that this matter can be resolved in the near future.

Impact upon delivery of the development

As things presently stand, none of the dwellings can be occupied until such time as the footpath link is completed. Given the prospective delays in resolving the technical issues and safety implications, it is considered to be unreasonable to resist this proposal.

The variation of condition would secure the timely and safe provision of 22 dwellings which would go towards meeting our corporate and national housing targets.

Other material considerations

Crime and Disorder - There are no implications regarding Crime and Disorder issues related to this proposal.

All other conditions attached to that earlier consent have been reviewed and amended as necessary as part of this assessment. Condition 13 was a pre-commencement condition relating to foul and surface water drainage details which was not discharged, however in the interim the applicants inform that they have secured agreement with Anglian Water and a Section 106 agreement (Water Industry Act 1991) has been issued. This can be covered/secured via modified condition as part of this application to be agreed prior to occupation of any dwelling (see proposed Condition 8).

There are no material changes to other matters of planning importance.

The proposal would not contravene the provisions of the NPPF or Policies CS11 and DM15 of the Development Plan, nor any policies contained in the Neighbourhood Plan.

CONCLUSION

The variation of condition as proposed would secure the safe and timely provision of 22 dwellings which would contribute towards both corporate and national housing targets. There is a safe pedestrian route linking to village services from the western access point of the site where the estate has commenced.

The off-site footpath works to the east would ultimately be implemented as per the expectations of the Parish Council, but to a slightly delayed timescale, which is not considered to be unreasonable given the economic and health problems currently being experienced.

The application therefore complies with the provisions of the NPPF and Policies CS11 and DM15 of the Development Plan, and is recommended for approval subject to the conditions stated below – all other conditions attached to that earlier consent have been reviewed and amended as necessary as part of this assessment.

RECOMMENDATION:

APPROVE subject to the imposition of the following condition(s):

- 1 Condition: For the duration of the construction period the Construction Management Plan approved under application ref: 15/01499/DISC_A shall be fully complied with unless otherwise agreed in writing by the Local Planning Authority.

- 1 Reason: In the interests of highway efficiency and safety and the amenity of occupiers of nearby residential development in accordance with the NPPF and Development Plan.
- 2 Condition: The works to roads and footways (including drainage) shall be carried out in accordance with the approved details and plans agreed under application ref: 15/01499/DISC_B.
- 2 Reason: To ensure satisfactory development of the site and a satisfactory standard of highway design and construction in accordance with the NPPF and Development Plan.
- 3 Condition: No more than 22 dwellings shall be occupied prior to a detailed scheme for the off-site highway improvement works to provide a continuous footway on Old Church Road (as indicated on drawing number 36480/5501/SK01 rev A) has been agreed and completed to the written satisfaction of the Local Planning Authority.
- 3 Reason: To ensure that the highway network is adequate to cater for the development proposed in the interests of highway safety in accordance with the NPPF and Development Plan.
- 4 Condition: No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. (The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company has been established).
- 4 Reason: To ensure satisfactory development of the site and to ensure estate roads are managed and maintained thereafter to a suitable and safe standard in the interests of highway safety in accordance with the NPPF and Development Plan.
- 5 Condition: Before any dwelling hereby approved is first occupied the road(s) and footway(s) shall be constructed to binder course surfacing level from the dwelling to the adjoining County road in accordance with the details to be approved in writing by the Local Planning Authority.
- 5 Reason: To ensure satisfactory development of the site in the interests of highway safety in accordance with the NPPF and Development Plan.
- 6 Condition: All footways shall be fully surfaced in accordance with a phasing plan to be approved in writing by the Local Planning Authority prior to the occupation of any dwelling hereby approved.
- 6 Reason: To ensure satisfactory development of the site in the interests of highway safety in accordance with the NPPF and Development Plan.
- 7 Condition: Prior to the first occupation of any dwelling hereby approved a visibility splay measuring 4.5 x 160 metres shall be provided to each side of the access where it meets the highway and such splays shall thereafter be maintained at all times free from any obstruction exceeding 0.225 metres above the level of the adjacent highway carriageway.

- 7 Reason: In the interests of highway safety in accordance with the NPPF and Development Plan.
- 8 Condition: No dwelling shall be occupied until foul and surface water drainage (the latter to include SuDS) details have been approved and completed in accordance with those details agreed to the satisfaction in writing of the Local Planning Authority. The submitted details shall:
- I. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - II. include a timetable for its implementation; and
 - III. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8 Reason: To ensure that there is a satisfactory means of drainage in accordance with the NPPF.
- 9 Condition: In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 14, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 15, which is subject to the approval in writing of the Local Planning Authority.
- Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 16.
- 9 Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.
- 10 Condition: The scheme to protect the dwellings from road traffic shall be implemented as approved under application ref: 15/01499/DISC_A.
- 10 Reason: To ensure that the amenities of future occupants are safeguarded in accordance with the NPPF.
- 11 Condition: The development hereby permitted shall be carried out in accordance with the mitigation measures recommended in the Flood Risk Assessment (ref: GCB/GOSLING) dated February 2019 and prepared by Geoff Beel Consultancy.
- 11 Reason: To reduce the risks associated with flooding in accordance with the NPPF, NPPG and Development Plan.
- 12 Condition: Prior to the first occupation of any dwelling hereby permitted a flood evacuation plan should be submitted to and approved in writing by the Local Planning Authority. The plan should include actions to take on receipt of the different warning

levels, evacuation procedures and evacuation routes. The plan shall be implemented in the event of a flood.

- 12 Reason: To reduce the risks associated with flooding in accordance with the NPPF, NPPG and Development Plan.
- 13 Condition: There shall be no ground floor sleeping accommodation.
- 13 Reason: To reduce the risks associated with flooding in accordance with the NPPF, NPPG and Development Plan.
- 14 Condition: The development shall not be brought into use until a scheme for the provision of fire hydrants has been implemented in accordance with a scheme that has previously been submitted to and approved in writing by the Local Planning Authority.
- 14 Reason: In order to ensure that water supplies are available in the event of an emergency in accordance with the NPPF.