

**AGENDA ITEM NO.8/2(d)**

<b>Parish:</b>	<b>Downham Market</b>	
<b>Proposal:</b>	<b>VARIATION OF CONDITION 1 OF PLANNING PERMISSION 21/01105/RM: Reserved Matters: Construction of 8 Dwellings with access</b>	
<b>Location:</b>	<b>Vacant Unit 9 Fairfield Road Downham Market PE38 9ET</b>	
<b>Applicant:</b>	<b>MR MARK ATTRIDGE</b>	
<b>Case No:</b>	<b>22/01484/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Mrs C Dorgan</b>	<b>Date for Determination: 3 October 2022 Extension of Time Expiry Date: 9 November 2022</b>

**Reason for Referral to Planning Committee** – The applicant is the partner of a Member of Staff involved in the planning process.

**Neighbourhood Plan:** No

**Case Summary**

The application site is an area of 0.12 ha of land, located to the west of the town of Downham Market. Access to the site is via Fairfield Road which is a private unadopted road and a Public Right of Way. The site is situated between the railway tracks to the east and the River Great Ouse to the west, with Fairfield Road consisting of a mixture of residential development and employment uses. The site was previously in employment use but has been cleared and is currently vacant.

This application seeks full permission for the construction of eight residential units comprising of two-storey dwelling houses with designated parking spaces and private amenity space.

The application site already has planning consent for the construction of 8 dwellings, under references 19/01170/O and 21/01105/RM. This planning application seeks to vary condition 1 of the reserved matters application to amend the previously approved site layout.

**Key Issues**

Principle of Development and Planning History  
Form and Character  
Residential Amenity  
Access and Public Rights of Way  
Drainage  
Other Material Considerations

**Recommendation:**

**APPROVE**

## **THE APPLICATION**

The application site is an area of 0.12 ha of land, located to the west of the town of Downham Market. Access to the site is via Fairfield Road which is a private unadopted road and a Public Right of Way. The site is situated between the railway tracks to the east and the River Great Ouse to the west, with Fairfield Road consisting of a mixture of residential development and employment uses. The site was previously in employment use but has been cleared and is currently vacant.

This application seeks full permission for the construction of eight residential units comprising of two-storey dwelling houses with designated parking spaces and private amenity space.

The application site already has planning consent for the construction of 8 dwellings, under references 19/01170/O and 21/01105/RM. This planning application seeks to vary condition 1 of the reserved matters application to amend the previously approved site layout. The dwelling types, design and materials are to remain as previously approved.

The applicant is seeking to amend the site layout because it became evident during the previous planning applications that the historical route of the Public Right of Way (PROW) was more extensive than previously thought. As a result, the approved scheme encroached onto this highway and to develop the scheme as approved the applicant is having to go through the process of applying for a 'stopping up' order under the Town and Country Planning Act 1990 (Section 247) to remove part of the PROW. Given this is a lengthy process the applicant is also seeking to obtain consent for a revised layout for the scheme which will remove the footprint of the buildings from within this historic highway.

## **SUPPORTING CASE**

The variation of this application is submitted to modify the positioning of the front four properties and move them outside the area requiring a 'stopping up order' and alleviate concerns raised by PROW. The position of the units, if approved, would now be outside the PROW/Restricted Byway 13 and a greater distance would be provided between the main carriageway and the building frontages which will achieve a greater feel of openness where there is a narrowing of the verge opposite at this point along Fairfield Road. The remaining units to the rear will remain as previously approved and the design, style and appearance of all the buildings will not be changed.

## **PLANNING HISTORY**

21/01105/DISC\_A: Discharge of Condition final letter: 20/06/22 - DISCHARGE OF CONDITION 4 of Planning Permission 21/01105/RM: Reserved Matters: Construction of 8 Dwellings with access - Vacant Unit 9 Fairfield Road

22/00527/S257: Application for Public Footpath to be stopped up - Vacant Unit 9 Fairfield Road

21/01105/RM: Application Permitted: 24/02/22 - Reserved Matters: Construction of 8 Dwellings with access - Vacant Unit 9 Fairfield Road

19/01170/DISC\_A: Discharge of Condition final letter: 04/08/20 - Discharge of conditions 5, 6 and 7 of planning permission 19/01170/O: Outline application for demolition of existing building for residential development - Vacant Unit 9 Fairfield Road

08/01604/FM: Application Permitted: 09/09/08 - Construction of 12 dwellings - The Cottage and Factory Fairfield Road

## **RESPONSE TO CONSULTATION**

**Town Council: SUPPORT.**

**Local Highway Authority (NCC): NO OBJECTION.**

As previously mentioned under the RM application Fairfield Road is not adopted as a road once past the south boundary of The Lodge. This development therefore accesses from a private section of road and therefore we do not have an objection to this proposed variation.

**Public Rights of Way (NCC): NO OBJECTION.**

No objection in principle to the application but would highlight that a Public Right of Way, known as Downham Market Restricted Byway 13 is aligned coincident with Fairfield Road. Private structures such as fences or walls will not be permitted on highway land or within a Public Right of Way. Permission must be applied for and agreed for any proposed changes to the surface of the Highway before any commencement of works. The full legal extent of this Restricted Byway must remain open and accessible for the duration of the development and subsequent occupation.

**Community Safety and Neighbour Nuisance (CSNN): NO OBJECTION subject to conditions.**

Provided the scheme can be built in accordance with the relevant noise protection measures we previously required by planning condition for the earlier application ref 21/01105/RM, along with the previous planning conditions for other aspects to protect residential amenity, we have no concerns. Please re-attach conditions 3, 5, 7 and reword condition 4 to ensure CMP is implemented.

For an earlier planning application, ref 18/00553/O, we requested foul and surface water drainage was conditioned. This should be attached.

## **REPRESENTATIONS**

**NONE** received.

## **LDF CORE STRATEGY POLICIES**

**CS04** - Downham Market

**CS08** - Sustainable Development

**CS11** - Transport

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM15** – Environment, Design and Amenity

**DM17** - Parking Provision in New Development

## **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2019

## **PLANNING CONSIDERATIONS**

The main issues for consideration are as follows:

- Principle of Development and Planning History
- Form and Character
- Residential Amenity
- Access and Public Rights of Way
- Drainage
- Other Material Considerations

### **Principle of Development and Planning History**

The application site lies within the development boundary for the town of Downham Market. Policy DM2 of the Site Allocations and Development Management Policies Plan (2016) (SADMPP) states that development will be permitted within the development boundaries of settlements provided it is in accordance with the other policies in the Local Plan.

The principle of residential development on the site is therefore acceptable and in accordance with the NPPF, policies CS02 and CS04 of the Core Strategy (2011) (CS) and policy DM2 of the SADMPP, subject to compliance with other policies in the Local Plan.

Notwithstanding this the application site already has planning consent for the construction of 8 dwellings, under references 19/01170/O and 21/01105/RM. This planning application seeks to vary condition 1 of the reserved matters application to amend the previously approved site layout, the dwelling types, design and materials are to remain as previously approved. The principle and scale of development is established via the extant planning consents.

### **Form and Character**

The site layout and design of dwellings proposed is considered acceptable in the locality. The dwellings proposed are situated in two tandem blocks of four units which both front on to Fairfield Road. This layout is akin to residential schemes elsewhere on Fairfield Road.

The development consists of a terrace of three two storey dwellings and a single two storey dwelling along the frontage of the site with two pairs of semi-detached three storey dwellings to the rear. The site is served by a single point of access off Fairfield Road. Plots 1-3 and 5-8 have parking provided and all dwellings have some private amenity space included. Finished floor levels are as specified as part of the outline consent (condition 9). The proposed materials are as previously specified in the Materials Schedule submitted 3 June 2021 and agreed.

This application seeks to amend the layout by moving back plots 1-4 by approximately 2m in the plot, so plots 1-3 are in line with the existing dwelling 'The Cottage' to the south. The scheme will still retain private amenity space and parking for the dwellings, and these

contribute towards the separation gap between plots 1-3 and plots 5-8 of 18/19m which is considered acceptable in the town centre location. As a result of the revised layout the parking arrangements for plots 1-3 have been amended. While this will result in a reduced number of spaces, the scheme still provides parking for all but one of the units, in excess of the requirement for spaces in the town centre location. The Local Highway Authority has no objections. The nature of the town centre location, the form and character of the immediate locality and the scale of dwellings proposed means that the amenity space provided is broadly acceptable. The scheme is in accordance with the NPPF, and policy DM15 of the SADMPP.

### **Residential Amenity**

As part of the determination of the previous planning applications, careful consideration was given to the residential amenity of the occupiers of the dwellings proposed. Specifically, the proximity of the site to the employment use to the north and the railway line to the east. The applicant submitted a Noise Impact Assessment report which identified suitable mitigation measures to protect future residents against these sources of noise and disturbance, and a condition was attached to the consent to secure these.

The site was laid out to create barriers between the employment use and railway line and the garden areas for plots 1-3 and 5-8. CSNN are satisfied that the revised layout would not have a detrimental impact on this. CSNN also confirm that the mitigation measures previously proposed will remain appropriate and request that all conditions attached to the RM consent are carried forward to this consent to ensure the mitigation measures are delivered. While the applicant has now confirmed that the employment use to the north of the site has removed their spray booth, which will have a beneficial impact on neighbouring residents, the mitigation measures are still required because the land to the north is within a different ownership. Paragraph 187 of the NPPF requires that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. As such the proposal for residential development includes suitable mitigation measures to enable the business to the north of the site to continue to operate as it has done to date.

The amended scheme would not have a detrimental impact on the residential dwelling to the south of the site, and the relationships between the existing dwelling and neighbouring uses have previously been considered and accepted. The proposal is therefore in accordance with the NPPF, policy CS08 of the CS and policy DM15 of the SADMPP.

### **Access and Public Rights of Way**

The applicant is seeking to amend the site layout because it became evident, during the previous planning applications, that the historical route of the Public Right of Way (PROW) was more extensive than previously thought. The route of the PROW is not dictated by ownership but rather Public Rights of Way are routes of public access over private land. Boundary research undertaken by NCC shows the route on historical maps and it is evident there are many examples along Fairfield Road where development has taken place over the historical PROW including the front boundary wall of the neighbouring dwelling 'The Cottage'. Illegal encroachment is not however legitimised by time. As a result, the approved scheme encroaches onto this highway and to develop the scheme as approved the applicant is having to go through the process of applying for a 'stopping up' order under the Town and Country Planning Act 1990 (Section 247) to remove some of the width of the original highway no longer considered to be required. The PROW officer has stated it is unlikely that NCC would object to such a proposal.

That said this is a lengthy process and the applicant is also seeking to obtain consent for a revised layout for the scheme which will not affect the PROW, by removing the footprint of the buildings from within this historic highway.

The Public Rights of Way officer has no objections to the scheme proposed. However, they do state that 'private structures such as fences or walls will not be permitted on highway land or within a Public Right of Way. Permission must be applied for and agreed for any proposed changes to the surface of the Highway before any commencement of works'. While the applicant has provided a proposed landscape scheme which is broadly acceptable, this does include a proposed change in hard surfacing to the front of the dwellings on the route of the PROW. Notwithstanding the plans submitted it is proposed that the consent includes a condition to secure details of the hard and soft landscaping to the front of the dwellings to be submitted and agreed in writing by the LPA, prior to the commencement of works on the route of the PROW. In addition, the PROW officer reinforces that the full legal extent of this Restricted Byway must remain open and accessible for the duration of the development and subsequent occupation, and this could be attached as an informative.

The proposed amendments to the scheme will not result in the loss of any PROW and there are no objections from the PROW officer or the Local Highway Authority. The scheme is in accordance with the NPPF, policy CS11 of the CS and policies DM15 and DM17 of the SADMPP.

### **Drainage**

CSSN request that drainage conditions are attached to this consent. Drainage arrangements were requested by condition as part of the outline consent 19/01170/O (condition 10), and therefore the condition is not required to be duplicated and form part of this consent.

### **Other Material Considerations**

None.

### **CONCLUSION**

The planning application seeks to amend the site layout for an extant consent for 8 dwellinghouses at Fairfield Road, in the town of Downham Market. The amendments are in response to the fact that a small part of the application site includes a historical PROW, which will potentially impact upon the ability to develop the site as previously approved. The applicant has submitted an amended scheme which pushes the footprint of the dwellings back outside of the PROW. The proposed amendments to the approved scheme have been detailed above and assessed to ascertain the impact of these.

The proposed site layout would not give rise to any issues in terms of form and character, given the dwellings themselves are as previously approved and given the variety in nature and form of existing development along Fairfield Road. Furthermore, the amended scheme would not give rise to any detrimental impacts on the neighbouring residential dwelling to the south as a result. The noise mitigation measures previously approved on site are to be brought forward into this scheme to continue to protect the residential amenity of the proposed residents. CSNN has objections to the amended scheme subject to conditions being re-attached.

Finally, there are no objections from the PROW officer or the Local Highway Authority. The applicant has submitted a landscaping scheme, however any changes to the surfacing of the

PROW would need to be agreed by Norfolk County Council prior to the commencement of any works on the PROW. Therefore, notwithstanding the plans submitted, a condition is proposed requiring a detailed landscaping scheme to be submitted and agreed by the LPA.

The proposed development is in accordance with the NPPF, policies CS04, CS08 and CS11 of the CS and policies DM2, DM15, and DM17 of the SADMPP and on this basis the application is hereby recommended for approval.

## RECOMMENDATION

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

- 1 Condition The development hereby permitted shall be carried out in accordance with the following approved plans - Drawing Nos

1008/21-09A Proposed Site Plan (received 19/10/22)  
1008/21-02B Proposed Block A – Plots 1-3  
1008/21-03 Plots 5 to 8 – Floor Plans and Elevations  
1008/21-05B Landscaping Plan (received 18/08/22)  
1008/21-04A Site Sections  
1008/21-07 Proposed Plot 4  
1008/21-NPD Location Plan.

- 1 Reason: For the avoidance of doubt and in the interests of proper planning.
- 2 Condition Before the first occupation of the dwellings hereby permitted the first floor bathroom and ensuite windows on the side elevations of plots 1, 3, 5, 6, 7 and 8, and on plot 4 the first floor window on the rear west elevation serving the study and the first floor landing window on the side south elevation shall be fitted with obscured glazing. In addition, any part of the windows that are less than 1.7 metres above the floor of the room in which it is installed shall be non-opening. The windows shall be permanently retained in that condition thereafter.
- 2 Reason: To protect the residential amenities of the occupiers of nearby property.
- 3 Condition The development hereby approved shall be carried out in accordance with the recommendations of the Noise Impact Assessment produced by Dynamic Response and dated November 2017. These measures include-
  1. Installation of an acoustic fence (as detailed on Drawing No 1008/21-05B) along the northern boundary of the site with the following specifications:
    - Be imperforate and have no holes or gaps;
    - At least 20 mm thick;
    - Achieve a minimum surface mass of 10 kg/m<sup>2</sup>;
    - Incorporate suitable gravel boards etc. to seal the gap between the fence and the ground.
  2. The dwellings should incorporate the Sound Insulation Scheme measures as detailed in the report in paragraph 4.9. For clarity plots 1-4 should encompass the measures specified in Sound Insulation Scheme 1, and plots 5-8 should encompass the measures detailed in Sound Insulation Scheme 2.

The development shall be constructed and retained in perpetuity in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

- 3 Reason: In the interests of the amenities of the locality in accordance with the principles of the NPPF.
- 4 Condition The scheme hereby approved shall be implemented in strict accordance with the Construction Management Plan, Ref 1008/21-CMP, dated 25th April 2022, received 16th May 2022 submitted, agreed and discharged by the Local Planning Authority under application ref 21/01105/DISC A, for the full extent of the works.
- 4 Reason: To ensure that the amenities of future occupants are safeguarded in accordance with the NPPF.
- 5 Condition Prior to the first occupation of the development hereby approved, details of the method of lighting and extent of illumination to the access roads, footpaths, parking, and circulation areas shall be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be implemented as approved prior to the occupation of the development or any phase of the development to which it relates and thereafter maintained and retained as agreed.
- 5 Reason: In the interests of minimising light pollution and to safeguard the amenities of the locality in accordance with the NPPF.
- 6 Condition Notwithstanding the details shown on the Drawing Nos 1008/21-05B and 1008/21-09A prior to the commencement of any works to the Public Right of Way known as Downham Market Restricted Byway 13 or to the first occupation of any of the dwellings of the development hereby approved (whichever comes first), full details of both hard and soft landscape works for the land forward of the principle elevation of plots 1-4 shall have been submitted to and approved in writing by the Local Planning Authority. These details shall include finished levels or contours, hard surface materials, refuse or other storage units, street furniture, structures and other minor artefacts. Soft landscape works shall include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment) schedules of plants noting species, plant sizes and proposed numbers and densities where appropriate.
- 6 Reason: To ensure that the development is properly landscaped in the interests of the visual amenities of the locality in accordance with the NPPF, and to ensure the landscaping is not detrimental to the Public Right of Way in accordance with the NPPF and policy CS11.
- 7 Condition All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation or use of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority. Any trees or plants that within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted, unless the Local Planning Authority gives written approval to any variation.
- 7 Reason: To ensure that the work is carried out within a reasonable period in accordance with the NPPF.



- 8 Condition The boundary treatments hereby approved shall be installed/ constructed prior to the occupation of the dwellings or in accordance with a timetable to be approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained in perpetuity.
- 8 Reason: To ensure that the development is compatible with the amenities of the locality in accordance with the NPPF.
- 9 Condition The on-site car parking / servicing / turning area shall be retained in accordance with the approved plan and maintained thereafter available for that specific use.
- 9 Reason: In the interests of the amenities of the locality in accordance with the NPPF.
- 10 Condition The development hereby approved shall be carried out in accordance with the Materials Schedule submitted on 3 June 2021 as part of 21/01105/RM.
- 10 Reason: To ensure a satisfactory external appearance and grouping of materials in accordance with the principles of the NPPF.