

10/01622/WCPP: REMOVAL OF CONDITION C13 (PROVISION OF PLAY AREA) OF PLANNING PERMISSION 10/00208/FUL – CONSTRUCTION OF 49 DWELLINGS LAND OFF THORNEY ROAD, EYE, PETERBOROUGH

10/01644/WCPP: REMOVAL OF CONDITION C20 (PLAY AREA / OPEN SPACE) OF PLANNING PERMISSION 04/01978/FUL – RESIDENTIAL DEVELOPMENT COMPRISING 35 DWELLINGS

AT LAND OF THORNEY ROAD, EYE, PETERBOROUGH

VALID: 23 OCTOBER 2010 & 1 DECEMBER 2010  
APPLICANT: LARKFLEET HOMES  
AGENT: NONE  
REFERRED BY: HEAD OF PLANNING, TRANSPORT AND ENGINEERING SERVICES  
REASON: PUBLIC INTEREST IN APPLICATION  
DEPARTURE: NO

CASE OFFICER: THERESA NICHOLL  
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## 1 SUMMARY/OUTLINE OF THE MAIN ISSUES

The main considerations are:

- Whether the development is acceptable without the approved Local Areas for Play being provided for on site
- Whether the alternative proposal of funding of off site leisure/sport provision in Eye is acceptable

The Head of Planning Transport & Engineering Services recommends that the application is **APPROVED** subject to conditions and the entering into of a planning obligation.

## 2 PLANNING POLICY

In order to comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 decisions must be taken in accordance with the development plan policies set out below, unless material considerations indicate otherwise.

### Development Plan Policies (Key policies summarised below)

#### a) The Peterborough Local Plan (First Replacement)

LT1 Planning permissions will not be granted for residential development of 9 or more dwellings unless open space is provided and laid out in accordance with the minimum standards set out in Appendix Vii (to the Local Plan). If there are particular deficiencies in open space in the surrounding area the Council may seek variations in the component parts of the required provision to overcome them.

LT2 In the following circumstances, planning permission for 9 or more dwellings will be granted if the developer has entered into a planning obligation to meet the open space needs of the development off site:

- (a) If the residential development in itself is of insufficient size to make the provision of certain types of open space within the site; or

- (b) Taking into account the accessibility of the existing open space facilities and circumstances of the surrounding area, the open space needs of the proposed development can be met more appropriately by providing either new or enhanced facilities off site.

## b) **Material Planning Considerations**

- Community Infrastructure Levy (CIL) Regulations – April 2010 (S122)

From 6 April 2010 it will be unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL, whether there is a local CIL in operation or not, if the obligation does not meet all of the following tests:

- (a) necessary to make the development acceptable in planning terms
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

ODPM Circular 05/2005 “Planning Obligations”. Amongst other factors, the Secretary of State’s policy requires planning obligations to be sought only where they meet the following tests:

- i) relevant to planning;
- ii) necessary to make the proposed development acceptable in planning terms;
- iii) directly related to the proposed development; (in the Tesco/Witney case the House of Lords held that the planning obligation must at least have minimal connection with the development)
- iv) fairly and reasonably related in scale and kind to the proposed development;
- v) reasonable in all other respects.

In addition Circular 05/2005 states the following principles:

The use of planning obligations must be governed by the fundamental principle that **planning permission may not be bought or sold**. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.

Similarly, planning obligations should never be used purely as a means of securing for the local community a share in the profits of development.

- Circular 05/05 – Planning Obligations (see below)
- Circular 11/95 – Conditions
- PPS 1 – Sustainable Development

## **3 DESCRIPTION OF PROPOSAL**

This report covers two planning applications to remove condition 13 attached to 10/00208/FUL (49 dwellings) and condition 20 attached to 04/01978/FUL (35 dwellings) which both require a Local Area for Play to be provided on the site. The land which was to be occupied by the LAPS will be conveyed to the nearest residential properties and instead of providing these LAPS on site, the developer has entered into a unilateral undertaking which would oblige him to pay a contribution of £43,500 to be used on open space/leisure/sports provision within Eye Parish.

## **4 DESCRIPTION OF SITE AND SURROUNDINGS**

The sites which are subject to these applications form part of the overall “Larkfleet” residential development site off Thorney Road, Eye. The development is currently under construction. The site was granted permission in various “parcels” and there have been several amendments to the original schemes most notably permission in the centre of the site for an Extra Care Home (09/01025/FUL) and a re-plan of the “right hand” part of the site (when viewed from Thorney Road) under 10/00208/FUL. The

site lies in the north east corner of the village and is bordered by the A47 and Easby Rise to the north, an open field to the east, residential development off Thorney Road to the south and Crowland Road (residential development and cemetery) to the East. The site was an allocated housing site in the Peterborough Local Plan.

A plan will be on display at the meeting which shows the site broken down into the various parcels/applications.

## **5 PLANNING HISTORY**

Application Number	Description	Date	Decision
04/01978/FUL	Residential development of 35 dwellings	6 July 2005	approved
09/01008/DIS	Discharge of conditions C2, C3, C5, C9, C10, C13, C14, C15, C29 and C33	27 Nov 2009	Partially discharged
10/00420/DIS	Discharge of conditions C3, C5, C8, C9, C10, C13, C17, C19, C21, C22, C23 and C30	9 July 2010	Partially discharged
10/01328/DIS	Discharge of conditions C21, C22, C23, C25	25 Oct 2010	Discharged

Application Number	Description	Date	Decision
10/00208/FUL	Construction of 49 dwellings	3 Aug 2010	approved
10/01084/DIS	Discharge of conditions C2, C3, C4, C8, C9, C11	10 Oct 2010	Discharged

## **6 CONSULTATIONS/REPRESENTATIONS**

### **INTERNAL**

Landscape Officer – No objections

Senior Recreation Officer – No objection with the commuted sum in lieu of the play area provision on site.

### **EXTERNAL**

Eye Parish Council – Originally objected to the proposal but upon clarification that a contribution will be paid towards open space/leisure facilities in lieu of the LAP provision AND that this money will be spent within the Parish of Eye, the objection was withdrawn.

### **NEIGHBOURS**

A total of 21 residences have objected to the proposal for the following reasons which are summarised:

- There is a shortfall of open space in Eye and these play spaces are needed, the situation being made worse by all the new houses. There is a lack of open space and play provision for children and young people in Eye, especially at this end of the village.
- If the design is now considered unsuitable, the play areas should be made available elsewhere in the site or a ring fenced sum of money provided to make provision on adjacent land
- To allow the removal of these conditions gives the impression that the Council are “punishing” the residents of Eye for recent objections to development outside the village or are in collusion with the developers in some way. It is increasingly frustrating that villagers’ views are disregarded
- There are already significant numbers of children who play in the road as they have no where to play and older children in particular can become bored and cause mischief.
- This increases the density of housing on these plots
- Whilst current economic climate is appreciated, residents should not suffer to allow the building company to increase their profits.

The applications have prompted some comments to be made about the development in general and the issue of the burden that additional housing in the village brings to infrastructure and the “feeling” of moving away from a self sustaining village environment.

The MP Stewart Jackson has also written in to support the comments made by the neighbours.

## **COUNCILLORS**

Cllr Sanders originally called the application to be determined by Committee as he was concerned about the loss of the play areas and agreed with the initial views of the Parish Council. Following discussion with the Parish Council and telephone conversations with Cllr Sanders, agreement was reached (still with misgivings) that if the LAPS could not be provided on site, a contribution should be made in lieu of this but that this money must be spent within Eye Parish.

## **7 REASONING**

These applications are made under S.73 of the Town and Country Planning Act to remove conditions attached to two separate planning applications. Consideration of these types of application must be limited to those issues related to the said conditions only although the current development plan and material considerations must be taken into account. This being said, S73 applications would constitute new stand alone permissions and therefore any relevant conditions attached to previous permissions or legal agreements will need to be re-imposed.

In this instance, the only matters for consideration relate to:

- (a) the removal of the LAPS from within the site and whether this is acceptable in planning terms and
- (b) whether the proposed contribution towards off site provision is a suitable and acceptable alternative. There are no other issues to consider.

Condition 20 attached to 04/01978/FUL requires the LAP to be equipped and laid out prior to the construction of the 25<sup>th</sup> dwelling.

Condition 13 attached to 10/00208/FUL requires the LAP to be provided upon occupation of the 20<sup>th</sup> dwelling in accordance with a scheme to be submitted and approved.

The approved plans show that the play area on the “left” site (04/01978) measures approximately 18 metres x 11.5 metres and the play area on the “right” site (10/00208) measures approximately 18.5 metres by 12 metres.

The National Playing Fields Association (now Fields in Trust) defines a LAP as being;

*“A small area of unsupervised open space specifically designed for younger children mainly between the ages of 4-6 years of age.*

*The location of the area is determined as within 1 minute walking distance.*

*The area should be appropriate for low-key games; flat and level with grass surfacing. A guard rail, fence or shrubbery should be used as a safety buffer zone to protect against road related accidents.”*

This is reflected in plans previously submitted showing a proposed layout of the play areas by a professional play equipment provider in order to evidence how much the play areas would cost. The plans showed that each LAP would provide one main piece of play equipment, one smaller piece, a bin and a seat. These would be mounted on safe surfacing and surrounded by grass and some landscaping. The nature of equipment was very much aimed at the 4-6 age range in keeping with the above definition – of a LAP.

The play areas were only intended as play areas for younger children and they were to serve the development need of the site only and not to meet shortfall in provision for the wider community. The original permission for the development did not include provision for maintenance of these play areas or their adoption by the Council or another body. The situation is therefore that the Council could insist that the play areas be provided in accordance with the conditions but cannot insist that the developer

maintains them or that the developer hands over the space to the Council. Normally, the provision of most kinds of open space as part of a development proposal would be subject to a Section 106 agreement requiring that either a Management Company be set up to maintain the space or that a commuted sum be paid to the Council to maintain the space for a period of 10 – 15 years. This did not happen.

The developer did offer the play areas to the Council for adoption but the Senior Recreation Officer calculated that a sum of £56,000 would be required to maintain both play areas for a period of 15 years. He advised that if this figure could not be provided by the developer the Council would not adopt these play areas because of the maintenance cost and because of their limited play value.

During previous negotiations with the developer, evidence was submitted and accepted by the Council (after scrutiny by the Section 106 Officer) which demonstrated that that not all of the Section 106 contributions were affordable and that the site would be unviable if all the contributions were paid. The Council have therefore accepted that viability is a material consideration regarding this development.

The developer asserts that providing the play areas plus £56,000 to maintain them is not viable. Given the previous history of the site as set out above, the Council would be in a difficult position to now argue that this would not be the case. Aside from this, as already pointed out, the planning permissions only require the developer to provide the play areas. Clearly this would cause future problems if the play areas were then not maintained. The likelihood would be that they would become a liability which the Council would end up having to resolve and in the current financial climate it would not be good use of public resources for the Council to consider taking on such a liability.

As for the benefit of having the play areas, they would obviously provide some benefit to those residents with very young children but given the restricted age range that a LAPS serves, this is limited.

The alternative solution put forward is that the developer pays a contribution that is equivalent in cost to providing two fully equipped LAPS on site, towards other provision within Eye. The cost of providing the LAPS is £43,500 hence the sum that has been offered in the unilateral undertaking. As the LAPS were providing local provision, it is essential and indeed would only meet the provisions of the CIL Regulations and Circular 05/05 if the monies are spent within Eye i.e. to meet a local need. This has been written into the proposed unilateral undertaking.

With regard to the Local Plan policy i.e. policies LT1 and LT2, there is provision to enable open space or equivalent provision to be made off site. It is not considered therefore, that this proposal is contrary to the development plan.

With regard to the objections made, the comments are understandable but there appears to be a misunderstanding or assumption (again understandable) that the LAPS were to be put in to serve that end of Eye when they were in fact, not tied down in any legal agreement as being public open space. There is a comment about the needs of older children but the LAPS would only serve very young children. There may well be a lack of provision of open space generally in Eye but it is not solved by provision of these LAPS. This application is being considered on its merits and has no link to decisions on other decisions taken by the Council or any previous objections that may have been made by the Parish or residents. The case officer has met the Parish Council to discuss the issues and the application has been brought to Committee due to the public interest in the matter. It is not the case that local views are being ignored.

If this proposal is acceptable to Members, the monies would be received by Peterborough City Council to spend within Eye. The Recreation Officer would be tasked with spending the money on open space/sport or leisure within Eye in consultation with Eye Parish Council.

## **8 CONCLUSIONS**

This report has set out the reasons why the current applications have been submitted and the history that has led to this situation. Whilst there are some drawbacks regarding not having the LAPS, the developer is offering the monetary equivalent of providing the LAPS. This money will be spent in Eye and there potential for it to benefit a wider range of residents. The alternative is to insist on the

developer providing the LAPS with no means of requiring the developer undertake or pay for the maintenance. This would only provide future problems for the local residents and a possible liability for the Council.

Therefore subject to the re-imposition of relevant conditions and the developer entering into a planning obligation to pay a contribution of £43,500 towards open space/sport or leisure provision within Eye, the proposals are acceptable.

## **9 RECOMMENDATION**

Subject to the prior satisfactory completion of a planning obligation under the provisions of Section 106 of the Town and Country Planning Act 1990 for a financial contribution to meet the open space/sport/leisure needs of the area, the Head of Planning Services be authorised to grant planning permission subject to the following conditions:

### **A) Application 10/01622/WCPP**

#### **C 1 The development hereby permitted shall be begun before 4 August 1013.**

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act (as amended)

#### **C 2 The development shall not be carried out except in accordance with the approved materials schedule and accompanying drawings 01P (x2) unless otherwise agreed in writing with the Local Planning Authority.**

Reason: To ensure a satisfactory external appearance in accordance with policy DA2 of the Peterborough Local Plan (First Replacement)

#### **C 3 The landscaping of the site shall be carried out in the first planting season following completion of the development in accordance with the Landscape proposals plans (sheet 1 and 2) as hereby approved. Should any tree, shrub or plant die, become diseased, damaged or removed within the first five years from planting, it shall be replaced in the next available planting season with a similar size and species to be agreed in writing with the Local Planning Authority.**

Reason: In the interests of the visual appearance of the site in accordance with policy LNE10 of the Peterborough Local Plan (First Replacement)

#### **C 4 The junction of the proposed access road with the existing highway (Thorney Road) shall be laid out with 8m radii in accordance with the approved plan (04L6 01P).**

Reason: In the interests of highway safety, in accordance with policies T1, T3, T5, T7 and T8 of the Peterborough Local Plan (First Replacement).

#### **C 5 The shared private access road shall be constructed in accordance with the layout and specifications shown on the approved plan 04L6 01P, unless otherwise agreed in writing by the Local Planning Authority.**

Reason: In the interests of highway safety, in accordance with policies T1 and T8 of the Peterborough Local Plan (First Replacement)

#### **C 6 All vehicles leaving the site shall pass through the approved wheel washing equipment diesel FX 1400 before entering the public highway. This equipment shall be retained and maintained in working order for the duration of the building works on site.**

Reason: To prevent mud and debris being brought onto the public highway in the interests of highway safety in accordance with policy T1 of the Peterborough Local Plan (First Replacement).

**C 7 No dwelling shall be occupied until the garage/carport, access/driveway and any turning associated with the dwelling has been completed in accordance with the approved plan 04L6 01P. All parking and driveways shall be surfaced and drained to prevent surface water run-off onto the highway and neighbouring land.**

Reason: In the interests of highway safety in accordance with policies T10 and T11 of the Peterborough Local Plan (First Replacement).

**C 8 No development shall take place until the visibility splays and the junction of the access to the site and Thorney Road has been provided in accordance with the approved plan 04L6 01P. All other visibility splays to junctions and individual driveways within the site shall be provided prior to the first occupation of the dwelling(s) which they serve in accordance with the detail and specifications shown on approved plan 04L6 01P. Thereafter, visibility splays shall be retained and kept clear of any obstacle over a height of 600mm.**

Reason: In order to safeguard highway safety in accordance with policies T1, T3, T5 and T8 of the Peterborough Local Plan (First Replacement).

**C 9 All construction traffic shall park, turn, load and unload within the site, i.e. clear of the public highway) for the duration of the construction period.**

Reason: In the interest of highway safety in accordance with policy T1 of the Peterborough Local Plan (First Replacement).

**C10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or as subsequently amended or re-enacted, no development which falls into Part 1, Classes A, E, F and H and Part 2, Classes A and B, shall take place on the land which is shown on drawing number 04-F as being private visual amenity open space, unless planning permission has first been obtained from the Local Planning Authority.**

Reason: In the interests of the visual appearance of the development and residential amenity in accordance with policies DA1 and DA2 of the Peterborough Local Plan (First Replacement)

**B) Application 10/01644/WCPP**

**C 1 The development hereby approved shall be constructed in accordance with the approved materials schedule dated 04/03/2010 and accompanying drawings 01P (x2) unless otherwise agreed in writing with the Local Planning Authority.**

Reason: To ensure a satisfactory external appearance in accordance with policy DA2 of the Peterborough Local Plan (First Replacement)

**C 2 Notwithstanding the submitted information, the developer shall immediately report to the Local Planning Authority should any unsuspected contamination be encountered during the construction of the development hereby approved. Thereafter, no further development shall take place until either the contamination is removed or remedial measures are agreed in writing with the Local Planning Authority and implemented in accordance with the agreed measures.**

Reason: To safeguard human health in accordance with PPS 23.

**C 3 Acoustic vents shall be fitted to properties on the northern boundary, Crowland Road and Thorney Road in accordance with the approved details HRU ECO4 System 4 and the recommendations contained the Acoustic Report by Acoustic Associates dated April 2008.**

Reason: In order to protect the inhabitants of these properties from undue noise exposure in accordance with PPG 24.

- C 4 The design recommendations contained in the Flood Risk Assessment submitted with the original application and dated December 2004 shall be fully implemented as part of the development hereby approved.**

Reason: In order to protect and safeguard the amenity of local residents or occupiers in accordance with policies U1 and U2 of the Peterborough Local Plan (First Replacement).

- C 5 No removal of hedgerows/site clearance shall be carried out on site between the 1 March and 31 July inclusive in any year, unless otherwise approved in writing by the Local Planning Authority.**

Reason: To protect species of nature conservation importance in accordance with PPS 9 and policy LNE19 of the Peterborough Local Plan (First Replacement).

- C 6 The hedgerows to be retained as shown on the approved landscaping plan (rev c) shall be protected from damage during works in accordance with BS5837:1991. Any parts of the hedges removed without the consent of the Local Planning Authority or which die or become seriously diseased or otherwise damaged within 5 years following contractual practical completion of the development shall be replaced no later than the end of the next planting season, with plants of a size and species which shall be agreed beforehand in writing with the Local Planning Authority.**

Reason: In the interests of amenity and biodiversity in accordance with policy LNE10 and LNE13 of the Peterborough Local Plan (First Replacement)

- C 7 The approved soft landscaping as shown on the Phase 1 landscaping rev c drawing shall be fully completed in accordance with the plan and notes contained thereon no later than the end of the first planting season following the first occupation of the last but one dwelling within the site hereby approved. Any trees or shrubs which die, become diseased or damaged or are removed within 5 years of planting shall be replaced during the next planting season by similar in terms of size and species as shall be agreed in writing with the Local Planning Authority.**

Reason: In the interests of the visual appearance of the site in accordance with policies LNE9 and LNE10 of the Peterborough Local Plan (First Replacement)

- C 8 All hard landscaping and boundary treatment/screening shall be completed prior to the first occupation of the dwelling to which it relates in accordance with the details shown on the approved drawing 04L6 04-F.**

Reason: In the interests of the visual appearance of the development and the privacy of occupiers in accordance with policies DA1 and DA2 of the Peterborough Local Plan (First Replacement)

- C 9 The finished floor levels of all buildings and garden areas shall be in compliance with the approved drawing E1430/10/D unless otherwise agreed in writing with the Local Planning Authority.**

Reason: To prevent any loss to neighbour amenity through overlooking in accordance with policy DA2 of Peterborough Local Plan (First Amendment)

- C10 Prior to the first occupation of each dwelling, an enclosed space for the storage of refuse bins shall be provided in accordance with the approved drawing EW-02.**

Reason: In the interests of residential amenity in accordance with policy DA2 of the Peterborough Local Plan (First Replacement)



**C11 Visibility splays from the egress of the site onto Thorney Road shall be provided in complete accordance with the details shown on the approved drawing E1430/29/B. Thereafter, the visibility splays shall be kept clear of any obstruction over 600mm in height.**

Reason: In the interests of highway safety in accordance with policy T1 of the Peterborough Local Plan (First Amendment)

**C12 All vehicles leaving the site under construction shall pass through the wheel wash equipment FX 1400 diesel as approved. The equipment shall be retained in working order on the site for the duration of the construction period.**

Reason: In the interests of highway safety in accordance with policy T1 of the Peterborough Local Plan (First Amendment)

**C13 Visibility splays clear of any obstruction over a height of 600 mm above carriageway level shall be provided on either side of the junction of the proposed access roads to plots 16, 17 and 18 off Crowland Road where it meets the public highway. The visibility splay lines shall be a minimum of 2.4 metres measured along the centre line of the proposed access road from its junction with the channel line of the public highway and 90 metres or the roundabout, whichever comes first measured along the channel line of the public highway from the centre line of the proposed access road.**

Reason: In the interests of highway safety in accordance with policy T1 of the Peterborough Local Plan (First Replacement)

**C14 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or as subsequently amended or re-enacted, no development which falls into Part 1, Classes A, E, F and H and Part 2, Classes A and B, shall take place on the land which is shown on drawing number 04-F as being private visual amenity open space, unless planning permission has first been obtained from the Local Planning Authority.**

Reason: In the interests of the visual appearance of the development and residential amenity in accordance with policies DA1 and DA2 of the Peterborough Local Plan (First Replacement)

Copy to Councillors Sanders and Dobbs

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