

**Redditch Borough Council
Planning Committee**

**Committee Updates
13th November 2019**

2016/077/OUT Land To The West Of Foxlydiate Lane And Pumphouse Lane, Bromsgrove Highway

Additional Representation from Member of Public

1. There is only 1 public footpath access on Foxlydiate Lane which is on the opposite side of the road.
2. Foxlydiate Lane is only 5 metres wide and having one side with residential properties there are always vehicles parked along the road.
3. Foxlydiate Lane is already being accessed by additional residential traffic from the Great Hockings Lane site, the 2 new housing developments on Church Road, Webheath and additional traffic using Foxlydiate Lane/Curr Lane to access the village of Bentley, Bromsgrove and Droitwich.
4. As long ago as 2016 Highways England has called into question the suitability of the existing road network to sustain this large development at Foxlydiate.

By proposing the use of the residential Foxlydiate Lane for access to the site by developers for the building of the first 200 houses planners are proposing to develop this large overall site piecemeal allowing sites on the periphery to have access to the existing road network and for the developers to be able to connect into the existing utilities systems without placing and infrastructure on the overall site.

5. Planners are proposing to block off the right-hand turn off Birchfield Road onto the A448 Bromsgrove Highway, forcing drivers to turn left cross over the bridge, navigate around the Island return back over the Bridge then turn onto the Bromsgrove Highway.

Drivers will be looking for other routes to access the M42 and M5 North via the B4184 through Redditch and the B4096 through to Bromsgrove or through the back lanes to Droitwich, Bromsgrove M5 South.

The plan also acknowledges will be needed at all the Warwick Highway round-about junctions and at the A4441 Alvechurch Highway/A4023 Coventry Highway/Redditch Road plus the A4441 Alcester Highway, Rough Hill Drive and the Slough turning.

6. Highways England and Worcester County Council Highways had requested Councils to refrain from approving local developments that would impact on the A38 Bromsgrove By-pass prior to its re-development of all its junctions with the planned £3 Million road improvement project.

7. Why is it that all the comment raised by Government bodies is being disregarded by local planners who have also shown little regard for the disruption to local residents in proposing a Lane to be used as the main building site access/entrance route?

There should be a financially funded, sustainable programme to build the main infrastructure road to facilitate these developments as and when required, well away from the existing narrow Lanes on the edge of Local Plan 4 to keep the disruption for local residents to an acceptable minimum.

Officer Comments

There are no technical objections from other Government departments or agencies to this proposal. The above highway matters are addressed in the officers report.

Further Representation

Worcestershire Acute Hospitals Trust 13-11-2019

In light of the upcoming Redditch planning committee on Wednesday 13.11.2019, it is only fair that the Trust will put forward the summary of the main disagreement that the Trust has in relation to the legal submissions presented in various officer's reports and relied on.

The legal advice depended on refers to the case of Elsick. The case does not change the law of the s 106, CIL Compliance or the interpretation of the law as it stands in relation to mitigating an impact but confirms that in the case of Strategic Planning, the Council cannot create a specific infrastructure Fund for which the developer has to pay towards, if the impact that the development creates has nothing to do with the projects financed from the Fund.

The case has nothing to do with the calculation of the mitigation measure dealing with the impact that the development creates. In fact the case confirms (paragraph 41) that the developer should pay contribution towards infrastructure (can be either services or facilities as confirmed by the case of Tesco referred in the Elsick) necessitated by the cumulative effects of various developments.

The basic principle is that the developer should contribute towards the impact that it creates.

The new occupants of the development will create an impact on the acute and A&E services in the same way as they create an impact on the GPs, education, traffic etc. To say that the new occupants have no link with the Trust is factually incorrect and discriminates all those occupants that are in need of Trust's acute and A&E services. There is plenty of evidence on the direct impact in the documents provided.

The mitigation of the impact is carefully calculated as explained in the numerous documents submitted to the Council. There is clearly a gap in the funding mechanism and if the contribution is paid it will alleviate the direct impact. Please note that there is no need necessarily for there to be a gap in the funding to require a developer to contribute towards the impact the development creates (please see the case of Tesco at 776). However the gap in the funding will make it absolutely necessary that the developer will contribute towards the impact it creates.

In the case of Foxlydiate site the Developer's own barrister agreed the principle but disagreed to the number of new occupants. The Trust has verified the developer's calculation and has agreed to it and the developer subsequently agreed to make the contribution.

If the legal principle put forward by the officer's report is followed, then there is no need to contribute towards education, highways, open space and towards monitoring officer's salary.

Finally, during the meeting the Trust requested that the Council would put the legal opinion obtained and relied on in the public domain to which the officers refused. Please note, it is contrary to the Environmental Information Regulations not to release the legal opinion that Council is publicly relying on in relation to the Environmental matters. The issues has significant public interest in that without the contribution the health of occupants of this development and the local community at large will be jeopardised (please see the case of Emma Brooksbank v Information Commissioner and Ryedale DC (2019) which also required the Council to publish instructions to Counsel) . The basic principle is in favour of disclosure.

If the decision is made based on the officer summary of the legal advice, the decision is challengeable.

I trust that this email together with the attached case of Elswick will be distributed amongst the members and public prior to the meeting.

Officer Comments -

The officer's report incorporates a detailed summary of Counsel's opinion.

The officer's report, at paragraphs 24.13 to 24.37, addresses these issues and officers have no further comments and this does not alter the Council's legal position.

A copy of the Elswick case is available to view under application reference 2016/077 via the following weblink -

<https://publicaccess.bromsgroveandredditch.gov.uk/online-applications/search.do?action=simple&searchType=Application> and is attached under the documents tab for that record.

The Council will review the release of its Counsel opinion in light of the Ryedale case.

19/01121/FUL Asda , Jinnah Road

Consultations

Petroleum & Safety Officer

Further comments as summarised below:

I have discussed this application with officers within Worcestershire Regulatory Services and no safety issues have been identified. I am aware that ASDA work directly with the Fire Brigade as their Primary Authority should any issues arise at the construction phase.

Worcestershire Regulatory Services

Further comments received summarised as follows:

WRS would comment that there are no minimum distances from any vent release areas to houses, just recommendations, which include not being near open windows or electrical items. WRS consider that the submitted plans are acceptable in that respect.

ASDA have a primary authority partnership with the London Fire Brigade.

The ground was remediated to an acceptable standard for commercial uses prior to the first occupation of the B&Q development, before the site became subdivided and ASDA occupied part of the site. The remediation took place at original ground levels before the part of the site which is proposed for development was raised to create the current surface level car parking area.

As part of this application the site was investigated and WRS have accepted the results of that investigation. The Unexpected Contamination condition (set out as condition 3 on pages 90 and 91 of the main report) is purely precautionary to protect the workers during the installation process. The standard WRS contractor guidelines (set out as informative 2 on page 92 of the main report) is there to ensure good working practices and protect workers and neighbours during the construction phase.

Public Consultation Response

Two further representations have been received in objection. Objections received are covered on Page 85 of the main report.

A four page document has been submitted by a neighbour who objects to the application which is included as an appendix to the update report.

The perceived lack of publicity / consultation with the local community has again been raised. Your officer's response is contained within the penultimate paragraph set out on Page 89 of the main report.

Comments regarding detriment to property values and home insurances policies are not material planning considerations in the determination of this application.

Assessment of Proposal

Contamination

To reiterate comments set out on Page 88 of the report, the site has been remediated to the satisfaction of WRS as the regulatory body for Environmental Health matters. WRS and the Petroleum & Safety Officer comment that no safety issues have been identified.

Design Considerations

At the top Page 89, the report states that No's 56 and 57 Millsbro Road measure approximately 8.25 metres to ridge. This property has accommodation over three storeys and does in fact measure approximately 11.5 metres to its highest point rather than 8.25 metres. A slide to be shown during the course of the presentation will demonstrate the height of this building relative to that of the canopy serving the proposed PFS. An amended plan has been submitted to reflect an inaccuracy with respect to the height of No's 56 and 57 Millsbro Road. Drawing number 2009RD-210-03-D - Proposed PFS Plan is therefore proposed to be substituted by Drawing number 2009RD-210-03-E - (see recommended condition 2 on page 90 of the report).

Hours of operation

Your officers would like to clarify that the tanker deliveries to the site which would take place 3 times per week would take place during the hours restricted under recommended condition 4 (page 91 of the report). Condition 4 has been expanded to incorporate this restriction.

RECOMMENDATION:

That having regard to the development plan and to all other material considerations, planning permission be GRANTED subject to conditions 1 to 6 and informatives 1 to 3 as stated in the main report with the exception of amendments to the following conditions as set out below:

Conditions:

2) The development hereby approved shall be carried out in accordance with the following plans and drawings:

Drawing: 2009RD-110-01-C - Location Plan

Drawing: 2009RD-210-01-C - Existing Site Plan

Drawing: 2009RD-210-02-C - Proposed Site Plan

Drawing: 2009RD-210-03-E - Proposed PFS Plan

Drawing: 2009RD-210-04-D - Proposed Landscape Plan
Drawing: 2009RD-210-05-C - Proposed Tracking Plan
Drawing: 2009RD-310-01-D - Proposed Elevations
Drawing: 2009RD-410-01-D - Proposed Sections
Drawing: 2009RD-510-01-D - PFS Standard Details
Drawing: 2009RD-510-02-C - Control Room Details
MP Consulting Drainage Plan and Strategy Statement
Sanderson Associates Transport Statement
DTS Raeburn Phase 1 Preliminary Risk Assessment

Reason: To provide certainty to the extent of the development hereby approved in the interests of proper planning.

4) The development hereby permitted shall not trade to the public outside the following hours:

0800 till 2200 Mondays to Saturdays
1000 till 1700 on Sundays
0900 till 1800 on Bank and Public Holidays

Deliveries of fuel shall not take place outside these hours

Reason: In the interests of protecting residential amenities

18/01626/S73 Discharge of conditions. Redditch Gateway, Land adjacent to A4023, Coventry Highway.

Comment received from Worcestershire County Highways;

The Highway works covered by condition 21 are addressed through the S278 process with Worcestershire having delegated Authority to Warwickshire to review the proposal on our behalf. I note that Warwickshire are satisfied as the lead Authority, therefore I have no objection to the discharge of condition 21.