

APPENDIX 1

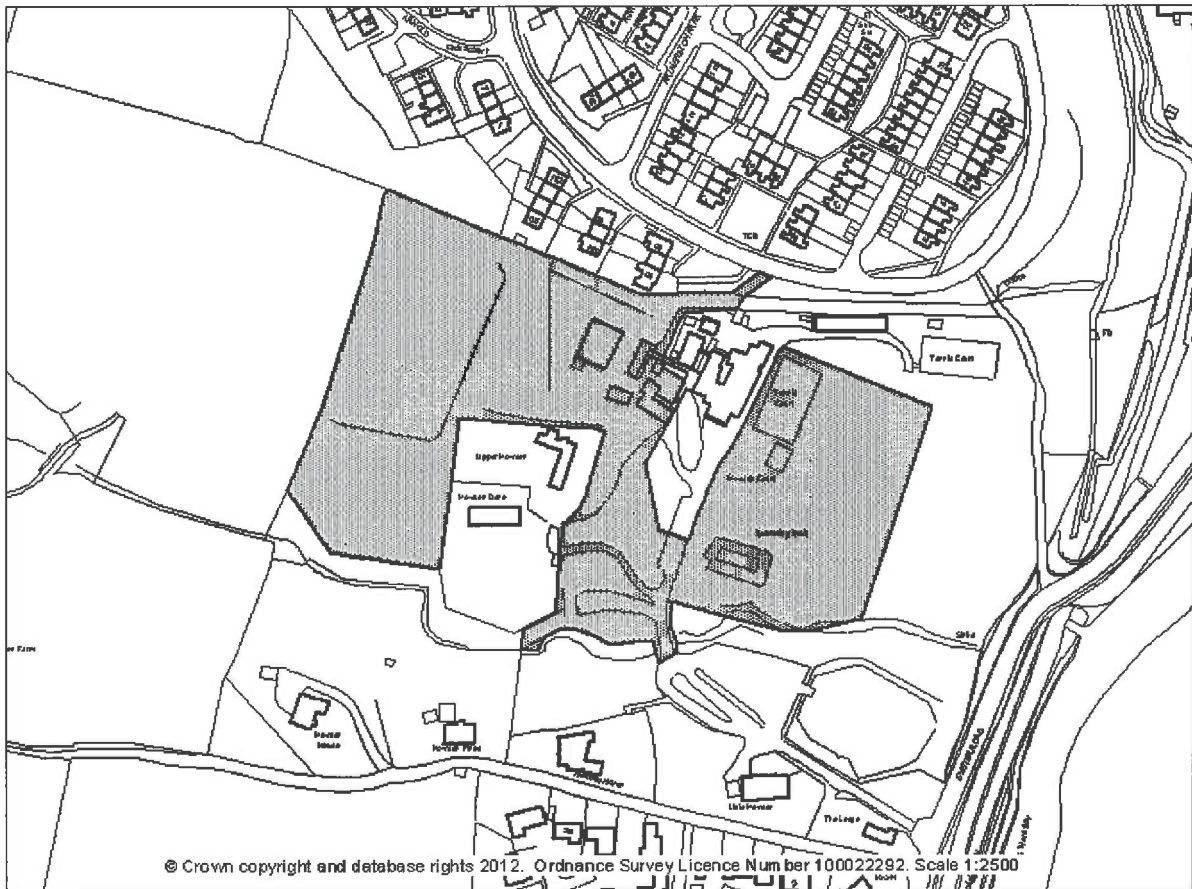
**Application No.** 11/01927/MFUL

**Grid Ref:** 111535 : 294646

**Applicant:** Mr D Lovell, Heritage Developments South West Ltd

**Location:** Land and Buildings at NGR 294646 111535 Howden Court Tiverton Devon

**Proposal:** Erection of 36 dwellings with associated access road, car parking, landscaping and demolition of existing outbuildings adjacent to Howden Court



## Update report for Planning Committee Meeting on 30<sup>th</sup> November regards LPA ref 11/01927/MFUL

### Introduction and background

1. This report relates to the scheme of development approved under reference: 11/01927/MFUL for erection of 36 dwellings with associated access road, car parking, landscaping and demolition of existing outbuildings adjacent to Howden Court.
2. Planning permission was granted for the scheme of development in June 2012, with the committee having first considered the application scheme at an earlier meeting in March 2012. The committee resolved to grant planning permission subject to completion of a Section 106 agreement to cover various matters and to a number of conditions to control/regulate the delivery of the approved scheme. Following the completion of the legal matters to agree the terms of the Section 106 agreement on the 24<sup>th</sup> October 2012 the planning permission decision notice certificate was issued on the 9<sup>th</sup> November 2012. A copy of the report pack for the June committee meeting follows on from this update report as **Appendix B**. In addition the minutes of the meeting are copied below for information.

RESOLVED that planning permission be granted subject to the provision of a S106 Agreement requiring:

- a) 3 no affordable rented units to be provided as part of the scheme layout;
- b) 3 no first buy residential units (sold at 80% of market price qualifying buyers, and with provision to ensure that in the event that a buyer subsequently goes onto acquire the 20% balance of equity that the funds are to be recycled into delivering affordable housing within the Mid Devon District;
- c) A commuted sum of £158,892 towards the delivery of affordable housing offsite;
- d) A contribution of £50 per dwelling for the provision of recycling containers;
- e) Delivery of a section of a footpath to link to Palmerston Park as indicated on drawing no Aubyn Rise Site 01 rev 1.08;
- f) A commuted sum of £20,000 to be specifically ring fenced for the upgrade of the original play area (Palmerston Park) adjacent to the site.

And conditions and informative notes as recommended by the Head of Planning and Regeneration with an amendment to Condition 6 to require secure fencing for the agricultural boundary surrounding the site.

3. The approved scheme of development has been built out on an ongoing basis since the approval was issued late in 2012, and is now entering the final phase of development. Twenty five of the thirty six of the houses are now occupied.

### The Footpath Link

4. This report is being presented to members to draw their attention to the proposed link between the new estate and Palmerston Park. The detail is shown on block plan 01 rev1.08, a copy of which is attached as **Appendix A** to this report.

The approved plan clearly shows the proposed footpath link as it was approved to be laid out as part of the new development within the application site, and is therefore a requirement under condition 2. The continuation of it over a grass verge (owned by the Council) beyond the application site to link up with the adopted highway of Palmerston Park is a required under the terms of the Section 106 agreement, as set out above.

5. Although the section of the link outside the application site (section 106 requirement) has been completed, the formation of pathway from the site boundary adjacent to Palmerston Park back upto the estate road serving the new development has not been completed.

### **The Current Situation**

6. Your officers have been monitoring this issue. Heritage Homes have sought to delay the timing of the delivery of the footpath link from the new estate out to Palmerston Park and their reasoning for a period of time seemed reasonable and justified given the health and safety concerns of introducing pedestrian movements into a building site environment. However the estate road is now completed ready for adoption and all the houses except those in the north- west corner are now built out. As stated above many are now occupied and therefore the justification for the delay of this aspect of the approved development is no longer supportable.
7. Since November 2015 your officers, following ongoing concerns expressed by some local stakeholders and more recently elected members of this authority, have made further approaches to Heritage Homes about the timing of the delivery of this element of the approved scheme.
8. In response Heritage Homes have advised that many of the occupiers of the new houses on the estate have confirmed that they do not support the proposed footpath link as they do not consider due to its steepness (and that of Palmerston Park) that it would provide a valuable alternative pedestrian link from the site into Tiverton and that the route along Exeter Road is considered adequate. A number of local residents have contacted your officers to qualify this view.
9. On the 4<sup>th</sup> November a petition was received submitted by occupiers of 23 of the 25 houses formally confirming that they do not support the delivery of the footpath for the following reasons.
  - We do not see the need for a link between St Aubyn's Rise and Palmerston Park. There is already a footpath to the A396 and those of us living here have cars. Should residents want to catch a bus to Tiverton or Exeter this can be done at the bottom of the existing roadway on the A396.
  - It poses a health and safety risk in that there are to be 40 steps and an unlit pathway.
  - It will cause unnecessary future expense to residents in maintaining and insuring the footpath against accidents.
  - It poses a potential security risk to our properties.
  - It completely contravenes the guidelines for footpaths in Secured by Design 2014.

It is understood that local residents intend to raise their concerns to members directly at the meeting on the 30<sup>th</sup> November.

10. As shown on the approved plans the footpath link would cascade down from the new estate road adjacent to plot 4 of the new development, (postal address No.4 Aubyns Wood Rise), and running along the rear of the Georgian House - Howden Court, down to the site boundary adjacent to Palmerston Park. Occupiers of both these properties have written to your officers. The occupier of no.4 has confirmed (email received 31<sup>st</sup> October) that he would not be in favour of it running so close to his boundary, or at worst over it. He has made this comment as part of the land over which it passes on the approved plans has been conveyed to him when it was sold by Heritage Homes. In addition the occupiers of Howden Court have contacted your officers to express their concerns about how the delivery of the footpath will affect their residential amenities, and they have made the following statement via email on the 25<sup>th</sup> October (set out below as written by them);

We would like to submit the following please:

LPA ref: 11/01927/MFUL: Planning approval for pedestrian link, Howden Court, Tiverton

We are concerned about the proposed footpath / pedestrian link that will run through the rear yard of Howden Court, our home since 1978.

The footpath, if built, would significantly compromise the security of Howden Court, which is our seven bedroom Georgian home. It would introduce the public directly into the rear courtyard, through the garden and up a significant number of steps (40) into the new development. Lighting is non-existent and will not be installed by the developer, trees are abundant and no properties overlook the footpath except one rear, pantry window of Howden Court itself and that is only a partial and limited view. It will also completely block access to the gate of our rear drive, which we use.

There is no reason for the path – it will not be adopted by the Highway Authority and is for the sole use of residents of Phase 2 of the new development. There is to be a lockable gate between Palmerston Park and the proposed footpath. Residents on the new site have already expressed security concerns, can see no purpose for it and do not want the path built.

This proposed footpath could potentially allow criminals easy access to new areas through a well-screened, shady, unmanaged narrow corridor. The Crime Security officers (Devon and Cornwall Police), Rick Napier and John Knowles, who have visited the site, were both concerned about the potential dangers of this proposed link.

Heritage Homes has approached the planning authority of Mid Devon District Council to request a rethink of the link. The planners are unwilling to do that. We are extremely worried and would be very grateful if this proposed link could be removed from the planning consent and the land on which it is to be built re-designated. Secured by Design 2014 is clear in its guidelines and this proposed footpath is completely contrary to the advice contained within that document.

For members information the owner of Howden Court (the house) owned the site before it was sold to Heritage Homes with the benefit of planning permission and was party to the terms of the Section 106 agreement.

### **Relevant Planning Policy**

11. The requirement for the link between the development area and Palmerston Park is established by the provisions of AIDPD policy AL/TIV/10, the logic being that it would increase permeability and connectivity between the site and Tiverton Town Centre.

Supporting paragraph 5.72 makes specific reference to the link through to Palmerston Park confirming that it will allow access to the town centre via lightly trafficked routes, and to the circular bus service which serves Palmerston Park. In addition the link was a requirement of Highway Authority in order to consider the development to be acceptable.

12. Therefore it is clear that there the route is supported in planning policy terms and which would have informed the discussions at the planning application stage to incorporate it as part of the approved scheme of development.

### **Considerations Required by Members of the Planning Committee**

13. Given the strength of feeling that has been expressed by some local stakeholders regards the benefits of completing the formation of the footpath link, Heritage Homes and the occupiers of Howden Court (– the property) have requested that members reconsider the benefits that would arise, and reflect on the concerns that have been expressed.
14. Policy DM2 requires that new development demonstrates a clear understanding of the characteristics of the site, its wider context and the surrounding area, and are well integrated with surrounding buildings and streets. Therefore the principle of the link between the new estate and Palmerston Park reflects best practise in terms of designing new housing developments, notwithstanding the specific requirement of policy AL/TIV/10.
15. Concerns about the usability and deliverability of the link given the change in levels across the route that it will follow and the relationship with the houses that it would sit adjacent to are capable of being resolved. Furthermore Heritage Homes Heritage have recently confirmed via email correspondence received on 31<sup>st</sup> October that there is still plenty of space to get the footpath in where it will work with the levels and steps. There has been no discussion regards the extent of how it would be enclosed. The occupiers of those properties that are concerned about safety and security issues would retain control of their boundaries.
16. Concerns about liability, maintenance and management would fall with the land owner and/or the management company acting on behalf of the owner(s) if all the common land within the new estate area is transferred to a management company represented by all the occupiers of the new houses, as is understood to be the case.
17. The use of the footpath link in hours of darkness presents a concern which would further consideration, particularly given that it is not proposed to be adopted by the Highway Authority.

### **Planning Balance & Recommendation**

18. In terms of balancing the range of issues that have been raised the delivery of the link between the new estate and Palmerston Park is supported in policy terms, and reflects best practise. Local stakeholders on the estate have questioned the benefits that it would provide to assist them in completing their journeys between their residences and Tiverton Town centre, which in main reason for the delivery of it policy terms. Notwithstanding the views of the current residents your officers recommendation is that the provisions of policy and the requirements of the approved plans should prevail.

If this is the view that is reached by members officers will continue to work with Heritage Homes and other parties to ensure the delivery of the link through the site up to the section of the footpath that has already been delivered over the grass verge through to Palmerston Park.

19. However if members consider that the views of the existing residents on the estate as now presented and the other matters that have been raised as set out in the report are sufficient to set aside the requirements of policy then members should invite a planning application to be submitted and formally considered to change the use of the part of the site from a footpath/open space to an area of open space.