

Application No. 17/00407/FULL

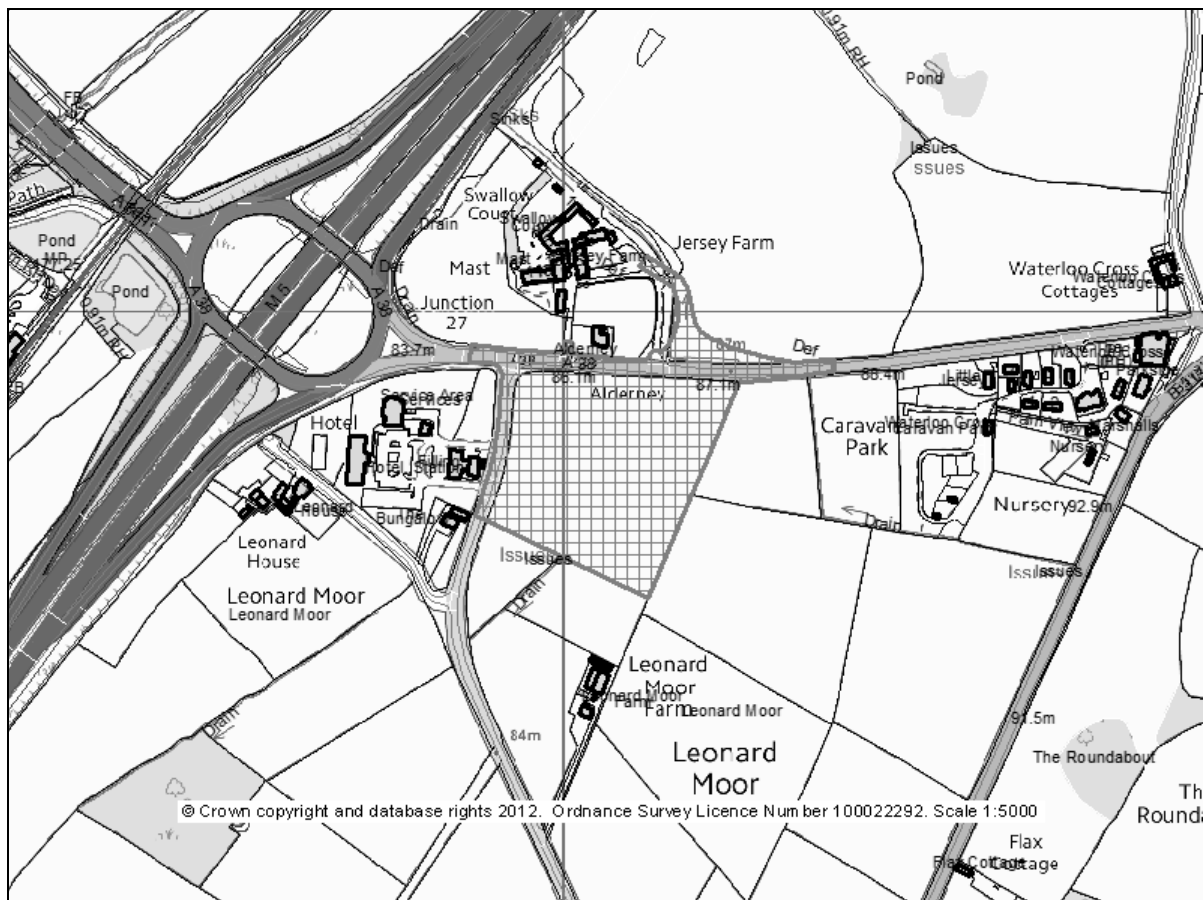
Grid Ref: 113872 : 305037

Applicant: Friends Life Ltd

Location: Land at NGR 305036 113872 (Junction 27) Sampford Peverell Devon

Proposal: Variation of conditions 5, 6, 15, 23, 27, 28, 31, 32, 34 and 35 to allow certain works to be undertaken before additional details are submitted to the Local Planning Authority, to phase the Construction Management Plan/s and to enable works to be carried out before the tree and hedgerow protection fencing is erected; and removal of conditions 24 and 26 (duplication of the requirements of other conditions) of planning permission 13/00947/MOUT

Date Valid: 8th March 2017



AGENDA ITEM

PLANNING COMMITTEE
14th June 2017

REPORT OF THE HEAD OF PLANNING AND REGENERATION

17/00407/FULL - VARIATION OF CONDITIONS 5, 6, 15, 23, 27, 28, 31, 32, 34 AND 35 TO ALLOW CERTAIN WORKS TO BE UNDERTAKEN BEFORE ADDITIONAL DETAILS ARE SUBMITTED TO THE LOCAL PLANNING AUTHORITY, TO PHASE THE CONSTRUCTION MANAGEMENT PLAN/S AND TO ENABLE WORKS TO BE CARRIED OUT BEFORE THE TREE AND HEDGEROW PROTECTION FENCING IS ERECTED; AND REMOVAL OF CONDITIONS 24 AND 26 (DUPLICATION OF THE REQUIREMENTS OF OTHER CONDITIONS) OF PLANNING PERMISSION 13/00947/MOUT - LAND AT NGR 305036 113872 (JUNCTION 27) SAMPFORD PEVERELL DEVON

Description of Development:

This application seeks planning permission for the variation of 10 conditions and removal of 2 conditions attached to the outline planning permission for the erection of a Roadside Service Area, HGV filling station and associated parking, drainage and landscaping works at Junction 27 of the M5 motorway, to the east of the existing services and south of the A38. The site forms part of the proposed allocation of land at Junction 27 contained within the Local Plan Review which has been submitted to the Planning Inspectorate for examination. The original proposal to vary Condition 13 has been withdrawn from this application.

Reserved matters approval for the development was resolved to be granted by Planning Committee at the meeting of 1st February 2017.

The conditions seeking to be amended relate to the majority of those which require the submission of additional details before work commences on site. These conditions are sought to be amended to allow for some works to be undertaken implementing the permission before further details are submitted for discharge. The conditions sought for removal in part duplicate the requirements of other conditions. Further detail of the specific nature of each condition seeking variation or removal is given in the material considerations section of the original report to Planning Committee, which is appended to this report.

Reason for Report:

To consider legal advice obtained at the request of the Planning Committee at the meeting of 17th May 2017.

RECOMMENDATION(S)

Grant permission subject to conditions.

Relationship to Corporate Plan:

Economy

- Bringing new businesses into the District

Environment

- Protect the natural environment

Financial Implications:

In the event of refusal any appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal and there is the potential of an application for an award of costs should the Council have exhibited unreasonable behaviour.

Legal Implications:

Decisions must be made in accordance with the Planning Acts.

Risk Assessment:

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

1.0 Introduction

1.1 At the Planning Committee held on 17th May 2017 Members of Planning Committee resolved to defer the planning application to seek legal advice with regard to:

1. The legal implications of decision making with regard to this application
2. Whether the Committee were at risk of being accused of pre-determination
3. The process of changing conditions on a previously approved planning application.

1.2 For clarity of response, points 1 and 3 above are addressed together in the following commentary.

1.3 The text below has been written in conjunction with the Legal Services Manager and Monitoring Officer.

2.0 The legal implications of decision making with regard to this application and the process of changing conditions on a previously approved planning application

2.1 Section 73 of the Town and Country Planning Act 1990 (as amended) sets out the ability to make applications to develop land without compliance with conditions previously attached to a planning permission and such applications are commonly known as applications for variation or removal of condition.

2.2 The grant of a Section 73 application is effectively the issuing of a new planning permission for the development that sits alongside the original permission which remains

unaltered and intact. The Government's Planning Practice Guidance advises that to assist with clarity Local Planning Authority's decision notices issued for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In this instance, other than conditions relating to the submission of reserved matters, none of the conditions have been discharged. Local Planning Authority's may impose new conditions when approving a Section 73 application, provided they do not materially alter the permission granted and could have been imposed when planning permission for the development was originally granted.

2.3 There are a number of core legal principles regarding Section 73 applications:

- (1) Can only be used to vary conditions on a previously granted planning permission (not a reserved matters application);
- (2) Can only consider the matters which arise from the conditions which are sought to be amended and/or deleted and not any other material considerations – it is not a complete re-consideration of the application, nor should the decision result in a fundamental alteration of the proposal put forward in the original application
- (3) Section 73 applications can only be made in relation to planning permissions for which the time limit for implementation has not expired.
- (4) Planning permission must not be granted under section 73 to the extent that it has the effect of extending the time within which either a development must be started or an application for approval of reserved matters must be made.

2.4 In this instance, the Section 73 application seeks to vary and remove conditions attached to an outline planning permission and principle 1 is met.

2.5 Members are reminded that, as set out in principle 2, they can only take into account those material considerations which directly relate to or arise from the conditions which are proposed for variation and/or removal.

2.6 When reserved matters approval pursuant to the outline planning permission was granted on 2nd February 2017, the time limit condition attached to the original grant of outline planning permission set the final date for commencement as 2nd February 2019 (being 2 years from the date of the final reserved matters approval). The conditions recommended to be imposed as part of this Section 73 application take this date into account and ensure that no further time is granted for the development to commence. Therefore principles 3 and 4 are complied with.

2.7 The applicants have the legal right to make a Section 73 application and the Local Planning Authority is obliged to consider and determine such a submission. For the reasons set out above, the submission made by the applicants and the varied conditions recommended being imposed accord with the provisions of the Act.

3.0 Whether the Committee were at risk of being accused of pre-determination

3.1 Development is proposed to be allocated at land at Junction 27 in the Local Plan Review which has been submitted to the Planning Inspectorate for examination. The site subject of this application for planning permission is included within that proposed allocation.

3.2 The proposed allocation is for the development of the land and not specifically for the Eden Westwood scheme also being promoted by the current applicants.

3.3 The business decisions of the applicant in respect of how and where they choose to focus their resources (stated as being a reason for submitting this Section 73 application) is

of no material consequence to the considerations and determination of this current application and should form no part of the Planning Committee's deliberations. The only material considerations are those which are both related to planning and the conditions sought for removal or variation.

3.4 Outline planning permission for the development of the Roadside Service Area now seeking a variation of conditions was granted on 17th January 2014. This outline planning permission was granted as a renewal of an earlier outline consent dating from 6th July 2010.

3.5 The outline planning permission granted the principle of development on the site. In February 2017, Planning Committee resolved to grant reserved matters approval pursuant to the outline planning permission and thus an implementable planning permission now exists with commencement of development being required to be undertaken no later than 2nd February 2019.

3.6 The Section 73 application now seeking approval would not permit any development which does not already have the benefit of planning permission and members of the Planning Committee are not being asked to make any decisions of principle as that was addressed when outline planning permission was originally granted. Furthermore, if the Planning Committee are minded to approve the application, this would not prevent or inhibit the submission and determination of future applications for all or any part of the site, nor for any wider development proposals for Junction 27 which may come forward in future.

3.7 Should this current application be refused the applicants would continue to be able to implement the planning permission for the Roadside Service Area as it would not affect the extant outline planning permission.

3.8 For these reasons the determination of this current application would not lead to the pre-determination of any other development at Junction 27, nor could it be viewed as such.

4.0 Conclusion

4.1 The applicants have the legal ability to submit a Section 73 application, the effect of the granting of which would be the issuing of a new planning permission, sitting alongside the original outline planning permission which would remain unaltered and intact. It is then a matter for the applicant to decide which, if any, permission it wishes to implement.

4.2 Should this application be refused the applicants would continue to be able to implement the existing planning permission for the development of a Roadside Service Area on the site, but subject to the original conditions contained on the outline planning permission.

4.3 Given that a fully implementable planning permission exists for the development already and members are not being asked to consider the principle of development, no pre-determination of specific or as yet unknown wider development at Junction 27 will arise from the granting of this application.

Contact for any more information

Miss Thea Billeter, Area Planning Officer

Background Papers

13/00947/MOUT, 16/01773/MARM

File Reference

17/00407/FULL

Circulation of the Report

Cllrs Richard Chesterton
Members of the Planning Committee

