

Parish: SHOTLEY

Location: Former HMS Ganges, Shotley Gate

Proposal: Submission of details under outline planning permission B/88/01560/OUT - The siting design and external appearance of, the means of access to and the landscaping of the site for a retirement community of 404 dwellings, nursing home and associated facilities.

Applicant: Haylink Limited

Case Officer: Gareth Durrant

Date for Determination: 2/11/2000

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The application was reported to the meeting of the Development Committee on 18<sup>th</sup> November 2009. At that meeting, Members resolved to defer their determination of the Reserved Matters pending the receipt of further legal opinion from Counsel for the Council. That opinion has been received and is the subject of a separate agenda item prepared by the Solicitor to the Council.

A lengthy and detailed written report was provided to the Development Committee meeting on 20<sup>th</sup> November 2009 and Members are requested to bring Paper J129 with them to the meeting. All sections and appendices of that report remain valid and, with the exception of the recommended 'reasons for approval' and the officer recommendation, are not repeated here. The main purpose of this report is to update Paper J129, including summaries of further representations received and to re-affirm the recommendation.

Electronic versions of Paper J129, its Addendum Paper and the minute of the 20<sup>th</sup> November 2009 meeting of the Development Committee are published on the Council's website at the following address;

[www.babergh.gov.uk/Babergh/Home/Council+and+Democracy/Council+and+Committee+Papers/Development/Development+Committee.htm](http://www.babergh.gov.uk/Babergh/Home/Council+and+Democracy/Council+and+Committee+Papers/Development/Development+Committee.htm)

#### THE SITE

1. Please refer to Paper J129 for a description of the site.

#### THE PROPOSAL

2. Please refer to Paper J129 for a description of the proposals forming the reserved matters submission.
3. Following deferral of this item at the Development Committee meeting on 20<sup>th</sup> November 2009 in order for the Council to seek legal advice from Counsel on the content of a legal opinion from Mr William Upton (see paragraph 8 below), the applicants sought their own opinion and have submitted this to the Council. The joint opinion from Mr Katkowski QC and Mr Pickles of Landmark Chambers in London draws the following conclusions;
  - The Planning Officer has taken the correct approach in relation to the lawful status of this Reserved Matters application

- The Planning Officer's conclusion is reinforced by reference to the protection that public consultation and the EIA process has given to the public interest in this matter.
- It is not considered that Mr Upton has advanced any substantial basis upon which to dispute the Planning Officer's conclusion on the lawfulness of the Reserved Matter application.
- It is strongly disagreed that *[allowing] this 2007 or 2008 application to be considered would drive a coach and horses through the time limit requirements'*. All that has happened is the application of the law to the facts of the case.

#### **RELEVANT HISTORY**

4. Please refer to Paper J129 for a summary of the relevant planning history.

#### **NATIONAL GUIDANCE**

5. Please refer to Paper J129 for details of relevant national planning guidance.

#### **PLANNING POLICIES**

6. Please refer to Paper J129 for a list of the relevant East of England Plan (2008), saved Suffolk Structure Plan (2001) and saved Babergh Local Plan (2006) policies.

#### **CONSULTATIONS**

7. Please refer to Paper J129 for the main body of consultation responses received in relation to the Reserved Matters and Environmental Statement. The following is a summary of the consultation responses received by the Council following completion of the Planning Officer's report for the 20<sup>th</sup> November 2009 meeting (including those provided to that meeting via the addendum paper to J129).
8. Woolverstone Parish Council - Has submitted (16th November) copy of a legal opinion from Mr William Upton about the reserved matters submission. In particular, the following points are made;
  - The applicants' legal opinion stating that the Council was able to determine the application (Christopher Katkowski QC – April 2007) was provided before the submission of the amendments to the Reserved Matters in August 2007 and no doubt without sight of the actual or later revisions.
  - Once submitted Reserved Matters can only be supplemented and not significantly amended.
  - The amendments to the Reserved Matters (2007) fundamentally altered the character of the development when compared to the nature of the Reserved Matters first submitted in 2000 and cannot be determined.
  - It is unreasonable for the Council to purport to make a decision nine years after submission.

9. Freston Parish Council – Has provided details and photographs of damage to the village bus shelter adjacent to the Freston crossroads junction caused by a road traffic accident on Friday 13<sup>th</sup> November 2009. They go on to comment that no-one was hurt in the accident, but point to it as evidence that the residents of Freston are at risk given that a safe plan has not been submitted for the junction. In 2007, a car also ran into the junction in 2003, two people were killed close to the junction and recently a 93 year old was seriously hurt at another part of the junction.
10. The Parish Council has also requested that the Committee be informed that they had previously requested a copy of Counsel's opinion about the Reserved Matters which had been received by the Council.
11. Tattingstone Parish Council has provided the following additional statement;
  - As our village is on the edge of the Shotley Peninsula the Council's principal concerns are for the additional traffic along the B1456 road which is already an extremely busy road and the impact 400 extra homes will have on the local services.
12. Felixstowe Town Council – Have no comments to make at this stage.
13. LHA - Confirm their approval of the latest revisions to the reserved matters and recommend the imposition of the conditions they previously recommended;
  - parking manoeuvring areas,
  - travel plan,
  - plan for the management/maintenance of communal parking areas,
  - provision of the off-site works details of the estate roads (etc)
14. EH – We have considered the amendments to the scheme and do not believe that the consultation relates to heritage matters.
15. HSE – Repeat their earlier comments (please refer to paragraphs 123 and 124 of the report forming Paper J129).
16. Suffolk County Council (Archaeology) – Repeat their earlier comments (please refer to paragraph 148 of the report forming Paper J129).
17. EA – submit comments and advice regarding pollution control measures. The advice could be added to the decision notice as advisory notes.
18. RSPB - Are satisfied with the outcome of the Appropriate Assessment that there will be no adverse impacts upon the SPA. However, the findings of the Integrated Ecology, Heritage and Landscape Management Plan should be part of a S106 Agreement, rather than planning conditions.
19. SWT – The amendments do not appear to relate to any ecological matters, so we have no additional comments.
20. Ramblers – Have no further comments to make.
21. Police Architectural Liaison Officer – Has no further comments to make.

## REPRESENTATIONS

22. Please refer to Paper J129 for the main body of representations received in relation to the Reserved Matters and Environmental Statement. The following is a summary of the representations received by the Council following completion of the Planning Officer's report for the 20<sup>th</sup> November 2009 meeting (including those summarised to that meeting via the addendum paper to J129).
23. Hutchison Ports (UK) – Has nothing further to add.
24. Seven further letters of objection were received. The issues and objections raised are summarised as follows;
  - The development will be intrusive and the area blighted, with views from Harwich destroyed.
  - The Reserved Matters have been held in abeyance for far too long with no agreement to extend time periods.
  - The application is a rambling number of submissions and alterations. The process has been confusing and is difficult to understand.
  - The current proposal does not fall within the original consent and differs in type, location and massing and represents a significant alteration.
  - There are serious concerns about the so-called *retirement* housing.
  - This is a new application. If it were to be submitted as such, it would not be approved.
  - None of the issues that led to the rejection of the 325 dwelling scheme have been remedied.
  - The Council will fail in its duty to preserve and enhance the Woolverstone Conservation Area and degrade the Area of Outstanding Natural Beauty.
  - If consent is granted we would support and contribute towards a judicial review.
  - The Freston crossroads junction has been hazardous for a while and this development will only make things worse; the junction needs to be completely re-designed.
  - Concerned about the safety of users of the bus stop at the Freston crossroads junction if this development is approved.
  - A DVD film has been submitted. The film was shown at the public inquiry into the previous application for 325 dwellings proposed at this site. The DVD illustrates (in particular) existing transport and traffic problems experienced on the Shotley peninsula.
  - The B1456 will not be able to cope with the increased traffic. The villages of Chelmondiston and Woolverstone should be bypassed.

## PLANNING CONSIDERATIONS

25. The planning considerations for this application for approval of reserved matters are provided in full within Paper J129 reported to the meeting of the Development Committee. There is nothing to add to the discussions and conclusions of that report save to provide further reasoning as to why the plans and Environmental Statement and other information submitted in August 2007 were accepted as legitimate amendments to the 2000 submission of reserved matters. The planning reasons for accepting the amendments were as follows;

- The entire development remains within the red-lined plan approved as part of the parent outline planning permission (B/88/1560).
- All development proposed in the 2007 amendments were (and remain) within the parameters and description of the outline planning permission. There is no change to the number of dwellings proposed (404) and the amended reserved matters contains a care home and associated facilities (community building, leisure building, bowling green and open spaces), all of which were permitted by the outline planning permission.
- The Reserved Matters submission continues to propose a retirement community and is compliant with the S106 Agreement and other conditions attached to the outline planning permission. This includes the requirement under the outline planning permission to provide an access corridor through the HMS Ganges site to connect up to the new housing development of the Shotley Marina site (the Shotley Marina development has commenced in the form of footings and a slab being provided, but has not progressed). The 2007 amendments to the RM's do not seek to alter the character of the development away from a 'retirement community'.
- The 2000 Reserved Matters submission was made in time and remained undetermined at the date the amendments were received in 2007; the Council had an application on "its books" that was capable of being amended.
- The outline and 2000 Reserved Matters were not screened under the EIA Regulations and neither submission contained an Environmental Statement. The 2007 submission included the submission of and ES for the first time (a positive amendment to the application, and a requirement for the Reserved Matters submission, post Barker)
- The amendments submitted in 2007 were, in part, in response to the findings of the ES and addressed changes in circumstances at the site since the 2000 submission (namely the discovery and subsequent scheduling of a Napoleonic Fort). The acceptance of the amendments removed an identified conflict with interests of acknowledged importance (the 2000 Reserved Matters submission included extensive new-build development on the site of the newly discovered Fort, the 2007 submission located development away from the Fort and its immediate environs).
- Means of access to the site remains unaltered between the 2000 Reserved Matters and the 2007 amendments and remains at the location envisaged under the outline planning permission.

## REASONS FOR APPROVAL

26. The Local Planning Authority has had regard to the provisions of the Development Plan comprising the East of England Plan (2008) the saved policies of the Suffolk Structure Plan, 2001 and the saved policies of the Babergh Local Plan, Alteration No.2, 2006, so far as material to the application and to all other material considerations. The Local Planning Authority is satisfied that the Reserved Matters are in accordance with the Development Plan.
27. The Local Planning Authority is content that the proposals are acceptable with regard to the siting design and external appearance of the buildings (PPS1, PPS3, policy ENV7 of the East of England Plan and policy CN01 of the Local Plan), the landscaping of the site and the impacts of the proposals upon the character and appearance of the countryside, including the nationally designated Area of Outstanding Natural Beauty (PPS7, and Local Plan policies CR01, CR02 and CR07) and the means of access to the buildings (PPG13). Furthermore, the proposals are acceptable in terms of the impact upon the setting of the listed buildings and scheduled ancient monuments which are located at and close to the site (PPG15, ENV6 and CN06), car parking provision, which accords with the Suffolk Advisory Parking Standards (PPS3, PPG13, Structure Plan policy T10 and Local Plan policy TP15) and nature conservation interests at the site and within the adjacent European wildlife sites (designated SSSI, SPA and Ramsar sites) (PPS9, and Local Plan policies EN04 and EN06). The Local Planning Authority is also content that the development is not at significant risks from a potential major disaster incident at the hazardous substances handling facility located at Felixstowe Port.
28. Having regard to the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended) insofar as they are applicable to the application, the relevant environmental considerations and the mitigation measures set out in the Environmental Statement, the Local Planning Authority considers the Environmental Statement demonstrates that there would be no significant environmental impacts arising from the development, which is acceptable in environmental terms.
29. Summary of policies and proposals in the Development Plan (and national guidance) relevant to this decision to approve the reserved matters pursuant to outline planning permission B/88/01360/OUT;

### **1. East of England Plan 2008**

- ENV6** (The Historic Environment)  
**ENV7** (Quality in the Built Environment)

### **2. Saved policies in the Suffolk Structure Plan 2001**

- T10** (Cycle Parking)

### **3. Saved policies in the Babergh Local Plan, Alteration No.2**

- EN04** (Semi Natural Habitats)  
**EN06** (Habitat creation)  
**CR01** (Landscape Quality)  
**CR02** (Areas of Outstanding Natural Beauty)

- CR07** (Landscaping Schemes)
- CN01** (Design Standards)
- CN06** (Listed buildings)
- TP15** (Parking Standards – New Development)

#### **4. National Guidance**

- PPS1** 'Delivering Sustainable Development'
- PPS3** 'Housing'
- PPS7** 'Sustainable Development in Rural Areas'
- PPS9** 'Biodiversity and Geological Conservation'
- PPG13** 'Transport'
- PPG15** 'Planning and the Historic Environment'

#### **RECOMMENDATION**

- (1) That Members note the content of the Environmental Statement (summarised at Appendix 1 of Paper J129) and the Appropriate Assessment (attached to Paper J129 at Appendix 2) before making a decision on the reserved matters submission.
- (2) That the Solicitor to the Council be authorised to secure a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 to provide:
  1. Developer contribution to be used towards the provision of healthcare
  2. Developer contribution to be used for off-site nature conservation (wardening)
  3. Implementation of the proposals and recommendations contained in the Integrated Ecology Heritage and Landscape Management Plan
  4. Street naming.
  5. Open spaces (being provided and open to the general public)
  6. Developer contribution towards library services
  7. Developer contribution towards waste services
  8. Provision of a package of highway works, to include works to Wherstead roundabout, Freston crossroads, Woolverstone, Chelmondiston and Shotley villages, new bus flags and review stands and new 'SLOW' road markings (combination of commuted payment and direct provision).
  9. Submission of and compliance with a construction management plan (proposals and implementation).
  10. Submission and implementation of a Green Travel Plan
  11. Such other Obligations (or variations to the above Obligations) as the Chief Planning Control Officer considers appropriate.
- (3) That, subject to the completion of the Planning Obligation referred to in Resolution (2) above to the satisfaction of the Solicitor to the Council, the Chief Planning Control Officer be authorised to grant planning permission subject to conditions, including:
  - Submission of details/samples of materials for buildings and hard surfaced areas.
  - Design and construction measures to mitigate against a potential incident at the explosives facility at Felixstowe docks for the relevant plots situated with the Band 2 consultation distance (HSE)
  - Withdrawal of permitted development rights for to extend or alter the dwellings within (or partly within) the Band 2 consultation distance.
  - Design and construction measures to mitigate against the potential adverse impacts of noise from the port during the night.
  - Archaeological works and recording.

- Details of means of enclosure (site and property boundaries)
  - Relatives/workers accommodation within the care home to remain ancillary and incidental to the operation of the care home facility.
  - Implementation of the recommendations and strategies contained within the arboricultural report.
  - Provision of fire hydrants.
  - As recommended by LHA.
  - Contamination (further investigations).
  - Details of lighting to roads and parking areas.
  - Details of provision for fitness and leisure equipment
  - Ground floor windows and door openings to be provided to 'Secured by Design' standards.
  - Strategy to reduce energy consumption from the development.
- (4) That in the event of the Planning Obligation referred to in Resolution (2) above not being secured, the application be returned to Committee for further consideration.