

Committee Report

Item No: 6B

Reference: DC/21/06805

Case Officer: Samantha Summers

Ward: East Bergholt.

Ward Member/s: Cllr John Hinton.

RECOMMENDATION – GRANT VARIATION OF CONDITIONS 7 AND 8 OF RESERVED MATTERS DC/20/04663

Description of Development

Application under Section 73 of The Town and Country Planning Act 1990 - Variation of Condition 7 (Restriction On Operation Times) and Condition 8 (Restriction On Construction Times) of Reserved Matters Approval DC/20/04663 Dated: 08/12/2021 (Outline Planning Permission B/16/01092 - Mixed-use development including up to 75 dwellings, a preschool and a neighbourhood hub, comprising a swimming pool, office space and a local shop, public open space, and associated infrastructure and landscaping as amended by drawings received on 11th November 2016 (omission of school land)) **to allow amendment to Operation Times and Construction Times.**

Location

Land East of The Constable Country Medical Centre, Heath Road, East Bergholt, Suffolk

Expiry Date: 18/03/2022

Application Type: FUW - Full App Without Compliance of Condition

Development Type: Major Small Scale - All Other

Applicant: Hills Residential Construction Ltd

Parish: East Bergholt

Site Area: 8.7Ha

Details of Previous Committee / Resolutions and any member site visit: Reserved Matters application DC/20/04663 was heard at Planning Committee on the 16th of June 2021. Members resolved to grant reserved matters.

Has a Committee Call In request been received from a Council Member: No

Has the application been subject to Pre-Application Advice: No

PART ONE – REASON FOR REFERENCE TO COMMITTEE

The application is referred to committee for the following reason:

This is a major application for a proposal of more than 15 dwellings.

PART TWO – POLICIES AND CONSULTATION SUMMARY

Summary of Policies

CN01 - Design Standards
EM01 - General Employment
CR02 - AONB Landscape
TP15 - Parking Standards - New Development
CS01 - Applying the presumption in Favour of Sustainable Development in Babergh
CS14 - Green Infrastructure
CS15 - Implementing Sustainable Development
CS18 - Mix and Types of Dwellings
CS19 - Affordable Homes
East Bergholt Neighbourhood Plan
NPPF - National Planning Policy Framework

Neighbourhood Plan Status

This application site is within a Neighbourhood Plan Area.

The Neighbourhood Plan is currently at:-

Stage 7: Adoption by LPA

Accordingly, the Neighbourhood Plan has Significant weight.

Consultations and Representations

During the course of the application Consultation and Representations from third parties have been received. These are summarised below.

A: Summary of Consultations

Town/Parish Council

East Bergholt Parish Council

The Council considered that during the course of this long planning process, part of the benefits of the development put forward had been the Operation and Construction Times would meet local needs. The Co-op traded from 7am to 10pm which met local needs and there was no evidence of need to have

trading beyond those hours which could impact adversely on existing traders and be a nuisance to residents early in the morning and late at night.

It was proposed by Councillor Miller, seconded by Councillor Roberts and RESOLVED (unanimously) that refusal be recommended on the grounds that both Opening, and Delivery Times should not exceed the times operated by the Co-op, namely 7am – 10pm, which meet local needs.

It was proposed by Councillor Miller, seconded by Councillor Roberts and Resolved (unanimously) that the amendment of Construction Times to enable a 7am start, be recommended for approval.

National Consultee

Anglian Water

The application is related to Variation of Condition 7 (Restriction on Operation Times) and Condition 8 (Restriction on Construction Times) which is outside of Anglian Water jurisdiction to comment

Historic England

Thank you for your letter of 10 January 2022 regarding the above application for planning permission. On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

Natural England

Natural England is not able to fully assess the potential impacts of this proposal on statutory nature conservation sites or protected landscapes or, provide detailed advice on the application. If you consider there are significant risks to statutory nature conservation sites or protected landscapes, please set out the specific areas on which you require advice.

The lack of detailed advice from Natural England does not imply that there are no impacts on the natural environment. It is for the local authority to determine whether or not the proposal is consistent with national and local environmental policies. Other bodies and individuals may provide information and advice on the environmental value of this site and the impacts of the proposal on the natural environment to assist the decision-making process.

County Council Responses

SCC Archaeology

Thank you for consulting SCC Archaeological Service. There is no objection from SCCAS should you wish to allow the variation of Conditions 7 and 8 on reserved matters approval DC/20/04663.

SCC Flood and Water

The LLFA has no comment to make on this application.

SCC Travel

Thank you for consulting me about the variation of condition application. On reviewing the planning document submitted, I have no comment to make.

SCC Development Contributions

I have no comments to make but have copied to highways.

SCC Highways

Notice is hereby given that the County Council as Highways Authority does not wish to restrict the grant of permission due to the application not having a detrimental effect upon the adopted highway.

SCC Fire and Rescue

Please be advised that we require Condition 16 to be brought forward from the original planning application B/16/01092/OUT – Details of Fire Hydrants.

Internal Consultee Responses

BMSDC Environmental Protection – Air Quality

I have no objections with regard to air quality.

BMSDC Environmental Protection – Land Contamination

Many thanks for your request for comments in relation to the above application. I can confirm that I have no comments to make with respect to land contamination with respect to the above referenced conditions.

BMSDC Environmental Protection – Noise/odour/light/smoke

Condition 7 – Shop opening hours.

I appreciate that the current hours may be felt to be overly restrictive. I note that the Co-Op store in East Bergholt has opening hours of 7am – 10pm and I would recommend that this would be appropriate for this store also. Prior to 7am is generally considered night-time and I would be concerned about operation before this time in terms of neighbourhood amenity. In terms of deliveries, I would be concerned about HGV deliveries outside of these hours due to the potential for disturbance.

Condition 8 – Construction hours

8.00am – 18.00 hours Monday to Friday and 09.00 – 13.00hours on Saturdays (with no working on Sundays and Bank Holidays) are the standard construction hours we recommend within the district. Given the site's proximity to a number of existing residential properties, I do not see any compelling reason to extend these hours and therefore would not recommend that this condition be varied.

BMSDC Strategic Housing

The rationale for conditions 7 and 8 is to manage the relationship between the residential and retail parts of the development. Extending the opening hours and delivery hours increases the risk of impacts on the amenity of the residents of the flats above the shop. This is a concern.

Should negative amenity impacts arise, this could also result in management issues for the Registered Provider (RP) which takes on the affordable units. The operational arrangements for the shop might present a disincentive for RPs considering acquiring the units.

Environmental Health colleagues may be able to advise further in respect of the potential for amenity impacts.

Dedham Vale and Stour Valley Project

The AONB team does not wish to offer any comment on the proposed variation to Condition 7 and Condition 8 (opening times and construction time).

B: Representations

At the time of writing this report, at least 1 letters/emails/online comment has been received. It is the officer opinion that this represents 1 objection. A verbal update shall be provided as necessary.

Views are summarised below:-

The extension of hours for both the shop and construction times is unacceptable in small rural village and would cause disturbance to existing residents.

(Note: All individual representations are counted and considered. Repeated and/or additional communication from a single individual will be counted as one representation.)

PLANNING HISTORY

REF: DC/20/04663	Application for approval of reserved matters following outline approval B/16/01092. Town and Country Planning (Development Management Procedure) (England) Order 2015 - Access, Layout, Scale, Design and Landscaping for Mixed-use development including up to 75 dwellings, a pre-school and a neighbourhood hub, comprising a swimming pool, office space and a local shop, public open space, and associated infrastructure and landscaping as amended by drawings received on 11th November 2016 (omission of school land).	DECISION: GTD 08.12.2021
REF: B/16/01092	Outline - (all matters reserved) Mixed-use development including up to 75 dwellings, a pre-school and a neighbourhood hub, comprising a swimming pool, office space and a local shop, public open space, and associated infrastructure and landscaping as amended by drawings received on 11th November 2016 (omission of school land).	DECISION: GTD 09.02.2018

PART THREE – ASSESSMENT OF APPLICATION

1.0 The Site and Surroundings

- 1.1 The application site is located on the eastern side of East Bergholt, a large village located in close proximity to the A12, 18km to the north-east of Colchester and 16km to the southwest of Ipswich.
- 1.2 The village is designated as a Core Village in the Babergh Core Strategy and contains a number of services and facilities. These include a primary school, a secondary school, playing fields and a sports centre, four community buildings including a village hall, a filling station, a GP practice, a sports centre, churches, public houses, a pharmacy, a village shop, a post office, a butcher's, a bakery and a tearoom.
- 1.3 The application site is split into two areas: the main area is to the south of Heath Road (B1070), and a smaller parcel is located to the north of the road. The main parcel is in agricultural use and is subdivided into two fields, with a field boundary running roughly north-south through the site. To the south there is a small block of spruce planting and to the eastern side of the site there is an existing copse. To the south is the Dedham Vale Area of Outstanding Natural Beauty (AONB) which is separated from the southern boundary by one field's depth, with a well-used footpath (the Donkey Track) with views looking south over the AONB. This parcel lies immediately adjacent to the built-up area of East Bergholt, with rear gardens backing onto the application site. The Constable Country Medical Practice is located immediately adjacent to the site and fronting onto Heath Road. To the south and east the site is surrounded by agricultural land.
- 1.4 The parcel to the north of Heath Road falls within the East Bergholt High School site, adjacent to the school's entrance and coach parking area. To the east of this parcel lies a cluster of commercial and residential buildings. The combined site area is 9.2 hectares.
- 1.5 The Reserved Matters application DC/20/04663 related only to the larger site to the south of Heath Road. Planning Committee Members resolved to grant reserved matters on the 16th of June 2021.

2.0 The Proposal

- 2.1 The proposal includes 75 dwellings, a pre-school with associated playing field, a swimming pool, car park, public open space and a building that will accommodate a local shop and a work hub with flats above.
- 2.2 All properties have sufficient parking which are to current Suffolk Parking Standards. The SCC Highway Authority has raised no objection to the scheme on parking and turning issues.
- 2.3 The density of build on this site is very low. The market houses have large gardens and there are large areas of open space, which give the development a feeling of openness that reflects the edge-of-village character. The density of build is eight dwellings per hectare.
- 2.4 There is a mix of house types on the development which includes bungalows, one-and-a-half-storey and two-storey dwellings. The swimming pool and pre-school are both single-storey. The shop has one storey of flats above.
- 2.5 Garden sizes vary on the development, with most of the market houses having large gardens and those for the affordable units being smaller. The flats above the shop do not have dedicated gardens. However, there is a green space to the south which could be utilised by the residents.

- 2.6 The dwellings have been laid out mostly in a linear form, which results in a high level of privacy for residents. Some of the plots are back-to-back. However, the angle is oblique and because of the size of gardens, there is very good spacing, and this is not considered to cause any overlooking or loss of privacy.
- 2.7 The materials palette consists of buff, red and mixed bricks for the dwellinghouses, with artificial slate, pantiles and plain tiles for the roofs.
- 2.8 The site area is 8.7 hectares.

3.0 The Principle of Development

- 3.1 The starting point for any planning decision is the development plan, as identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004. The determination of any application must be made in accordance with the plan unless material considerations indicate otherwise. A key material consideration regarding the principle of development is the National Planning Policy Framework (NPPF) 2021.
- 3.2 The age of policies itself does not cause them to cease to be part of the development plan or become “out of date” as identified in paragraph 219 of the NPPF.
- 3.3 Even if policies are considered to be out of date, which does not make them irrelevant; their weight is not fixed, and the weight to be attributed to them is within the remit of the decision taker. There will be many cases where restrictive policies are given sufficient weight to justify refusal despite their not being up-to-date.
- 3.4 Also, as required by paragraph 219 of the NPPF, the weight attributed to development plan policies should be according to their degree of consistency with the NPPF. The closer the aims of a policy are to the NPPF, the greater the weight that can be attributed to them.
- 3.5 The principle of development has been established by the granting of Outline Planning permission under permission B/16/01092 for “Outline - (all matters reserved) Mixed-use development including up to 75 dwellings, a pre-school and a neighbourhood hub, comprising a swimming pool, office space and a local shop, public open space, and associated infrastructure and landscaping as amended by drawings received on 11 November 2016 (omission of school land).”
- 3.6 The Reserved Matters application (DC/20/04663) of the Outline application included:
- Access
 - Layout
 - Scale
 - Appearance
 - Landscaping

These matters were granted by Planning Committee.

- 3.7 The detailing of the Reserved Matters was assessed against Babergh Local Plan, Babergh Core Strategy and East Bergholt Neighbourhood Plan policies. These policies were given full weight in decision making and were considered to be consistent with the National Planning Policy Framework.
- 3.8 This S.73 application seeks to vary two conditions (7 and 8) of the Reserved Matters permission.

These hours currently read as follows:

7. *ONGOING REQUIREMENT OF USE: RESTRICTION ON OPERATION TIMES*

The hereby permitted shop/work hub shall only operate between the hours of 08:00 and 20:00 Monday to Sunday. There shall be no deliveries to the development arranged for outside of these hours unless otherwise agreed in writing.

Reason - To enable the Local Planning Authority to retain control over the development in the interests of residential amenity within close proximity.

8. *SPECIFIC RESTRICTION ON DEVELOPMENT: RESTRICTION ON CONSTRUCTION TIMES*

The hereby permitted development shall only be constructed between the hours of 08:00 and 18:00 Mondays to Fridays and between the hours of 09:00 and 13:00 on Saturday. There shall be no working on Sundays and Bank Holidays. There shall be no deliveries to the development arranged for outside of these hours.

Reason - To enable the Local Planning Authority to retain control over the development in the interests of residential amenity within close proximity.

3.9 The current proposal is to change these conditions thus:

7. *ONGOING REQUIREMENT OF USE: RESTRICTION ON OPERATION TIMES*

The hereby permitted shop/work hub shall only operate between the hours of 07:00 and 22:00 Monday to Sunday. There shall be no deliveries to the development arranged for outside of these hours unless otherwise agreed in writing.

Reason - To enable the Local Planning Authority to retain control over the development in the interests of residential amenity within close proximity.

8. *SPECIFIC RESTRICTION ON DEVELOPMENT: RESTRICTION ON CONSTRUCTION TIMES*

The hereby permitted development shall only be constructed between the hours of 07:00 and 18:00 Mondays to Fridays and between the hours of 09:00 and 13:00 on Saturday. There shall be no working on Sundays and Bank Holidays. There shall be no deliveries to the development arranged for outside of these hours.

Reason - To enable the Local Planning Authority to retain control over the development in the interests of residential amenity within close proximity.

3.10 To clarify - the changes are therefore to commence use/deliveries at the shop/hub one hour earlier in the morning and terminate two hours later in the evening; and to allow construction one hour earlier Monday to Friday.

- 3.11 NOTE – the application, when first submitted, had sought even longer hours for operation/delivery (i.e. 6am – 11am), but during the course of the application, your Officers have negotiated this to the hours described above.
- 3.12 The principle of varying two conditions on operation/delivery times of the shop and construction times is considered to be acceptable following changes to the hours after advice from the Environmental Protection Team. The main consideration of this application is the impact on residential amenity of existing and future residents.

4.0 Impact on Residential Amenity

- 4.1 The wording of Condition 7 restricts the opening and delivery times to be between 8am and 8pm. The application form stated that, *“The shop opening, and delivery times are very restrictive and not commercially friendly. We therefore request that the opening hours are amended to 6am to 11pm with deliveries able to take place outside of these hours as is normal for small convenience shops of this size.”*
- 4.2 These new proposed hours raised objections from the Parish Council, Environmental Protection and also Strategic Housing. The shop is located in an area that is mainly commercial. However, the shop would have affordable flats above at first floor level and there are other affordable dwellings near to this area of the site. Noise from customers and also delivery vehicles are the main considerations of this application and the impact on residents. One of the main concerns is that delivery vehicles, which may include HGVs, may come to site before the shop is open and may leave their engines running while they wait to be unloaded. This would be a difficult situation to deal with, and enforce against, because they may be unregular events.
- 4.3 During the course of the application, the applicant has come back with revised hours which have been confirmed in an email dated 23rd February 2022. The email stated, *“Whilst very restrictive for the operator they are willing to stipulate that deliveries are only to take place between 7am to 10pm following our own discussions with them. I trust this overcomes the Environmental Protection Officer’s concerns.”* These hours match those of the existing Co-op store in the centre of the village and were recommended by both the Parish Council and the Environmental Protection Team during the consultation process. Therefore, this aspect of the application is considered to be acceptable and will not cause a loss of residential amenity during night-time hours.
- 4.4 The wording of Condition 8 restricts construction and delivery of materials to between 8am and 6pm Monday to Friday and 9am to 1pm on a Saturday with no working on Sundays or Bank Holidays. The application stated that, *“Most construction sites begin work at 7am and so we request an amendment to the working hours to enable commencement of 7am with completion at 6pm.”*
- 4.5 The Environmental Protection Team have raised an objection to this variation of the hours as there is no justification for the increased construction hours. However, an additional hour on weekday mornings is not considered to be detrimental to the residential amenity of existing residents in the area, particularly as this is a large site and it is likely that the setting up of machinery may take some time each day and therefore noisy processes will not be starting during night-time hours. This condition is only relevant for the construction period and therefore has a limited time in which to be active. This additional hour is only acceptable on weekdays. Saturdays, Sundays and Bank Holidays will remain with the existing specification of construction hours. The Parish Council raised no objection to the increase of one hour.

5.0 Parish Council Comments

- 5.1 East Bergholt Parish Council raised an objection to the increased opening and delivery times of the shop as specified in the application form. The applicant has changed the hours to those suggested by the Parish Council and the Environmental Protection Team and are now considered to be acceptable at 7am to 10pm.
- 5.2 East Bergholt raised no objection to the increase of one hour in the morning for the construction/delivery times.

PART FOUR – CONCLUSION

6.0 Planning Balance and Conclusion

- 6.1 Central to the balancing exercise to be undertaken by decision makers is Section 38(6) of the Planning and Compulsory Purchase Act 2004; which requires that, if regard is to be had to the Local Plan for the purpose of any determination to be made under the Planning Acts, determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 6.2 The shop opening, and delivery hours have been amended to fall in line with those suggested by both the Parish Council and Environmental Protection Team. The hours of 7am to 10pm match those of the existing Co-op store in the centre of the village which is also within a residential area. The increase of construction hours by one hour is not considered to be detrimental to residential amenity and will be of a limited timeframe, i.e., only until the building works have been completed. Weekend hours and Bank Holidays will remain the same.

RECOMMENDATION

- (1) Subject to the prior completion of a Deed of Variation to the S.106 Obligation as may be deemed necessary to the satisfaction of the Chief Planning Officer.
- (2) That the application is GRANTED to vary the wording of conditions 7 and 8 of Reserved Matters permission DC/20/04663 with the following text:

7. ONGOING REQUIREMENT OF USE: RESTRICTION ON OPERATION TIMES

The hereby permitted shop/work hub shall only operate between the hours of 07:00 and 22:00 Monday to Sunday. There shall be no deliveries to the development arranged for outside of these hours unless otherwise agreed in writing.

Reason - To enable the Local Planning Authority to retain control over the development in the interests of residential amenity within close proximity.

8. SPECIFIC RESTRICTION ON DEVELOPMENT: RESTRICTION ON CONSTRUCTION TIMES

The hereby permitted development shall only be constructed between the hours of 07:00 and 18:00 Mondays to Fridays and between the hours of 09:00 and 13:00 on Saturday. There shall be no working on Sundays and Bank Holidays. There shall be no deliveries to the development arranged for outside of these hours.

Reason - To enable the Local Planning Authority to retain control over the development in the interests of residential amenity within close proximity.

NOTE – all other conditions from DC/20/04663 are to be re-stated where applicable.