

# TEWKESBURY BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT

<b>Committee:</b>	Planning
<b>Date:</b>	15 March 2022
<b>Site Location:</b>	Land At Lawn Road Ashleworth
<b>Application No:</b>	21/01436/FUL
<b>Ward:</b>	Highnam with Haw Bridge
<b>Parish:</b>	Ashleworth
<b>Proposal:</b>	Removal or variation of condition 8 (visibility splay requirements) of planning application reference: 20/00487/FUL.
<b>Report by:</b>	Bob Ristic
<b>Appendices:</b>	Site location plan Approved Site Layout Plan Visibility Splay Assessment
<b>Recommendation:</b>	Permit

## 1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1** The application site is located on the southern side of Lawn Road and to the west of its junction with Foscombe Lane. The application site comprises a narrow, triangular parcel of land with an access track running along its northern edge, which serves a barn/commercial building to the southwestern end of the site, which benefits from a lawful development certificate for use as a Class D2 Gym. **(See site location plan)**
- 1.2** The site is broadly triangular in shape and widens to its southern end. The northwestern boundary comprises a post and rail fence and separates the site from a paddock which is in separate ownership. The eastern boundary is screened by a hedge, beyond which is a recent development of 35 dwellings at Rectory Close.
- 1.3** Planning permission (20/00487/FUL) for 3 detached chalet style dwellings accessed from Lawn Road was granted in October 2020 and is subject to a number of conditions. This permission is yet to be implemented and remains extant. **(See approved site layout plans).**
- 1.4** This current application seeks planning permission to remove Condition 8 of the approved scheme for 3 dwellings at the site.

The condition states that:

*'No construction works shall take place until visibility splays are provided from a point 0.6 metres above carriageway level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured*

*perpendicularly), for a distance of 20.9 metres to the left and 29 metres to the right measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6 metres from the edge of the carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of the land so formed which would obstruct the visibility described above.'*

## 2.0 RELEVANT PLANNING HISTORY

<b>Application Number</b>	<b>Proposal</b>	<b>Decision</b>	<b>Decision Date</b>
17/00585/FUL	The construction and use of 4 dwellings (2 x semi detached & 2 x detached) and associated development including garages and improvements to internal access road.	Refused	26.09.2017
20/00178/CLP	Certificate of lawfulness for the proposed change of use of an agricultural building and associated land to a Class D2 Gymnasium use.	Grant	14.04.2020
20/00487/FUL	Erection of 3 No. detached dwellings and the demolition of a Gymnasium building (Use class D2).	Permit	20.10.2020
21/00009/FUL	Erection of 4 detached dwellings and the demolition of Gymnasium building (Class D2) (Revision of permitted application 20/00487/FUL).	Refuse	10.11.2021

## 3.0 RELEVANT POLICY

The following planning guidance and policies are relevant to the consideration of this application:

### 3.1 National guidance

National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG)

### 3.2 Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) – Adopted 11 December 2017

- Policy SP2 (The Distribution of New Development)
- Policy SD10 (Residential Development)
- Policy INF1 (Transport Network)

### **3.3 Tewkesbury Borough Local Plan to 2011 – March 2006 (TBPL)**

- None

### **3.4 Tewkesbury Borough Plan 2011-2031 Pre-submission Version (October 2019)**

- Policy RES3 (New Housing Outside Settlement Boundaries)
- Policy RES4 (New housing at other rural settlements)
- Policy RES5 (New Housing Development)

### **3.5 Neighbourhood Plan**

None

### **3.6 Other relevant policies/legislation**

- Human Rights Act 1998
- Article 8 (Right to Respect for Private and Family Life)
- The First Protocol - Article 1 (Protection of Property)

## **4.0 CONSULTATIONS**

Full copies of all the consultation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

### **4.1 Ashleworth Parish Council – Object to the proposal for the following reasons:**

- There will be an adverse impact on highway safety
- This is exacerbated if the splay requirement is reduced
- Applicant is not the sole owner of all the relevant land
- Parish Council objected to the original application 20/00487/FUL
- Verge on one side of the entrance to the site is not in the ownership of the applicant
- Condition 8 is based upon Provision of Vehicular Visibility Splays
- Cannot understand what has changed in the time that has elapsed
- Highways now has no objection to the removal or Variation to this condition
- What is the robust assessment
- Highways reference to Congestion is irrelevant
- Condition must remain regardless of whether the applicant pursues the development of

three dwellings or a gymnasium

- Necessary for highway safety

**4.2** Gloucestershire Highways – No objections

## **5.0 PUBLICITY AND REPRESENTATIONS**

Full copies of all the representation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

**5.1** The application has been publicised through the posting of a site notice for a period of 21 days.

**5.2** In response, six letters of representation have been received. The comments raised are summarised below:

- Road is narrow, uphill with a blind corner and no footpath
- Would reduce safety
- Other road users (pedestrians, cyclists and horses) would be at increased risk
- no safe pedestrian access to Lawn Rd and village amenities
- Previous application/appeal for 4 dwellings was refused on visibility
- Unclear why the applicant seeks to remove this condition
- No alternative visibility arrangements proposed
- Applicant relies on the 'existing use' of a gymnasium building.
- Site is not in practice used for that purpose
- Site presently generates no traffic
- Cannot be claimed that dwelling would reduce traffic and associated risk
- No room for construction/delivery vehicles
- Site is in an environmentally sensitive area
- Applicant does not own all of the access drive
- Half of drive belongs to owner of adjoining paddock
- Not clear if applicant has permission from other landowners to cut hedges adjoining the access/Lawn Rd to comply with the condition as it stands
- Verge owned by Redcliffe Homes
- The 2.4m x 29m splay cannot be achieved without crossing 3rd party land

## **6.0 POLICY CONTEXT**

- 6.1** Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
- 6.2** The Development Plan currently comprises the Joint Core Strategy (JCS) (2017), saved policies of the Tewkesbury Borough Local Plan to 2011 (March 2006) (TBLP), and a number of 'made' Neighbourhood Development Plans.
- 6.3** The Tewkesbury Borough Plan (TBP) has reached an advanced stage. The Pre-Submission TBP was submitted for examination in May 2020. Examination in Public (EiP) took place over five weeks during February and March 2021. The examining Inspector's post hearings Main Modifications letter was received on 16th June 2021. In this letter the Inspector provided his current view as to what modifications are required to make the Plan 'sound'.
- 6.4** A schedule of Main Modifications to the Pre-submission TBP were approved at the meeting of the Council on 20th October 2021 and is now published for consultation as the Main Modifications Tewkesbury Borough Plan (MMTBP).
- 6.5** Those policies in the MMTBP which were not listed as requiring main modifications may now attract more weight in the consideration of applications, with those policies which are subject to main modifications attracting less weight depending on the extent of the changes required. The TBP remains an emerging plan and the weight that may be attributed to individual policies (including as with modifications as published for consultation) will still be subject to the extent to which there are unresolved objections (the less significant the unresolved objections, the greater the weight that may be given) and the degree of consistency with the NPPF (the closer the policies to those in the NPPF the greater the weight that may be given).
- 6.6** The relevant policies are set out in the appropriate sections of this report.
- 6.7** Other material policy considerations include national planning guidance contained within the National Planning Policy Framework 2021 and its associated Planning Practice Guidance (PPG), the National Design Guide (NDG) and National Model Design Code.

## **7.0 ANALYSIS**

- 7.1** It is noted that the applications site has been subject to a number of applications including a dismissed appeal for 4 dwellings (application No.17/00585/FUL). This appeal was dismissed for a number of reasons including concerns relating to highway safety.
- 7.2** Since that appeal, the applicant has established a fallback, namely that an existing building at the site could be used as a gym and with that, an associated intensification of the site access. A subsequent application for 3 dwellings was permitted (subject of this application). In assessing that application the Local Highway Authority (LHA) raised no highway safety objections advising that the proposed residential development would generate less vehicular movements than the permitted gym use from the site. The LHA however recommended a condition (8) requiring the provision of a 2.4 x 20.9 to the left and 2.4 x 29 metres to the right. The condition also required the area within that splay to be kept clear of obstructions.

## **Applicant's Case**

- 7.3** The current application seeks to remove Condition 8 of that permission which requires the provision and maintenance of visibility splays. The applicant sets out that the wording of the Condition 8 is incorrect/not necessary as the development of the site for 3 dwellings would not result in an intensification in the use of the access when compared to the fallback use of the site as a gym.
- 7.4** The applicant also refers to correspondence with the Local Highway Authority in respect of a further application for 4 dwellings at the site (application no.21/00009/FUL) where no highway safety concerns were raised or condition required. It is noted that while this application was refused planning permission (and is presently subject to appeal) highway safety/visibility matters did not form a reason for refusal.
- 7.5** The applicant refers to correspondence with the LHA (in respect of application no.21/00009/FUL) which sets out that as the proposed use of the site for 4 dwellings would not represent an intensification of the use of the site access (when compared to a gym use) a condition to require improved visibility is therefore not deemed reasonable and should not be sought. The applicant advises that the same principle should apply in respect of the approved scheme for 3 dwellings at the site and Condition 8 should therefore be removed.

## **Assessment of Proposed Removal of Condition**

- 7.6** Paragraph: 003 Reference ID: 21a-003-20190723 of the Planning Practice Guidance sets out that:

*'... planning conditions should be kept to a minimum, and only used where they satisfy the following tests: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.*

*These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply.'*

Furthermore, Paragraph: 009 Reference ID: 21a-009-20140306 sets out that

*'Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) – ie prohibiting development authorised by the planning permission or other aspects linked to the planning permission (eg occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.'*

- 7.7** Paragraph 111 of the NPPF advises that:

*'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'*

- 7.8** JCS Policy INF1 sets out that developers should provide safe and accessible connections to the transport network to enable travel choice and that planning permission will be granted where the impact of development is not considered to be severe.

- 7.9** The submitted drawings show a right hand splay of 2.4 x 13.5 metres to the centre of the carriageway over highway land and a 2.4 x 29 metre visibility splay to the right nearside carriageway edge, however it is noted that this splay would be over a verge which is in private ownership, outside of the applicant's control and thus can-not be achieved and the condition cannot be complied with.
- 7.10** The application has been assessed by the LHA and the Development Coordination Officer has raised no objections to the proposal. The concerns of the Parish Council, residents and LPA have subsequently been raised with the LHA Development Coordination Manager who has confirmed that the approved development for 3 dwellings would represents a reduction in vehicular movements when compared to the permitted gym use (which could operate from the same access). As a result of the lesser highway impact it would be unreasonable to require the condition securing visibility splays on the permission for 3 dwellings.
- 7.11** In view of this advice and despite the conflict with JCS Policy INF1, the condition is no longer considered necessary or reasonable and would therefore not meet all 6 of the tests set out in planning guidance.

## **8.0 CONCLUSION AND RECOMMENDATION**

- 8.1** In the absence of an objection from the technical consultee (Gloucestershire Highways), the fact the condition would not meet the identified tests and the absence of any other harms, it is considered that the proposal is acceptable, and it is recommended that the proposal is permitted subject to the following conditions:

### **CONDITIONS:**

1. The works hereby permitted shall be begun before the expiration of five years from the date of this consent.

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved drawing nos.21720/12, 13 and 14, received by the Local Planning Authority on 7th September 2020 and any other conditions attached to this permission and 21720/11A, SP01, SP02 and SK03, received by the Local Planning Authority on 7th September 2020 and drawing no. SK02 REV.E received by the Local Planning Authority on 25th November 2021 and any other conditions attached to this permission.

Reason: To ensure that the development is carried out in accordance with the approved plans.

3. Notwithstanding the submitted details, no construction works shall take place above slab level until precise details and where appropriate samples of the following have been submitted to and approved in writing by the local planning authority. The works shall thereafter be carried out in accordance with the approved details and shall be similarly maintained there after:-

- External facing and roofing materials,
- Details including profile and colour of the window frames and doors and their reveals.
- Details of any colour tinting to glazing
- Details of all boundary treatments and enclosures

Reason: To ensure a high-quality finish to the development in the interest of the visual amenities of the area.

4. No above ground works shall take place until drainage plans for the disposal of foul and surface water flows have been submitted to and approved by the Local Planning Authority, and the scheme shall be implemented in accordance with the approved details before the development is first brought into use.

Reason: This is to ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution.

5. No dwelling hereby permitted shall be occupied until precise details of the landscaping to development have been submitted to and approved in writing by the Local Planning Authority. The Landscaping shall be implemented in accordance with the approved details no later than the first planting season following the completion of the development. The landscaping shall thereafter be maintained for a period of 5 years. If during this time any trees, shrubs or other plants are removed, die, or are seriously diseased these shall be replaced during the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 5 year maintenance period.

Reason: Interest of the visual amenity of the area.

6. No dwelling shall be occupied until the car/vehicle parking area and turning spaces shown on the approved plan 21720/11A has been completed and thereafter the areas shall be kept free of obstruction and available for the parking of vehicles associated with the development for the duration of the use.

Reason: To ensure that there are adequate parking facilities to serve the development constructed to an acceptable standard.

7. No dwelling shall be occupied until covered and secure storage for a minimum of 2 no. cycles (as shown on drawing no.21720/11A) have been made available to serve that dwelling and those facilities shall be maintained for the duration of the use.

Reason: To ensure the provision and availability of adequate cycle parking.



8. The development hereby permitted shall not be first occupied until each individual plot driveway access visibility splays have been provided from a point 0.6 metres above carriageway level at the centre of each individual plot access and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 15 metres in each direction measured along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of the land so formed which would obstruct the visibility described above.

Reason: In the interests of highway safety.

9. The development hereby permitted shall not be first occupied until the proposed dwellings have been fitted with an electric vehicle charging point. The charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and Manual for Gloucestershire Streets. The electric vehicle charging points shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging points shall be of the same specification or a higher in terms of charging performance.

Reason: To promote sustainable travel and healthy communities.

10. No dwelling hereby permitted shall be occupied until the vehicular access has been laid out and constructed in accordance with the approved plan SK02 Revision: E with the first 10 metres of the proposed access road, taken from the carriageway edge of the public road surfaced in bound material, and shall be maintained in accordance with the approved details thereafter.

Reason: In the interest of highway and pedestrian safety, and to ensure vehicles are able to pull clear of the adopted highway and avoid becoming an obstruction to oncoming traffic.

11. The development hereby permitted shall be carried out strictly in accordance with the recommendation set out in the Focus Environmental Consultants Ecological Appraisal Ref. No.1958 Dated May 2020. If any protected species are found during the site preparation, demolition or construction phases of the development, works shall cease immediately and a suitably qualified ecologist shall be consulted.

Reason: To ensure that the development does not adversely impact protected species.

12. Prior to the first occupation of the development hereby permitted, the ecological enhancements set out in the Focus Environmental Consultants Ecological Appraisal Ref. No.1958 Dated May 2020 shall be implemented and thereafter maintained for the duration of the use.

Reason: To provide a net gain in biodiversity

13. No external lighting shall be installed upon the building or within the site unless otherwise agreed in advance by the local planning authority.

Reason: To ensure that any external lighting does not adversely impact protected species and the rural character of the area.

14. Prior to the first occupation of any of the dwellings hereby permitted, the 'gymnasium building' as highlighted on drawing no.21720/11A shall be demolished, rubble removed and the land reinstated in accordance with details to be submitted and approved under Condition 6 (landscaping) above.

Reason: To conserve the visual amenity of the area.

15. Prior to the commencement of built development precise details of the existing and proposed ground levels and proposed finished floor level (including a datum point outside of the site) shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

Reason: These details will require further consideration in order to minimise the visual impact of the development.

**INFORMATIVES:**

1. In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing the to the Council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.