

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Development and Conservation Control Committee 4th January 2006

AUTHOR/S: Director of Development Services

**S/1846/04/F - Longstanton
Balancing Pond and Scheme of Ditch Widening to Serve Approved Residential and
Commercial Development, Land West of Longstanton for Persimmon Homes (East
Midlands) Ltd**

**Recommendation: Approval
Date for Determination: 2nd December 2004**

Introduction

1. At the 2nd February 2005 meeting of this Committee, Members were minded to approve the application. The relevant minute is as follows:

“**Delegated Approval**, for the reasons set out in the report from the Director of Development Services, subject to the prior completion of a Section 106 Legal Agreement securing the payment of a commuted sum (the extent of which to be determined by the Land Drainage Advisory Group) to the Council to cover the increased maintenance costs along the award drain as a result of the proposed development, and to the Conditions referred to in the report presented to the Committee on **3rd November 2004 (item 45 refers).**”

A copy of the agenda report is attached at Appendix 1.

2. The recommended conditions referred to in the report to Committee on 3rd November 2004 were:

- “1. Standard Condition A - Time limited permission (Reason - A);
2. Prior to development commencing, details of means to provide long term management and maintenance of the Balancing Pond shall be submitted to and agreed by the Local Planning Authority in consultation with the Environment Agency and Middle Level Commissioners. (Rc - To ensure that the balancing pond continues to serve its purpose of flood attenuation in perpetuity.)
3. Sc52 - Implementation of landscaping (Rc 52);
4. Subsequent to works commencing, monthly position updates shall be provided in writing to the Local Planning Authority concerning the ecological mitigation measures to be achieved in the Balancing Pond and Ditch, in accordance with the submitted schemes of mitigation; (Rc - In order to inform the Local Planning Authority of the progress of the ecological mitigation work.)
5. No development shall commence until a scheme for the provision of a programme of archaeological investigation has been submitted to and

approved by the Local Planning Authority. The scheme shall be carried out in the approved form. (Rc 66)”

A copy of this agenda report is attached at Appendix 2.

3. On 14th October 2005 the Council’s Land Drainage Advisory Group considered a report upon the Balancing Pond at Home Farm. It recommended that the Portfolio Holder:

“Agree the adoption of the maintenance of the Balancing Pond at Home Farm, Longstanton by the Council on the payment of a commuted sum to be agreed.”

A copy of the agenda report is attached at Appendix 3.

4. Following the recommendation made by the Group, the Environmental Health Portfolio Holder agreed:

“the adoption of the maintenance of the Balancing Pond at Home Farm, Longstanton by the Council on the payment of a commuted sum to be agreed.”

5. Two contributions were agreed with Persimmon Homes Limited; the first for Pond and Control Structures and the second for Drain and Ditch Works.
6. The Planning Permission was dated 11th November 2005.

Application for Judicial Review

7. Marrons Solicitors, acting for Peter Stroude, who owns the land which is the subject of the “impugned” planning permission, has written by letter dated 29th November 2005 requesting that the Council consents to an order quashing that decision notice.
8. The grounds upon which Marrons rely are:

“a) On 11th November 2005 the Director purported to issue the Planning Permission notwithstanding a Section 106 legal agreement had not been completed securing the payment of a commuted sum to cover maintenance costs, and without the imposition of Conditions 2 and 5 as set out in the report presented to Committee on 3rd November 2004.

b) Accordingly the issue of the planning permission by the Director fell clearly outside the terms of his delegated authority and was thus unlawful; furthermore,

c) The Claimant had a legitimate expectation that any planning permission issued by the Council would be in accordance with the resolution of the Development and Conservation Control Committee dated 2nd February 2005 and therefore subject to the limitations and restrictions specified therein.”

Advice from Head of Legal Services

9. The Head of Legal Services has advised that the Council should consent to the quashing of the planning permission dated 11th November 2005 and that the Committee be satisfied that the land drainage payments can be achieved by alternative mechanism to a Section 106 Agreement.

The Section 106 Agreement

10. The Head of Legal Services advised that a Section 106 Agreement could not be completed because Persimmon Homes Ltd did not own the land, which is the subject of the planning application.
11. Instead terms of agreement between Persimmon and the Council, for the Council to act as Persimmon's (and its successors in title) agent in maintaining, repairing and renewing the Balancing Pond and surface water drainage system were set out in correspondence between the Head of Legal Services and Persimmon's Company Solicitor.
12. The purpose of a Section 106 Agreement was to secure the payment of a commuted sum to cover the increased maintenance costs along the award drain (Longstanton Brook) and to cover maintenance of the Balancing Pond.
13. The first contribution for Drain and Ditch works is expected to be paid in full before the date of this Committee meeting.
14. The second contribution for Pond and Control Structures will be paid once the Council's Drainage Manager is satisfied that the Pond and Associated Works has been completed in accordance with approved plans.

Planning Conditions 2 and 5

15. The requirement of recommended Condition 2 of the 3rd November 2004 report (see Para 2 above) has been achieved as a result of the Council resolving to adopt the maintenance of the Pond and associated structures and to accept the commuted sums to cover that maintenance and the increased cost of maintenance along the award drain. The mechanism for the payment of such agreed sums has been put in place by the Head of Legal Services.
16. Recommended Condition 5 concerned archaeology. On 21st October 2005 the applicant submitted to the County Council an archaeological evaluation report at Longstanton Balancing Pond. On 4th November 2005 the County Archaeology Office advised me that no further steps of mitigation works were required in advance of construction for this development. Further, on receipt of the report, it would be recommended that the archaeology condition be discharged. A letter, dated 5th December 2005, has subsequently been received to confirm that the Condition can be discharged.

Consequently the imposition of the recommended conditions were no longer necessary.

Other Planning Conditions

17. A landscaping implementation condition has been agreed in consultation with the Council's Drainage Manager and Ecology Officer.
18. In lieu of recommended condition 4 of the 3rd November Committee report, the Ecology Officer has recommended a revised condition to safeguard water voles and their habitat as a protected species.
19. An additional condition was imposed on the 11th November 2005 planning permission to ensure that the Balancing Pond was not constructed in phases. This accorded

with recommendations of both Environment Agency and the Middle Level Commissioners, acting on behalf of the Swavesey Internal Drainage Board.

20. Such final decisions upon whether there should be conditions on planning permission are incorporated in the Council's scheme of delegation.

Recommendation

21. That the Committee consents to an order quashing the planning permission dated 11th November 2005 and,
22. That delegated authority be given to officers to issue a new planning permission once the permission dated 11th November 2005 has been quashed. The new permission (as amended by drawing EO 459/65 rev E framed 10th October 2005) shall be subject to the following conditions.
 1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.
(Reason - To ensure that consideration of any future application for development in the area will not be prejudiced by permissions for development which have not been acted upon.)
 2. All planting, seeding or turfing comprised in the approved details of landscaping (Drawing JBA 03/120 08A as amended by the substitution of seed mix EM3 for EMI) shall be carried out in the first planting and seeding seasons following the completion of the development; and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
(Reason - To enhance the quality of the development and to assimilate it within the area,)
 3. Prior to the creation of the balancing pond and the completion of works to the Longstanton Drain, A Water Vole Survey shall be undertaken of the Longstanton Drain within the application site in order to establish the current distribution of the species. Should water voles be found to be present then:
 - 1) A Water Vole Mitigation Scheme shall be presented to the Local Planning Authority prior to any development commencing on the balancing pond or the completion of works to the Longstanton Drain within the site.
 - 2) Subsequent to works commencing, an ecologist shall be employed by the applicant to ensure that the Water Vole Mitigation Scheme is suitably implemented. Bi-monthly position statements shall be provided to the Local Planning Authority until such time that all works associated with the development are completed.
 - 3) Following completion of the works (to both the Balancing Pond and the Longstanton Drain) a Water Vole Survey of the Longstanton Drain shall be undertaken in the next suitable survey period in order to monitor the impact of the implemented works. Should the Water Vole Mitigation Scheme be found to have been inadequate then appropriate habitat compensation measures for water voles should be

proposed in order to address any shortfalls of the Water Vole Mitigation Scheme.

- 4) Any variation from the approved Water Vole Mitigation Scheme shall be agreed in writing by the Local Planning Authority prior to being implemented.

(Reason - To minimise harm and disturbance to the water vole, a protected species and to ensure compliance with Policy EN13 of the South Cambridgeshire Local Plan 2004.)

4. The balancing pond, hereby permitted, shall not be constructed in phases and shall not be constructed other than in its entirety to provide the approved 20,000 cubic metres of storage volume specified on approved drawing EO459/65/E.

(Reason - To provide a satisfactory surface water drainage scheme for Home Farm development and to avoid exacerbating flooding downstream.)

Reasons for Approval

1. The development is considered generally to accord with the Development Plan and particularly the following policies:
 - a) Cambridgeshire and Peterborough Structure Plan 2003:
P6/4 - Drainage
 - b) South Cambridgeshire Local Plan 2004:
CS5 - Flood Protection
EN13 - Protected Species
2. The development is not considered to be significantly detrimental to the following material planning considerations, which have been raised during the consultation exercise: **Surface water disposal and future maintenance, ecological impact and archaeology**

Informatives

1. The applicant is reminded of the terms of Condition 18 of the outline planning permission, reference S/0682/95/O, which relates construction of the approved surface water drainage scheme to occupation of development at Home Farm. The scheme provides for the construction of the whole system, including the whole of the Balancing Pond, from the outset, as clarified by letter dated 1st April 2004 from Persimmon to the Local Planning Authority.

Background Papers: the following background papers were used in the preparation of this report:

- South Cambridgeshire Local Plan 2004
- Cambridgeshire and Peterborough Structure Plan 2003
- Planning file Ref: **S/1846/04/F**

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