

Mr Steven Mott
Major Sites Team Leader
South Derbyshire District Council
Planning Department
Civic Offices
Civic Way
Swadlincote
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Date: 23 February 2024

Our ref: 50105/13/JG/ATu/29814821v2

Dear Steven,

Land at New House Farm, Mickleover: Application under Section 73 of the Town and Country Planning Act 1990 (as amended) to amend planning permission ref DMPA/2022/1153

On behalf of our client, CEG Land Promotions Limited, please find enclosed an application submitted under Section 73 of the Town and Country Planning Act 1990 (as amended) proposing the deletion of condition 31 of outline planning permission DMPA/2022/1153 which relates to development proposals approved on Land at New House Farm, Mickleover.

The deletion of condition 31 would allow all approved dwellings on this site (1,100) to be occupied prior to the commencement of the A38 Derby Junctions Grade Separation Scheme at the A38/A5111 Kingsway Junction. In addition, it would allow for the much-needed school, local centre, community centre, playing pitches and medical facilities to be delivered without delay. This new social infrastructure would bring far reaching benefits for the local community as a whole, providing new facilities and services, and avoiding the need for residents to travel elsewhere to access such provision. This would bring additional sustainability benefits and reduce the number of trips on the highway network.

The Site

The application site extends to 50.9ha and is located on the urban edge of Mickleover on land to the north and west of New House Farm. The site forms part of adopted Local Plan Allocation H19: Land West of Mickleover.

Background to the s73 Application

Original Outline Planning Permission 2018 (9/2017/0349)

Outline planning permission was originally granted in October 2018 for the development of this site to provide 1,100 dwellings, an extra care facility, a local centre, public house, café and restaurant, doctors' surgery, community facility and primary school under Planning Ref. 9/2017/0349.

Reserved Matters Permissions

In March 2019, Reserved Matters consent was granted for 311 dwellings alongside public open space and associated infrastructure (Ref. DMPA/2019/1459). This was subsequently amended in November 2022 to allow for the construction of 317 dwellings (DMPA//2022/0499).

An application seeking the approval of reserved matters for roads, landscaped open space, and drainage works provision including sustainable drainage features was approved in August 2023 (DMPA/2022/1005).

A further application seeking the approval of reserved matters for 687 dwellings was submitted in July 2022 and is still pending a decision (DMPA/2022/0996)

First S73 Permission (DMPA/2020/0543)

In October 2021, Section 73 application DMPA/2020/0543 was granted, approving changes to the wording of Condition 39 of the original outline permission 9/2017/0349. Condition 39 originally stipulated that no more than 317 dwellings could be occupied until the A38 Derby Junctions Grade Separation Scheme at the A38/A5111 Kingsway Junction was delivered. The s73 approval changed the trigger point of this condition, allowing 317 dwellings to be occupied before the A38 Derby Junctions construction works were commenced. Upon the approval of this s73 application, Condition 39 became Condition 31.

Second S73 Permission (DMPA/2022/1153)

In August 2022, a further s73 application (DMPA/2022/1153) was submitted seeking changes to the wording of Condition 31 of the 2021 s73 permission (DMPA/2020/0543) to allow an increase in the number of dwellings that could be occupied prior to the commencement of the A38 Derby Junctions Grade Separation Scheme at the A38/A5111 Kingsway Junction from 317 to 617.

This S73 application resulted from uncertainties surrounding the timeframes for the commencement of the highway works following unexpected delays to the issuing of the Development Consent Order (DCO) which would allow the A38 Derby Junction works to commence¹; all of which was outside the Applicant's control. This meant that 3.5 years on from the granting of the original outline planning permission, works were yet to commence on the A38/A5111 Kingsway junction.

The application was supported by additional post opening / occupation development traffic surveys undertaken in October 2021 and March 2022 which demonstrated that the already constructed houses had limited impact on the adjoining junction.

Observed trip generation rates were seen to be comparable with those anticipated at the original outline planning application stage. However, the distribution of trips through the junction was significantly lower and using more up to date, and reliable, post occupation data, it was observed that the development was adding 50% less movements to the A38 / A5111 junction during the peak periods compared to what was previously forecast.

Updated turning counts at the existing junction also demonstrated that the junction was carrying far fewer vehicle movements than was forecast at the planning application stage (12-17%) which was also significant. The cumulative impact of lower total traffic movements using the junction and a lower proportion of development generated trips passing through the junction was a material change to the situation forecast at the planning stage.

Overall, the post occupation traffic surveys showed there had been a material change to the level of development generated trips impacting on the existing A38/A5111 junction and that occupation of all 1,100 dwellings would have no material impact upon the operation and levels of highway safety at the existing A38/A5111 junction. The residual cumulative impact of the development was not significant and therefore was not severe and hence it was concluded that Condition No.31 was not now necessary and should be removed.

Notwithstanding this evidence, a threshold of 617 dwellings was still progressed through the s73 application.

The S73 application was approved on 2nd February 2024 and Condition 31 now reads as follows:

No more than 617 dwellings shall be occupied until construction works have commenced on the A38 Derby Junctions grade separation scheme at the A38/A5111 Kingsway Junction unless otherwise agreed in writing with the Local Planning Authority.

Context for the Proposed s73 Application

A further 18 months has now passed since the submission of the second s73 application and the Derby Junctions highway works have been further delayed. In August 2023, the A38 Derby Junctions DCO was issued but National Highways now needs to remobilise and reprogramme the project which it has estimated will take 12 months (i.e. to August 2024). No date has been announced for construction works to commence. This timescale is at least 2 years beyond what was suggested at the time the previous s73 application was made and this is entirely outside the Applicant's control.

In order to safeguard against any further delays to the commencement of the Derby Junctions scheme, and to prevent delivery of the New House Farm development stalling (including the much-needed local centre, community centre, playing pitches, MUGA, school and medical facilities which would provide benefits for the wider community), this s73 application now proposes to remove condition 31 in its entirety.

¹ The original DCO decision was quashed by a High Court Order on 8th July and at this point in time was being re-examined with no publicly available timeframe on when a decision was likely to be issued.

This also reflects the updated highway position which does not justify the commencement of these junction works prior to the occupation of the 1,100 homes approved within the New House Farm scheme. This S73 application therefore proposes to remove condition 31 as it no longer meets the NPPF tests (set out in paragraph 56) which require conditions to be necessary, relevant to the development to be permitted and reasonable in all other respects.

The current trigger point within condition 31 does not provide sufficient, unrestricted support for the housebuilders to fully implement the scheme and works to deliver the wider site. These include primary school, secondary education, built facilities, youth and adult and transport contributions which will flow from the full release of the approved housing development above the level currently restricted by condition 31. The unrestricted delivery of the approved market housing would also be accompanied by the delivery of additional affordable housing.

This new social infrastructure would deliver far reaching public benefits for the local community as a whole, providing new facilities and services within the local area. This would reduce the need for residents to travel further afield to access such provision and introduce the option to walk or cycle, creating more sustainable travel patterns and reducing the overall number of vehicular trips on the wider highway network. This would also have a positive impact in terms of enhancing the range and choice of school, retail and community uses locally, creating a sustainable and coherent community.

The removal of condition 31 was actually justified in the Highways Technical note supporting the earlier s73 application (DMPA/2020/0543), although the complete removal of this condition was not sought at that point in time; however given ongoing delays to the A38 Derby Junctions scheme, the removal of this threshold now needs to be addressed.

This s73 submission is supported by an updated Technical Note produced by Bryan G Hall assessing the 'Impact of Development Generated Trips on the A38/A5111 Kingsway Junction and dated February 2024. This is accompanied by a further set of post opening / occupation development traffic surveys which were undertaken in October 2023 to a specification agreed with National Highways.

The removal of Condition 31, could result in the following three scenarios occurring, all of which would be acceptable in highway terms:

- 1 The A38 Derby Junctions scheme is commenced prior to the occupation of the 617th dwelling in line with the existing planning permission which is the approved situation.
- 2 The commencement of construction work on the A38 Derby Junctions is further delayed and the junction continues to operate as a partially signalised roundabout layout (current situation) alongside the occupation of 1,100 homes on the New House Farm site.
- 3 The commencement of construction work on the A38 Derby Junctions is further delayed but the alternative committed full signalisation scheme² planned for the A38/A5111 Kingsway Junction is implemented alongside the occupation of 1,100 homes on the New House Farm site.

² Approved as part of the residential development of 580 dwellings on land at the former Kingsway Hospital Site located immediately to the east of the junction (outline planning permission ref.11/17/01469) which is currently under construction.

The supporting Highways Technical Note demonstrates, using the results of up to date survey data, that in the absence of a Grade Separation Scheme at the A38/A5111 Kingsway Junction, the impact of the full occupation of 1,100 dwellings is not significant on either the existing partially signalised junction arrangement or the committed fully signalised junction arrangement associated with the residential development at the Kingsway Hospital Site that is to be delivered under a S278 agreement.

This further analysis has also shown that occupation of 1,100 dwellings will have no material impact upon the operation and levels of highway safety at the A38/A5111 junction.

On this basis, this Section 73 application seeks to delete Condition 31 of planning permission DMPA/2022/1153. This would allow all approved dwellings on this site (1,100) to be occupied prior to the commencement of the A38 Derby Junctions grade separation scheme and would enable the unrestricted delivery of new services and facilities which will benefit the local community as a whole.

S73 Planning Application Submission

The s73 application has been submitted via the Planning Portal (ref: PP-12805995) and comprises the following information:

- Application form and ownership certificates
- Covering letter (this document)
- Technical Note: Impact of Development Generated Trips on A38 / A5111 Kingsway Junction (February 2024) prepared by Bryan G Hall

The requisite planning application fee of £293 has been made via the Planning Portal.

The Applicant has engaged with the Council, Derby City Council and National Highways through pre-application discussions where the scheme proposals were presented and discussed.

Summary

We trust that you have sufficient information to validate and expeditiously determine this application and look forward to hearing from you in due course. If you require any further information or clarification, then please do not hesitate to contact me.

Yours sincerely



Anna Turton
Planning Director
BA (Hons) MPlan MRTPI
