

OTTERY ST MARY
(Ottery St Mary Rural)

07/1691/VAR

Target Date: 12.09.2007

Applicant: Otter Nurseries Ltd.

Location: Otter Nurseries

Proposal: Waiver of condition 3 and 5 of planning approval 06/2815/MFUL in relation to the provision of footpath links to the site and minor alterations to the proposed elevations and site ownership boundary plan.

CONSULTATIONS

County Highway Authority

The application seeks to waive conditions 3 and 5 of planning consent 06/2815/MFUL, which effectively obligates the applicant to provide a pedestrian access and footpath link to the building from the southwest corner of the site, adjacent to the north west of Woodcote Bungalow, and provide a financial contribution of £35,000 towards pedestrian improvements along the Butts Hill road between Ottery St Mary and the Otter Nurseries site.

I understand it has been discovered that the applicant does not control the necessary land required to provide the pedestrian link under condition 3.

The Highway Authority was approached prior to the submission of this application with a proposal to implement an Environmental Improvement Scheme, which effectively took the form of white lining, signing and road surface treatments to highlight the 30mph speed restriction zone along the public highway from the site in the Ottery St Mary direction. While the Highway Authority considers that such a scheme may reduce traffic speeds slightly, such a scheme is unlikely to have a significant effect of pedestrian/cycle safety.

Whilst, as stated in the application, "garden centres by their nature attract car traffic" it is inevitable that the expansion of the garden centre will have an effect on pedestrian movements and those pedestrians must have safe facilities. It should be noted that the development would result in an additional 17 staff representing a significant 6% increase.

Under the previous planning application, the developer agreed to create a pedestrian link and to make a financial contribution of £35,000 towards pedestrian improvements. In agreeing to such provisions, it is assumed the developer agreed that pedestrian improvements were necessary. In my view they still are.

While it is accepted that the purchase of bulky and often unpacked goods, would lead to the use of private vehicles, the provision of safe and convenient alternative modes of transport, such as walking, cycling and public transport, should still be made available to customers and staff alike. It is considered that safe walking/cycling facilities do not exist in this instance.

I am not aware that a Travel Plan has been established for this site. Measures and initiatives, such as an employee's bus, a home delivery service, or a park and ride scheme could be considered in such a Plan, but no such Plan has been submitted as part of this or the previous planning application.

The Planning Officer has requested whether the provisions of the Environmental Improvement Scheme would be supported by the Highway Authority. Any scheme that reduces traffic speeds along this section of public highway would be supported bearing in mind that it is the speed of traffic that impacts upon pedestrian safety, but such a scheme should not be seen as a

replacement for providing physical pedestrian improvement facilities. In the event that the local planning authority is minded to grant planning permission, then the Highway Authority would recommend the imposition of a Grampian styled condition to implement a traffic calming/speed reduction scheme to be submitted to and approved by the Local Planning Authority in consultation with the Highway Authority.

To summarise, the Highway Authority considers that the proposed development granted consent under 06/2815/MFUL, would give rise to additional pedestrian movements along a highway network that is deficient of safe pedestrian facilities, and therefore refusal of the application is recommended.

Economic Development Officer

"I had a meeting with Cllr Halse and William Casely, the Managing Director of Otter Nurseries, yesterday (Tuesday 17th July).

Otter Nurseries are feeling increasingly frustrated over their inability to let a contract for the reconfiguration of their non-plant retailing area, due to the lack of progress on the proposal for improved pedestrian access to their site.

The big problem is the fact that they don't control all of the land necessary to affect the route agreed at the time their planning application was consented. I gather the police are now voicing doubts about the safety/security of this route.

These security concerns have prompted Otter Nurseries to look into the possibility of introducing traffic calming measures on the B3177 (as a way of making this a safer route for pedestrians).

They freely acknowledge that they're not strongly placed to promote a highway improvement scheme and I'm hoping these ideas can be progressed (by others) without delaying the implementation of the scheme to rationalize their non-plant retailing operation? I'm in no doubt that their objective is to provide a better, more coherent services to their existing customer base and by this means to keep them on site longer.

The merits of the redevelopment project are widely accepted and I hope we can find a way of making it possible for them to get on and implement it. Mr Casely left me in no doubt of their willingness to make a contribution in the order of some £34,000 to whatever pedestrian access improvement is finally agreed but would like to be relieved of the task of brokering this so that they can get on with what they're good at."

Head of Legal and Member Services

The Council's legal department has been asked to look into the issue of the validity of the conditions imposed on the previous application. A copy of the full response is appended to the report but in summary the view is expressed that condition2 (requiring the provision of the footpath link) could in the light of Circular 11/95, which offers guidance on planning conditions, be considered to fail at least one of the tests of that circular regarding whether a condition should be imposed or not in terms of whether the condition was reasonable, relevant to the development proposed and there was a need for it.

TOWN/PARISH COUNCIL

Recommends refusal. The pavement access and footpath link was an integral condition as agreed by EDDC in the interests of safety. This was unanimous.

WARD MEMBER(S)

No comments received.

REPRESENTATIONS

1 letter of representation has been received from a neighbouring occupier who has raised no objection to the proposal.

PLANNING POLICIES

Government Guidance

PPS 1 - Planning Policy Statement 1: Delivering Sustainable Development
PPS 7 – Planning Policy Statement 7: Sustainable Development in Rural Areas
PPG 13 – Planning Policy Guidance Note 13: Transport

Devon County Structure Plan (2001-2016)

Policy CO6 – Quality of New Development
Policy ST4 – Infrastructure Provision
Policy TR5 – Hierarchy of Modes
Policy TR7 – Walking and Cycling
Policy TR10 – Strategic Road Network

East Devon Local Plan (1995-2011)

Policy D1 – Design and Local Distinctiveness
Policy D2 – Sustainable Construction
Policy S5 – Countryside Protection
Policy SH8 – Rural Shops, Garden Centres, Nurseries and Similar Related Uses
Policy TA3 – Transport Assessments/Travel Plans
Policy TA9 – Parking Provision in New Development
Policy TA7 – Adequacy of Road Network and Site Access

SITE LOCATION AND DESCRIPTION

Otter Nurseries is a large, established garden centre comprising of outdoor sales areas, two large public car parks and various retail and associated warehouse/office buildings. It is located to the north of Ottery St Mary (outside the built up area boundary) on the Gosford Road. The total site area comprises 18.1 ha and the main group of buildings including the existing main retail building are located approx. in the centre of the site to the west side of the Gosford Road (that divides the site). There is also an existing two storey office building (former dwelling house) within the main complex of buildings. Aside from the office building, the buildings on the site are ostensibly single storey and display a variety of materials and roof forms. To the south of the main complex of buildings are two large warehouse buildings on slightly elevated land with a further large warehouse building within the main car park on the opposite side of Gosford Road.

The site is relatively level but is elevated above the level of the surrounding roads. It lies adjacent to the Ottery St Mary Conservation area but the proposal site itself is some distance from this. Part of the site also lies within a designated flood risk zone, although the proposal site lies outside of this.

Access to the main site is via two vehicular access on the west side of Gosford road. The most northerly of which also serves as a pedestrian access from the car park opposite.

PROPOSED DEVELOPMENT

The proposal seeks a variation to conditions on a previous application which granted consent for a large extension to the main retail building over an existing outdoor retail area.

The following conditions were imposed on the previous application (06/2815/MFUL), at the request of the Highways Authority:

- 3. Prior to the completion of the development and the building hereby approved being brought into use the applicant shall provide a pedestrian access and footpath link to the building from the southwest corner of the site, adjacent to the north west of Woodcote Bungalow at Ordnance Survey Grid 310074.096235. in accordance with details to have been previously submitted and approved in writing by the Local Planning Authority.
(Reason – To improve pedestrian access to the site in the interests of highway safety.)**

- 5. No development shall take place until the applicants have entered into a legal agreement with the Local Planning Authority to provide contributions towards pedestrian improvements along the Butts Hill road between Ottery St. Mary and the Otter Nurseries site.
(Reason – To improve pedestrian access to the Otter Nurseries site.)**

These conditions required the applicant to provide a footpath link between the southwest corner of the site and the main retail part of the site. This footpath would provide a link between an existing public right of way at the northern end of Butts Hill Road and run across the southeast boundary of the site (on land within the applicant's ownership). A separate condition required the applicant's to enter into a legal agreement to provide contributions towards pedestrian improvements along Butts Hill road between Ottery St Mary and the Otter Nurseries Site.

The current application also includes an amendment to the site boundary which has been reduced as it is understood that this was incorrectly denoted on the approved application and includes an amendment in the form of a small plant room extension.

CONSIDERATIONS AND ASSESSMENT

The proposed extension is essentially as approved under 06/2815/MFUL. The differences between the proposed and approved schemes relating to the proposed removal of conditions imposed to secure improved footpath links with the town. Additionally the application also includes the provision of a small plant room off the north elevation of the building as extended. This plant room would be part of the proposals to provide 10% of the buildings energy requirements by renewable means. This was required by condition 4 of the previously approved application. The proposed plant room would be small in relation to both the approved extension and existing buildings and would be clad externally to blend in with existing buildings. It is not considered that this element would have any significant impact visually or otherwise. Whilst some details have been submitted of options to provide the required percentage of energy from renewable means this is not sufficient to discharge the condition on the previous application.

Conditions 3 and 5 of the application were imposed at the request of the Highway Authority in order to provide improved pedestrian links between the site and Ottery St Mary. The applicants have now applied for these conditions to be lifted on the basis that: the footpath is not reasonable in relation to the extension proposed; the applicant's do not control all of the land required to

provide it; the route would be poorly lit, run to the rear of residential properties and give access through non retail parts of the site (there are therefore concerns over personal safety and security); the route would not serve other adjoining businesses and this and the perceived unsuitability of the route would mean pedestrians would continue to use the road for access.

In view of the problems highlighted with providing the required footpath, the applicants entered into discussions with the highways authority with a view to providing traffic calming measures along Butts Hill Road/Alphington Road. The proposals included road narrowing painting on the highway and further speed restriction signage. This scheme was not brought forward though, as it is understood that there was a failure to reach agreement on the extent and form of the highways improvements required. It is understood that the Highways Authority were seeking the provision of a full length footpath along the road side to serve the Otter Nurseries site as well as the proposed traffic calming measures. This element the applicants felt was unreasonable in relation to the development proposed and would result in the urbanisation of the road affecting its rural character and appearance. It is understood though that the applicants would still, if considered necessary, be prepared to accept a condition requiring the improvements as proposed in the submitted Environmental Improvement Scheme.

This scheme also sets out details of predicted increases in pedestrian movements related to the site. These it suggests would be in the order of less than one a day. This due to the small increase in actual retail sales area and the fact that due to the nature of the business the vast majority of visitors arrive by vehicle. The highways authority has however suggested that the additional 17 staff that the approved extension would create would represent a 6% increase in staff numbers. As a result of this and whilst acknowledging that a lot of customers would use private transport, the highways authority maintain that pedestrian improvements are required. In light of the further information submitted with the current application it is considered that the main issues in the determination of the application are as discussed below.

The ability of the applicant to comply with the conditions

The previous application indicated that the land adjacent to the start of the required footpath link (in the southwest corner of the site) was within Otter Nurseries ownership. The current application excludes the first field to the north of this point and the supporting information with the application explains that this area was included in the previous application in error. As this land lies outside of the applicant's control it would not be possible for the applicant to meet the requirements of condition 2 without the use of third party land.

The reasonableness, relevance and need for the conditions in relation to the proposed development.

There was some officer reservation to the imposition of the conditions on the previous application as it was considered that the development itself was not extending the retail area of the site but merely covering over an existing outdoor retail area. Furthermore the nature of the garden centre business would be such that the likelihood is that the majority of customers would access the site by car. Therefore it is certainly contestable as to whether the footpath requirement is a reasonable condition in relation to the development proposed and in terms of need whether the proposal is required to meet a specific demand for it, when it would appear that the vast majority of traffic associated with the site is vehicular and the nature of the business dictates this.

The original Transport Assessment suggested that the proposed extension would not generate any significant increase in visitor numbers but that customers would be likely to remain on site for longer periods of time. Further information in the Environmental Improvement Scheme document submitted with the current application suggests that the main pedestrians visiting the site would be the garden centre staff. It is further suggested that assuming a figure of 10% of staff walking to the site the proposal would, with an increase in travel demand of 3%, result in less than one additional person walking to work each day.

In consideration of these factors and in light of advice from the Council's legal department it is considered that the provision of the footpath link although desirable is not reasonably required in relation to the development, necessary and can not be provided for entirely within land in the applicant's ownership.

Alternative proposals

The applicants have suggested that they are keen to help to solve the perceived problem of pedestrian safety through an acceptable and alternative scheme. The applicant's had therefore commissioned a survey of environmental improvements that could be made to the Alphington Road/Butts Hill Road in order to improve pedestrian safety. The Improvements suggested are seen as preventative in proposing traffic calming measures to reduce traffic speeds along this section of the road and the applicants would be willing to accept the requirement to provide these as varied condition.

Whilst there may be a desire and need to slow traffic along this section of road (although there is no survey indicating whether traffic speed is generally a problem here) it still needs to be considered whether the imposition of a varied condition would be reasonable, whether the methods proposed would be effective and what visual impact they might have. In the first regard if the previously imposed conditions were considered to be unreasonable in relation to the development proposed then this would also be the case with the proposed traffic calming measures, regardless or not of the willingness of the applicant to provide these. Furthermore, in relation to the safety record along this section of road it would appear that there have only been two injury accidents in the past five years neither of which involved pedestrians and it is therefore questionable whether there is a need for the traffic calming measures and if so whether these are likely to have any significant benefits in terms of pedestrian safety. If this is not likely to be the case then it is considered that the improvements would be unwarranted and could have a detrimental impact visually on the character and appearance of this rural stretch of road by dramatically increasing the road signage and road markings.

It is understood that the Highways Authority and Town Council have a desire to see a footpath provision linking the Otter Nurseries site to the town centre and the reasons for this are understood and in principle supported. In reality though and regardless of whether such a link is required in relation to the proposed development and should be provided by the current applicant, there are a number of problems involved in the provision of such a link. Firstly, any footpath provision adjacent to the road would either require the narrowing of the carriageway or the purchasing of various third party land neither of which would be straightforward and the former of which would be likely to be unacceptable from a highway authority viewpoint. Secondly, any footpath link along side the road would be likely to have an adverse impact on the rural character and appearance of this stretch of road by introducing a more urban element in the form of a raised kerb pavement and the lighting that would be required in association with this. Such a link is also likely to blur the boundaries between the edge of the town and the countryside which could in turn lead to pressure for further development along its length.

Other Issues

The Town Council has reiterated their desire for the footpath link and has recommended refusal of the application on the basis that the original conditions were integral to the application and required in the interests of safety. The applicant's have included within their submissions a review of the Personal Injury Accident Data for the sections of road in question for the most recent complete five year period. The data they suggest shows that there has been no accidents involving either pedestrians or cyclists during this period. This being the case it would be difficult to argue that the footpath provision were required to tackle a specific problem.

The Community Safety Officer for the Police has been consulted on the application but no response has been received. However, the applicant has submitted a copy of a letter from the Crime Prevention/Architectural Liaison Officer of the Police which comments on the route of the footpath link required. The comments in the letter raise concern both for the security of the site itself and neighbouring residential properties; the impact and cost of providing lighting for the length of the route and the personal safety of pedestrians using the route. On these last two points the route and alignment of any footpath link along the route suggested would mean that it would be poorly lit and unsupervised. As a result of this such a route would give rise itself to concerns over the safety of its users who may indeed choose not to use such a route if they felt it to be dangerous.

CONCLUSIONS

In the light of the information supplied with the current application (in particular with relation to the site boundary and extent of land controlled by the applicant) and with regard to legal advice on the validity of conditions imposed on the previous application, it is considered that the proposal to waive conditions 3 and 5 (to provide pedestrian improvements and to form a footpath link to serve the site) is reasonable and is recommended for approval.

It is further considered that were the application to be refused and if the applicant were to appeal against such a decision that there is a strong possibility that any appeal against costs incurred may well be upheld. Finally with regard to the improvements suggested by the applicant to provide traffic calming measures along Butts Hill Road and Alphington Road, whilst these are welcomed there is no evidence that these are necessary or would provide any significant improvements to pedestrian safety and this is a view confirmed by the Highways Authority. Nevertheless, the highways authority have requested that if the Local Planning Authority are minded to waive the conditions that a Grampian style condition designed to secure a traffic calming/speed reduction scheme should be imposed. It appears that the applicant's are minded to provide contributions towards the funding of such a scheme. Nevertheless there is still the issue of whether a condition requiring such improvements would in itself be reasonable and necessary and it is suggested that this is not the case. The application to waive conditions 3 and 5 of the previous planning permission is therefore recommended for approval with the other conditions reiterated.

RECOMMENDATIONS

APPROVE subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.
(Reason – To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.)
2. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
(Reason - To ensure that the materials are sympathetic to the character and appearance of the area.)

3. Prior to the commencement of development on site further detailed drawings and information demonstrating the methods by which the development would incorporate renewable energy production or significantly reduce operational energy demands in accordance with the requirements of policy D1B (Sustainable Construction) of the East Devon Local Plan 1995-2011, shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

(Reason – To ensure the development meets the requirements of policy D1B of the Council's Local Plan in the interests of sustainability)

Reasons for Approval

The variation of conditions imposed on application 06/2815/MFUL which would involve the removal of conditions 3 and 5 requiring the provision of a footpath link and pedestrian improvements is considered acceptable as the provision of such facilities can not be achieved entirely through land in the applicant's ownership, is not considered reasonable or relevant in relation to the development proposed and there is insufficient evidence of a need for it.

Note to applicant

CN04 – M05110.337 Rev. D, M05.110.338 Rev. G, M05.110.046, M05.110.047, M05.110.043 Rev. E, M05.110.049 Rev. B, M05110.048, M05110.050 Rev. B