



# Doncaster Council

## Report

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Date: 05.03.2019

To the Chair and Members of the  
**PLANNING COMMITTEE**

**Application to modify terms of Section 106 Agreement relating to the timing, details of works, implementation programme and safety measures associated with the Railway Crossing Improvement Scheme, in connection with planning application 01/1201/P (mixed use development at Manor Farm, Bessacarr) – application reference 18/00717/DOV.**

| <b>Relevant Cabinet Member(s)</b> | <b>Wards Affected</b> | <b>Key Decision</b> |
|-----------------------------------|-----------------------|---------------------|
| Cllr C McGuinness                 | Finningley            | No                  |

### **EXECUTIVE SUMMARY**

1. Persimmon Homes have submitted an application to modify the terms of a Section 106 agreement in order to allow further homes to be occupied on the Manor Farm development before the railway crossing scheme (an underpass) is provided.
2. The original Section 106 agreement states that no more than 100 homes are to be occupied, or no dwellings on Phase 2 are to be constructed (whichever is the later), until a scheme to provide details of the proposed upgrading of the level crossings at Bessacarr Lane and if applicable Carr Lane.
3. During the consideration of the first Reserved Matters application, Network Rail and Persimmon agreed a Heads of Terms document whereby up to 150 dwellings could be occupied, and if the underpass was still not in place, then more than 150 dwellings could be occupied with additional safety measures.
4. The Heads of Terms document was not formalised, despite the parties working within the perimeters of the agreement, and the original Section 106 agreement was not at this time varied. A condition was however imposed,

following consultation with Network Rail, that no more than 150 dwellings were to be occupied prior to 31 December 2015 and the completion of the improvement works (upgrading of the crossing) set out in the Section 106 agreement. This condition was added at the request of Network Rail. A further condition was imposed for a 1.8m high fence running North – South across the site to prevent occupants from phase one of the development being able to access Carr Lane Crossing until the railway crossing scheme (underpass) is in place and open to the public.

5. The fence is in place and Network Rail is satisfied that this measure is effective.
6. Network Rail have assessed the risk of allowing up to 250 homes to be occupied without a railway crossing scheme in place and have produced a report 'House Occupations at Manor Farm Development: Risk/Mitigation of Risk to Rail Crossing Users' dated February 2018. This document considers the evidence and analysis with regard to the relationship of the Persimmon Homes house occupancy with the usage of the Bessacarr Halt Level Crossing. The report sets out that the statutory consultee, Network Rail is satisfied that at the current time sufficient measures are in place to allow a further 100 number of houses to be occupied, giving a total of 250 occupancy.
7. Persimmon must still fulfil their requirement to provide an underpass as part of the legal agreement to support the Manor Farm development.
8. Network Rail, as the statutory consultee, have no objection to the proposal. In considering whether the application is acceptable in principle, the local planning authority rely heavily on the advice and expertise provided by Network Rail on whether risk is acceptable.
9. Since the submission of the Deed of Variation, the 150 dwelling limit has been exceeded, and the occupation level in February 2019 was 187. Network Rail are aware of this and this follows their reassessment of occupancy to 250. Network Rail have supported Persimmon at a Level Crossing Safety Event on the 5<sup>th</sup> of February 2019, which is one of the soft measures outlined in the report that should be in place to support the increased number. As such, the authority has not considered it expedient to take enforcement action i) because the application to vary the agreement had been submitted and was being determined, and ii) Network Rail were aware of the increased occupancy and raised no objection to the increased occupancy level.
10. A number of representations have been made as a result of the advertisement of the Deed of Variation application. Councillor Neil Gethin has requested that the proposal be decided by the Planning Committee. Councillor Richard Allan Jones has objected to the proposal.

## **EXEMPT REPORT**

11. Not applicable.

## **RECOMMENDATIONS**

12. It is recommended that Members approve a Deed of Variation to the Section 106 agreement to allow up to 250 dwellings to be occupied prior to the underpass being in place.

## **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

13. Until the two level crossings at Bessacarr Lane and Carr Lane are closed and the underpass is in place, there could be a slight increase in users crossing the railway line at the Manor farm development. As such, there remains a safety risk when crossing the railway line.
14. In terms of assessing what this risk will be, the authority have considered Network Rail's assessment which states that the occupation of 250 houses, with mitigation measures, would not pose a significant risk, as the risk level is considered to be as low as reasonably practicable.

## **BACKGROUND**

15. On the 14<sup>th</sup> of March 2018, Persimmon Homes Limited submitted a formal request to DMBC vary the section 106 agreement attached to application 01/1201/P which was signed 23<sup>rd</sup> September 2009 and approved on appeal by the Secretary of State on the 13<sup>th</sup> of January 2010.
16. The Secretary of State agreed with the Inspector appointed to the case that the proposed closure of both railway crossings (Carr Lane and Bessacarr Lane) and the provision of a grade-separated railway bridge at Bessacarr Lane would reduce the potential risks associated with crossing the railway.
17. As set out in the section 106 agreement, no dwellings are to be constructed in Phase 2 or no more than 100 dwellings are to be occupied (whichever is the later) until the developer has submitted, and had approved by the Council in consultation with Network Rail, a scheme to provide details for the proposed upgrading of the level crossings at Bessacarr Lane and if applicable Carr Lane. This scheme is to include details of the works proposed to upgrade the level crossing at Carr Lane and upgrade or replace by means of grade separation the level crossing at Bessacarr Lane. It must also to include an implementation programme for the timing of the works referred to in the scheme.
18. During the consideration of the first Reserved Matters application (11/00719/REMM), Network Rail raised an objection in relation to the increase in risk to pedestrian safety. This objection which was subsequently withdrawn subject to conditions and the requirement of a deed of covenant. One such condition was that no more than 150 dwellings shall be occupied until such time as the underpass has been implemented.
19. Despite not being formally signed, both Persimmon and Network Rail

continued to work to an agreed set of Heads of Terms. As part of this agreement, no more than 150 dwellings were to be occupied until the railway improvement scheme was completed.

20. As part of the Heads of Terms, other provisions were set out in the event that the crossing was not completed by 31<sup>st</sup> December 2015 and Persimmon wished to allow occupation of more than 150 dwellings. In these circumstances, it was set out that additional safety controls would be agreed between Network Rail and Persimmon and implemented to address any net increased use of the level crossings over that recorded in the full census undertaken in 2009.
21. Whilst the Railway Crossing Improvement Scheme has been agreed in the form of an underpass under reference number 15/02914/PRIOR, the underpass is not yet in place.
22. Before reaching the 150 dwelling trigger, Persimmon Homes asked Network Rail whether any additional safety measures were necessary for more than 150 dwellings to be occupied. Network Rail produced the report 'House Occupations at Manor Farm Development: Risk/Mitigation of Risk to Rail Crossing Users', dated February 2018, and this has been submitted with the Deed of Variation.
23. The report looked at census survey data (pre and post development commencement), considering the population projections and made assumptions about source and destination in considering rail crossing usage, and made an assessment of risk and recommendations for additional safety controls.
24. Network Rail consider that there is scope to increase housing numbers subject to mitigation. It is recognised that in the short term there may be a slight increase in users crossing the railway line, but the measures outlined below are considered sufficient to address the increased number of users and mitigate the increase in risk;
25. Mitigation will include:
  - An agreed plan to move the miniature warning lights to a better position for visibility
  - Awareness days to be undertaken in line with the rate of home occupancy
  - Materials to brief residents regarding level crossing safety
  - In addition to the above, Network Rail will continue to monitor the usage at the crossings during the period until the underpass is in situ.
26. Network Rail summarise that they have considered the evidence and analysis

with regard to the relationship of the Persimmon Homes house occupancy with the usage of the Bessacarr Halt Level Crossing and, it is satisfied that sufficient measures are in place to allow a further 100 number of houses to be occupied, giving a total of 250 occupancy. Persimmon must however, still fulfil their requirement to provide an underpass.

27. Network Rail also state that it was agreed that the developer should implement a steel palisade barrier running North-South across the site to prevent occupants from phase one of the development being able to access Carr Lane Crossing until such times as an underpass is in place, Network Rail is satisfied that this measure is effective in its position. This fence is to discourage new occupants from using the Bessacarr Lane crossing and to stop them from using Carr Lane crossing, and according to Network Rail, has proved to be more effective than originally envisaged,
28. As stated earlier in this report Network Rail have already supported Persimmon at a Level Crossing Safety Event on the 5th of February 2019 which is one of the soft measures outlined in the report that should be in place to support the increased number.
29. The local planning authority have requested that trigger points are inserted into the deed of variation for the developer to inform the council at different levels of occupancy to ensure that the figure cannot be further exceeded. This would be at the 210th dwelling and 240th dwelling which enables sufficient monitoring.

## **OPTIONS CONSIDERED**

30. Option 1 (Preferred Option): To approve the Deed of Variation and allow Persimmon Homes to occupy up to 250 homes prior to the underpass being in place and open to use by the public, subject to the mitigation measures set out in the Network Rail Report.
31. Option 2: Refuse the Deed of Variation and serve an enforcement notice to prevent further homes being occupied prior to the underpass being in place. Construction could still however continue.

## **REASONS FOR RECOMMENDED OPTION**

32. The statutory consultee, Network Rail do not object to the proposal. They are comfortable with the proposed occupancy level of up to 250 dwellings subject to the mitigation measures set out in the report.
33. Network Rail are the experts on rail safety, and have provided the local authority with robust supporting information in the form of a report with added mitigation measures.

34. Network Rail are aware that the 150 dwelling trigger has been exceeded and that current levels are at 187 dwellings occupied. As this is within the 250 limit which has been risk assessed, and mitigation is in place, they remain satisfied with this.
35. The proposed trigger points would ensure that the occupancy levels on site are closely monitored.

## IMPACT ON THE COUNCIL'S KEY OUTCOMES

|  | <b>Outcomes</b>   | <b>Implications</b>  |
|--|---|--|
|  | <p><b>Doncaster Working:</b> Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> <li>• Better access to good fulfilling work</li> <li>• Doncaster businesses are supported to flourish</li> <li>• Inward Investment</li> </ul>   | <p>This outcome is likely to be unaffected.</p>  |
|  | <p><b>Doncaster Living:</b> Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> <li>• The town centres are the beating heart of Doncaster</li> <li>• More people can live in a good quality, affordable home</li> <li>• Healthy and Vibrant Communities through Physical Activity and Sport</li> <li>• Everyone takes responsibility for keeping Doncaster Clean</li> <li>• Building on our cultural, artistic and sporting heritage</li> </ul> | <p>Network Rail are satisfied with the risk to public safety given the mitigation measures outlined.</p> |
|  | <p><b>Doncaster Learning:</b> Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> <li>• Every child has life-changing learning experiences within and beyond school</li> </ul>   | <p>This outcome is likely to be unaffected.</p>  |

|  |  |   |
|--|--|---|
|  | <ul style="list-style-type: none"> <li>• Many more great teachers work in Doncaster Schools that are good or better</li> <li>• Learning in Doncaster prepares young people for the world of work</li> </ul>  |   |
|  | <p><b>Doncaster Caring:</b> Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> <li>• Children have the best start in life</li> <li>• Vulnerable families and individuals have support from someone they trust</li> <li>• Older people can live well and independently in their own homes</li> </ul>   | <p>The assessment report written by Network Rail shows that the occupation of 250 houses would not pose significant risk, as the risk level is considered to be as low as reasonably practicable. Network Rail is also satisfied with the existing and proposed mitigation.</p> |
|  | <p><b>Connected Council:</b></p> <ul style="list-style-type: none"> <li>• A modern, efficient and flexible workforce</li> <li>• Modern, accessible customer interactions</li> <li>• Operating within our resources and delivering value for money</li> <li>• A co-ordinated, whole person, whole life focus on the needs and aspirations of residents</li> <li>• Building community resilience and self-reliance by connecting community assets and strengths</li> <li>• Working with our partners and residents to provide effective leadership and governance</li> </ul> | <p>This outcome is likely to be unaffected.</p>   |

## RISKS AND ASSUMPTIONS

36. Should the Deed of Variation not be approved, the decision could be appealed and the local authority susceptible to costs. Network Rail would likely be an expert witness for the appellant.

## **LEGAL IMPLICATIONS [HL 22.09.2019]**

Where an application is made to modify or discharge a planning contribution made under the Town and Country Planning Act 1990, the LPA may decide to either:

- (a) continue the planning contribution without modification
- (b) discharge it, if it no longer serves a useful purpose; or
- (c) if it continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications applied for, then allow the modifications, provided it does not place any burden on a third party.

Where the LPA decides not to allow a modification or change, and the agreement has been in existence for 5 years or more the applicant may appeal the determination to the Secretary of State, pursuant to section 106B of the Town and Country Planning Act 1990 (as amended).

## **FINANCIAL IMPLICATIONS [Officer Initials: DR; 22<sup>nd</sup> February 2019]**

- 37. The proposed Deed of Variation is not expected to give rise to any direct financial implications for the Council.

## **HUMAN RESOURCES IMPLICATIONS [Officer Initials: AC: 22/02/2019]**

- 38. There are no HR implications.

## **TECHNOLOGY IMPLICATIONS [Officer Initials: NE: 21/02/2019]**

- 39. There are no technology implications.

## **HEALTH IMPLICATIONS [Officer Initials: RS; 24.02.2019]**

- 40. There is a potential risk that increasing the number of occupied homes on the Manor Farm development could lead to increased safety concerns at the Bessacarr Halt Level Crossing.
- 41. However, the mitigations put in place by Network Rail appear sufficient for decision makers to approve the recommendation.

## **EQUALITY IMPLICATIONS [Officer Initials: NE: 22/02/2019]**

- 42. There are no equality implications.



## CONSULTATION

43. The proposal was advertised by means of site notice posted in 6 locations on the 6<sup>th</sup> of April 2018. The locations included both sides of each level crossing, Bawtry Road and within the Manor Farm development.
44. Objections have been received from three individuals and highlight the following concerns, officer comments are in italics;
- Allowing more residents poses a greater safety risk (*Network Rail are satisfied with the increase in risk and the mitigation measures, Network Rail are the experts on rail safety*)
  - The proposed construction of the underpass has been going on too long, no date has been fixed for its installation (*Commencement of the works is not within the local planning authority's control. However it is understood that Persimmon Homes committed to delivery of the underpass*)
  - Objection to the construction of the underpass at Kelsey Gardens (*this is not the subject of this Deed of Variation*)
  - The Deed of Variaton cannot be discussed without referring to the proposed Public Right of Way (PROW) diversion request (*Does not affect the ability to consider an increase in occupancy, whilst this will need to be agreed before the underpass is in use, in legislation terms, they are separate processes*)
  - Assumption by Network Rail and Persimmon that the Deed of Variation and PROW applications are going to be approved (*The decision whether to allow the Deed of Variation rests with the Planning Committee. The diversion of a PROW cannot be assumed. If objections to a PROW Diversion Order are received within the specified time limit and are not withdrawn, the Council must refer the Order to the Secretary of State who will take the decision on whether or not to confirm the Order to divert a PROW*)
  - Network Rail confirm that the proposal increases the risk to users of Bessacarr Halt (*They have confirmed that the risk level is as low as reasonably practicable and have no objections*)
  - In paragraphs 3.3 to 3.6 of the above Network Rail's "House Occupation.." document is a claim that the current ALCRM risk figure (i.e., 2018) has reduced despite increased usage. In other words the building site conditions have resulted in a safer crossing than the original farmer's field. (*Network Rail state that in the short term there may be an increase in users as a result of the housing development, for which mitigation measures are in place to address*).

- Concern that Network Rail's monitoring is after the event (*Mitigation is in place, Network Rail will continue to monitor the situation*).
- Concern that there will be a further request for an extension (*This would be subject to further consideration under a separate application for a Deed of Variation, should this be the case*).
- Network Rail are not an impartial consultee (*Network Rail are a statutory consultee for development affecting the railway and are the experts on rail safety issues*).
- Network Rail clearly have an internal issue relating to the safety at Bessacarr Halt. This is evidenced by the April 2014 submission to close that level crossing. There is now a notice attached to the level crossing gates which stated:  
"This crossing is closed to vehicular use until the construction of the nearby housing estate is completed."
- Heads of Terms do not mention an underpass at Kelsey Gardens (*Does not affect the ability to consider an increase in occupancy*)
- Road not delivered through the development site to allow maintenance to the East Coast line. (*Does not affect the ability to consider an increase in occupancy*)
- Still outstanding issues with the underpass (final footpath design, PROW not approved) (*Does not affect the ability to consider at increase in occupancy, although the PROW will need to be diverted before the underpass is constructed and brought into use*)
- There is a Stopping Up Order for the Bessacarr Halt B.O.A.T. which was issued in June 2011. It still has not been activated. If Network Rail or Persimmon were genuinely concerned about safety surely they could have activated the Order. (*Not relevant to the increase in occupancy*)

45. Ward Members in both the Finningley and Bessacarr wards have been consulted and the following comments have been received;

- Cllr Gethin objects on safety grounds and convenience given the only current safe walking to local shops is via Warren Lane. There will remain the Public Right of Way across Carr Lane and Bessacarr Lane crossings, at least for now. I am surprised that Network Rail are in agreement with this proposal given their desire to close Level crossings along their rail lines. I also understand there is an expected increase in freight traffic along the line hence increasing the probability of an incident. I also have concerns that the figures using the crossings may be artificially low given that the people of Manor

Farm are denied access to the Public Right of Way across the Carr Lane.

- Cllr Jones objects to the proposal and considers that the underpass needs to progress and should have timescales and other requirements written into the variation as a clear understanding of when the underpass will be completed.

46. Further consultation includes;

- Network Rail – An initial limit of 150 homes was set. As envisaged by the HOTS at para 6.2, this figure has now been reviewed based on an up to date survey and risk assessment. The proposal to extend the limit of occupations at this stage to 250 dwellings is considered acceptable in light of the assessment of risk. Subject to a satisfactory wording of the S106 Network Rail has no objection to the proposal.
- Finningley and Cantley Parish Council – No comments received.
- Safer Communities Manager – No comments received.
- Health and Safety Executive - HSE does not advise, on safety grounds, against the granting of planning permission in this case (*their concern is the gas pipeline and comments provided from them relate to this*)
- Public Rights of Way – No comments received in respect of the increase in numbers.
- Area Manager – No comments received.

## **BACKGROUND PAPERS**

Documents submitted in support of application reference 18/00717/DOV.

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