

PLANNING COMMITTEE - AMENDMENTS TO THE AGENDA

Committee Date: 2nd April 2019

Officers Present: Roy Sykes – Head of Planning, Heidi Lehane – Senior Legal Officer, Amber Torrington – Governance Officer
Mark Sewell – Principal Planning Officer, Nicola Elliott – Principal Planning Officer

Agenda Item No. and Application Reference	Notes
ITEM 1	<p><u>Application Description</u></p> <p>Erection of a retail parade (for flexible use across Classes A1, A2, A3, A4, A5 and D2) with an associated bin store, outdoor seating area, car parking and landscaping</p> <p><u>Location</u></p> <p>Land At Torne Park West End Lane New Rossington Doncaster</p> <p><u>Request to Speak</u></p> <p>Speaking for the applicant – Jake McLeod (agent) Walsingham Planning.</p>
AGENDA ITEM 6 18/00717/DOV	<p><u>Description</u></p> <p>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.</p> <p><u>Requests to Speak</u></p> <p>Speaking in opposition - Mr Phil Midgley – Member of the Public</p>

	<p>Speaking in support – Mr Stephen Hind – Network Rail</p> <p>Speaking for the applicant - Mr Robin McGinn – Persimmon Homes (the applicant)</p> <p><u>Briefing Note</u></p> <p>The application was deferred from Planning Committee on the 5th of March 2019 to enable further clarification and information to be provided to Members. The requested information is presented in the attached briefing note.</p>
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Briefing Note for Agenda Item 6

Application 18/00717/DOV - 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.

The above application was presented to Planning Committee on the 5th March, where Members decided to defer to allow for further clarification on the contractual arrangements and timescales for delivery of the underpass, for further clarification on the points raised by Mr Midgley and for consideration of other pedestrian routes that could be used as an alternative to the underpass.

The following provides a summary of Mr Midgley’s comments, a summary of Network Rail’s comments which includes further clarification on the contractual arrangements and a plan which shows alternative pedestrian routes. Parties were asked to provide a summary of no more than two pages to summarise the main points of their case and this information is provided below, as it was submitted to the Council. This briefing note should be read in conjunction with the officer’s report.

1. Mr Midgley’s Comments;

“Introduction:

The original planning conditions restricted Persimmon to a maximum occupancy of 150 homes by which time an underpass had to be in place. In January 2019 the Head of Planning admitted that 187 homes were occupied, i.e., 37 occupancies “over the limit”.

The DoV application is only one component of the Railway Improvement scheme and should not be considered in isolation. The scheme requires an underpass, closure of the level crossings, closure of Bessacarr Lane B.O.A.T roadway and diversion of the Carr Lane public bridleway. Persimmon must produce a new roadway through the development so that Network Rail can gain access to the East Coast Main Line which is currently via Carr Lane. Each of these components is integral to the functioning of the scheme. All of this is to be completed before the increase in occupancy from the agreed maximum of 150 homes. The Heads of Terms agreement between Network Rail and Persimmon (and endorsed by DMBC) identifies these requirements.

Since the scheme was proposed, the location of the underpass was changed via permitted development in April 2015. The decision to approve the change was taken by officers. Consultation with local residents was minimal in terms of face to face meetings. The permitted development “route” was presented to the local community who were misleadingly told that the permitted development option could not be challenged. A public meeting on 14th July 2017 hosted by DMBC and Network Rail still failed to admit that the permitted development approach could be challenged.

The current application to relax the 150-home occupancy level, permits additional occupancy without addressing the other elements listed above.

Persimmon:

Persimmon and Network Rail entered into a Heads of Terms agreement in 2011/12. That agreement stated that there should not be any increase in risk. (see HoT Para 1.2 & 2.2). Throughout this development Persimmon have a history of ignoring requirements and reacting afterwards. Their submission in March 2018 acknowledged that there would be an increase in risk in relaxing the occupancy condition to 250. Persimmon have had discussions with the Rights of Way group regarding the diversion of the Carr Lane public bridleway which is fundamental for access to the proposed underpass. Local residents will be objecting to the diversion on safety grounds when it is published which could result in the application being sent to central government for a decision.

Network Rail:

Network Rail (NR) in their support document acknowledged that there would be an increase in risk due to the additional housing occupancy. They offered mitigating circumstances such as additional signage and “traffic” lighting together with briefing new homeowners and school visits.

Traffic signals and signage are already in place – does this mean that the current situation is inadequate?

NR have unlawfully locked off the Bessacarr Halt level crossing numerous times – apparently as a safety precaution. Bessacarr Lane is a Byway Open To All Traffic (BOAT). Persimmon have a Stopping Up Order dating back to June 2014 but for unknown reasons have not activated it. NR applied – unsuccessfully – in April 2014 to have Bessacarr Halt level crossing closed on safety grounds. Now that same crossing is deemed “safe” with an increase in users! Logic?

Doncaster Metropolitan Borough Council (DMBC):

DMBC have failed to monitor their own planning consent conditions. When challenged, DMBC have indicated that they are minded to overrule the Planning Committee should the decision be to reject the application. In my opinion DMBC have not acted with as an honest broker in this matter.

I wrote to the Mayor and Chief Executive on the 17th September 2017 complaining, as I saw it, favourable treatment regarding the housing development. In early May 2018 I did meet with representatives from DMBC, councillors and Persimmon – Network Rail were unable to attend. Following that meeting it was assumed that the DoV application would then be submitted to the Planning Committee. The application was “held back” until March 2019. No reason has been given, no new information has been published. The effect of not presenting the application allowed Persimmon to continue selling houses and the occupancy level increased.

During that period no-one from DMBC made any attempt to monitor housing occupancy so we are at a stage that the requested increase in housing occupancy is already around 40 out of a further 100 requested. DMBC’s approach is that it not “expedient” to act on this and that DMBC are quite likely to “overrule” the Planning Committee decision should they reject the application. (Mr Dale’s and Mr. Sykes’ e-mails to me confirm this situation.)

Conclusions:

Persimmon and Network Rail have ignored the occupancy breach. Similarly, DMBC have ignored the breach, indeed they haven’t even monitored the level.

There are clear obligations on Network Rail when closing level crossings to ensure that the closure does avoid “...the possibility of importing new dangers...”. This obligation is to ensure that closing a crossing does not transfer any risk elsewhere, in simple terms “moving the risk to somewhere else”.

Ref. Office of Rail Regulation document: Strategy for regulation of health and safety risks – 4: Para 6.

Neither Network Rail nor DMBC have conducted such an assessment to quantify the “risk transfer” effect from the level crossing to the proposed underpass. NR’s action could be increasing the risk to the local community. If it’s not measured how can they be sure it’s acceptable?

Great emphasis is put on mitigation. Mitigation of risk is not elimination of risk. Mitigation is managing risk. There is a way to eliminate the risk – close the level crossings, don’t build any more houses until an alternative is in place.

I have asked Network Rail to give examples of schemes where they have increased the risk in similar circumstances but as yet, no response. Why should the local community be the “guinea pig”?

DMBC have been unable to give recent examples of an underpass being approved in similar circumstances, indeed in the town centre, such underpasses have been removed and surface road crossings been substituted (Station to Frenchgate, “old” Southern Bus station roundabout).

Persimmon’s submission is so worded that it will permit them to “leave” the building site after 249 occupancies without any obligations to regarding risk management control.

DMBC have “sub-contracted” their responsibility for safety back to the applicant Network Rail. In effect Network Rail is “marking its own homework”!

The proposal permits the increase in risk to the general public. There is no strategic need for this application to be approved at this time. I am not aware of any Network Rail policy that permits an increase in risk at a level crossing, in fact quite the reverse. Approval will create an unwelcome precedent for any future application.”

END OF MR MIDGLEY’S COMMENTS

2. Network Rail’s Comments:

“Overview

Network Rail have entered into an agreement with Persimmon Homes to install an underpass crossing between the Kelsey Gardens housing estate and a new housing estate being developed by Persimmon Homes adjacent to the railway.

The design and development of the underpass took longer than originally anticipated. This was due to design queries that have now been resolved. In response to the delay, interim level crossing risk mitigation has been delivered to reduce the level crossing risk in the area whilst the permanent solution (the underpass) is developed. With the interim measures implemented, Network Rails level crossing experts have assessed the level crossing risk and have stated to Doncaster City Council and Persimmon Homes that the level crossing risk is manageable up to 250 occupied homes.

The installation of the underpass will facilitate the closure of both Carr Lane and Bessacar foot level crossings, delivering on Network Rails commitment to reduce level crossing risk.



Contractual Arrangements

Network Rail and Persimmon Homes entered into negotiations in October 2018 for the installation of the underpass. Following discussions that included a review of the Network Rail

contract templates, an Emerging Cost Implementation Agreement was agreed in January 2019. This agreement is for Network Rail to undertake detailed design and construction to install an underpass between the Kelsey Gardens housing estate and the new housing estate being developed by Persimmon Homes.

The current programme for the installation of the underpass is Easter 2020. This will be finalised, and dates for possessions confirmed, once a Network Rail Framework Contractor has been formally engaged. The procurement process is at an advanced stage and will be concluded over the coming months.

Network Rail and Persimmon Homes had previously entered into an agreement for Network Rail to undertake option selection and outline design works for the installation of the underpass.

Level Crossing Risk

Due to the potential of increased level crossing risk from the new housing development, the amount of occupied homes was to be limited to 150. This was formalised as part of the s.106 planning application for the housing development.

More development work was required than originally anticipated for the underpass which resulted in the underpass not being installed in line with development of 150 homes. As such, Network Rail undertook a detailed review of the level crossing risk associated with the new housing development.

Network Rail engaged their level crossing safety experts to assess the potential risk to level crossing safety posed from the new housing development. A report was produced by the Network Rail level crossing safety team that states that the level crossing risk could be managed up to 250 occupied homes if interim mitigation measures were implemented whilst the permanent solution (the underpass) was developed.

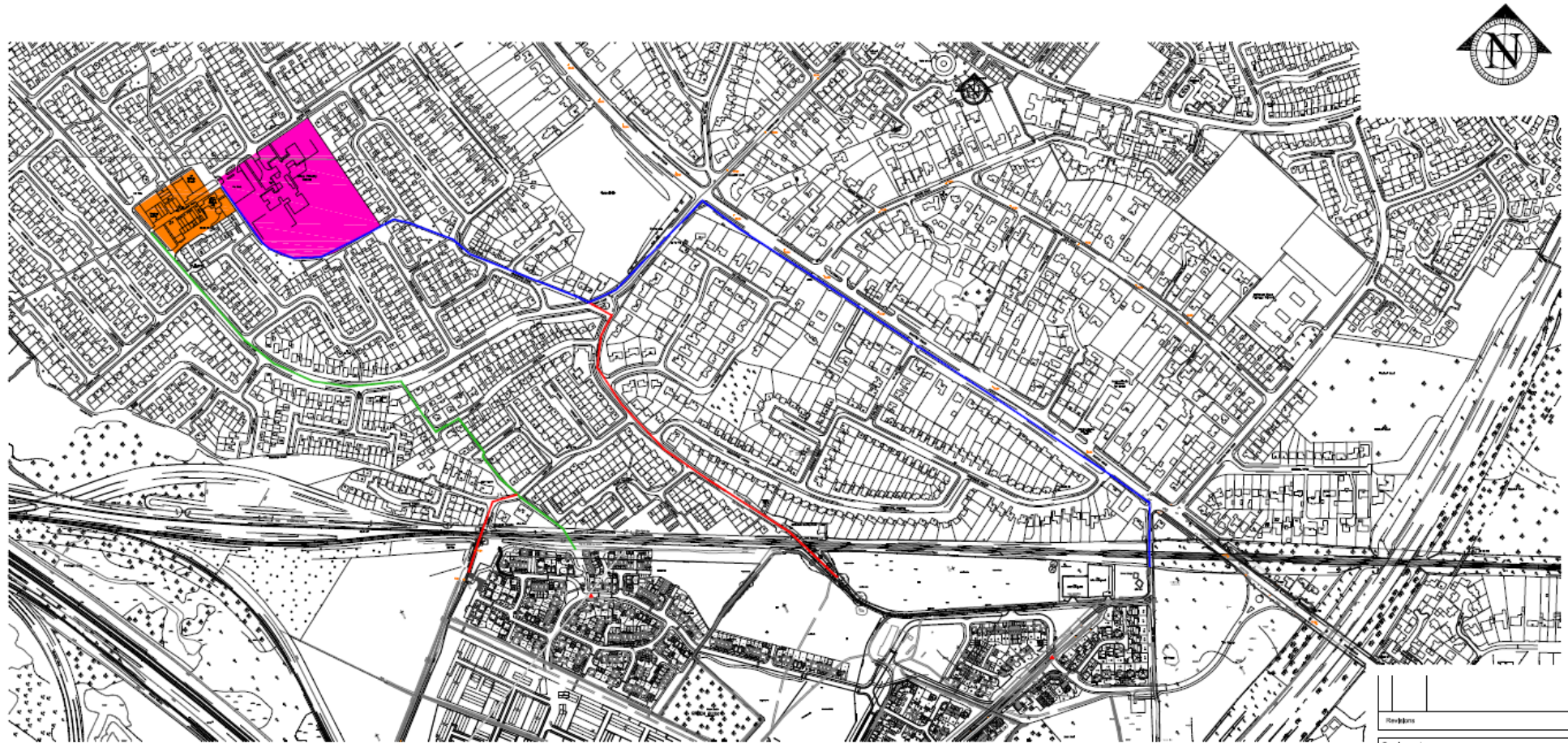
Persimmon Homes have delivered the interim mitigation works identified by the Network Rail level crossing safety experts. These measures included the construction of a steel palisade barrier running North-South across the new housing development to prevent occupants from accessing Carr Lane level crossing until such times that the underpass is in place.

With the interim mitigation works in place, Network Rail is satisfied that the level crossing risk can be managed up to 250 occupied homes within the new housing development. An extract taken from the level crossing report can be found below:"






Network Rail 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 for the reasons contained within the report that 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 still fulfil their requirement to provide an underpass as part of the planning conditions to support the Manor Farm Development.

END OF NETWORK RAIL'S COMMENTS

3. Existing and Proposed Pedestrian Routes;



KEY

-  Existing Footpath Linkage Unchanged
-  Existing Footpath Linkage Removed
-  Proposed Footpath Linkage
-  School
-  Local Amenity

Revision

Development
Manor Farm, Bessacarr

Drawing Title
Existing/Proposed Footpath Links to Local Amenity



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