

BROMSGROVE DISTRICT COUNCIL

VIRTUAL MEETING OF THE PLANNING COMMITTEE

TUESDAY 22ND SEPTEMBER 2020

AT 6:00P.M

UPDATE SHEET No.2

Additional Representation (from public)

Developer Obligations in respect of Education Infrastructure which are in Section 3 of the report -

“(iv)

• £7,471,000.00 towards the provision of fully serviced land for a new first school with up to 3 forms of entry (3FE)

• A middle school contribution calculated on a per plot basis for each reserved matters application:

• £708 open market 2 or more bedroom flat

• £1,769 open market 2 or 3 bedroom dwelling

• £2,654 open market 4 or more bedroom dwelling

(xi)

the land on which the First School will be provided being up to 2.8 ha in area”

- the first item should be re-worded to read "£7,471,000.00 towards the cost of providing a new first school with up to three forms of entry"
- the middle school contributions should be applied to all dwellings, not just the open market dwellings.
- item 3 (xi) should be re-worded to read " the fully serviced land on which the first school will be provided being up to 2.8ha in area"

Why is there seems no contribution to secondary education other than the "Off-site teen and adult play and sports facilities and play pitch improvements: £1,200,000"?

Response from WCC Education

1. It is a contribution of **£7,471,000.00 towards the cost of a 3FE first school and nursery provision** and also, **the provision of fully serviced land suitable for a 3FE first school and nursery up to 2.8ha** and (see point 3 below). However, the S106 will deal with all the technicalities of the provision of the land and the financial contribution towards the cost of a new 3 FE first school and nursery.
2. Negotiations regarding the education obligation commenced prior to the latest Education Obligations Policy (2019) being introduced. At the time of the discussions, mitigation towards middle school infrastructure was not sought on affordable housing.
3. Reference to the provision of fully serviced land for the purposes of a 3FE first school and nursery. See 1 above – technicalities covered in S106.

4. There is surplus capacity in the Redditch Education Planning Area at high school level. Therefore, to seek a contribution towards high school infrastructure would not be in line with National Planning Policy. Families moving into the area will be able to apply for high school places in line with the admissions policy in operation at the time of application.

Further Representation from Bentley Paucefoot Parish Council 21.09.2020 Regarding s106 Education Contributions

Bentley Paucefoot Parish Council thank the Case Officer for passing our questions of 12th August 2020 on to WCC Education and for their response of 21st August 2020. We note, however, that only BPPC’s document is contained within the Report Pack for the meeting. WCC Education assure BPPC that there is High School capacity in the area although it does seem that this may require some children to have to travel some distance to school. BPPC had sought clarification that the actual s106 contribution for this application would be higher than the figures stated in the Report Pack, which are from 2016. We note that the figures in the latest Report Pack remain at the 2016 values but we understand that the final figures will be negotiated by the LPA if the Planning Committee agree to delegating that responsibility.

BPPC understand that it is standard practice, for applications such as this, to increase the original figure quoted in line with the RPI. There is no reference to such a procedure in the Report Pack and we are concerned that calculations, based purely on RPI, may still result in a contribution far short of the correct figure.

To demonstrate this BPPC used the RPI calculator on the Bank of England’s web site. It shows that the revised contributions, based purely on RPI, would still be almost 19% lower than the contributions requested for the Foxlydiate Hotel application based on April 2019 figures. Now, over a year later, there must have been a further increase.

	16/0263 Foxlydiate Contributions	2019 Contributions using Bank of England RPI Calculator	19/00615 Foxlydiate Hotel Contributions April 2019
2 or more bed flat	£708	£777	£923
2 or 3 bed dwelling	£1,769	£1,942	£2,308
4 or more bed dwelling	£2,654	£2,914	£3,462

BPPC appreciate this could be incorrect, hence we request confirmation that the process used by the LPA will ensure that the cost per dwelling contribution will be increased to the same levels as those for the Foxlydiate Hotel application or greater.

There is a clear need to provide additional infrastructure to maintain a sufficiency of school places for middle school age children. WCC Education state (for the Barn House Farm application, also at Foxlydiate): *‘On conclusion, middle schools in the area do not have capacity to absorb the proposed pupil numbers from housing growth.’*

There was no policy in place to request contributions towards SEND requirements at the time this application was originally submitted, and it is understood that WCC Education always try to facilitate children attending main stream schools. But it is unrealistic to believe that a development of this size will not have some children with special educational requirements. Ensuring the contributions from the applicant are based on the latest values will help ensure all the children growing up on this development will have access to quality schooling.

We believe that this is a reasonable expectation of the s106 contribution and fulfills the requirements that the obligations must be:

- Necessary to make the development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related in scale and kind to the development.

Response from WCC Education to comments from BPPC

Response to Bentley Pauncefoot PC letter of 21st September 2020:

1. As previously advised, there is surplus capacity in the Redditch Planning Area at high school level and therefore, there is no requirement to mitigate this provision. Demographics across an education planning area indicate that parents may express a preference for an alternative school and therefore, may wish to travel further afield. The admissions policy and transport policies will be applied at the time of application.
2. With regards to education contributions, the education obligations tariff is calculated at the time of submission. Over time costs may increase however, the level of the cost increase cannot be predicted and current mechanisms are in place to support a level of increase by applying RPI. The tariff is updated every year to take into consideration development costs. This may or may not increase by RPI, hence the difference in the sums quoted.
3. The local authority has a duty to ensure a sufficiency of school places in the area and will continue to do so across all phases of education including SEND. The development proposed at Foxlydiate is required to mitigate the impact on education infrastructure to the provision agreed, which at the time of submission did not include SEND.

In conclusion there is no proposal to change the submission already provided to the local planning authority.

Officer Comments on Education Matters

No further comments or changes are proposed to the recommendation as a consequence of these further representations concerning education contributions.

1. Construction Vehicles using Cur Lane

It is anticipated that this development will take 14-15 years to complete. The amount of construction traffic, from huge delivery lorries to the cars and small vans of construction workers will be significant.

Bentley Paucefoot Parish Council's (BPPC's) concern is that drivers of construction vehicles will use the narrow lanes to access and leave the site each day to avoid congestion. The applicant's own Transport Assessment admits that Cur Lane is used to avoid congestion (TA Vol IV 2.4.21) and Sat Navs frequently recommend using Cur and Copyholt Lanes as the fastest route between Foxlydiate Lane and areas to the West (the M5 J5, Worcester, Droitwich and areas of Bromsgrove for instance), particularly during peak hours. The construction vehicles will typically be travelling in the opposite direction to vehicles using the lanes as a rat run causing grid-lock, or worse.

Mott MacDonald suggest that a '*suitable monitoring mechanism*' should be put in place as part of a CEMP to make sure that construction vehicles utilise agreed routes, rather than utilising minor roads such as Cur Lane. They go on to include a caveat that '*Measures for restriction on these routes should be considered and implemented if monitoring demonstrates that they are being used by construction traffic.*'

They have not defined what a 'suitable monitoring mechanism' is but during the Planning Committee Meeting on 24th August, the Committee decided an application that also involved commercial vehicle movements. The Case Officer explained to the Planning Committee that, in his professional judgement, conditions that try to limit or control vehicle movements are unenforceable as it is not feasible to monitor for compliance all day, every day. It is easy to see why. How, for instance, will the applicant ensure that each and every delivery driver knows that he or she must follow a specific route to site? And what can the LPA do if a driver chooses to use Cur Lane to reach the site? BPPC have real-life evidence of the ineffectiveness and unenforceability of vehicle movement conditions. A comprehensive Construction Management Plan was a condition of the permission granted to build just 200 houses on Church Road in Webheath. The reality was:

- construction vehicles, of all sizes, used narrow country lanes to get to site, frequently ignoring 'Prohibited to Motor Vehicles' highway signs and signs erected by the developer indicating 'official routes' to site.
- WCC Highways told residents that they cannot stop any vehicle using a public highway that is open to motor vehicles.
- At an angry meeting about the problems, residents were shocked to be told that there was very little the LPA could do to sanction the developer for flagrant violations of the conditions.

Conclusion:

It is not disputed that construction vehicles will use the narrow lanes, if not prevented.

But it is clear from Officer's advice to Committee Members on 24th August, and WCC Highways comments, that the issue cannot be solved by a condition, under the CEMP or otherwise. They are simply unenforceable.

It is inconceivable that the LPA would advise the Planning Committee that conditions that attempt to limit vehicle movements are unenforceable for one application but are enforceable for this application, where vehicle movements will be substantially greater. Yet para 7.42 of the Report Pack for the Planning Committee Meeting states that the matters raised by Mott MacDonald can be addressed through amended or additional planning conditions. As the Council's Legal Advisor also stated on 24th August, such a decision would cause irreparable damage to the public's confidence in the planning regime.

The simplest, and most effective, way to prevent these problems is to close Cur Lane to motor vehicles. It has to be closed for the developer to carry out their plans, this simply means closing it at the start of construction. If it is closed it CANNOT be used by construction vehicles.

2. Cyclists and Walkers

The Covid pandemic has placed new emphasis on encouraging cycling and walking. Bentley Pauncefoot saw a huge increase in the numbers of both cyclists and walkers throughout the lockdown.

WCC already have a number of walking and cycling policies. For instance, WC1 recognises *'the vital role that walking and cycling can play both in transport provision and in health and environmental improvement, Worcestershire County Council will seek wherever possible to embed safe walking and cycling infrastructure provision within the delivery of all other transport schemes.'* and WC5 highlights how important safety is in promoting active travel.

WCC further state that they will support the introduction of new or amended Traffic Regulation Orders that promote increased walking and cycling. In particular, to allow the removal of physical and/or legal measures that unnecessarily restrict safe movement for pedestrians and cyclists. Any proposal to amend existing Traffic Regulation Orders would be subject to a safety assessment to ensure safety is maintained for all users.

WCC recently announced a number of enhancements to the cycle network in Redditch and Bromsgrove including 'sectional enhancements to Redditch to Bromsgrove cycle route utilising quiet lanes'. Unfortunately, none of these are in the Foxlydiate and Webheath area.

The Redditch to Bromsgrove cycle route appears to be the one designated as NEAT8 in LTP4. It starts in the centre of Redditch, near the Railway Station, then follows a route north west to Tutnall and then on towards Finstall. This means it is of little, if any, benefit to anyone wishing to cycle, for instance, from the Foxlydiate development or the wider Webheath area to Bromsgrove Railway Station or the industrial estates around Buntsford Hill.

However, closing Cur Lane to motor vehicles would make a significant difference to those cyclists. It would also dramatically improve the safety of all vulnerable users of the narrow country lanes, including cyclists using NCN5, walkers following the famous Monarch's Way footpath, horse riders and those walkers and cyclists (including the occupiers of the new development) who simply wish to improve their health and wellbeing by making use of the beautiful lanes on their doorsteps.

Conclusion: Closing Cur Lane to motor vehicles would encourage more walkers and cyclists to use the lanes confirming WCC, BDC and RBC's commitment to active travel and reducing car travel. It would also improve compliance with WCC Walking and Cycling Policies.

3. Phasing, Footpaths and Pedestrians

a) BPPC are pleased that Mott MacDonald acknowledge further work must be done to protect the safety of non-vehicle users. However, the expectation that all pedestrians will cross Foxlydiate Lane and use the alleyways and side roads to access 'quiet streets' is incorrect. Hence, BPPC contend that some important safety points have not been addressed:

i) the nearest bus stop for buses to and from Bromsgrove is on Birchfield Road, near the original junction with Foxlydiate Lane (now pedestrians and cyclists only). It is also the closest bus stop for parents taking their young children to the first school at Tardebigge (bearing in mind that the first school planned will not be built until, at least, the first 500 houses are occupied and that Foxlydiate is in the Tardebigge catchment area). The safest, most direct route to these bus stops for pedestrians, is to remain on the western side of Foxlydiate Lane but there is no footpath on this side of the road. From the plans it appears that a cycle path will be created to exit the development onto the cul-de-sac but it is not clear that this can be shared, safely, by pedestrians particularly the disabled and those with reduced mobility. It should be a condition that it is completed before any dwelling is occupied and that it is safe to be shared by cyclists and pedestrians.

ii) one of the reasons WCC Highways originally recommended refusal of Barn House Farm was because '*There are restrictions to crossing Birchfield Road due to a lack of visibility and crossing facilities. The bus stop has no kassell kerbing or shelter.*' The ability to cross Birchfield Road safely (both to access the bus stop near Foxlydiate Lane and for those walking towards the GP surgery, or Redditch Town Centre) is an important safety consideration yet is not mentioned.

iii) Both the Walking and Cycling Strategy and Mott Macdonald reference alleyways that pedestrians will be expected to use to access the 'quiet streets' beyond Foxlydiate Lane. If the plan is to encourage their use there should be evidence that

they are safe and suitable for all. Do these alleyways have adequate lighting to make them safe on dark mornings and evenings? Is the surface suitable for disabled users or those with reduced mobility? Is there vegetation that needs to be cut back? etc. Once again, these important questions have not been addressed.

If several hundreds of houses are going to be occupied before a bus service through the new development, or any facilities are provided it is surely essential, in order to comply with NPPF requirements, that such fundamental issues are addressed.

b) On 12th August 2020 a Mott MacDonald document dated 21st September 2018 was put onto the application web page. In it Mott MacDonald make this important point (the tables referred to are in the main text of the TA):

Note: All existing amenities shown in Table 3-7 are located near or outside of the acceptable walking distances stated in Table 3-6. The table shows that the distance to existing local amenities falls outside maximum desirable walking distances. Therefore, the amenities proposed as part of the development should be included as part of the first development phase (as currently proposed) to encourage sustainable travel to these and reduce the dependence on the private car PJA says that the completion and occupation of the local centre is subject to commercial and technical considerations but will be provided in compliance with any phasing plans that are approved as part of the planning application The Planning authority needs to consider how to frame this within the conditions to avoid car habits being established from development opening.

The current phasing encourages car dependency and has not addressed how those without cars will safely access important facilities such as GP surgeries which are far outside the maximum walking distance.

Conclusion:

It is clear that the evidence BPPC requested to demonstrate that this application meets the requirements of the NPPF, particularly para 110 a) and b) has not been provided. Whilst we welcome Mott MacDonald, in their document of 8th September, acknowledging that a full assessment -to protect the safety of non-vehicle users- is still required, the NPPF requires that an application gives priority **-first-** to pedestrian and cycle movements, both within the scheme and with neighbouring areas. It must also address the needs of people with disabilities and reduced mobility. This is to ensure that pedestrians and cyclists, who are at the top of the hierarchy of users, are rightly considered before private car users, who should be considered last. Therefore, if an assessment is required, it must take place before approval is granted to confirm the application is fully compliant with the NPPF.

BPPC also welcome Mott MacDonald's acknowledgement of the need to encourage sustainable travel and reduce car dependency. A condition that the spine road, together with the access onto the roundabout with Church Road, be completed before any dwellings are occupied would enable bus services to operate through the site giving vulnerable groups a safe and sustainable travel option from the start of occupation.

Summary:

BPPC hope that the Planning Committee will find the suggestions we have put forward are practical solutions to prevent problems and make the development safer and more sustainable.

- Closing Cur Lane (West) to motorised vehicles at the point it enters the development is the only practical, enforceable, solution to preventing construction vehicles using narrow lanes to access the site. Failing to do this risks accidents, conflict, fear and disruption for the residents. The LPA have confirmed that conditions to try to simply ask vehicles to follow an alternative route are unenforceable.

- This closure has the additional benefit of improving the safety of the lanes for cyclists and walkers, encouraging its use. It would be an enhancement to NCN5.

This closure is simply bringing forward a closure that is planned. It could be reviewed once construction is complete. It would also give the applicant time to fulfil their intention to undertake public involvement in any decision.

- The spine road and access onto the roundabout with Church Road should be built prior to the occupation of any dwellings to allow bus services to run through the site to reduce car dependency and provide safe and sustainable travel options for non-car users.

Response from Mott MacDonald (Highway Consultant) for BDC

Point 1 Construction Vehicles using Cur Lane

The Construction and Environmental Management Plan (CEMP) is the correct mechanism to deal with the issue of construction vehicles using Cur Lane. Mechanisms can and should be agreed between WCC (as the highway authority) and the developer whereby the developer is responsible for ensuring that the route is closed to construction vehicles. Typically this responsibility is reinforced by a system of penalties if non-agreed routes are used by construction vehicles. MM have examples where a CEMP with similar provisions has been implemented and prevents vehicles of all types using the wrong routes using technology to track, record and report. The developer should also be responsible for providing a signing and construction route strategy as part of the CEMP. MM are of the view that the permanent closure of Cur Lane is not appropriate.

Point 2 Cyclists and Walkers

In respect to cyclists and walkers we defer to WCC as the highway authority on the issue of provisions for walking and cycling under the various policy documents that are currently in place. However, MM do support the focus on active travel.

Point 3 Phasing, Footpaths and Pedestrians

It is MM's view that completion of the shared footway/cycleway should be considered in advance of any occupation of dwellings, noting the points made by BPPC and in addition the likelihood of use by new residents in particular.

As stated previously by MM, it is recommended that a review of the existing crossing points be undertaken before construction, with the view of providing more formal crossing points where necessary to make them more accessible for all users, and to highlight their presence to road users. It may therefore also be of benefit to provide enhanced signing and wayfinding to the existing residential areas to the east of the site in order to best guide users through the local footway and cycle network.

Representation from Bentley Pauncefoot Parish Council 22-09-2020

BPPC have the following comments with regard Point 1 of Mott MacDonald's response of 21.09.20.

We understand the principle of a CEMP but note Mott MacDonald have not specified the exact penalties that can be imposed when conditions are ignored.

They state that they have examples of CEMP that prevented vehicles of **ALL** types using the wrong routes. Unfortunately, details have not been provided so it is not clear how **ALL** construction and delivery lorries can be tracked, recorded and prevented from using the lanes. Clearly, the Church Road development is not one of the examples even though a Construction Management Plan was a condition listed by HMI when granting approval on Appeal.

It would be helpful if the LPA could explain:

1. How will **ALL** types of construction and delivery lorries, vans etc. be tracked, recorded and reported?
2. Who is responsible for ensuring the CEMP is complied with for the entire 15 years?
3. Exactly what penalties can be imposed on the developer for non-compliance?
4. Why isn't it appropriate to close Cur Lane from the start of construction when it has to be closed for the developer to make the changes they plan?
5. Why the conditions for the Church Road development were ignored?

Given the concerns of the Parish Council, on behalf of its residents, this issue must be resolved before approval is granted.

Officer Comments on Highway Matters

The movement of construction vehicles on and off the site can be controlled by a lorry routing plan.

The reference by BPPC to officer advice regarding enforceability of conditions relating to HGV movements related to the application at 30 The Avenue Rubery reported to Planning Committee on 24th August and was in reference to monitoring the number of vehicle movements throughout the day, and not related to any controls relating to lorry routing. The officer comments referred to were reported in the minutes to that meeting (1st paragraph p4). The cases are not comparable.

The approval of a routing plan can only seek to mitigate the risk of construction vehicles arriving or leaving the site by an unauthorised route. However, it does not preclude the possibility of other mitigation / monitoring measures that do not involve the impracticality of stationing officers observing vehicle movements for hours on a daily basis. The control and monitoring of construction traffic and framing condition requirements to mitigate the risk of vehicles using an unauthorised route is a matter which officers are seeking delegated authority to address.

Furthermore, WCC have separate additional mechanisms to address these concerns. It is common practice to place temporary directional signage for construction traffic. WCC Highway planners would discuss and agree the signage with WCC Streetworks team once the s278 Technical approval for the works had been granted.

The permanent closure of Cur Lane to motor vehicles is not, nor has ever been part of the application proposal, nor is it within the applicant's gift to facilitate that. The proposal effectively diverts motorised traffic into the site, closing the first section of Cur Lane to motorised vehicles, from the mini island, but would allow traffic to enter and exit the site via a new section of internal road.

The inference that Cur Lane has to be closed anyway to facilitate the development so should be closed at the outset is inaccurate. Save for any temporary closure which may be required to facilitate safe working within the highway, (which is a matter of the Highway Authority) it would not be necessary to close Cur Lane whilst the new section of road within the site is being constructed.

Bentley Pauncefoot Parish Council have made numerous representations expressing concern about Cur Lane and other rural lanes being used as rat runs. If the Cur Lane access works were undertaken before any dwelling were occupied, the occupiers of the first houses would be able to use Cur Lane as a direct access and egress to the site, establishing behavioural patterns of vehicles movements which could be discouraged if the current proposed sequencing of access works as set out in the agenda is adhered to.

This application must be considered on its own merits.