

**HOLT - RV/22/0308 - Variation of Conditions 2 and 24 of planning ref: PF/17/1803 to amend plans to reflect updated on-site affordable housing provision (0%) and to update previously approved Land Contamination Report, Land Rear of 67 Hempstead Road, Holt, Norfolk, for Hopkins Homes Limited**

**Target Date:** 03<sup>rd</sup> March 2023

**Extension of Time:** 03<sup>rd</sup> March 2023

**Case Officer:** Russell Stock

**Variation of Condition Application**

**RELEVANT SITE CONSTRAINTS:**

Within the defined Residential Area and Settlement Boundary of Holt

Part of a Mixed Use Allocation (site allocation Policy HO9)

The application proposes development within a defined County Wildlife Site

Within a Mineral Safeguard Area

Within a Contaminated Land Area/Buffer

Within an area of Controlled Water Risk - Medium (Ground Water Pollution)

Development is within 60m of Class A road and is adjacent to a defined Principal Route (A148), Access from a C Road, in the vicinity of an Unclassified Road

**RELEVANT PLANNING HISTORY:**

**Reference PF/17/1803**

Description Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation

Decision Approved 02.06.2021

**Reference CD/21/2590**

Description Discharge of Condition 5 (CEMP - Construction Environmental Management Plan) of planning permission PF/17/1803

Decision Condition Discharge Reply 28.07.2022

**Reference CD/21/2794**

Description Discharge of Condition 13 (detailed schemes, including full engineering and construction details for on and off-site highway improvement works) of planning ref: PF/17/1803 Residential development of 52 dwellings (including the removal of No. 67 Hempstead Road), provision of new vehicular access to Hempstead Road, associated landscaping, open space, pumping station and electricity substation

Decision Condition Discharge Reply 06.01.2023

**Reference CD/21/2795**

Description Discharge of Condition 37 (full engineering, drainage, street lighting and constructional details) of planning ref: PF/17/1803 Residential development of 52 dwellings (including the removal of No. 67 Hempstead Road), provision of new vehicular access to Hempstead Road, associated landscaping, open space, pumping station and electricity substation

Decision Condition Discharge Reply 05.08.2022

<b>Reference</b>	<b>CD/21/3202</b>
Description	Discharge of condition 7 (Arboricultural Method Statement) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)
Decision	Condition Discharge Reply 31.03.2022
<b>Reference</b>	<b>CD/21/3325</b>
Description	Discharge of condition 42 (cycle store) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)
Decision	Condition Discharge Reply 29.07.2022
Appeal	Currently Pending Decision
<b>Reference</b>	<b>CD/21/3326</b>
Description	Discharge of condition 22 (noise mitigation) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)
Decision	Currently Pending Decision
<b>Reference</b>	<b>CD/21/3327</b>
Description	Discharge of condition 29 (Foul Drainage Scheme) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)
Decision	Condition Discharge Reply 08.06.2022
<b>Reference</b>	<b>CD/21/3328</b>
Description	Discharge of condition 27 (surface water) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)
Decision	Condition Discharge Reply 08.06.2022
<b>Reference</b>	<b>CD/21/3329</b>
Description	Discharge of condition 12 (Ecological Enhancement Plan) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)
Decision	Condition Discharge Reply 20.05.2022
<b>Reference</b>	<b>CD/21/3441</b>
Description	Discharge of condition 3 (Reptile Migration)) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)

Decision Condition Discharge Reply 14.04.2022

**Reference CD/21/3442**

Description Discharge of condition 31 (Energy Statement) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)

Decision Condition Discharge Reply 20.05.2022

**Reference CD/21/3468**

Description Discharge of conditions 17 (Landscape & Ecological management Plan) and 19 (Landscaping) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)

Decision Condition Discharge Reply 06.04.2022

**Reference CD/22/0085**

Description Discharge of condition 33 (Accessible and Adaptable Dwellings) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)

Decision Condition Discharge Reply 06.04.2022

**Reference CD/22/0129**

Description Discharge of condition 35 (Fire Hydrant Scheme) of planning permission PF/17/1803 (Residential development of 52 dwellings (including the removal of No.67 Hempstead Road), provision of new vehicular access to Hempstead Road; associated landscaping, open space, pumping station and electricity substation)

Decision Condition Discharge Reply 26.04.2022

## **THE APPLICATION**

This application seeks to vary Conditions 2 and 24 for planning permission reference: PF/17/1803 to amend the plans to reflect an updated on-site affordable housing provision of 0% from the original 44% approved, and to update the previously approved land contamination report.

## **REASONS FOR REFERRAL TO COMMITTEE**

At the request of the Assistant Director for Planning in the public interest given that the initial application was heard by the Development Committee in Dec 2020, with affordable housing provision being a key element of the development.

## **LOCAL WARD COUNCILLOR COMMENTS**

Cllr Perry-Warnes:

“This proposal is very upsetting, particularly as we recently lost a substantial number of affordable housing due to NNDC mistakes. Far from making up the shortfall as promised, this

reduction to 0% is being considered. I am sure you can appreciate the level of anger and outrage the people of Holt feel about this, which I share.”

“I am grateful that you have given me another opportunity to express my dismay that, once again, Holt will lose much needed affordable home provision. I am concerned that the objection I raised in an earlier email has not been recorded as a consultee comment on the website.

As you correctly identified, this is not the outcome we want and need. Holt has many new developments which are not meeting local needs and making Holt an unaffordable option for many whose families have been based in Holt for decades and even generations. This development received lukewarm initial support due to its detrimental impact on traffic on the Hempstead Road, despite the Highways assessment, and it was the need for the affordable homes which tipped the balance. If it is no longer viable with the affordable home provision, then it should be stopped until it is viable.

Affordable homes are not an optional extra, and Hopkins Homes and all developers need to know that. Allowing them to provide none, and to presumably replace them with market houses to render the scheme viable, sends the wrong message and sets a precedent. I suggest that they go back to the drawing board and make the numbers work without dropping the affordable home provision.”

Cllr Eric Vardy:

“I have been in communication with Cllr Perry Warnes and Holt Town Council regarding this application and I fully concur with Cllr Perry Warnes email comments regarding this. Holt is in desperate need for affordable accommodation, I appreciate that a viability study has been completed, however these are often carried out to the advantage of the developers who are often able but not willing to make changes.”

## **PARISH/TOWN COUNCIL**

### **Holt Town Council:**

“Holt Town Council strongly object to the planning proposal to remove all affordable housing from the site off Hempstead Road.

NNDC’s own evidence states the clear need for more affordable housing in Holt, unfortunately it is becoming increasingly difficult for many to be able to afford to live in the town, in which they were born. The town recently missed out on affordable housing on the Cley Road development and simply cannot afford to miss out again.

Affordable homes are needed for those wanting to work in the town, the two new care homes in the town will provide many new jobs, but the workers require homes to live in! Holt is losing the younger generations, who have no choice but to move away to more affordable areas of Norfolk.

Cllrs know every single affordable house provided can make such a difference. They have already accepted a reduction on this site and made allowances for the financial climate. It must be remembered that it is the same cost of living crisis in which residents are struggling with. Now more than ever more help is required to secure affordable housing for the families of Holt.

Holt is fortunate as it sits outside the Nitrate Vulnerable Zone, the Norfolk Homes site at Cley Road site has just got started and as such Cllrs are prepared to wait for the Hempstead Road site to be developed. In short, they would prefer to wait, until such a time the affordable housing can be achieved as planned, rather than see the site developed with 0% affordable homes provided.

It is concerning that Hopkins Homes are claiming that the Hempstead Road site is unviable in Holt, which is a High Value District, where does this leave other proposed developments across North Norfolk?

Holt Town Council requests that members call this planning re-consultation into Committee, to be discussed further, and asks that this letter is shared with the Cllrs of the Development Management Committee.”

## **CONSULTATIONS:**

**Environmental Health Officer: No objection, subject to condition.**

**Strategic Housing: In principle does not support the loss of Affordable Housing, however in relation to this application the independent viability assessor’s comments are noted/understood.**

## **REPRESENTATIONS:**

None received.

## **HUMAN RIGHTS IMPLICATIONS**

It is considered that the proposed development may raise issues relevant to:

- Article 8: The Right to respect for private and family life.
- Article 1 of the First Protocol: The right to peaceful enjoyment of possessions.

Having considered the likely impact on an individual's Human Rights, and the general interest of the public, approval of this application as recommended is considered to be justified, proportionate and in accordance with planning law.

## **LOCAL FINANCE CONSIDERATIONS**

Under Section 70(2) of the Town and Country Planning Act 1990 the council is required when determining planning applications to have regard to any local finance considerations, so far as material to the application. Local finance considerations are not considered to be material to this case.

## **STANDING DUTIES**

Due regard has been given to the following duties:

Crime and Disorder Act, 1998 (S17)

Natural Environment & Rural Communities Act 2006 (S40)

The Conservation of Habitats and Species Regulations 2017 (R9)  
Planning Act 2008 (S183)  
Human Rights Act 1998 – this incorporates the rights of the European Convention on Human Rights into UK Law - Article 8 – Right to Respect for Private and Family Life  
Planning (Listed Buildings and Conservation Areas) Act 1990 (S66(1) and S72)

## **RELEVANT POLICIES:**

### **North Norfolk Local Development Framework Core Strategy (September 2008):**

Policy SS 1 (Spatial Strategy for North Norfolk)  
Policy SS 3 (Housing)  
Policy SS 4 (Environment)  
Policy SS 6 (Access and Infrastructure)  
Policy SS 9 (Holt)  
Policy HO 1 (Dwelling Mix and Type)  
Policy HO 2 (Provision of Affordable Housing)  
Policy HO 7 (Making the Most Efficient Use of Land (Housing Density))  
Policy EN 2 (Protection and Enhancement of Landscape and Settlement Character)  
Policy EN 4 (Design)  
Policy EN 6 (Sustainable Construction and Energy Efficiency)  
Policy EN 8 (Protecting and Enhancing the Historic Environment)  
Policy EN 9 (Biodiversity & Geology)  
Policy EN 10 (Development and Flood Risk)  
Policy EN 13 (Pollution and Hazard Prevention and Minimisation)  
Policy CT 2 (Developer Contributions)  
Policy CT 3 (Provision and Retention of Local Facilities and Services)  
Policy CT 5 (The Transport Impact of New Development)  
Policy CT 6 (Parking Provision)

### **North Norfolk Site Specific Allocations Development Plan Document (DPD) (Adopted February 2011):**

Policy HO9 (Land at Heath Farm / Hempstead Road:

### **Minerals and Waste Development Framework - Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 2010-2026**

Policy CS16 (Safeguarding mineral and waste sites and mineral resources)

### Material Considerations:

### **Supplementary Planning Documents and Guidance:**

Design Guide Supplementary Planning Document (December 2008)  
North Norfolk Landscape Character Assessment (January 2021)  
North Norfolk Landscape Sensitivity Assessment (January 2021)

### **National Planning Policy Framework (2021):**

Chapter 2 (Achieving sustainable development)

Chapter 4 (Decision-making)  
Chapter 5 (Delivering a sufficient supply of homes)  
Chapter 6 (Building a strong, competitive economy)  
Chapter 8 (Promoting healthy and safe communities)  
Chapter 9 (Promoting sustainable transport)  
Chapter 11 (Making effective use of land)  
Chapter 12 (Achieving well-designed places)  
Chapter 14 (Meeting the challenge of climate change, flooding and coastal change)  
Chapter 15 (Conserving and enhancing the natural environment)  
Chapter 16 (Conserving and enhancing the historic environment)  
Chapter 17 (Facilitating the sustainable use of minerals)

**Other material documents/guidance:**

Heath Farm Development Brief (July 2013)  
Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy - Habitats Regulations Assessment Strategy Document (2021)  
Technical housing standards – nationally described space standard (March 2015)  
National Design Guide (2019)

**SITE DESCRIPTION**

The application site comprises an irregular shaped piece of rough grassland / scrub of approximately 2.8 hectares in area behind (north) of 67 Hempstead Road. Development has commenced on site following the grant of permission PF/17/1803. Surrounding developments have also progressed since the determination of PF/17/1803, in most other respects, the site description set out within the Committee Report for PF/17/1803 remains largely reflective of the current site context.

**OFFICER ASSESSMENT:**

**MAIN ISSUES FOR CONSIDERATION:**

- 1. Housing Land Supply Position**
- 2. Principle of Development**
- 3. Affordable Housing**
- 4. Contaminated Land**
- 5. Other Matters**

**1. Housing Land Supply Position**

The National Planning Policy Framework (NPPF) requires Local Planning Authorities to identify a five-year supply of specific deliverable sites to meet housing needs. At the current time the council is unable to demonstrate that it has 5 years' worth of deliverable sites. Planning applications will therefore be considered in line with paragraph 11 of the NPPF which states that where relevant policies are considered out of date permission will be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

## **2. Principle of Development**

This application is made under Section 73 of the Town and Country Planning Act 1990 to vary a condition imposed upon a decision already granted planning permission by the Local Planning Authority (LPA). Section 73 of the Act instructs the Local Planning Authority to consider the variation to, or relief of conditions that are applied for, stating that "if...[the LPA] decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted....they shall grant permission accordingly" (s.73(1)(a)). As such, the Local Planning Authority can grant permission unconditionally or subject to different conditions, or alternatively refuse the application if it is deemed that the original condition(s) should remain in place.

The variation to the planning permission would not revoke the development, however, the grant of a planning permission under Section 73 essentially provides a new planning permission. It is therefore necessary to reconsider the overall development proposal against the development plan.

Since the grant of planning permission on 02.06.2021 in respect of application PF/17/1803 there has been a change in national planning policy as contained within the NPPF. The changes made to the policies however do not significantly differ from those contained within the previous versions of the NPPF with regard to the matters relevant in this case. The below assessment has had regard to the latest version of the NPPF which was published in July 2021. The assessment has also had regard to the Development Plan and all relevant guidance, some of which has been updated since the consideration of application PF/17/1803.

In this instance the principle of development on the site has been established following the grant of planning permission under application PF/17/1803. This application seeks permission to amend the scheme approved under PF/17/1803. These changes relate to the site wide dwelling type layout and is a result of the Applicants intentions to remove all provision of affordable dwellings from the site. This would result in the 23 dwellings originally secured as 'affordables' becoming available on the open market. Further discussion on these changes are set out within the sections below.

## **3. Affordable Housing**

Policy HO 2 of the Core Strategy states that planning permissions for the erection of new dwellings or conversion of existing buildings to dwellings will be permitted provided that, where it is viable to do so, the scheme provides affordable housing. For developments such as this one, Policy HO 2 expects the provision of 45% Affordable Housing and of those, 80% should be affordable rent and 20% should be shared ownership. Site allocation Policy HO9 which covers this development reflects this policy requirement.

The NPPF sets out at paragraph 65 that where major development involving the provision of housing is proposed, planning decisions should expect at least 10% of the total number of homes to be available for affordable home ownership. Paragraph 58 of the NPPF states that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at

the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

The Governments Planning Practice Guidance states any viability assessment should be supported by appropriate available evidence informed by engagement with developers, landowners, and infrastructure and affordable housing providers. Any viability assessment should follow the government's recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available. In decision making, viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.

As approved under application PF/17/1803, 23 of the 52 dwellings were secured as affordable housing (44%), comprising 17 (74% of the affordable dwellings) as Affordable Rental tenure and 6 (26% of affordable dwellings) as Shared Ownership tenure. No viability assessment was put forward by Hopkins Homes, the Applicant, for application PF/17/1803, and therefore in line with paragraph 58 of the NPPF, it can be assumed that the development was viable.

However, following a review of the economic viability of the development approved under application PF/17/1803, the Applicants have submitted this Section 73 Application to remove all on-site provision of affordable housing and have supported their position with a detailed viability report. It was during the course of the consideration of this application that this report was amended to remove all on-site affordable housing. The initial submission sought a reduction from the secured 23 affordable dwellings down to 10 Section 106 secured affordable dwellings, whilst a further 8 were being put forward to be delivered as affordable via grant funding (not secured via legal agreement).

As part of the assessment of this application the Council instructed an Independent Viability Assessor to review the Applicant's viability case. This review found that the evidence produced and methodology followed by Pathfinder on behalf of the Applicants, was sound and whilst there were some errors identified, these were minor and did not have a material impact on the outcome of the appraisals. The appraisals produced by Pathfinder achieve the following outcomes:

	<b>% Affordable Housing</b>	<b>Section 106 Obligations</b>	<b>Developer Profit</b>	<b>Viability Deficit</b>
<b>Base</b>	45%	£432,691	17.5%	£3,500,771
<b>Option 1</b>	0%	£432,691	17.5%	£1,566,904
<b>Option 2</b>	0%	£0	15%	£681,224
<b>Option 3</b>	0%	£432,691	15% plus reduced build cost	£315,014

In all scenarios the financial appraisals result in a viability deficit. Hence, the applicants claim the development is no longer sufficiently viable to deliver any affordable housing.

The Independent Viability Assessor's review concludes that the Pathfinder assessments and findings are appropriate and suitably demonstrate that the proposed development is now not sufficiently viable to support the delivery of any affordable housing. It is however recommended that a review mechanism is secured in order that the final outcome of the development can be established and provide for the payment of commuted sums if the 17.5% agreed profit return is improved upon.

The Council do not wish to see the removal of affordable housing provision from this scheme or indeed any other, given the significant identified need for such housing within Holt and the wider district. That being said, the independent and expert review of the viability evidence provided by the Applicants has been found sound. The guidance highlighted above makes it clear that the weight to be given to a viability assessment is a matter for the decision maker. Having regard to the circumstances in this case, that the findings of the assessment have been found sound, appropriately evidenced and in accordance with relevant guidance and requirements, it is considered that this assessment can be given weight in reaching the decision.

The review mechanism to be secured via legal agreement provides some comfort that any changes in circumstances which result in higher levels of developer profits would ensure that commuted sums towards affordable housing provision would be made.

Therefore, whilst it is undesirable for a scheme of this scale not to be providing on-site affordable housing which helps to create mixed, inclusive and diverse communities, the evidence provided by Hopkins Homes, the Applicants, has been found sufficient to justify this approach. On this basis, it is considered that refusal of the proposals on this matter would be difficult to sustain in light of both local and national planning policy provisions and government guidance in respect to developer profit and scheme viability.

#### **4. Contaminated Land**

This application seeks to vary Condition 24 of the planning permission granted under application PF/17/1803. This condition related to contamination matters and ensured that the development was carried out in accordance with the approved assessments covering these issues. The applicant has submitted a Supplementary Phase II Geoenvironmental Assessment alongside a Remediation Method Statement as part of this application. These reports are updated versions of those originally considered as part of application PF/17/1803, and which were secured via Condition 24.

The Environmental Protection Officer (EPO) has considered these assessments and states that they are sufficiently robust and detailed in so far that if implemented, would meet the obligations of the developer to mitigate the contamination risks identified on site. The EPO therefore raises no objection to the proposed development, subject to an amended condition to secure the recommendations and procedures set out within the revised assessments.

Subject to an amended condition in this respect, the development would accord with the requirements of Policy EN 13 of the Core Strategy which seek to protect public health and safety.

#### **5. Other Matters**

##### Housing mix

Whilst the proposed development would see the removal of all on-site affordable dwellings, the proposed housing mix would remain as that approved under application PF/17/1803. A mix that was found to satisfy Policy HO 1 of the Core Strategy.

##### Conditions

The grant of a planning permission under Section 73 enables the Local Planning Authority to impose planning conditions that are deemed appropriate and meet the relevant tests as cited

within the NPPF (paragraph 57). Given that the application provides a new planning permission, it is considered necessary and reasonable to continue to impose those planning conditions attached to planning permissions PF/17/1803 that remain relevant to the development for clarity and completeness, with amended phrasing where applicable.

### **Planning Balance/Conclusion**

As highlighted above, the loss of the provision of 23 affordable homes from this 52 dwelling residential development is not a welcomed progression. This would weaken the creation of a vibrant, mixed and inclusive development which helps to meet identified affordable housing needs. In this instance however, the Applicant has provided sufficient evidence to justify their decision to alter the plans. This evidence has been independently assessed and a review mechanism put forward to ensure that any unexpected exceedance of profits is appropriately routed back towards the provision of affordable dwellings in the public interest.

The updated contamination assessments have been found to be acceptable and amended conditions are suggested which would secure the recommendations set out within.

The proposals do not seek to amend PF/17/1803 beyond that set out above. Consideration has been given to the latest policy position and relevant guidance when assessing this submission. The proposals have also been considered in line with paragraph 11 of the NPPF and it is not considered in this instance that the harms identified would outweigh the benefits associated with the development.

### **RECOMMENDATION:**

**Delegate APPROVAL to the Assistant Director for Planning subject to:**

- 1. The completion of a deed of variation to the original Section 106 Agreement associated with the approval of application PF/17/1803, to secure the updated affordable housing position and review mechanism.**
- 2. The imposition of appropriate conditions** (detailed list of conditions to be provided to Development Committee ahead of the meeting);
- 3. Any other conditions that may be considered necessary at the discretion of the Assistant Director for Planning; and**
- 4. In the event that the Deed of Variation cannot be secured within three months of the date of Committee resolution to approve, to return the matter to the Development Committee for further consideration.**