

APPENDIX 3

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14.02.20
Tel 07709 969 599
Ref SW/19/503810/OUT

Ms C Griffiths
Senior Planning Officer
Development Management
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent
ME10 3HT

Dear Ms Griffiths,

**Land On The South East Side Of Bartletts Close Halfway Kent, ME12 3EG
Outline Application 19/503810 – 17 Dwellings with Private New Access Road.**

We have been requested by the agent, Peter Cooper and client to prepare this letter as it is understood Members may wish the 170m length of Bartlett Close to be made up to adoptable standards prior to the development coming forward. As a highway and transportation engineer with a background working for KCC for over 13 years plus my experience with highway legislation including the Highways Act 1980 I wish to set out the issues that are raised and the concerns which are pertinent should Members consider this as a requirement.

The section of Bartletts Close, with a mainly gravel or road scalping surface, which members have referred to; is a "Private Street" which is a highway maintained by the street frontagers. Highway legislation dictates when, how and by what authority the road may be made up. Utility companies are also involved with new street works as their plant may be under or over the road in question.

Under normal circumstances Private Streets are made up by the highway authority based on many requests from house owners who front onto the road. Then KCC would, if in Kent, go to committee to highlight such requests and to commence formal consultations with householders. If more than 50 to 60% say are agreeable, then KCC would determine whether to go ahead or not. KCC members are involved as they instruct officers in the decision-making process due to cost, timescales and possibly many objections.

The adoption road construction process, if undertaken by KCC following residents requests then involves the works being costed including professional fees, construction costs and utility company consultations. When costed it is then divided into a cost per linear metre frontage. Then funds are requested from the owners. Based

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on a length of 170m the overall cost may be of the order of over £2,000 per linear metre hence £340,000 plus utility costs. We hasten to add the £2000 is based on an approximation. We do not undertake such work hence again we suggest KCC be contacted to determine what may be the budget sum per linear metre involved.

Most Private Streets have funds available, in the coffers of the highway authority, as any development in the past and current time under the Advance Payment Code (APC) procedure (Highways Act legislation) deposit funds for the future making up of the road. After the building regulations are approved the Highway Authority have a 6-week window to serve notice on and obtain a deposit for making up the road in future. KCC in the past have been regimental in following this course of action. The legislation was included in the Highways Act 1959 before the Highways Act 1980 came into legislation. We recommend you seek to determine what funds KCC already have collected, and is available, so that Members are aware residents have always had the option to make the road up.

We would refer you to our Transport Statement plus letters on this matter, addressed to KCC, which refers to the APC. KCC have agreed in writing the new road can remain private (28th October 2019).

If we now review how a planning condition may be used to seek the future making up of the road we have appeal decisions relating to Grampian conditions. Inspectors now reject such conditions where there is no likelihood of such conditions being implemented.

The NPPF also has planning condition tests including not being seen to purchase an approval if planning conditions are seen to be unreasonable or disproportionate. The judiciary in the higher and court of appeal also take this same approach. We have examples on file.

TEST	KEY QUESTIONS	THIS DEVELOPMENT
1. Necessary	Will it be appropriate to refuse planning permission without the requirements imposed by a condition? - A condition must not be imposed unless there is a definite planning reason for it, i.e. to make the development acceptable.	No KCC highways have identified that these works are not required. They agree to the development including a turning head for refuse vehicles.
2. Relevant to planning	Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached? - A condition must	No. The making up of the 170m stretch of road would be within the control of the highway authority. They have the jurisdiction to permit and

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	not be used to control matters that are subject to specific control elsewhere in planning legislation	to deal with Section 278 Agreements (Highways Act 1980). Given KCC do not support any “off site” highway works this is not relevant to the development of the site. We would refer you to our TS, letters plus responses in the public domain from KCC. Any such works would also take many months (7 to 8) to construct and would cause unnecessary disruption to residents.
3. Relevant to the development to be permitted	Does the condition fairly and reasonably relate to the development to be permitted? <ul style="list-style-type: none"> - It is not sufficient that a condition is related to planning objectives; it must also be justified by the nature or impact of the development permitted. - A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development. 	No. It has been demonstrated through the Transport Statement, which KCC accepts, that the proposed development does not impact on the existing highway (private street) and the network to such an extent to justify changes to the road construction. In NPPF policy terms the development impacts are not severe.
4. Enforceable	Would it be practically possible to enforce the condition? <ul style="list-style-type: none"> - Unenforceable conditions include those for which it would, in practice be impossible to detect a contravention or remedy any breach of the condition, or those concerned 	As KCC do not support the making up of the road there are no assurances KCC would permit Section 278 of the Highways Act be used. KCC should be involved in any road construction and adoption planning conditions.

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	with matters over which the applicant has no control.	
5. Precise	Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it? - Poorly worded conditions are those that do not clearly state what is required and when must not be used.	The wording has not yet been produced by the Council. This may be delegated to officers.
6. Reasonable in all other respects	Is the condition reasonable? - Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. - Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.	Making up 170m of road is not reasonable based on the new section and turning head being provided by the applicant. Existing residents have the power to seek the future making up of the road, albeit funded by them. The proposal is therefore disproportionate and would fail the test.

Taking the six tests as set out in paragraph 55 of the Feb 2019 NPPF, the conditions imposed by the Planning Committee are likely to fail them all.

We appreciate you taking this application back to Committee and would like Members to be made aware that their request is considered to be unreasonable by KCC (as they have never requested it) and the applicant; and does not meet the six tests as set out in the Framework.

Should the Committee be of the view to defend their recommendation, then it is likely that the applicant will consider submitting an appeal to the Planning Inspectorate against the imposition of such a condition. We would seek confirmation from KCC beforehand as to the following, if Members do not have the information before them prior to determining the application: -

- A) How many Private Streets have been made up in Kent in the last 5 Years?
- B) What funds are already available from the residents in Bartletts Close?
- C) How many times and in which year have local residents requested the making up of the road?

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D) What budget costs, albeit estimates at this stage, have KCC in respect of making up a new road, based on a linear metre cost? Then the 170m length of road can be costed more accurately.

We hope to have clarified the issues that have resulted from Members desire to have the road made up as a public highway. If you require further information, please do not hesitate to contact me.

Yours Sincerely



Mr L Brown

Planning letter 3–Bartletts to Swale case officer

CC Client

CC Peter Cooper