

**Parish:** SUDBURY

**Location:** Land adjacent to the former Priory Stadium, Priory Walk, Sudbury

**Proposal:** Alterations to ground levels to provide flood compensation scheme for housing development on adjacent land under Reserved Matters application B/01/02018/RES. Construction of cycle/footpath link to Quay Lane (as amplified by agents letter dated 26/01/2006, and drawings 3567 – 200A and 3567 – 201A received on 1<sup>st</sup> April 2008)

**Applicant:** Knight Development Limited

**Case Officer:** Jackie Ward

**Date for Determination:** 04/10/2005

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## BACKGROUND

1. This application was presented to Development Committee on 28<sup>th</sup> February 2007 for determination. (Paper F193 item 10 refers – a copy of this report is attached to this item for Members information).
2. At that meeting Members agreed to grant planning permission in accordance with the following Committee resolution:
  - (1) That the solicitor to the Council be authorised to secure a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 to ensure that the land is transferred to the Council for use as public open space with a commuted sum for its future adoption and maintenance.
  - (2) That subject to the planning Obligation referred to in the Resolution (1) above being secured, the Chief Planning Control Officer be authorized to grant planning permission subject to the following conditions: -
    - Landscaping;
    - Protection of existing trees to be retained;
    - Protected species survey with appropriate translocation measures and the provisions of a refuge (elsewhere on site);
    - As required by County Highway Authority relating to fencing and safety measures;
    - Archaeology

## ASSESSMENT

3. Since that time, work has been ongoing to complete the Section 106 Obligation. The submitted site location plan showed the whole of the application site area included in the Flood Compensation Scheme. This comprises the area between the Bowling Green and The Valley Walk, and a narrow strip of land along the southern boundary of the new housing development with the ditch. The drawing superimposes the flood compensation scheme area on the

housing layout for the development (that is now under construction) on the site of the former Priory Stadium. This shows that a small area of flood compensation scheme land along the southern boundary of the housing site north of the ditch is included within the gardens of Plots 6 to 11 (inclusive) and 40 and 41.

4. Paragraphs 28 to 32 of the attached Committee report deal with the appearance and future function of the area of land formerly used by AFC Sudbury as training football pitches (the area between the Bowling Green and The Valley Walk). This was the area of land subject of the Consultant's assessment (paragraph 30).
5. Paragraphs 33 to 35 of the report deal with the area along the route of the ditch that runs along the southern boundary of the site.
6. To safeguard the Flood Compensation Scheme function, and the visual amenity of the southern edge of the residential development, it is recommended that 'Permitted Development' rights are withdrawn from Plots 6 – 11 and 40 and 41 in respect of erecting or constructing anything within the Flood Compensation Scheme areas of their gardens (these areas are to be excavated and will slope down toward the ditch and are clearly marked on the submitted drawings), and the erection of new gates, fences, walls or other means of enclosure or replacement of the agreed fence.
7. The Section 106 Obligation is ready for completion. The current situation is set out below: -
  - The recommendation and Minute from Development Committee on 28<sup>th</sup> February 2007 both refer to the completion of a Section 106 Obligation to transfer "the land" to the Council for use as public open space.
  - It has become clear that this could be interpreted as all of the land included in the application site boundary. This includes the narrow strip on the north of the ditch along the southern boundary of the residential site.
  - The narrow strip of land is unsuitable for use as public open space, and it was not intended that this land should be included in the transfer or used as public open space.
  - The large area to the east of the residential site is to be transferred to the Council for use as public open space with a commuted sum for its future adoption and maintenance.
  - The narrow strip of land north of the ditch is to be conveyed to the owners of the new houses being erected on the site of the former Priory Stadium.
  - The original intention to transfer land to the Council to be used as public open space is not compromised by not including the narrow strip of land on the north bank of the ditch.
  - The visual amenity and flood compensation function of the area are to be safeguarded by removing 'Permitted Development' rights to ensure that no obstructions are built on the narrow strip of land, and permission will be required to erect any means of enclosure other than the post and rail fence that has been agreed (see paragraph 8 below).
  - As the Committee resolution refers to "the land" the application is returned to Committee to consider a revised resolution clarifying the area of land to be transferred to the Council for use as public open space.

## RECOMMENDATION

- (1) That, the Solicitor to the Council be authorised to secure a planning obligation agreement under Section 106 of the Town and Country Planning Act, 1990, to ensure:
- that the area of Flood Compensation Scheme land between the Bowling Green and The Valley Walk, to the east of the residential development on the site of the former Priory Stadium, is transferred to the Council for use as public open space with a commuted sum for its future adoption and maintenance.
- (2) That, subject to the completion of the planning obligation in Resolution (1) above being secured the Chief Planning Control Officer be authorised to grant planning permission subject to the following conditions:
- Landscaping;
  - Protection of existing trees to be retained;
  - Protected species survey with appropriate translocation measures and the provision of a refuge (elsewhere on site);
  - As required by County Highway Authority relating to fencing and safety measures;
  - Archaeology
  - Removal of Permitted Development rights for any buildings, structures or obstructions of any kind in the Flood Compensation Scheme areas within the gardens of Plots 6 – 11 and 40 and 41 (as noted on the submitted drawing).
  - Removal of Permitted Development rights in respect of gates, fences, walls, and other means of enclosure for Plots 6 – 11 and 40 and 41

## **PREVIOUS PAPER**

### **DEVELOPMENT COMMITTEE** **28<sup>TH</sup> February 2007**

**Item No: 1**

**Reference: B/05/00236/FUL**

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<b>Parish:</b>	<b>SUDBURY</b>
<b>Location:</b>	<b>Land adjacent to Priory Stadium, Priory Walk</b>
<b>Proposal:</b>	<b>Alterations to ground levels to provide flood compensation scheme for housing development on adjacent land under Reserved Matters application B/01/02018/RES. Construction of cycle/footpath link to Quay Lane (as amplified by agents letter dated 26/01/2006).</b>
<b>Applicant:</b>	<b>Knight Developments Limited</b>
<b>Case Officer:</b>	<b>Mrs Christine Thurlow</b>

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#### **SITE**

1. The application site comprises an area of approximately 1.16 hectares and contains vacant open space which was ancillary to the adjacent football club prior to its move to an alternative site in the town. The football club site lies to the immediate west and received approval for 60 dwellings under B/01/02018/RES. The southern boundary of the site adjoins the river Stour and the Railway Walk. To the north, the site adjoins the bowling green and club. To the east lies a car park and the Quay.

#### **PROPOSAL**

##### **Background**

2. Application B/01/02018/RES approved 60 dwellings on the football club site; ground levels across part of that site are to be raised as part of flood prevention measures. The new level will be above the 100-year level of flooding identified in the flood risk assessment and ensures ground floor levels are above the critical level of 24.08 metres. The greatest increase in levels will be close to the south boundary of the site where levels are to be raised by 700 mm (the greatest increase). The level change required reduces northwards across the site and ground levels towards the northern boundary are to be lowered to provide a consistent level through.

##### **Proposal**

3. The application site of this proposal relates to the vacant land to the east of the developable land under B/01/2018/RES including the strip of land which lies between the approved development site and the Railway Walk. This land includes a ditch which acts as a drain for adjoining land and feeds directly into the River. This drain also fills up when the River level rises.
4. This application proposes the provision of flood storage to compensate for the flood storage lost as a result of raising levels on the adjacent development site. The scheme involves the following works:-
  - A drainage channel running northwards from the existing drain adjacent to the housing development site;

- The lowering of ground levels across the application site to provide compensatory flood storage by approximately 1 metre (although in places it is lower). The submitted plan contains an annotation on the southern part of the site which states “wetland area to be created with suitable planting scheme”
  - Widening of the southern drain (referred to in paragraph 3) adjacent to the Railway Walk-submitted sectional drawings detail that the widening dimensions alter along its length.
5. The applicant has submitted letters, a flood risk assessment and a consultant’s report; these can be viewed before the meeting via prior arrangement with the case officer. The information is summarised as follows:
- Have taken levels south of the railway walk and directly south of the site on the open space adjacent the River Stour. The average level is 22.415 which is 85mm lower than the lowest level provided for the flood compensation scheme. Clearly this land would flood before our site, being lower and adjacent the river. Does not believe there have been any issues about the land being boggy or waterlogged for any lengthy periods.
  - The flood compensation area would be re-laid to grass once the levels have been reduced.
  - Three trial pits were excavated in the flood compensation land (application site) to an approximate depth of 2 metres, left for 24 hours to allow the water level to establish itself and the highest level recorded (pit 1) after this time was 22.220 AOD. The engineer established the water level of the southern drain to be 22.400 AOD. At that time the river was at a high level, not far from the river bank level. Due to the time of year (April being a wet month) the present water level is a worse case situation and the level will reduce in summer months.
  - The trial pits were left open over the weekend, there was a marginal increase to the water table over the site which was not unexpected due to the very heavy rainfall, but the water table is still generally 200mm (or greater) lower than the proposed ground level across the site.
  - Presently both the stadium and adjacent land are derelict and there is no public access. The open space/flood compensation area will remain in the ownership of AFC Sudbury as set out in the S106 agreement. Originally the open space would have provided two training football pitches but these are no longer required and will not be provided.
  - The EA has a drill log that recorded the ground water at 21.20 AOD in April 2000.
  - It is proposed to drain the reduced flood compensation land so in the case of flooding, when the water level drops again the land will drain and not hold water.
  - The overall benefits of the development far outweigh the rare occasions when the open space land will not be able to be used due to flooding.

## **RELEVANT HISTORY**

6. 2000 – Outline planning permission granted for residential development. Application number B/99/00512/OUT refers. The consent was subject to a number of conditions, including a ceiling of 42 dwellings, and a S106 Agreement which secured 20% of the dwellings as affordable units and the provision and maintenance of the area of public recreation and/or public open space.
7. 2001 – Reserved matters approved for 60 two-storey dwellings and removal of condition 12 attached to B/99/00512/OUT to allow more than 42 dwellings to be built. Application B/01/02018/RES refers.

## **POLICY**

### **8. PPS16 - Archaeology and Planning**

- Relates to safeguarding any archaeological interests from developments

### **9. PPS9 – Biodiversity and Geological Conservation**

- Relates to safeguarding wildlife and biodiversity from development

### **10. PPS25 – Development and Flood risk**

- The aims of planning policy on development and flood risk are taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding and to direct development away from areas of highest risk. Where new development is exceptionally necessary in such areas policy aims to make it safe without increasing flood risk elsewhere and where possible reducing flood risk overall.
- Relates to safeguarding development from areas liable to flood and from risk associated with flood water

### **11. PPG17 –Planning for Open Space, Sport and Recreation**

- Relates to the need for the proper provision of and protection of existing open space areas and facilities

### **12. The following adopted Development Plan policies are considered relevant to this application;**

#### **Suffolk Structure Plan 2001**

**ENV3** (Design Standards)

**ENV14** (Flood protection)

#### **Babergh Local Plan Alteration No.2 (2006)**

**LP01** (Planning obligations)

**EN03** (Protected Species)

**EN04** (Semi natural features)

**EN05** (Mitigation measures on features of bio-diversity interest)

**EN11** (Protection of floodplains and washlands)

**HS31** (Public open space and play areas on new development)

*\* please note that details or extracts of policies are no longer included in reports – see page 4 of these papers.*

## **OBSERVATIONS**

13. TC – No Comment – the major concern remains that the flood compensation scheme will be sufficient to protect adjoining sites.

14. CHA – No objection in principle to re-profiling of the land but concerned about the effect of the earthworks on the cycle/footpath link that runs across the northern boundary of the site to Quay Lane. This link is shown on the latest layout drawings but is not included on the detailed drawings that form the flood risk assessment dated October 2004. Therefore it appears that a re-configuration of the flood compensation area will be required to demonstrate that the cycle link can be accommodated without being too close to the drainage ditch to the north or the embankment down to the lowered area of land to the south. The ‘southern drain’ appears to start behind plot 8 and the flood compensation scheme proposes widening of that drain. Between plots 7 and 8 the cycle/footpath link crosses the drainage ditch and a bridge will therefore be required spanning a distance of 25-30 metres. Whilst a ditch can be designed to accommodate this span it may be simpler to limit the width of the ditch in this area.
15. EA – Original comments –
- No objection to proposed ground lowering creating a total volume of 8144 cubic metres to compensate for the loss of 7980 cubic metres but recommend imposition of condition to prevent storage of materials including soil or raising of ground levels within the part of the site liable to flood.
  - The proposals detailed in the flood risk assessment are our preferred option to provide the compensatory flood storage required. The proposals provide a solution that replicates the natural drainage of the area and functioning of the floodplain as it would do naturally.
16. EA – Further comments –
- We agree with the agent that the proposal to provide above ground floor storage that is freely draining back to the River Stour following a flood event is more appropriate than underground tanks.
  - Compensatory storage should relate hydrologically to the source of the flooding and as such above ground storage would replicate the natural situation in flood events unlike below ground storage.
  - The issue of the failure of any storage tanks or poor maintenance would also raise concerns as this could result in the compensatory storage not being provided adequately in flood conditions.
  - With a naturally draining compensatory flood storage scheme based on the sculpting of the floodplain this would not be of concern as there are no tanks, pipes or structures to fail or become blocked.
  - The flood risk assessment submitted as part of the application included details of the proposed compensatory storage scheme for the site. The FRA provided cross sections of the proposed ground lowering in the field to the east of the development creating a volume of 8144 cubic metres to compensate the loss of 7980 cubic metres.
  - In summary the details proposed in the FRA and agreed by us represent our preferred option to provide the compensatory flood storage required. The proposals provide a solution that replicates the natural drainage of the area and functioning of the floodplain as it would do naturally.
17. SCC Archaeology – Although there are no known archaeological sites on this land, it is an area of high archaeological potential being within 100 metres of the known site of the medieval Dominican Friary; within a landscape zone of demonstrably high levels of archaeological sites; an area of high potential for waterlogged deposits and organic preservation adjacent to the River Stour and therefore recommend imposing a condition to ensure an adequate record is made of any archaeological features or finds.

18. SPS – Object. The detailed reserved matters application (B/01/002018) is deeply disappointing in design terms and surface water is being treated as a problem when it can in fact be an asset. The problem appears largely to emanate from the poor design and quantity of hard surfacing. There are no sustainable features.
19. SWT – Grass snake, slow worm and common lizard have been recorded in areas close to this site. Would not expect the main area of the site to support reptiles, but it is highly likely that they may occur on site in the vicinity of the Valley Walk embankment and also the banks of the River Stour, although it is possible that grass snakes may venture further out into grassy areas. These reptiles are protected and as such are a material planning consideration and it is essential that an evaluation is carried out to assess the impacts of this proposal upon reptiles. Where reptiles are present, it is important no site clearance takes place or movement of heavy machinery onto the site until appropriate mitigation has been carried out, in order to comply with legislation. Reptiles are normally active between April-September and this therefore confines the period when the survey can take place. Any reptiles found within the main area of the site would need to be captured and released in adjacent semi-natural habitats, details should be included in the mitigation plan. Would expect proposal to include a significant buffer strip between the river and Valley Walk. These areas should be fenced off during development to prevent encroachment of construction traffic and safeguard habitat occupied by reptiles.
20. Anglian Water – Recommend imposition of condition for details of foul and surface water disposal.
21. EDF Energy - To be updated if available.
22. Letters - None received.
23. HoCAM - Original comments- The proposed development is to be surrounded by an embankment with a crest level set above the flood level for a 1 in 100 year storm. The threshold levels for the properties are also to be set above this flood level. Compensatory storage has been provided on site to compensate for the loss of flood plain storage. There is a watercourse along the northern boundary of the site. This has caused flooding problems on the adjacent developments in the past when it has become obstructed. This watercourse should be kept clear and should not be transferred into private gardens on the new estate. If it is to be piped it will be necessary to provide manholes at a maximum of 30m centres to allow access.
24. HoCAM - Further comments - The ground level will be reduced by approximately 1m. The applicants technical report states the area will therefore take longer to dry out after wet weather especially during winter. May also be necessary for temporary measures to be taken for heavy vehicle use (eg circus) when the ground is wetter. This indicates that the proposals as submitted will not necessarily allow the public open space to be used as it is at present. Who will provide the additional temporary measures when required? Should the surface be designed to allow this type of use by using some form of soil reinforcement as a permanent measure?
25. HoCAM - Further comments - If an alternative storage solution cannot be implemented the area will not be usable as public open space for long periods each year. The flood park will need to be fenced off to prevent access during times of flooding.

## **ASSESSMENT**

26. The land at Priory Stadium (excluding the current application site) was allocated for housing under policy LP14 (n) of the Babergh Local Plan (Alteration No.1). Condition 14 attached to the grant of outline planning permission for the residential redevelopment of Priory Stadium requires the provision and implementation of a satisfactory compensatory flood scheme. It states that no occupation of any of the approved dwellings can occur unless the scheme has been constructed and completed in accordance with an approved compensatory flood storage scheme. It also states that the works/scheme shall be constructed and completed in accordance with the approved details before any dwellings are first occupied. This application represents the works required by that condition.

27. Widening of the ditch and lowering of the adjacent public open space became the developers preferred option. The principal considerations of the submitted scheme fall into the following main areas; these being:-

- **The performance of the scheme as both an acceptable compensatory flood storage scheme and public open space**
- **The impact of the works on the visual amenities of the area and in biodiversity terms**

**These are dealt with as follows:-**

**The performance of the scheme as both an acceptable compensatory flood storage scheme and public open space**

28. The key issue here is whether or not the land, once lowered in level, will be able to continue to function as open space. It will be inevitable that at times the land will be flooded (that is its purpose) but of equal significance is whether or not the lowering of its surface will result in the land being waterlogged for significant periods of time, such that it cannot reasonably be used either formally or informally as open space. The site has been used as public open space for a number of years with the Circus being accommodated on the land in the past. The site is identified as Open Space in the Babergh Local Plan in land use policy terms and the S106 Obligation attached to the grant of outline planning permission continued its use as open space for the purposes of recreation by allowing the provision of training pitches (for football) on it albeit the ownership of the land remained unaltered and it was not transferred to any public body for adoption or maintenance. The S106 Obligation stipulated however that it should only be in use as public open space when not required by the Football Club and then only by members of the public on foot. The land is low lying and grassed and lies adjacent to the Railway Walk which is heavily landscaped and treed along its route. The drain referred to in paragraph 3 and elsewhere in this report lies to the north of this tree lined route. The land is attractive in appearance and banks of the drain within the application site contain protected species of wildlife (see paragraph 19 above).

29. Other compensatory flood storage options have been considered and rejected and this scheme represents the Environment Agency's preferred method of achieving acceptable compensatory flood storage for the approved residential development. In addition since submission of the application, the provision of underground tanks has been considered together with other measures with the agent so that the land if wetter could take wheeled vehicles so that its future use (in the same way as the Circus) would not be prejudiced by this application. However the EA has submitted reasons why this is not such an attractive solution and suggested ground measures were ruled out on cost grounds by the agent.

30. Given the need to establish whether the site can continue to function satisfactorily as public open space if these ground level measures were to occur, an independent Consultant has been employed by the Council to advise further on this issue. The conclusions of this assessment are:-

“The analysis has shown that the lowering of ground levels at the site to provide compensatory flood storage will result in an area that is wet throughout the year from high groundwater levels and rainfall. This severely limits the potential use of the Site as follows:

- it will have limited use as public recreation area due to the wet nature of the Site especially during the winter months;
- it will not be suitable for vehicular use; and
- ball games such as football may damage the undrained grass, unless it is on a very irregular basis when conditions are drier.

- In addition, the site will flood on average one year in ten.”

31. In view of the above, the ability of this land to function as public open space if these works are carried out has been reflected upon by your Officers. The conclusion has been reached that while public access will be limited because of its likely waterlogged nature at times, its undeveloped nature operates as a “green lung” in visual terms given the built up nature of existing and proposed development in the vicinity. This clearly would not alter if the works the subject of this application were carried out.
32. However the existing S106 Obligation does allow the owner of the land the right to restrict public usage of the site when required for activities by Sudbury Town Football Club. In the light of this and given that the flood compensatory works would further limit the range of leisure activities which could be undertaken on the site, negotiations have taken place with the agent, the applicants and the owners of the land and they have now agreed to transfer this land to the Council with a commuted sum for its future adoption and maintenance as public open space. By doing this the Council can ensure that the public have the opportunity to use the land all year round albeit in a more limited way. By following this approach it is considered that a satisfactory outcome has been negotiated which allows the land to still function as public open space and perform a compensatory flood storage role as well.

#### **The impact of the works on the visual amenities of the area and in biodiversity terms**

33. The widening of the drain at the southern boundary of the site will impact upon vegetation and biodiversity. In respect of trees a thorough assessment of whether any important trees will be affected has taken place and it is clear that there are no specimens of such significance that warrant the scheme being altered in order to retain them. However the loss of trees on the site for these works will impact on the area in visual terms and negotiations have taken place which have resulted in an agreement to replanting with suitable species to take account of the wetter land conditions. It is recommended that this is dealt with by way of a condition attached to the grant of planning permission.
34. With regard to wildlife considerations the matter has been discussed with the agent and he has agreed to the imposition of a condition for the survey of and translocation of protected species to a refuge to be provided elsewhere on the site.
35. With regard to the footpath issue raised by the Highway Authority this matter is being further investigated, as there are no existing public footpaths crossing the site although any routes that exist as identified on the northern boundary of the site may have informal status or be the subject of a legal claim. A further report on all these outstanding matters will be undertaken at the meeting.

#### **CONCLUSION**

36. To conclude it is clear that the consequence of these works will result in the ground being wetter than before with the prospect of it flooding once in 10 years. In addition its capability of use as public open space will be more limited than before. However with the changes proposed to the existing S106 Obligation it is considered that the land can continue its public open spacerole and also provide compensatory flood storage in a way which will meet the Environment Agency’s requirements and deliver the most natural appearance to the site and the area in landscape terms.

#### **REASONS FOR APPROVAL**

Subject to the satisfactory outcome of current investigations concerning the impact of the proposed works associated with the lowering of the ground levels to the public footpath on the northern side of the site, the proposal is considered to be in accordance with policies ENV3 and ENV14 of the Structure Plan 2001 and policies EN11, ENO3, ENO4, ENO5 and HS31 of the Babergh Local Plan (Alteration No 2.) 2006 and will not be harmful to the provision of proper flood drainage and public open space for the area whilst safeguarding the

interests of visual amenity, trees, landscape characteristics and protected species and wildlife and biodiversity issues.

## **RECOMMENDATIONS**

A. That subject to a satisfactory outcome of current investigations concerning:-

- the impact of the proposed works associated with the lowering of the ground levels to the public footpath on the northern side of the site

The Solicitor to the Council be authorised to secure a Planning Obligation under S106 of the Act to ensure:-

- the land is transferred to the Council for use as public open space with a commuted sum for its future adoption and maintenance

B. Upon securing the above Obligation the Chief Planning Control Officer be authorised to grant planning permission subject to the following conditions:-

- landscaping
- protection of existing trees to be retained
- protected species survey with appropriate translocation measures and the provision of a refuge (elsewhere on site)
- any as required relating to the outcome of current investigations concerning the impact of the proposed works associated with the lowering of the ground levels to the public footpath on the northern side of the site.