

## ADDENDUM 1 – 12.11.2021

**Application No:** 19/00257/FULES                      Author: Maxine Ingram  
Date valid: 25 February 2019                      ☎: 0191 643 6322  
Target decision date: 17 June 2019                      Ward: Collingwood

Application type: Full application with Env Statement

**Location: Land Adjacent To Rake House Farm Rake Lane North Shields Tyne And Wear**

**Proposal: Development of 310 residential dwellings (including affordable housing) and associated infrastructure and engineering works, creation of new access from A191 Rake Lane, creation of SuDS and open space. EIA submitted. (Additional information revised plans, TA and TP August 2020, July and August 2019, revised plans July 2019 and amended description)**

Applicant: Northumberland Estates, Mr Guy Munden Quayside House 110 Quayside Newcastle NE1 3DX

**RECOMMENDATION:**                      Minded to grant legal agreement req.

### 1.0 Department for Levelling Up, Housing and Communities

1.1 In deciding whether to call in this application, the Secretary of State has considered his policy on calling in planning applications. This policy gives examples of the types of issues which may lead him to conclude, in his opinion that the application should be called in. The Secretary of State has decided not to call in this application. He is content that it should be determined by the Local Planning Authority (LPA).

1.2 This means that the decision rests, without intervention, with the Planning Committee.

### 2.0 Representations

2.1 A further representation has been submitted by Persimmon Homes and Bellway Homes Limited. It is set out in full below:

It has always been the position of Persimmon Homes Limited and Bellway Homes Limited that they want to work with Northumberland Estates Limited (NEL) and integrate NEL's proposed scheme into the wider development of the Murton Gap Strategic Site. However, we need to achieve this in a way that meets the terms of the adopted development plan and will not prejudice the delivery.

The adopted Local Plan allocation is dealt with in S4.4 Part c of that policy deals with how applications are to be progressed. It requires a comprehensive masterplan, prepared collaboratively and agreed by the relevant developers and the Council and for the applications to be consistent with the plan. It anticipates a single application for the whole site and is very clear that if an application is made for part only of the site, it must not "in any way" prejudice the implementation of the whole allocation. Any application that does cause any such prejudice would clearly be contrary to the

terms of the adopted development plan and would, by definition harm the delivery of the rest of the allocation on a key strategic allocation.

The Murton Gap Masterplan is an adopted SPD and also covers the same matters as the Local Plan. At section 9 it deals with delivery. It highlights the importance of not just infrastructure delivery but also the timing of that delivery, the need for cooperation between landowners, the need for comprehensive development, the need to avoid piecemeal development and the need to avoid prejudice to the development of the rest of the allocation. Integration between development parcels is highlighted, alongside the provision of access to adjacent land. It states clearly that the Council will need to be satisfied that development of individual parcels will not “sterilise or frustrate” delivery of other parts of the site. It concludes that conditions and legal agreements will be required to achieve this.

The current application 19/00257/FULES is for some 310 dwellings and is therefore slightly more than 10% of the overall allocation. It raises the following issues:

Its development should not disproportionately absorb highways infrastructure capacity, before the Spine Road is complete. This road will be required after approximately 800 to 1000 homes are occupied. As the application is for some 10% of the allocation, it follows that no more than the proportionate amount of 80 to 100 homes) should be allowed to be occupied on the NEL site until the Spine Road is operational. This can be achieved by a Grampian condition. This is necessary as the ‘opening up’ of the site is a huge capital commitment and a significant strain on cashflow which requires a clear, sustained revenue stream from multiple sales outlets particularly until the Spine Road is opened up and the above capacity cap lifted. All land interests must share this equitably. Furthermore, the Consortium still need to secure legal rights off Nexus to implement the Spine Road. With this final deal being uncertain, it is not appropriate for NEL to develop a disproportionate amount of the above 800 units, which would also prejudice delivery of the rest of the allocation.

The Rake House Roundabout, Tynemouth Pool and Foxhunter’s schemes should be delivered via this application and should also be delivered in a way that does not restrict the wider development with the timings secured via appropriate Grampian conditions.

A properly proportionate contribution needs to be paid for allocation wide infrastructure. Figures have been discussed and generally agreed with NEL for individual items and are as follows:

- 25% on-site affordable housing provision
- Primary education £690, 000.00
- Public transport £24, 029.00
- Metro Station £1, 009, 400.00
- Green Infrastructure £453, 406.00
- Allotments £39, 920.32
- Sports pitch £205, 110.00
- Built sports £259, 400.00
- Employment and training £72, 100.00
- Waste £51, 036.00
- Local Wildlife Ste £60, 500.00
- Coastal Mitigation £104, 740.00
- Rake House Roundabout e£3,5m

- Tynemouth Pool e£1.6m
- Foxhunters e£1.7m

NEL seeks that these costs are fixed whilst the consortium members are exposed to changing specification, unforeseen circumstances and inflation for their 90% share. In the interests of moving the project forward the consortium are prepared to accept these sums provided that they are appropriately index linked and made available so that the rest of the consortium can combine them with their own sums and deliver the infrastructure that is needed for the comprehensive development of the allocation. This means that the sums will need to be paid on an early but phased basis commensurate with infrastructure construction and completion. This will have to be set out in a legal agreement that includes the rest of the consortium. Otherwise, it is not enforceable by them and there is no mechanism for paying money to them. These matters should be in a development agreement but could in a S106 if the rest of the consortium are parties to this as well as the Council and can take the benefit of these matters directly.

There will need to be highways, footpaths and other services and infrastructure that must connect between the NEL development and the rest of the allocation. To achieve such connections in a manner consistent with the Local Plan the following will need to be addressed:

- The relevant piece of infrastructure must be designed to have enough capacity to serve the rear of the allocation in line with the masterplan.
- It must be provided to the boundary as soon as is reasonably practicable, with appropriate step in rights if it isn't at NELs cost.
- Rights must exist for it to be connected to and used by the rest of the development allocation.
- Entry on to the NEL land will be needed for connection.
- The relevant infrastructure will need to be maintained by NEL until adoption or another party takes that role over, with step in rights at NELs cost.
- Where relevant that infrastructure needs to be to an adoptable standard and be offered for adoption at the earliest practicable opportunity.

As above, these matters should be in a development agreement, but could be in a S106 if the rest of the consortium are parties to this as well as the Council and can take the benefit of these matters. They will be reciprocal to the rest of the allocation.

Areas of the NEL land that are to be non-developable (for housing) and are needed for other purposes such as open space need to be secured as such. These matters should be in a development agreement but could be in a S106 if the rest of the consortium are parties to this as well as the Council and can take the benefit of these matters. They will be reciprocal to the rest of the allocation.

There is a need for NEL to address the costs of ongoing maintenance and stewardship of the allocation wide infrastructure in a fair and equitable way on such matters as open space and landscaping. These matters should be in a development agreement but could be in a S106 if the rest of the consortium are parties to this as well as the Council and can take the benefit of these matters. They will be reciprocal to the rest of the allocation.

NEL (or related parties) may have the benefit of covenants or mines and mineral rights that could prejudice the rest of the development allocation. These need to be released. These matters should be in a development agreement but could be in a

S106 if the rest of the consortium parties to this as well as the Council and can take the benefit of these matters. They will be reciprocal to the rest of the allocation.

Although the possibility of a S106 has been raised above, in reality for those matters that cannot be dealt with by Grampian condition, need a development agreement to meet the terms of the Local Plan.

Persimmon / Bellway have recently had very positive discussions with NEL in this regard and have generally agreed commercial arrangements that could facilitate the release of the NEL planning permission. Persimmon / Bellway are prepared to remove their objections to the application conditional upon the requisite planning and commercial controls / agreements being in place.

The above legal agreements can be drafted and concluded quickly, and Persimmon / Bellway are willing to work with NEL and the LPA to achieve this. However, should these agreements not be in place, Persimmon and Bellway have significant concern that approval of the NEL application would prejudice the wider application and jeopardise the delivery of the strategic housing allocation.

We hope that the above is self-explanatory and outlines a clear and collaborative way forward which allows the approval and implementation of the NEL application. However, it must be done on this basis and if it is not, we would need to consider the resultant legal position very carefully.

### 3.0 Response from applicant

3.1 The applicant has provided a response to the representation submitted by Persimmon Homes and Bellway Homes Ltd. It is set out in full below:

Spine Road: The Primary spine road (north-south) is completely separate from the application site. The application site has a standalone access from Rake Lane, and even when the wider Murton site is delivered, the application site will have no vehicular link north (bus only access). A planning condition restricting the number of units able to be delivered at the application site is inappropriate, especially as there is no sign of a planning application for the wider site coming forward. The condition would restrict delivery of homes in the south-east corner, with no date forthcoming for when the spine road would be delivered. Furthermore, the spine road is not required as mitigation for the application site. Without the spine road in place, the improvements to Foxhunters are required, which are being delivered entirely by the early delivery of the application site. This is the whole point of this application delivering Foxhunters improvements – to enable early delivery of the south-east corner without the need for the north-south spine road.

It is completely inappropriate for the Consortium members to be party to the S106 agreement between NE and the Council. They are not landowners of the application site, have no legal interest in the land, and have no responsibility to enforce the terms of the S106. The monies of the S106 will not be paid directly to the Consortium, but to the Council.

We confirm that the application site will deliver highways, footpaths, services and infrastructure to the boundary of the site, allowing the wider Masterplan to be delivered. This is in accordance with the approved plans. Indeed, the only real connection is the highways link which will only be adoptable by the Council if it is built up to the boundary to enable connection to the wider site.

Areas of the application site that are non-developable will be secured via the approved plans. There is no need for this to be within the S106. Any proposal to develop these areas would also be subject to a separate planning application in any case.

We are making a fair and equitable contribution to the wider open space and green infrastructure. This has been calculated based on the most up-to-date Landscaping Strategy, and the amount has been agreed with Council Officers.

Mines and minerals rights – this is subject to a separate discussion with Persimmon outside of the planning process. A commercial agreement is not required by the planning process and has no bearing on whether the Council determine that the application is acceptable in planning terms.

We would reiterate that it is unacceptable for Persimmon to delay delivery of houses at Murton on the false assumption that delivery of this site would prejudice the overall Masterplan. The only thing prejudicing delivery of the Masterplan is the lack of planning application from Persimmon. The Council need to decide whether to A) grant consent for 310 houses or B) wait an indefinite amount of time for the wider Persimmon application to materialise, which there has been no sign of since the Masterplan was adopted in December 2017.

#### 4.0 Officer Comments

4.1 The Local Planning Authority (LPA) agrees with Persimmon Homes and Bellway Homes Limited points that this planning application must integrate into the wider development of the wider strategic allocation and that it must not prejudice the delivery of the wider strategic allocation. Their representation also makes specific reference to Section 9 of the Masterplan. These matters are discussed at various points throughout the committee report, including paragraphs 8.23 and 8.25.

4.2 Specific reference is made in the additional representation that this development should not disproportionately absorb highways infrastructure capacity, before the north-south link road is complete and suggests that the no more than the proportionate amount of 80 to 100 homes should be occupied on the applicant's site until completion of this link road. There is no policy requirement to restrict occupation on the applicant's site until completion of this link road.

4.3 Paragraph 12.12 of the committee report discusses the highway infrastructure required to mitigate the impacts of this development and how this infrastructure links to the wider highway infrastructure requirements. This paragraph also discusses the approach the applicant has applied to ensure that they pay their proportionate costs towards the delivery of the wider highway infrastructure.

4.4 The advice in the Local Plan Transport Impacts report (2016) stated:

#### "A191/A192 Foxhunters & A192/A1058 Tynemouth Pool Roundabouts

The 'Foxhunters' roundabouts currently operate over capacity but due to the restrictions on access from the Murton strategic site onto the A191 Rake Lane, the operation of the junction does not worsen, although remains over capacity. Spare capacity is provided through the provision of the link road ("Monkseaton bypass"). The 250 residential units NTC Local Plan 4 May 2016 Commercial in Confidence Development Phasing Testing for Murton Strategic Site 46 accessed off Rake Lane

takes up all of the spare capacity provided by the link road at this location and as such the junction remains at / overcapacity. As such further physical mitigation works at the Foxhunters junction would not be necessary subject to the number of properties accessible from the Rake Lane access not exceeding 250. The 'Tynemouth Pool' roundabout currently also operates close to capacity and is pushed over through the delivery of Phase 1 of the Murton Gap site. This can be seen clearly in the AM peak with the increase in degree of saturation from 96% to 102% on the A192 southbound approach to the junction, and the PM return route via the A1058 eastbound approach. It will therefore be necessary to mitigate the impact at this junction." (pg 45/46).

4.5 The site specific IDP sets out requirements for the delivery of highway mitigation works and these requirements were taken through into the Masterplan which requires the link road and the Rake Lane junction to be provided in Phase 1. In relation to the application site, the Masterplan advises that this part of the site could provide access for approximately 250 units from Rake Lane. A bus gate in this area will restrict access to the wider strategic allocation for all vehicles except for buses and cyclists. This suggests that it would have been acceptable, from a highway's perspective, to permit access for 250 units off Rake Lane subject to the off-site mitigation works being secured. This application results in an additional 60 residential units accessing Rake Lane, but this is further mitigated by the fact the applicant is carrying out highway works at Foxhunters prior to the occupation of the 100<sup>th</sup> unit.

4.6 The representation from Persimmon Homes and Bellway Homes imply that this scheme should be restricted to between 80-100 units until the north-south link road is complete. As already set out in the committee agenda, the application site does not connect directly into the proposed link road and does not rely on the delivery of the link road. Therefore, the total amount of dwellings proposed (310) is considered appropriate for build out without restriction to 80-100 units until the north-south link road is provided and a Grampian condition is not considered necessary or reasonable. A Transport Assessment (TA) was included as part of the application that identified the off-site highway mitigation required along with a Framework Travel Plan with appropriate targets and bond. Whilst it is acknowledged that agreement with Nexus (as a land owner) is not certain, based on the costs published in the Site Specific IDP information on the costs an appropriate financial contribution can be secured. It would not be appropriate to delay the current proposal indefinitely on the basis that agreement may or may not be secured.

4.7 The Rake Lane roundabout, Tynemouth Pool and Foxhunters highway schemes are being delivered by this development on the evidenced provided in the TA and will be delivered even if no further applications come forward.

4.8 The LPA considers it can secure appropriate and proportionate contributions via a legal agreement, which have been agreed with the applicant, to mitigate the impacts of their development. It is noted that the consortium would prefer that the contributions are index linked. Members are advised that the requested S106 contributions will be index linked and this will be secured as part of the legal agreement. However, in line with normal practice and as is set out in the Masterplan, the off-site highway infrastructure will be secured via a S278 Agreement and will be delivered at the cost of the developer. The role of the LPA is to determine the submitted application. The absence of a development agreement between interested parties, it is not considered to be a justifiable reason to delay the current application

when the LPA can secure appropriate contributions for the purposes of securing infrastructure delivery set out in the master plan.

4.9 Appropriate highways and footpaths will be provided to the boundary of the application site that will enable future developments to connect into. This has been secured by planning condition. A planning obligation is suggested to be included in the S106 Agreement to secure both the dedication and adoption process, to ensure the secondary link road, public footpaths and cycleways are constructed to an adoptable standard and offered for adoption at an agreed timescale.

4.10 The figures set out in the Persimmon/Bellway representation are consistent with the figures set out paragraph 15.16 of the committee report. Members are advised that the estimated costs provided by Persimmon/Bellway regarding the highway infrastructure costs (Rake Lane, Tynemouth Pool, Foxhunters) are notional costs. Members are advised that these works will be carried out on-site by the developer via a S278 Agreement (paragraph 5.17 of the committee report). Members should note that S106 terms set out in the main report also include securing off-site compensation land to compensate for the loss of ecology land and mitigate the identified impacts.

4.11 Persimmon/Bellway are of the view that they need to be party to the S106 Agreement otherwise it is not enforceable by them and there is no mechanism for paying money to them. Both the IDP and Masterplan acknowledge that planning contributions, conditions and Section 278 Agreements will be required to secure the delivery of on-site infrastructure and off-site works to ensure the delivery of the wider strategic allocation is not prejudiced or sterilised. The LPA's approach has been to identify contributions to assist in the delivery of the wider strategic allocation infrastructure (including infrastructure required to be delivered on land not within the applicant's ownership). The LPA has also sought to secure the delivery of infrastructure within the application site by condition, off-site highway works by a S278 Agreement and off-site ecology compensation land by a S106 Agreement. The financial contributions will be paid to the Council. The monies will be used by the Council for the purposes of delivering the identified infrastructure pursuant to the obligations set out in the legal agreement to be completed. It is recognised, in doing so, it may be appropriate to provide monies to developers bringing forward other parts of the site which include the wider on-site infrastructure. The Council will make available the monies for the purposes set out in a legal agreement as required to deliver the wider strategic infrastructure.

4.12 Conditions have been suggested to secure the delivery of on-site infrastructure, including the delivery of the green infrastructure within the application site up to the site boundaries. The green infrastructure to the southern boundary of the site will connect to the wider strategic green infrastructure. This area of green space will be maintained by the applicant. The matter of on-going maintenance and stewardship of the wider strategic green infrastructure will either need to be secured by a condition to secure a mechanism for contributing towards this or secured via a commuted sum.

4.13 As set out in the Masterplan, co-operation between all landowners to deliver the wider strategic allocation would be beneficial but it is not a requirement.

4.14 Paragraph 8.24 of the committee report advises that equalisation amongst landowners in terms of housing numbers and infrastructure provision is not a matter for the LPA save to the extent that it gives rise to a conflict with the requirements of

the strategic policy as part of the development plan considerations. Members are also advised that mines and minerals rights fall outside of the remit of the planning process.

#### 5.0 Additional Consultee Comments

##### 5.1 Manager for Environment Health (Pollution)

5.2 Since the submission of this application, a supermarket has now been constructed to the south side of the A191 (Rake Lane). This supermarket was granted planning permission in 2020 (Ref: 20/00004/FUL).

5.3 I have viewed the noise report and note that assessment was carried out prior to the development of the Lidl store located adjacent to the A191. The original survey indicated that the dominant noise source was traffic from the A191. It will be necessary to ensure adequate mitigation for any proposed houses located near to the Lidl store to maintain external and internal noise levels and protect against nuisance by assessing noise impact from deliveries and plant. The delivery area of the supermarket faces toward the A191 and the plant is located east of the site in accordance with BS4142.

5.4 A noise scheme including a revised noise survey to consider noise from plant and delivery noise from supermarket adjacent to Rake lane A191 as well as traffic noise, and mitigation measures must be submitted prior to development for approval in writing and thereafter implemented

#### 6.0 Conditions

6.1 The Contaminated Land Officer has confirmed that conditions 5 and 6 can be removed as a Phase 1 and Phase 2 Site Investigation Report form part of the supporting documents accompanying this application.

6.2 Condition 12: Amended to include assessing impacts from the supermarket Notwithstanding Condition 1, and within each approved phase, prior to the commencement of any part of the development hereby approved a noise scheme in accordance to noise report reference number 28979/A5/ES2019, taking into account noise from plant and delivery noise from the supermarket adjacent to Rake Lane as well as traffic noise, shall be submitted to and approved in writing by the Local Planning Authority. This scheme must include details of the window glazing and sound attenuation measures to be provided to habitable rooms to ensure bedrooms meet the good internal equivalent standard of 30dB(A) at night and prevent the exceedance of Lmax of 45dB(A) and living rooms meet an equivalent noise level of 35dB(A) as described in BS8233:2014. Thereafter, the development shall be carried out in accordance with these agreed details which shall be implemented prior to the occupation of each dwelling and permanently retained.

Reason: This information is required from the outset to ensure appropriate mitigation is provided to safeguard the amenity of future occupants having regard to policy DM5.19 of the North Tyneside Local Plan (2017) and National Planning Policy Framework.