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Brandon Lewis MP,
Secretary of State for Communities and Local Govt.
National Planning Casework Unit
5 St Philips Place
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18th April 2016

Dear Minister,

Request for EIA Screening Direction in respect of land at Germany Beck, East Of Fordlands Road, Fulford, York.

1. Fulford Parish Council (FPC) is writing to request an EIA Screening Direction in respect of proposals to construct an access junction and additional flood defences on land at Germany Beck, Fulford.

Planning history

2. Outline consent was granted under Appeal Ref: APP/C2741/B/05/1189897 on 9 May 2007. The outline application bears the reference: 01/01315/OUT 'Outline application for residential development for approximately 700 dwellings, public open space & community facilities including local shops with assoc. footpaths, cycleways, roads, engineering works & landscaping (means of access submitted)'.
3. A reserved matters application was approved on 9 May 2013 (Ref: 12/00384/REMM) and various details under pre-commencement conditions were approved between August 2014 and April 2015. (Refs AOD/14/00120, AOD/14/00356, AOD/14/00357, AOD/14/00417, AOD/14/00419, AOD/15/00039).
4. The development is a Schedule 2 EIA development and Environmental Statements were submitted in 2001 and subsequently updated in 2003, 2006 and 2012. In early 2013 an addendum in respect of bat survey information and a Non-Technical Summary were submitted. Since early 2013, no further environmental statements have been produced.

5. Although a short section of the access slip road was constructed in April 2015, since then no further construction work has been undertaken although we were informed on 14 April 2016 that major works will begin in the next few weeks.

Background to the request

6. The request arises following a Section 278 Highways Act 1980 Agreement between the City of York Council (CYC) as Highway Authority and Persimmon Homes Ltd (the Developer) signed on 6 October 2015, but only disclosed to FPC on 16 March 2016. The Agreement contains 35 separate plans relating to the approved access arrangements including details of carriageway construction, retaining walls, road contours/levels, lighting and signage etc. Changes to the approved access road plan have been introduced, including an extension to a retaining wall on the east side of the A19, annotated on Plan ref: 11644/5007-1-121F as having been added as an extension southwards on 23 July 2014.
7. Crucially, the plans also contain details of an additional flood defence scheme to protect the A19 (and the new access junction) against closure during future flood events. Without these additional defences the only access to the development would be subject to closure during flood events, even after the Developer raises the level of the A19 carriageway at the site of the junction.

Additional flood defence scheme

8. The broad principles of the defences were outlined during the 2006 inquiry and provision for a financial contribution is included in the S106 Agreement, thus confirming that the scheme is necessary to make the development acceptable in planning terms, as the (then) Secretary of State confirmed in her Decision.
9. However, the defence scheme did not form part of the Germany Beck application and no planning permission exists for these works. Whilst the defences are the responsibility of CYC, it is clear from the S278 Agreement that the Developer has agreed to construct the defences in conjunction with their own proposals at the A19.

EIA Regulations

10. The Germany Beck development is a Schedule 2 EIA development and the S278 plans represent 'a change or extension' to development as described in Column 13(b) of Schedule 2 of the 2011 EIA Regulations:

“Schedule 2, 13 (b) Any change to or extension of development of a description listed in paragraphs 1 to 12 of column 1 of this table, where that development is already authorised, executed or in the process of being executed.

Either—

i) The development as changed or extended may have significant adverse effects on the environment; or

ii) in relation to development of a description mentioned in column 1 of this table, the thresholds and criteria in the corresponding part of column 2 of this table applied to the change or extension are met or exceeded”.

11. Flood relief works themselves can also be considered as Schedule 2 development as described in Schedule 2 10(h): “Inland-waterway construction not included in Schedule 1, canalisation and flood-relief works”. In this regard, it is relevant that the ECJ in the ‘Dutch Dykes’ case, concluded that ‘flood relief works’ encompassed all works for retaining water and preventing floods, including dyke works. [Case C-72/95 Kraaijeveld and others v Gedeputeerde Staten van Zuid-Holland³]

12. The NPPG advises the following:

“Changes or extensions to Schedule 2 development, which when considered with the existing development as a whole, may result in significant adverse effects on the environment, or which meet the thresholds or criteria set out in column two of Schedule 2, are also Schedule 2 development and require screening”.

13. CYC has not to our knowledge undertaken a formal screening opinion in respect of the S278 plans to consider whether any adverse environmental impacts would arise or whether those impacts would be significant. In fact, CYC has described the S278 flood defence works as works of improvement within the boundaries of the highway that do not constitute ‘development’ and do not require planning permission.

14. However, in a letter to FPC dated 1 April 2016, CYC has confirmed that the scheme is still at a formative stage and that third party land will probably be required outside the highway boundary:

“The present position is that the Highway Authority has requested further information from the Consultants engaged by Persimmon, in relation to modelling the impact of possible additional improvement works, aimed at

reducing the potential for flood impacts on the highway, so that council officers can interrogate these issues further. Discussions are ongoing. As originally envisaged, an element of such works will probably involve work on third party land and in such circumstances the Council, as Highway Authority would seek to address and resolve this, with the parties concerned, such that a robust engineering solution can be delivered, to the benefit of all highway users". [Letter CYC to FPC 1 April 2016]

15. It would seem self-evident that a flood defence scheme that requires engineering works within a floodplain and which is to be undertaken by the developer in conjunction with major EIA works to raise the level of the A19 carriageway would require full planning permission and a further EIA (to include a robust FRA).

Site sensitivity

16. When considered against the criteria for screening Schedule 2 development and assessing the likelihood for environmental effects, the particular area concerned is environmentally sensitive for all the following reasons:
- i) it lies wholly within the green belt and partly within a green wedge;
 - ii) it is contained within a conservation area or its setting;
 - iii) part of the area required for the flood walls is on the boundary of the Fulford Ings SSSI;
 - iv) the area lies within flood zone 3;
 - iv) the area is archaeologically and historically important due to the general acceptance that the 1066 Battle of Fulford was fought in this location.
 - v) the area lies at the historic fording place from which the Fulford derives its name and forms the picturesque and highly distinctive entrance to both the village and the City of York from the south.
 - vi) the area is ecologically diverse and is home to at least two protected species, namely bats and water voles and since the inquiry, the Germany Beck corridor has been allocated as a Local Green Corridor in the Draft Local Plan.
 - vii) the A19 in this location lies within an Air Quality Management Area.
17. FPC considers that there is a high likelihood for adverse environmental effects and that the environmental information should therefore be updated and integrated in order to assess the impacts of the flood defences in combination with the approved development.

Potential environmental effects

18. The potential environmental effects relate in principally to flood risk; heritage; archaeology; protected species; and residential amenity.

Flood risk

19. The additional A19 defence scheme has never been assessed for its effectiveness in any FRA, despite FPC's repeated requests for a new FRA at reserved matters stage and during the discharge of pre-commencement conditions. The scheme includes walling to hold back large volumes of floodwater emanating from the River Ouse flood plain. In addition, the Developer proposes to raise the A19 carriageway and to construct high retaining walls to form flood barriers at Germany Beck. These changes to the overall hydrology of the area are likely to result in significant and cumulative environmental impact, especially in the context of climate change and recent occurrences of flooding in the locality. It is also relevant that the latest topographical surveys have resulted in an increase in the estimated 1:100 year flood level at Fulford.

20. The defence scheme requires a sheet piled flood wall up to 1.53m in height (above ground) along the west side of the A19 which is currently lined by hedging and mature trees. The wall continues over Germany Beck and straddles the boundary with the Fulford Ings SSSI, continuing around the corner into the historic Landing Lane, which also needs to be raised and re-aligned as part of the defences. A further 'cut-off wall' is clearly required at the east side of the A19 (on third party land) in order for the defence scheme to be effective but there are no plans for this wall despite it being such an essential element of the overall scheme as outlined during the public inquiry. [ID181, ID139, ID213 and ID221]

21. In the absence of any Flood Risk Assessment it has not been demonstrated whether the defences will be effective either in the short term or over the lifetime of the development, nor what the consequences for local residents would be in the event of failure of the scheme. In these circumstances, it is only through the EIA process that the proposals could be made to comply with the NPPF §103 to ensure that flood risk has been properly assessed and will not be increased elsewhere.

Heritage

22. In 2008, the Fulford Village Conservation Area was extended to include the area of the site within which the junction with the A19 is to be built (as well as additional floodwalls). The setting of the CA has also changed to now include Landing Lane and the land to the south of Germany Beck that will contain the other defence works.

23. Since the CA designation in 2008, there has been no further impact assessment whatsoever, yet the details contained in the S278 plans are due to be constructed without any public consultation.

24. The 2012 ES makes reference to impact on the conservation area but it also states that an assessment would be made through condition 31:

8.6 The creation of the new junction and the first section of the access road will clearly impact upon the appearance of the Conservation Area. However paragraphs 5.18 to 5.20 of the 2008 Conservation Area Appraisal acknowledges the existing planning permission and the proposed access and specifically states "The extension of the conservation area would not prevent the approved development going ahead but should ensure a greater degree of control over its detailed design and quality, in order to minimise conflict with the area."

8.7 Such detailed control would be assessed at the discharge of condition stage when more detailed engineering design drawings are produced for the access (existing condition 31) and detailed plans for the nature park are produced (existing condition 10). [Heritage Assessment 2012 ES Chapter 14A]

25. An internal memo from the Conservation Officer dated 15 April 2013 also suggests that details of the access arrangements would be secured by condition and would require further consideration:

"The access road was approved prior to the conservation area being extended to the south. Conditions 30 (sic) and 31 cover detailed development of the highway, including the new link road from the A19. It is most important that that the detailed highway scheme drawings are developed to mitigate their impact on landscape, ecology and other valued characteristics of the existing environment...".

26. However, condition 31 was discharged containing only details of offsite highway works meaning that the impact on the extended CA has never been assessed and the public has been denied an opportunity to participate in the planning process.

27. We consider that there is a high likelihood of adverse impact on the rural character of the CA at the entrance to the village as a result of additional lengths of high walling, land

raising and further loss of trees, hedgerows and verges. The only way to properly assess the impact is to require an EIA to consider direct, indirect and cumulative impact of the proposals. [The historic landscape at this entrance into Fulford is fully described in section 3.27-3.28 of FPC's 2010 Submission provided to CYC as part of the Core Strategy process].

Archaeology:

28. The flood defence works have the potential to impact on archaeological remains due to excavations and engineering works both within and outside the Developer's red-line plan. Because of the historic nature of the area and the fact that it is generally accepted to be the most probable site of the Battle of Fulford, these impacts could be major unless further investigations are carried out in all areas not already identified for archaeological survey.

Ecology and protected species:

29. Bats: It is accepted that the A19 at Germany Beck is a major crossing point for commuting and foraging bats and that the trees lining each side of the road are important in forming hop-over points for bats to cross the busy carriageway. Most of the hedging and trees along the east of the road have already been lost during site preparation works and it cannot be doubted that the impact of engineering works to the west side may adversely affect roadside trees (owned by a third party) and that noise, vibration and dust pollution may also impact on the nearby bat populations.
30. Water voles: In April 2015, CYC acknowledged the presence of water vole populations along Germany Beck and Natural England has very recently granted a licence to allow the Developer to undertake works at the beck. Because the existence of water voles has never been recognised in the Developer's environmental statements, we consider that a full EIA update is now required to ensure that the licencing conditions and any method statement for dealing with water vole displacement is managed in conjunction with any impacts from the additional works now proposed.

Residential amenity:

31. The engineering and sheet piling works are to be carried out close to residential properties on Main Street but the potential impact of dust, noise and vibration emanating from construction activities (including sheet piling) has not been evaluated.

For all the above reasons we trust that you will consider issuing an EIA Screening Direction that an EIA is required to assess the full environmental impact of the access road details and flood defence proposals.

The documents that we consider relevant and referred to in this letter are listed below and are provided through a Dropbox link, but we would be pleased to provide any additional information that may be required.

Thank you for your consideration of this matter.

Yours sincerely

Karin de Vries

Chair of Fulford Parish Council

Copied to:

Mike Slater (CYC)

Simon Usher (Persimmon Homes)

Robin McGinn (Persimmon Homes)

Julian Sturdy MP

List of Documents in Dropbox:

Dropbox link:

<https://www.dropbox.com/sh/bhke7zpdcdqg5vc/AADgmG5QgE1q-xIoY6yjA7c7a?dl=0>

Secretary of State Decision Letter with conditions 2007

Inspector's Report 2007

Flood Risk Assessment 2004

FPC Submission – (York Core Strategy) - June 2010

Technical Paper 3 Historic Character and Setting, City of York Council - January 2011

Fulford Village Conservation Area Appraisal – 2008

S278 Agreement signed 6 October 2015

S278 Agreement Plans

Letter FPC to CYC 16/03/16

Letter CYC to FPC 01/04/16

ID181 Flood defences Pauline Randal landscape

ID139 Flood defence plans

ID213 Flood defences correspondence JSM and EA

ID221 Flood defences amended plan

A19 Photographs x 4