

**ROYAL BOROUGH OF WINDSOR & MAIDENHEAD  
PLANNING COMMITTEE**

**WINDSOR DEVELOPMENT CONTROL PANEL**

21 December 2009

Item: 1

<b>Application No.:</b>	09/01696/VAR
<b>Location:</b>	Land East Of Horton Road Horton Slough
<b>Proposal:</b>	Variation of S106 Agreement completed in connection with the permission for extraction of sand and gravel so the developer provides a financial contribution to the Council to pay for improvements to Bridleway 4 rather than the developer undertaking the improvements itself
<b>Applicant:</b>	
<b>Agent:</b>	Roger Miles Planning Limited
<b>Parish/Ward:</b>	Horton Parish

**If you have a question about this report, please contact:** Phillip Taylor on 01628 685753 or at [phillip.taylor@rbwm.gov.uk](mailto:phillip.taylor@rbwm.gov.uk)

## 1. SUMMARY

- 1.1 The variation to the S106 agreement is considered to be acceptable as it will help to ensure that improvement works to Bridleway No. 4 are completed. The details of the improvements have been the subject of discussions as a result of which it is considered that better details can now be provided than were in the S106 in the first instance. The Council's Rights of Way Officer has no objection to the variation and advises that, whilst the Council has the power to complete the improvement works to the surface of Bridleway No. 4, the prior written consent from the landowner for the removal of the existing gates to the north would be required before a replacement could be provided. Approval of the variation would mean that the Council would take on the responsibility for completing the improvement works and, with a willing landowner, both the surfacing works and the improved replacement gates to Bridleway No. 4 would be completed to the benefit of the local community and in a better way than is required in the S106 agreement.

**It is recommended the Panel delegates authority to the Head of Planning & Development to vary the S106 agreement dated the 25th July 2008 to that given in Section 9 of this report.**

## 2. REASON FOR PANEL DETERMINATION

- At the request of Councillor Lenton who questions why the applicant does not undertake the cost/risk of improving Bridleway No. 4, although the Head of Planning & Development would have considered it appropriate that the Panel determines the application in any event.

## 3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 3.1 The application site involves Bridleway No. 4 that is located between Colnbrook and Horton.

## 4. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY

- 4.1 The applicant seeks to vary the terms of a Section 106 agreement dated the 25<sup>th</sup> July 2008. The agreement was completed when planning permission was granted on appeal for the extraction of sand and gravel and restoration to agricultural land reference 07/00590 (a copy of the Inspector's decision letter is attached at Appendix B to this report).
- 4.2 The variation of the agreement seeks to delete Part 1 (3) of the Third Schedule that requires improvement works to be undertaken to Bridleway No. 4 (the relevant extracts from the agreement are also attached at Appendix B) and replace it with a requirement for the applicant to pay the Council a financial amount to undertake improvement works to Bridleway No. 4.

## 5 MAIN RELEVANT STRATEGIES AND POLICIES RELEVANT TO THE DECISION

### Local Area Agreement

- 5.1 The recommendation would contribute to the achievement of these selected priorities of the Council and its partners:

Promote healthy lifestyles ✓

### Other Local Strategies or Publications

- 5.2 Other Strategies or publications relevant to the proposal are:

- RBWM Public Rights of Way Improvement Plan – view at [http://www.rbwm.gov.uk/web/prow\\_improvement\\_plan.htm](http://www.rbwm.gov.uk/web/prow_improvement_plan.htm)

## 6. EXPLANATION OF RECOMMENDATION

- 6.1 The key issue for consideration is whether the variation of the agreement is acceptable, taking into account the consequences of not approving the variation.
- 6.2 Section 106A of the Town & Country Planning Act 1990 advises that a planning obligation may not be modified or discharged except:

(a) by agreement between the authority by whom the obligation is enforceable and the person or persons against whom the obligation is enforceable.

- 6.3 Under Part 1 (3) of the Third Schedule to the agreement and as amplified in Appendix 2, Bridleway No. 4 would be improved as follows:

Part 1 (3) of the agreement states:

“Works to Public Bridleway 4 Horton

3. Prior to the commencement of extraction of sand and gravel to carry out the works to public bridleway 4 Horton and to complete the works relating to it in a good and workmanlike manner and to the best of modern standards and to the specification at Part 1 of Appendix 2 of this deed.”

Appendix 2, Part 1 states:

“Works to Public Bridleway 4 Horton

1.1 The developer shall, prior to the commencement of excavation, undertake works to Public Bridleway 4 Horton as follows:

- (i) overlay the existing surface bridleway between points A and B on drawing 003 with a 22mm blinding of 18mm to dust well graded hard durable stone, laid, watered and rolled to form a hard well bound uniform surface
- (i) replace the existing barrier at the northern end of Public Bridleway 4 (point B on plan 003) with a timber field gate and timber bridle gate suitable for full disabled access.”

- 6.4 An issue over whether the improvement works to Bridleway No.4 can be completed by the applicant has arisen because of an apparent uncertainty over land ownership. A site meeting has taken place with the apparent landowner (the Trustees of the Rayner Family Trust) and a copy of the minutes of the meeting (these are in the course of being agreed) are attached as Appendix C.

- 6.5 In order to seek to overcome the apparent issue of land ownership the applicant has applied to vary the terms of the agreement so that a payment would be paid to the Council for the improvement works to be completed, assuming that the landowner allows the works to be undertaken and such consent is required. The Council's Rights of Way officer has suggested the sum of £9,000.00 + VAT (a total of £10,575.00) would be required to complete the improvement works.
- 6.6 The applicant advises that the payment would be payable by them during the operational life of the site within two weeks of a request being made by the Council. The money would be held by the Council for a period of two years from the date of payment and any unexpended sum would be repaid to the applicant (but see para. 6.9 below).
- 6.7 There is no apparent disagreement that the surface works should take place along the line of the existing hardcore base of Bridleway No. 4. It has been suggested that the proposed timber replacement field gate and timber bridle gate would not be appropriate in this location (at the northern end of Bridleway No. 4) because it could be damaged and be a threat to security generally (e.g. it may be able to be set alight and may allow access by cars driving through them, and for motorbikes. It is proposed to replace the existing metal field gate at the north of Bridleway No. 4 with a similar metal, as opposed to timber, field gate and leaving the existing metal horse gate (with a low metal 'step over' bar) as is there currently. In addition, a metal cycle/disabled access gate ("K barrier") is proposed on the other side of the replacement metal field gate (see Appendix D). This would help to ensure that the access requirements and security concerns raised are both met and in a better way than is required in the S106 agreement at it currently stands.
- 6.8 It is considered that the variation to the agreement is acceptable as it will best ensure that improvement works to Bridleway No. 4 are completed so that the benefit to all of the local community is realised. The Council's Rights of Way Officer has no objection to the variation and advises that whilst the Council has the power to complete the works to the surface of Bridleway No.4, the prior written consent from the landowner of the existing gates to the north would be required before the replacement timber field gate and timber bridle gate suitable for full disabled access (as presently detailed in the S106 agreement) could be provided. Agreement to the variation would effectively mean the Council would take on the responsibility for completing the works and, with a willing landowner, both the surface works and the replacement gates could be provided.
- 6.9 It is considered that a two year period for the Council to complete the works may not allow enough time to complete all of the works and a ten year period is recommended.
- 6.10 The alternative of refusing the request to vary the agreement would mean that the original requirement of those parties who signed the agreement would still remain. If the improvement works to the bridleway did not occur then the onus would be on the Council to enforce the requirements of the agreement. This would likely take considerable time and resources and it may well be that by not agreeing to the variation all of the works to Bridleway No. 4 would not occur. The benefit of the variation would ensure that the improvement works to the bridleway have the best chance of being completed.

### **Other Material Considerations**

- 6.11 Reference to conditions in the planning permission has been made by local residents. Condition 2 relates to the requirement for a scheme to be submitted to the Council to protect the new footpath and bridleway along the western and northern boundaries. This condition was discharged by the Council by letter dated the 4<sup>th</sup> August 2009. Condition 3 relates to a requirement for a scheme to be submitted to the Council to protect Bridleway No.4. This condition was also discharged by the Council in a letter dated the 4<sup>th</sup> August 2009. The current application relates to a variation of the S106 agreement and the issues raised by the 7 local residents are unrelated to this application.

- 6.12 As part of the requirements specified in the S106 a new Bridleway (Bridleway No. 5) is being constructed along the northern boundary of the site. In addition a new footway/cycleway and a horse margin are being constructed along the western edge of the site adjacent to Horton Road. These will connect via two other gates to Bridleway No. 4.
- 6.13 It is proposed to replace the existing steel railing at the field boundary between Bridleway No. 4 and the proposed Bridleway No. 5 with a York style two-in-one gate constructed with metal posts (Appendix E).
- 6.14 It is also proposed to install a metal horse style and a metal bridle gate ("K barrier") suitable for disabled access at the northwest corner of the new Bridleway No. 5 to connect with the western footway/cycleway and horse margin (Appendix F).

**7. CONSULTATIONS CARRIED OUT**

**Comments from interested parties**

513 occupiers were notified directly of the application.

The application was advertised in the Windsor, Slough and Eton Express on 3 September 2009.

The applicant posted a statutory notice advertising the application at the site on 25 August 2009.

The Council also erected site notices on 14 September 2009.

No letters were received supporting the application.

7 letters were received objecting to the application, summarised as:

Comment	Where in the report this is considered
1. There is a significant overlap with this request to the planning conditions imposed at the appeal determination. The request represents an abdication of the developer's responsibility to what had been stated in the original planning application and therefore the request should not be allowed.	Para. 6.11
2. If the upgrade of Bridleway No.4 is not achieved then it would jeopardise Condition 2 of the appeal decision.	Para. 6.11
3. The proposal would lead to a higher volume of traffic and pollution in the area.	This comment is not considered to be material to the decision.
4. No details have been provided in the application on the level of contribution which would be required to complete the works. Even with an adequate level the Council has no way on implementing the works. The replacement of metal gates to the north with wooden gates would not be sufficient to protect the bridleway from stolen cars and motorbikes. The works also contain no provision for the maintenance of the bridleway during the course of the mineral operations.	Paras. 6.5 – 6.9
5. The appeal decision should be upheld and no variations approved.	Para. 6.11
6. There is no reason to change what was an improved benefit for the community.	Para. 6.7
7. The objector believes that if the Council takes on this responsibility it will make Condition 3 and the S106 agreement untenable.	Para. 6.11

A letter of objection was also received from the Trustees of The Rayner Family Trust (RFT) and a meeting with the RFT subsequently took place on site with the Council on the 3<sup>rd</sup> November 2009.

8.	<p>The RFT was not given notification of the planning application to which the permission relates despite being the landowner.</p> <p>Neither the Council nor any of the parties to the S106 agreement has sought any kind of consultation with the RFT or its advisors regarding its terms and the extent to which they would impact upon the land owned and used by the RFT and/or by its lawful tenants.</p> <p>The application has been made some 8 months after the Council being alerted that there might be some irregularity in the ownership and title to Bridleway No. 4 and the applicant was advised in April 2009 of the persons they should contact.</p> <p>The RFT has owned and occupied the bridleway and adjoining farmland for over 50 years. No regard appears to have been given to Circular 05/2005 to ensure that those who might need to be directly involved have entered into the agreement.</p> <p>It now seems the case that to resolve this irregularity the Council should bear the brunt of implementing the works that should be the obligation of the applicant. The Council might be able to exercise its powers (under the Highways Act 1980) to overcome the applicant's inability to undertake the works. However the Council's powers seem to be limited to improvement of the surface of the bridleway only.</p> <p>RFT considers that the application is made to overcome such irregularities and is an abuse of process.</p> <p>RFT would have made objections at the outset had it been notified of the initial planning application, but due to the absence of requisite planning notice, and consequently an absence of any consultation, RFT is left with no recourse but to submit this objection.</p>	<p>Paras 6.1 – 10 refer. An objection to the planning application 07/00590/FULL for mineral extraction and restoration to agricultural land was made by the Rayner Family Trust on the 22<sup>nd</sup> March 2007. A meeting was held with the RFT and their solicitor on the 3<sup>rd</sup> November 2009.</p>
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## Consultees

Consultee	Comment	Where in the report this is considered
Rights of Way Officer	The Rights of Way Officer has no objection to the proposed variation commenting that the Council could complete the works to the surface of Bridleway No. 4 under the Highways Act 1990. The replacement of the northern gate could not be completed under this Act as the permission of the landowner would be required. In addition the removal of the field boundary fence to connect with the new Bridleway to the west would also require landowner approval. Without the removal of this fence the connection of the two Bridleways could not occur. This will be required to be included in the Highways Act S25 dedication agreement referred to in the S106 Agreement.	Para. 6.8
Colnebrook with Poyle Parish Council	The Parish Council unanimously agreed to oppose the request and recommend that it be rejected. Whilst they fully appreciate that lawful tenure to the land in question is in dispute, and that this would be an exceptional circumstance, they are aware of Condition 3 of the appeal planning consent. The Parish Council advise that the purpose of conditions is to either protect the community from the impact of development or to protect the community's access or rights to daily routines within acceptable safety margins.	Para. 6.11

## 8. APPENDICES TO THIS REPORT

	Appendix A – Site location plan
	Appendix B – Appeal decision letter and extracts from the S106 agreement
	Appendix C – Agreed minutes of a site meeting with the Trustees of The Rayner Family Trust
	Appendix D – Illustrative detail of a metal bridle gate (“K barrier”) suitable for disabled access and a replacement metal (agricultural) field gate
	Appendix E – Illustrative detail of a York style two-in-one agricultural gate to be constructed with metal posts to replace the existing low steel railing at the field boundary between Bridleway No. 4 and the proposed new Bridleway No. 5
	Appendix F – Illustrative detail of a horse style to be installed to the northwest corner of the new Bridleway No. 5 to connect with the western footway/cycleway and horse margin. A metal cycle/disabled access gate (“K barrier”) would also be installed at this location.

## 9. RECOMMENDATION

**That the Panel delegates authority to the Head of Planning & Development to vary the signed S106 agreement dated the 25th July 2008 with the substitution of the following words at Part 1 (3) The Third Schedule:**

### **3 Works to Public Bridleway No 4 Horton**

**Within two weeks of a request being made by the Council the operating company shall pay the Council the sum of Nine Thousand Pounds (£10, 575.00) to complete improvement works relating to Public Bridleway No. 4 Horton or, if the monies received, or part thereof, can not be spent on the improvement works to Public Bridleway No. 4 Horton due to the absence of any necessary landowner consent to undertake those works, then improvement works to another designated Right of Way in close proximity to the application site be completed using the unspent monies.**

**The sum shall be held by the Council for a period of ten years from the date of the agreement and any monies unspent shall be returned to the operating company following the final payment of all invoices.**

**And with the substitution of the following words at Appendix 2 Part 1**

### **Works to Public Bridleway No 4 Horton**

**1.1 The developers shall, prior to commencement of excavation, undertake works to Public Bridleway No. 4 Horton as follows:**

- (i) overlay the existing surface bridleway between points A and B on drawing 003 with a 25mm blinding of 18mm to dust well-graded hard durable stone (“Type 1” sub-base), laid water and rolled to form a hard well bound uniform surface**
- (i) replace the existing barrier at the northern end of Public Bridleway No. 4 Horton (point B on plan 003) with a metal field gate, a metal horse gate (with a low metal ‘step over’ bar) and a metal bridle gate (“K barrier”) suitable for disabled access**