

North Hertfordshire Local Plan Examination

Hearing Statement of Croudace Homes Group

Matter 11: Housing allocations and settlement boundaries: Category A Villages

This statement follows on from the representations submitted to the Council under the following references:

- Respondent 14468: Croudace Homes Ltd (submitted by Portchester Planning)
- Respondent 16069: Croudace Homes (submitted by Savills)
- Respondent 193: Croudace Strategic Ltd (submitted directly by Croudace)

All these submissions are from parts of the Croudace Homes Group, which will be termed “Croudace” in this statement for simplicity.

Matter 11 – Housing allocations and settlement boundaries: Category A Villages

Ashwell: Site AS1

Matter 11.1

1. Croudace confirms that it is still pursuing an application for housing on site AS1, under reference 16/01797/1. This application was originally for 33 dwellings, but has since been revised to comprise 30 dwellings during the process of negotiation. The application remains undetermined at the time of writing (9 January 2018).
2. All land within the application site is under option to Croudace. Croudace is a well-established developer which is active in the area, with the resources to carry out a development of this type.
3. As part of the application, evidence and assessments have been prepared into the proposed scheme and its impacts on a variety of matters, including vehicular and pedestrian access.
4. Croudace understands there to be no outstanding issue in respect of the vehicular access. The response to the planning application from Hertfordshire County Council's Area Highway Development Control Manager is attached as Appendix A. This confirms that, having considered the submitted material, the County Council in its capacity as Highway Authority does not object to the planning application, subject to conditions being applied.
5. With respect to the pedestrian access, the proposed pedestrian route from the site into the rest of the village passes along a short stretch (approximately 30 metres) of unadopted highway, which forms part of Ashwell Street. This unadopted stretch of Ashwell Street also provides the only access to a small number of existing dwellings.
6. Croudace has had prepared a combined Stage 1 and 2 Safety Audit which concludes that the pedestrian use of this part of Ashwell Street would be safe. The audit and designer's response are attached as Appendix B.
7. Croudace has also submitted in support of the application an Opinion from David Forsdick QC, dated 12 June 2017, confirming that the site has the benefit of legal rights to use this short stretch of unadopted highway. This Opinion is attached as Appendix C.
8. The landowners are currently going through the process of registering the site's existing right to use this stretch of unadopted highway with the Land Registry. It is acknowledged that objectors to the planning application are also trying to prevent the registration of this right. Matters are currently with the Land Registry and may proceed to a tribunal, although no date for this has yet been set.
9. Croudace remain confident that the legal right exists and will be confirmed, in light of the QC opinion and all other material which has been presented, including the material presented by the objectors opposing registration.
10. On all other matters Croudace is not aware of any outstanding issues with respect to supporting infrastructure or services which would prevent the delivery of this site.

Matters 11.2 and 11.3

11. Croudace believes this housing allocation is justified. Ashwell is a large village with good facilities, including a doctor's surgery, school and shops. The village is also served by Ashwell and Morden station, albeit this is a little way removed from the village itself. As one of the largest villages with the best services in the district, Croudace maintains that Ashwell should be accommodating some of the housing growth proposed.
12. This parcel of land adjoins existing development on two sides and offers the opportunity to deliver a modest increase in the level of housing in the village, including 40% affordable housing. No other sites were identified through the Local Plan process which the Council considered to be more acceptable than this site in Ashwell, with the result being that this site is the only one proposed for allocation in the village.
13. As part of the planning application, impacts on landscape and heritage assets have been considered, as well as impacts on adjoining properties. The scheme has been amended through the course of negotiating the application to reduce the ridge heights of the proposed dwellings. This has been done in order to minimise the impacts on adjoining residents, and any potential impacts on wider views of the village from the footpath network to the south-west, particularly with regard to views from near the Scheduled Ancient Monument of Arbury Banks, an Iron Age Hillfort.
14. Five sites in Ashwell were assessed in the latest Strategic Housing Land Availability Assessment (HOU9) and the Site Information Matrix (HOU13). The site which is now proposed for allocation as AS1 was assessed as Site 3. The other four were:
 - Site 301: considered unsuitable due to significant impact development here would have on Ashwell Conservation Area and nearby listed buildings.
 - Site 304: Historic England expressed concern about impacts on the Ashwell Conservation Area and nearby listed buildings.
 - Site 305: Historic England expressed concern about impacts on the Ashwell Conservation Area and nearby listed buildings.
 - Site 306: Opportunity constrained by limited capacity of the access road, with no options to improve access identified.
15. This site, which does not affect the conservation area or listed buildings and has suitable access was therefore the only acceptable site in Ashwell.

Matter 11.4

16. The proposed village boundary is proposed to logically follow the southern and western boundaries of site AS1, where there is already a line of trees and hedgerows separating the site from the large field to beyond.
17. The village boundary is also proposed to bring the adjoining pumping station within it, which seems logical and is supported by Croudace.

Appendix A: Response to planning application 16/01797/1 from Hertfordshire County Council's Area Highway Development Control Manager

Date of response: Wed 06 Sep 2017

Decision Notice is given under article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 that the Hertfordshire County Council as Highway Authority does not wish to restrict the grant of permission subject to the following conditions:

1. The development hereby permitted shall not commence until the proposed access has been constructed to base course construction for the first 12 metres and the join to the existing carriageway has been constructed to the current specification of Hertfordshire County Council and to the local Planning Authority's satisfaction.
2. The gradient of the access shall not be steeper than 1 in 50 for the first 12 metres from the edge of the carriageway.
3. The access road shall be a minimum of 5.50 metres wide and the kerb radii shall be 10 metres as identified on drawing number 072/064 revision F.
4. Before the access is first brought into use vehicle to vehicle visibility splays of 2.4 metres x 90 metres to the northern direction and 2.4 metres x 84 metres to the southern direction shall be provided and permanently maintained. Within which there shall be no obstruction to visibility between 600 mm and 2.0 metres above the footway level. These measurements shall be taken from the intersection of the centre line of the permitted access with the edge of the carriageway of the highway respectively into the application site and from the intersection point along the edge of the carriageway.
5. Construction of the approved development shall not commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority in consultation with the highway authority. Thereafter the construction of the development shall only be carried out in accordance with the approved Plan. The Construction Traffic Management Plan shall include construction vehicle numbers/routing of construction traffic and shall be carried out as approved.
6. Prior to the commencement of development a Construction Method Statement shall be submitted to and approved in writing by the local planning authority in consultation with the highway authority. Thereafter the construction of the development shall only be carried out in accordance with the approved Statement.

The Construction Method Statement shall address the following matters:

- a. Off site highway works in order to provide temporary access throughout the construction period, work shall be completed prior to the commencement of development, and reinstated as required;
- b. Construction and storage compounds (including areas designated for car parking);
- c. The Siting and details of wheel washing facilities;
- d. Cable trenches within the public highway that affect traffic movement of existing residents;
- e. Cleaning of site entrance and the adjacent public highways and,
- f. Disposal of surplus materials.

REASONS for the recommendation above:

1. In the interests of highway safety and amenity.
2. To ensure a vehicle is approximately level before being driven off and on to the highway.
3. To facilitate the free and safe flow of other traffic on the highway and the safety and convenience of pedestrians and people with a disability.
4. To provide adequate visibility for drivers entering and leaving the site.
5. In order to protect highway safety and the amenity of other users of the public highway.
6. In the interests of highway safety, amenity and free and safe flow of traffic.

HIGHWAY INFORMATIVE:

1. Works to be undertaken on the adjoining highway shall be constructed to the satisfaction of the Highway Authority and in accordance with Hertfordshire County Council publication Roads in Hertfordshire Highway Design Guide. Before proceeding with the proposed development, the applicant shall contact <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx> or call on 0300 1234 047 to obtain the requirements for the associated road works as part of the development. This should be carried out prior to any development work is carried out.

Reason:

1. To ensure that work undertaken on the highway is constructed to the current Highway Authority's specification, to an appropriate standard and by a contractor who is authorised to work in the Public Highway.
2. Prior to commencement of the development the applicant is advised to contact the 0300 1234 047 to arrange a site visit to agree a condition survey of the approach of the highway leading to the development likely to be used for delivery vehicles to the development. Under the provisions of Section 59 of the Highways Act 1980 the developer may be liable for any damage caused to the public highway as a result of traffic associated with the development. Herts County Council may require an Officer presence during movements of larger loads, or videoing of the movements may be considered.

COMMENTS:

The application comprises of 30 dwellings together with associated access, parking, amenity and open space. (Site layout amended by amended plans received 29/01/17, 23/03/17 and 22/08/17).

VEHICLE ACCESS

The development has one point of vehicle access from Claybush Road that is designated as the C9 unnumbered classified local access road subject to a speed limit restricted to 30 mph to the northern direction and derestricted to the southern direction.

TECHNICAL AUDIT

The design would have to be submitted to a scale of 1:200 to the highway authority and subjected to a Technical Audit with the ultimate design being technically approved prior to commencement of the s278 works on site.

To maintain highway safety along the residential street adjacent to the site the highway construction serving the new development must be complete to base course level for the at least the first 15 metres prior to any building construction to the new development commencing on site.

The width of the access road has been shown at 5.5 metres wide on the submitted drawings which would conform to the minimum width of an access road that would accommodate a waste collection vehicle in current use. This width would support two-way traffic taking into account the passing of parked cars by waste collection vehicles for the scale of the development due to likely indiscriminate parking on the access road.

Further discussion will need to take place with the developer to discuss the adoption process for the internal highway layout and the limits of highway adoption that the highway authority would accept.

The submitted road layout may not be to an adoptable standard. The site internal layout will need to comply with 'Roads in Hertfordshire - Highway Design Guide' if the roads within the estate were to be adopted under a Section 38 Agreement.

The Developer should contact <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx> or call on 0300 1234 047 to obtain the requirements for the associated road works as part of the development. This should be carried out prior to any development work is carried out.

The internal road layout has an acceptable level of vehicle to vehicle inter-visibility from driveway accesses and around bends and this has been demonstrated on the submitted drawings.

HIGHWAY SAFETY & vehicle to vehicle inter-visibility along the highway from the New Development

The vehicle to vehicle inter-visibility from the new connection within the new development accords with Manual for Streets.

Forward visibility around the bend within the development access road is achievable and conforms to the sight stopping distance (SSD) criteria of Manual for Streets.

MANOEUVRABILITY WITHIN THE ROAD LAYOUT

To confirm that the geometry of the horizontal alignment of the road layout has sufficient capacity to accommodate two-way traffic for vehicles likely to serve the development a swept path analysis has been prepared and is shown on drawing number 072 details demonstrate that a waste collection vehicle in current use by North Herts District Council can turn around and exit the site in forward gear the method of waste collection must be confirmed as acceptable by North Herts refuse collection agency.

The vehicle tracking shown is acceptable for waste collection vehicles and the turning area is also considered acceptable for the manoeuvring space needed for delivery and emergency vehicles at the end of the cul-de-sac and along the access road.

TECHNICAL DESIGN OF THE ROAD LAYOUT

The gradient of the access road has been recommended to be a minimum 1:50 (2%) for the first 12 metres. This gradient is to avoid grounding of vehicles using the access to the new

development from Claybush Road.

Hertfordshire County Council as Highway Authority would consider that if the details were submitted showing the development layout with an acceptable level of vehicle to vehicle inter visibility on the road layout was provided and detailed to scale (1:200) on the site layout drawings of the proposal to accord with the above comments this may be considered for compliance with highway safety.

However prior to commencement on site preliminary design details of the new access roads should be provided to establish the technical design is to highway standards. An engineering drawing should be prepared drawn to a suitable scale of 1:200 to demonstrate the extent of re-profiling of the carriageway where it joins the existing road at Claybush Road, showing the access width, carriageway crossfalls and a scheme for the on-site and regulated discharge of surface water run-off drainage from the proposal.

Three copies of the preliminary design should then be submitted for approval to the highway authority where a in due course when progressing the s278 agreement a technical design check would also be carried out.

In order to proceed to full planning permission a topographical survey of the existing ground levels has been carried out this is in order that the vertical alignment is possible from the adjacent highway.

PARKING PROVISION

Parking provision has been sited to comply with the walking distance found within Roads in Hertfordshire 'Highway Design Guide' which is 20 metres. (Section 4 ; Design Standards and Advice Chapter 9 ; Vehicle Parking Facilities)

A careful balance must be struck between the desire of residents to park as near to their house as possible and maintain the overall setting.

If residents consider that the parking spaces are too far away from the their dwellings they will park their vehicles on the access road which will cause an obstruction and prevent emergency vehicles reaching their destination and service vehicles such as waste collection vehicles from collecting refuse.

It is inevitable that residents that do not have individual driveways will not park in the prescribed areas and will park outside their homes.

DESIGN AND ACCESS STATEMENT

Public Transport

The applicant has submitted a Transport Statement to consider the proposal which addresses the passenger transport provision to the new development.

BUS

The nearest bus stops to the development are located to the north of the site on the High Street opposite Gardiners Lane and are within walking distance of the proposed development and below the recommended 400m walking distance and provide access to services 91 and 202.

Additional bus stops located at the post office on the High Street provide access to additional services such as 90 and 127 these are located within 700m walk distance of the stops offer access

to Ashwell & Morden train station; Letchworth; Baldock; and Royston.

These stops lack easy access kerbing and it may not be possible to improve these stops with easy access kerbs.

The village has a limited bus service that runs throughout the day where some sections of the route has a 'hail and ride' service with buses stopping where it is safe to do so. This has been considered to be a viable service to meet the needs of the new residents in order to reduce the use of the private car.

Services available are as follows:

90/91 Letchworth-Royston Mon-Sat 2-3 hrly, no Sun

127 Everton & Eyeworth 2 services on schooldays and 2 & Ashwell & G additional Wednesday only. Morden & Royston

290 Hinxworth-Royston Weds only x 1 each direction

202 Ashwell & Morden Station Mon-Fri am & pm services at commuter times

RAIL

Ashwell and Morden station is located approximately 2.5 miles away. Services are run by First Capital Connect into London Kings Cross and are 3 per hour in am peak, hourly off peak.

OTHER COMMENTS

The site is located within recognised accessibility criteria of a bus stop. The stops however have no shelters or easy access kerbs.

The flags, where the bus should stop, are attached to lamp columns.

Sustainable transport contributions could be used to provide easy access kerbing easy access kerbing £4000 per stop.

Services are of limited frequency but do enable access to surrounding towns on the 90/91 (Royston, Baldock, Letchworth) and to the station, on the 202. Ashwell and Morden station is somewhat remote from the village and the 202 bus route provides 3 or 4 am and 3 or 4 pm services to and from the station in peak commuter periods. Journey time into London Kings Cross is between 42-57 minutes.

It has been recommended to use s106 contributions to provide upgrades to bus stops in the vicinity of the site in order that they are fully Accessibility Act-compliant.

Walking and Cycling

Pedestrians have access to an extensive network of footways within the vicinity of the site with footpath access extending to the village High Street.

The village centre and local facilities have a realistic access from the development by cycling albeit that there is no dedicated cycle lane.

CONSTRUCTION TRAFFIC

Concerns over the impact that the volume of construction traffic travelling to the site by HCC has resulted in a planning condition being recommended to prepare a Construction Traffic Management Plan.

TRANSPORT IMPACT

HCC has compared Traffic data by using an assessment of the TRICS database to calculate the

trips rates for the development. The junction of Claybush has the capacity to carry the total volume of traffic from the new development.

Bearing in mind that the traffic flows are fundamental to the assessment of traffic impact HCC is satisfied that the data produced provides an overall picture of the existing traffic movements and the future traffic generated from the new development.

TRAFFIC GENERATION

Traffic generation has been derived from the volume of predicted traffic generated compared with the likely trip rates obtained from comparable residential site within the national TRICS software, (Trip Rate Information Computer System) trip generation database with equal multi modal splits with a reasonable level of public transport accessibility based on development at the outside of a town. The new development has been assessed and has been accepted of being comparable and realistic.

Given the proposal involves the provision of around 30 dwellings considering the data output from the TRICS software the total peak generation of traffic would be around a total of 15 vehicles departing from the development in the morning peak travelling period (8:0 am to 9:0 am) and a total of 16 vehicles arriving at the development in the evening peak travelling period (5:0 pm to 6:0 pm) this was compared with 0.5 trips taken per household (the figure of 0.5 trips taken from the 2015 (a) TRICS Data base) taking into account that the development is located adjacent to a local access road the new traffic generation of vehicles is considered not to have a significant impact on the local highway network.

The above data has been considered acceptable in traffic generation terms.

HCC have considered the Transport Statement covering highway and traffic issues, submitted in support of the application. This document was carefully considered to establish the likely impact of the road network.

PLANNING OBLIGATION INFORMATIVE: Through the planning process Hertfordshire County Council would recommend that a financial contribution is provided by developers toward an integrated transport scheme to mitigate the incremental increase in traffic impact from developments and maximise the sustainability of the site in transport terms where safety and passenger transport improvements would then be delivered in order of need.

This approach is consistent and relate to the scale and impact of development. The sustainable contribution means the sum of eight thousand pounds (£8,000) (Index Linked) as a contribution towards the design and construction of highway improvement works to the bus stops along the High Street that will encourage users of the Development to travel to and from the Development by means of transport other than the private car which the County Council determines will contribute to the improvement of highway conditions on parts of the network affected by traffic associated with the Development.

OFFSITE WORKS INFORMATIVE:

The requirement as part of the offsite s278 works is to include the to extend the existing speed limit to the south. The details of the Speed Limit Order should be included as part of the s278 drawing as part of the required highway work in conjunction with the development.

As a requirement of the section 106 agreement the bus stops along Station Road are required to be upgraded to Disability Discrimination Act standards in order to maximise accessibility of the site. The bus stops will need to be upgraded with easy access kerbs (the existing shelter may need relocating). This will need to be agreed in conjunction with appropriate parties. These works shall be secured through the s106 agreement.

CONCLUSION

Hertfordshire County Council as Highway Authority has considered that the proposal would not have an unreasonable impact on the safety and operation of the adjoining highways and does not wish to restrict the grant of permission subject to the recommended planning conditions and highway informatives above.

Appendix B: Safety Audit of proposed pedestrian access and designer's response

CLAYBUSH ROAD, ASHWELL, HERTFORDSHIRE

**Proposed Residential Development -
Pedestrian Access**

Road Safety Audit - Combined Stage 1 & 2

Final Report

August 2017



Taylor Bowie Ltd
ROAD SAFETY & TRANSPORTATION CONSULTANCY

REPORT APPROVAL

Document Location

Ensure that this document is current. Printed documents and locally copied files may become obsolete due to changes to the master document.

This is a controlled document.

The source of the document can be found on the file server at location:

SB:TAYLOR BOWIE LTD:CLIENTS:CroudaceHomes:ClaybushRoadAshwellHerts:PedestrianAccess:RSACombinedStage 1&2.docx

Revision History

This document has the following history:

Version No.	Version Date	Summary of Changes	Changes marked
1.0	17/07/2017	N/A	N/A

Approvals

This document requires the following approvals:

Name	Title
Sarah Bowie	Audit Team Leader
Mario Gatti	Audit Team Member

Distribution

This document has also been distributed to:

Name	Title & Organisation
Alan Griffin	Senior Engineer - Croudace Homes

1 INTRODUCTION

1.1 Commission & Terms of Reference

This report has been prepared in response to an e-mail commission dated 13th July 2017 from Alan Griffin, Croudace Homes, requiring a Combined Stage 1 & 2 Road Safety Audit on a proposed pedestrian access associated with a proposed residential development sited off Claybush Road, Ashwell, Hertfordshire.

The Terms of Reference are as described in the Highways Agency's Design Manual for Roads and Bridges document HD 19/15 'Road Safety Audit'.

1.2 The Scheme and its Purpose

The proposed pedestrian access is associated with a residential development on land west of Claybush Road, Ashwell, Hertfordshire. The proposed development is circa 33 residential units.

Pedestrian access to the site is via a short section of concrete road, which connects to Ashwell Street west of its junction with Bear Lane.

This section of Ashwell Street serves seven properties in total, five of which are beyond the access point to the field where the residential development is proposed.

1.3 The Audit & Audit Report

The audit comprised an examination of documents forming the Audit Brief and an examination of the site during daylight hours. The documents were made available to the Audit Team by Alan Griffin who was available to respond to queries from the auditors to clarify detailed issues, to provide additional details and to achieve an Audit Brief acceptable to the Audit Team. The total documents forming the Audit Brief are listed in **Appendix A**. Generally, the Brief comprised:

- Proposed pedestrian access

This information was considered sufficient as the Audit Brief for the purpose of undertaking the road safety audit requested.

The Audit Team membership approved for this audit was:

Sarah Bowie IEng, MICE, FIHE, MCIHT, MSoRSA HE RSA Cert Comp

(Audit Team Leader) Director, Taylor Bowie Ltd

Mario Gatti BSc Civ Eng, HE RSA Cert Comp

(Audit Team Member) Associate Consultant, Taylor Bowie Ltd

The audit took place at Taylor Bowie Ltd Letchworth office during July 2017, and both Audit Team Members examined the site together in daylight hours on the morning of Monday 17th July 2017. The weather during the site visit was hot and sunny. The carriageway was dry. Traffic flows at all times were light. Five pedestrians and no cyclists were observed during the site visit.

The scheme has been examined, and this report compiled, only with regard to the safety implications to road users of the scheme as presented. It has not been examined or verified for compliance with any other Standards or criteria. However, to clearly explain a safety problem or the recommendation to resolve a problem the Audit Team may, on occasion, have referred to a Design Standard without touching on technical audit.

No Departures from Design Standards have been reported by the Design Organisation.

1.4 Audit Administration

This Audit Report has been submitted to the Design Organisation as a draft for checking, consideration and approval. The Design Organisation is responsible for agreeing with the Audit Team Leader the form of the final version of the report and for instructing that the report is presented in its final form.

It is the responsibility of the Audit Project Sponsor, i.e. the local highway authority, Hertfordshire County Council, to advise the Audit Team Leader if any Problem or Recommendation is not adopted. A copy of every signed Exception Report is required by the Audit Team Leader from the Audit Project Sponsor for attachment to the master copy of the Final Audit Report.

Safety issues identified during the audit and site inspection which the Terms of Reference exclude from this report, but which the audit team wishes to draw to the attention of the Audit Project Sponsor, will be set out in a separate letter. These issues could include maintenance items and operational issues. In this regard, the Audit Team have made reference to one item as referred to in a covering letter to the Design Organisation, Croudace Homes, dated 1st August 2017. This covering letter should be supplied to the Audit Project Sponsor, Hertfordshire County Council and, be considered in conjunction with this Combined Stage 1 & 2 Road Safety Audit Report.

2 ITEMS RAISED IN THIS COMBINED STAGE 1 & 2 ROAD SAFETY AUDIT

2.1 General

No Problems identified in this category at this Combined Stage 1 & 2 Road Safety Audit.

2.2 Local Alignment

No Problems identified in this category at this Combined Stage 1 & 2 Road Safety Audit.

2.3 Junctions

No Problems identified in this category at this Combined Stage 1 & 2 Road Safety Audit.

2.4 Non-Motorised User Provision

2.4.1 PROBLEM

Location General - Proposed pedestrian access route between Ashwell Street and residential development (Drawing 072/067).

Summary - Potential lack of adequate and suitable intervisibility could result in a slight increased risk of conflicts occurring between pedestrians and vehicles.

Detail - At this Combined Stage 1 & 2 Road Safety Audit, the scheme proposals indicate that a pedestrian access path is to be provided between Ashwell Street and the proposed residential development sited to the south.

The site visit has established that the existing concrete carriageway access road is narrow with vegetation on both sides and on the exit/entrance corners.

Whilst traffic flows and speeds within this area have been observed to be very low, concern arises that this situation may result in a risk of conflicts occurring between pedestrians and vehicles entering and exiting Ashwell Street.

RECOMMENDATION

At the construction stage of the project, suitable and adequate intervisibility zones should be provided to enable pedestrians to clearly see any passing vehicles. Associated localised vegetation clearance should be undertaken in particular along the northern side of the proposed pedestrian route itself and exit/entrance corner.

2.5 Road Signs, Carriageway Markings & Street Lighting

No Problems identified in this category at this Combined Stage 1 & 2 Road Safety Audit.

**END OF REPORT - NO PROBLEMS IDENTIFIED OR RECOMMENDATIONS OFFERED IN THIS
COMBINED STAGE 1 & 2 ROAD SAFETY AUDIT**

3 AUDIT TEAM STATEMENT

We certify that this Audit has been carried out in accordance with HD 19/15.

AUDIT TEAM LEADER

Sarah Bowie I.Eng, MICE, FIHE, MCIHT, MSoRSA, HE RSA Cert Comp

Director

Taylor Bowie Ltd


Road Safety & Transportation Consultants

5 Curlew Close

Letchworth Garden City

Hertfordshire

SG6 4TG

Signed: 

Date : 1st August 2017

AUDIT TEAM MEMBER

Mario Gatti BSc Civ Eng, HE RSA Cert Comp

Associate Consultant

Taylor Bowie Ltd

Road Safety & Transportation Consultants

5 Curlew Close

Letchworth Garden City

Hertfordshire

SG6 4TG

Signed: 

Date : 1st August 2017

APPENDIX A

Documents Forming the Audit Brief

Drawings:

DRAWING NO.	TITLE
072/067	Pedestrian Access

Taylor Bowie Ltd

ROAD SAFETY & TRANSPORTATION CONSULTANCY

5 Curlew Close
Letchworth Garden City
Hertfordshire
SG6 4TG

E: sarah.bowie@taylorbowie.co.uk

M: 07810 712985

Claybush Road, Ashwell - Pedestrian Access

Road Safety Audit Combined Stage 1 & 2

Designers Response

2.1 General

No Problems identified in this category at this Combined Stage 1 & 2 Road Safety Audit.

2.2 Local Alignment

No Problems identified in this category at this Combined Stage 1 & 2 Road Safety Audit.

2.3 Junctions

No Problems identified in this category at this Combined Stage 1 & 2 Road Safety Audit.

2.4 Non-Motorised User Provision

2.4.1 PROBLEM

Location General - Proposed pedestrian access route between Ashwell Street and residential development (Drawing 072/067).

Summary - Potential lack of adequate and suitable intervisibility could result in a slight increased risk of conflicts occurring between pedestrians and vehicles.

Detail - At this Combined Stage 1 & 2 Road Safety Audit, the scheme proposals indicate that a pedestrian access path is to be provided between Ashwell Street and the proposed residential development sited to the south.

The site visit has established that the existing concrete carriageway access road is narrow with vegetation on both sides and on the exit/entrance corners.

Whilst traffic flows and speeds within this area have been observed to be very low, concern arises that this situation may result in a risk of conflicts occurring between pedestrians and vehicles entering and exiting Ashwell Street.

2.4.1 RECOMMENDATION

At the construction stage of the project, suitable and adequate intervisibility zones should be provided to enable pedestrians to clearly see any passing vehicles. Associated localised vegetation clearance should be undertaken in particular along the northern side of the proposed pedestrian route itself and exit/entrance corner.

2.4.1 DESIGNERS RESPONSE

We propose to cut back vegetation as identified on the northern boundary of the pedestrian route and near the entrance exit corner.

2.5 Road Signs, Carriageway Markings & Street Lighting

No Problems identified in this category at this Combined Stage 1 & 2 Road Safety Audit.

END OF REPORT

Appendix C: Opinion of David Forsdick QC on legal right of site to use unadopted stretch of Ashwell Street

LAND SOUTH OF ASHWELL STREET, ASHWELL

PLANNING AND ACCESS

ADVICE

1. In the context of an application for planning permission for residential development of agricultural land to the rear of Ashwell Street (“the Development Site”), an issue has arisen as to the extent of pedestrian access rights along the unpaved section of Ashwell Street (“the Road”). Various local residents are relying on what they claim is the absence of private law rights to use the Road to try to prevent planning permission being granted. I am asked to advise the owners of the Development Site (“the Clients”) as to the relevance of the dispute to whether planning permission should be granted and as to the status of the Road.

Private Law disputes relevance to planning

2. Private law issues are not normally (absent some special reason¹) relevant to planning.
3. It is possible (and appropriate) for *Grampian* conditions to be imposed and s.106 obligations to be entered into notwithstanding difficulties that the developer may have in satisfying their requirements:
 - a. *British Railways Board v. Secretary of State for the Environment* [1994] JPL 32 – per Lord Keith:

“A would-be developer may be faced with difficulties of many different kinds, in the way of site assembly or securing the discharge of restrictive covenants. If he considers that it is in his interests to secure planning permission notwithstanding the existence of such difficulties, it is not for the planning authority to refuse it simply on their view of how serious the difficulties are”; and
 - b. the NPPG advises that *Grampian* conditions should not be imposed where there is “no prospects at all” of it being satisfied – it is no longer the case that the Secretary of State’s policy is that there should be reasonable prospects of being able to satisfy the condition.
4. There is nothing in the facts here to demonstrate that there is “no prospect at all” of the relevant *Grampian* condition or s.106 obligations being complied with and therefore no basis to refuse permission on the basis of the private law arguments of the objectors.
5. On the discharge of the *Grampian* or in order to comply with a s.106 obligation, the Developer may have to demonstrate that residents would have a legal right to use the Road on foot. For that reason I turn now to consider the private law arguments being raised.

¹ Such as a situation where there are competing sites and only one permission will be issued – the prospects of delivery may be relevant in deciding between those competing sites.

The Status of the Road

6. In 1841 the Road continued beyond its current end point to join a highway to the south west. At a point between then and 1862, that part of the Road appears to have been erased². There is no material available to be able to ascertain the lawful status of that section prior to it being erased or the lawful basis of its erasure. I will however proceed on the basis that whatever rights there were up to 1841 were removed at some point thereafter.
7. In 1862, an enclosure award (“the Award³”) was made concerning the fields now comprising the Development Site *and* the houses on the Road. At the end of the Road was field 253. Fields 244 – 250 and 285 comprised the areas below the Road and bounded by Claybush Road to the east.
8. The Road was labelled as “private carriage road no 251”. From the Award it appears that the Road was owned with field 253.
9. Fundamentally the Road was not owned by the frontagers to it. This is not a case where the frontagers own the subsoil or the land over which the Road passes subject to the rights of way of others.
10. The Award stated that the Road was set out “for the use of the persons interested for the time being in the allotments numbered 249, 250, 252 and 253 and the old enclosure numbered 285” who were required to contribute to its upkeep “for ever hereafter”.
11. Allotments 249, 250 and 285 comprise most of the Development Site and all the land now occupied by houses fronting the Road (built much later – around 1920s).
12. The Road was thus owned by the owner of field 253 but was for the *use* of the owners of those fields. There was no express or implied restriction on the extent of that user. None of the frontagers (except the owners of what was field 253 – Mr Farr) have any standing to take private law action against others using the Road.
13. The Award appears to be the original source of the rights of all frontagers to use the Road. This is confirmed by the registered title of most of the premises fronting it which do not record any express grant of rights of way along the Road – no such express grant was necessary on any conveyance given the terms of the Award.
14. It follows that Road was owned with field 253 and laid out “for the use of” all frontage properties including the Development Site. There is no restriction on the extent of that user.

Subsequent History

15. I have not seen anything in the later history which demonstrates the removal of any of those rights.

² I do not use the term “stopped up” because that implies a lawful process of erasing highway rights.

³ I have not seen the full Award but have been provided with extracts of it and a note of its key terms.

16. Indeed, I am told that for a number of years much of the frontage was used by the Client for commercial premises. No objection was made. The use by visitors, workers and the public was unimpeded. That is (at least) consistent with the above analysis of the status of the Road.
17. I, therefore, regard the position on the material I have to be clear. Derived from the Award, there is a private right of user for all purposes along the Road for frontage properties and for the Development Site – a private right of way. There is no power in the residents of the frontage properties to object to or to prevent such user by occupiers of the Development Site. There is no right for anyone to erect a gate to prevent such user.

Right of Way by User

18. Given the long history it may also be relevant to consider the evidence of user - although nothing in what follows affects the conclusion reached in paragraph 17 above. Long user would, if established be a separate and independent route to establishing rights of way.
19. The evidence of long historic user as of right of the Road for access from Ashwell Street to the residential premises and to the Development Site is strong and consistent.
20. In respect of the Development Site specifically:
 - a. Gladys May Gurney provided a statutory declaration in 1974 which detailed the use of the Road in respect of the Development Site and No. 47 for at least 35 years back to 1939 – it being said that the right was “at all times and for all purposes”;
 - b. the physical layout during that period appears to confirm that the Road was the principal (but not the only) means of access to the Development Site; and
 - c. in 2004, Eric Gurney provided a statutory declaration covering the period from 1975 to 2004 - evidencing use at all times with or without vehicles and his claim is referred to on the Register.
21. At that point the requirements of s.2 and s.4 of the Prescription Act 1832 would have been complied with on the evidence I have seen and a right of way by prescription would have arisen. This would plainly have included pedestrian traffic.
22. There is no evidence of there having been any interruption by the owner of the servient tenement since nor any legal or factual step which had the effect of bringing an easement to an end.
23. One objector has suggested that the 2004 Statutory Declaration is untrue in claiming that this was the *only* access. It is legally irrelevant whether this was the *only* access. I note that none of the objectors claim that there was no use made as of right of the Road to access the Development Site in the period 1939 – 2004. Any such claim would not be credible.
24. It is said that the historic user did not continue post – 2004 and does not now continue. I have no evidence on continuation of user after 2004. If it was correct that there had been no user for the last 13 years or a substantial proportion thereof it may be difficult now to establish a right of way under s.2 of the Prescription Act 1832. However, I do not think that that matters. The historic user from 1939 – 2004 has to be presumed to have had some legal origin (lost modern grant): see *Phillips v. Halliday* [1891] AC 228 @ 231. In cases where the 20 years user

might not have continued down to the time of the action brought, reliance on lost modern grant may be possible: *Healey v. Hawkins* [1968] 1 WLR 1967 @1976.

25. I therefore think that there is on the facts of user to 2004 a right of way on foot (and in vehicles) to and from the Development Site along the Road.
26. It is not possible for the objectors to close the Road as threatened because: (1) to do so would infringe the above right; and (2) in any event the owner of the Road and all persons with the benefit of the right of way along Road would have to agree and, of course, the Clients will not agree.

Change in User of the Development Site

27. The changes in development along the Road (including historically as a commercial premises) appears to demonstrate that the right of way is not limited to agricultural or residential purposes.
28. This does not therefore appear to be a case where the principle in *William v. James* (1867) LR2 CP 577 applies.

“When a right of way to a piece of land is proved, then that is, unless something appears to the contrary, a right of way for all purposes according to the ordinary and reasonable user to which that land might be applied at the time of the supposed grant. Such a right cannot be increased so as to affect the servient tenement by imposing upon it any additional burden” (underlining added).

29. Thus a right of way for a field could not be used in connection with a factory later built on the field if the effect was to significantly increase the burden on the servient tenement. The principle appears to be that the dominant servient could not be so changed as substantially to increase or alter the burden of the servient tenement. This applies to any radical change in the user of the dominant tenement or user of the way of a different kind or for a different purpose. Mere intensification of user for the same use will not infringe this principle: *British Railways Board v. Glass* [1965] Ch 538.
30. The issue will be one of fact in any case. The principles enunciated by Neuberger LJ in *McAdams Homes v. Robinson* [2004] EWCA 214 [2004] 3 EGLR 93 indicate that where there is a change in use of the dominant tenement which results or may result in an alteration in the manner or extent of the use of the easement two questions need to be considered:
 - a. is there a “radical change” in the character of the dominant land. That may be met here although that would be dependent on information about the former commercial use; and
 - b. whether the use of the dominant tenement would result in a substantial increase or alteration in the burden on the servient land.
31. On b., the proposed user is only by people on foot – compare the historic use by heavy agricultural and commercial vehicles as well as more low key users. It is difficult to see how the user by residents on foot would infringe b..

32. For the avoidance of doubt my conclusion at paragraph 17above, applies irrespective as to whether the “right of way by user” argument is also made out on the facts.

David Forsdick QC

Landmark Chambers

12th June 2017