

Proposed Development at Townside, Bury: Phase 1a

**Conditions 33 and 48 Attached to Planning Permission
Reference 47200 in respect of Links between the Site
and the Metrolink**

April 2007

Introduction

1. This report is concerned with the issue of the conditions attached to the Planning Permission (reference 47200) for the first Phase of the Townside development - conditions which require linkages to be achieved between the development site and Bury Interchange's Metrolink facility.
2. In granting Planning Permission for this first phase of the Townside proposals, conditions were attached to both the full and outline parts of the Permission which require that prior to the first occupation of any of the buildings approved full details of pedestrian linkages from the site to the adjacent Metrolink facility, along with the timetable of the implementation of the details, be approved by the Local Planning Authority (LPA) unless otherwise agreed in writing.
3. There are two conditions with this requirement – 33 and 48 – the wording of which are identical.
4. The intention of the conditions is fully appreciated by the developer. It is the detail of the requirement of the first part of the conditions that is currently preventing progress being made in actually achieving development upon site.
5. This is because the first part of the conditions:
 - Requires the co-operation and agreement of third parties over which the developer has no control (indeed one of the third parties is still to be appointed - the new Metrolink Concessionaire);
 - The current absolute requirement of the first part of the conditions prevents funding bodies / banks from releasing monies required to fund the development; and
 - The Pre-lets/Occupiers of the first two office buildings (BMBC and PCT) will not accept a condition preventing occupation pending satisfaction of an action the control of which rests with third parties.
6. However, a solution exists without the need to delete the subject conditions since the LPA has the ability to approve an alternative mechanism by virtue of the inclusion of the words "unless otherwise agreed" in the conditions. The suggestion within this report is that the requirement of the conditions be instead achieved by a Planning Obligation (S 106 Agreement).

Achieving Links

7. The construction on site of the Townside development will create improved pedestrian links from the site to the Metrolink facility through construction of new surface level crossings over Angouleme Way and Knowsley Street so linking the site directly with the town centre and the Metrolink facility.
8. The development will have the potential to further improve pedestrian linkages through the achievement of an 'at grade' crossing of the Metrolink line from the eastern boundary of the site to link directly to the Metrolink platform.
9. The Angouleme Way and Knowsley Street pedestrian links to the site has been committed to by the developers. These works are programmed to take place as part of the initial operations in the construction of the development at a cost of approximately £500,000.

10. The at grade crossing which is proposed to provide a link direct to the Metrolink requires the co-operation and approval of a number of third parties – including GMPTC, Her Majesty’s Inspectorate of Trains and the Metrolink train operating company (the Concessionaire). In respect of the last of these, the franchise for the operation of the Metrolink service is currently under review and the new operator has not yet been appointed. Hence, discussions cannot be commenced upon this aspect until a new Concessionaire is appointed.

Actions Since Grant of Permission (23 Jan 2007) - Third Parties

11. As a result of the fact that third parties need to be involved within the process of seeking to secure the ‘at grade’ crossing to the Metrolink platform, the developer has worked diligently in the period since the Planning Committee Meeting (at which conditions 33 and 48 were imposed – 23 January 2007) to establish the practicalities of securing the required agreement, together with the preparation of a technical report which seeks to secure approval in principle. As a result of these 8 weeks of discussions, significantly more information is now understood which was not appreciated at the Planning Committee meeting in January.
12. This work has revealed that a realistic minimum timetable for the establishment of whether or not an agreement can be reached with all parties is December 2007. In other words, given the complexities of the parties involved (including the fact that one of these parties is not yet appointed – the new train operating Concessionaire) it will take until the end of 2007 before the Council and the developers are in a position to know whether or not agreement can or will be reached.
13. This end of year timescale needs to be contrasted with the programmed start on site of June/July 2007 – a start date which is required to meet the requirements of the Borough Council as occupiers of one of the principal buildings at the site in relation to the need to exit their accommodation at Craig House and Lester House.

Actions Since Grant of Permission (23 Jan 2007) - Funders

14. The period since the imposition of the conditions at the end of January 2007 has also allowed the developers to investigate the implications of these conditions - in terms of ensuring discharge - with potential funders of the scheme.
15. The position is that no funding can be granted by any potential funding partner in a situation whereby there is an absolute requirement for the ‘at grade’ crossing to be achieved when the control over whether or not such an agreement can be reached is outside the control of the developer (i.e. it requires the co-operation and agreement of the third parties referred to above).
16. This is because the developer cannot *guarantee* that the ‘at grade’ crossing can be achieved – that power lies in the hands of the third parties.
17. Hence the legal first occupation of the buildings at the site cannot be guaranteed.
18. If there continues to be a “Grampian” style absolute requirement that the ‘at grade’ crossing be achieved prior to the first occupation of any building,

then this will stop the developer (or indeed any developer) securing funding for the scheme in order to actually get the development underway.

Proposed Solution

19. In these circumstances, it is proposed that the Council utilises its ability under the terms of the conditions (“unless otherwise agreed in writing by the Local Planning Authority”) and agree a variation to the approach of the conditions.
20. This variation would involve the completion of a Planning Obligation by way of a Unilateral Undertaking under Section 106 of the Town and Country Planning Act (as amended) which requires the developer to use reasonable endeavours to provide or procure pedestrian linkages, which includes the ‘at grade’ crossing which links the site directly to the Metrolink facility.
21. The Section 106 Planning Obligation will be a document which is a charge upon the land and is legally enforceable by the Local Planning Authority.
22. It contains reasonable endeavours obligations which, in combination with the existing planning conditions, must be met by the developer in a manner which can be enforced by the Borough Council:
 - To implement the new surface level crossing from the site over Angouleme Way as part of the first phase of development (to be in place prior to any building being brought into use);
 - To provide or procure the ‘at grade’ crossing to link the eastern boundary of the site to the Metrolink at the earliest opportunity;
 - To submit regular update reports to the LPA informing of the progress being made.
23. The “reasonable endeavours” clause stated in the S 106 has legal definition, which means using such endeavours as are reasonable in all the circumstances, taking into account financial and commercial reasonableness.
24. This S 106 approach would allow for the planned start on site in June/July 2007 whilst also being a form of approach which would be acceptable to those from whom funding is sought.

Conclusion

25. The Council is therefore requested to approve the S 106 approach so updating of the requirements of conditions 33 and 48.
26. This legally enforceable Obligation would replace the current absolute requirement of the conditions with a mechanism which would allow:
 - the time required to undertake the discussions with third parties (including following the appointment of the new Metrolink train operating company);and
 - funding to be securedin order to allow start on site.