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ITEM	APP/2007/6224	WARD Oxton
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**Location:** Land south of 27 and 54 Christleton Close and east of 21-27 Christleton Close Oxton Wirral CH43 0XF

**Proposal:** Variation of condition 11 of APP/2005/5945 relating to site access during construction

<b>Applicant:</b> Mr D O'Grady Pure Acquisitions and Developments Ltd c/o Percy Hughes & Roberts 19 Hamilton Square Birkenhead Wirral CH41 6AY	<b>Agent:</b> Mr Gary Szilagy Grantley Lowe LLP 34 St Anne Street Liverpool L3 3DS
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**Development Plan allocation and policies:** Primarily Residential Area  
HS4 - Criteria for New Housing Development.

**Planning History:** 2005/5945 Erection of 30 dwellings comprising one bungalow, four semi detached dwellings, four semi detached dwellings, four terraced dwellings and twenty one flats (excluding three plots previously approved through APP/2004/5277), with amended layout to include footpath diversion). A/C 11/08/2005

2004/5277 Erection of 15 dwellings and 10 apartments A/C 20/08/2004

**Representations and consultations received:** Representations:  
A site notice was displayed on a lamppost on the corner of Christleton Close and Holmlands Drive. A total of 5 letters of notification have been sent to properties in the area. At the time of writing this report two written objections has been received on the following grounds:

- Large lorries and heavy construction site traffic is a danger to children on the highway
- Traffic will increase difficulties currently experienced in relation to access and parking
- Tracking of site debris
- Damage to the highway
- Condition 11 on APP/2005/5945 served to mislead residents
- Concerns regarding the number of properties approved in the previous planning application APP/2005/5945

Consultations:  
Director of Technical Services - Traffic Management Division - no objections.

**Directors comments:** PROPOSAL  
The application is for the variation of Condition 11 of APP/2005/5945 relating to site access during construction of the previously approved housing development.

#### PRINCIPLE OF DEVELOPMENT

The application seeks permission to vary a condition, and requires the principle of the condition to be revisited. Condition 11 was attached to protect the amenities of residents in a Primarily Residential Area under Policy HS4 of the Wirral UDP. Planning law indicates that the appropriate method of traffic control is by a Traffic Regulation Order, not Policy HS4. It is recommended that the application is approved.

#### SITE AND SURROUNDINGS

The site lies at the end of Christleton Close, which is an adopted highway, in a primarily residential area. Planning permission was granted for a new housing development in August 2005. The developer is currently developing the site in accordance with the granted planning permission.

#### POLICY CONTEXT

The previous planning permission for 30 dwellings comprising one bungalow, four semi-detached dwellings, four terraced dwellings and twenty one flats was granted planning permission on the 11th August 2005 under policy HS4 - Criteria for New

Housing Development. Condition 11 was implemented to protect the amenities of adjacent residents in line with policy HS4.

#### APPEARANCE AND AMENITY ISSUES

Residents and ward councillors have raised concerns that Christleton Close, an adopted highway, is being used by the developer's heavy goods vehicles and cranes as a means of obtaining access to and from the development site.

This is contrary to Condition 11 of the approved planning permission (2005/5945) which states:

"Access to Christleton Close shall not be used by any vehicle involved in the construction of the development".

The reason for implementing this Condition was "to protect the amenities of adjacent residents in line with policy HS4 of the Wirral Unitary Development Plan".

The applicant wishes to temporarily relax Condition 11 as access is currently not possible from the rear roadway for a crane and occasional medium sized vehicles until the first block of flats is completed. Access from the rear can then recommence for the final block of flats.

Access was originally obtained from a rear unadopted road, but because the developer has chosen to develop the back end of the site first, this has caused difficulty in obtaining access to the rest of the site and hence the need to use Christleton Close.

In law, a condition must fulfil some planning purpose, fairly and reasonably relate to the permitted development and not be manifestly unreasonable. Whilst the condition was imposed with good intentions to prevent harm to local residents, the principle of the condition is being revisited.

Paragraph 71 of the Circular, under the heading "Lorry Routing" states that planning conditions are not an appropriate means of controlling the right of passage over public highways. Such conditions are likely to be very difficult to enforce effectively. When it is essential to prevent traffic from using particular routes, the correct mechanism for doing so is an Order of the Road Traffic Regulation Act 1984.

The condition fails to distinguish between types of traffic. The condition was intended to target HGV vehicles, however the condition encompasses cars and other traffic. In addition, the condition merely provides that traffic should not enter the site from Christleton Close. Traffic turning back or unloading in the Close would affect the amenities of local residents but this activity would not be in breach of the condition.

The terms of Policy HS4 are directed at the design of the completed development, not the construction process. Therefore whilst protection of amenity is a material consideration, it is deemed an Inspector would place little weight on Policy HS4 to justify the condition.

Objections regarding the tracking of site debris and damage to the highway are not planning considerations. Concerns regarding the number of properties approved in the previous planning application APP/2005/5945 is not directly relevant to this application.

#### HIGHWAY/TRAFFIC IMPLICATIONS

Objections regarding highway safety and access and parking issues are issues dealt with by the Traffic Management Division. Traffic Management Division had no objections to the previous applications 2004/5277 and 2005/5945, and had no objection to the current application.

#### ENVIRONMENTAL/SUSTAINABILITY ISSUES

There are no Environmental/Sustainability issues relating to these proposals.

#### HEALTH ISSUES

There are no health implications relating to this application.

**CONCLUSION**

Condition 11 was imposed in relation to planning application 2005/5945 to prevent harm to local residents. However planning law has indicated that the appropriate method of traffic control is by a Traffic Regulation Order or a section 106 if the developer is obliged. The Traffic Management Division had no objection to the application. As such it is recommended that the application is approved and the condition is completely removed from the previously approved planning application.

**Summary of Decision:** It is deemed that Condition 11 imposed on Planning Application 2005/5945 should be fully removed.

**Recommendation:** **Approve**

**Last Comments By:** **19 July 2007**

**56 Day Expires On:** **08 August 2007**

**Case Officer:** **Miss S Hesketh**