Report of the Chief Executive

APPLICATION NUMBER:	19/00524/OUT
LOCATION:	Former Dry Ski Slope, Cossall Industrial Estate,
	Soloman Road, Cossall, Nottinghamshire
PROPOSAL:	Hybrid planning application comprising: Outline application to construct 64 dwellings including access with some matters reserved. Full application to change use to create a country park and associated works

This application has been brought to Planning Committee as it is a major application where contributions are also required under a Section 106 Agreement.

1.1 This application was brought before the Planning Committee on 6th January. At this meeting the Committee raised concerns about the lack of Section 106 contributions proposed as part of the application, the pedestrian access through the industrial estate, and the stability of the site following the proposed significant earthworks. A decision was made to defer the application to allow the applicant to address these matters.

2 Section 106 Contributions

- 2.1 It was previously reported to the Committee that the proposal was unable to make any contributions, despite the following requests:
 - Primary School contribution: £226,538Secondary School contributions: £238,750
 - Bus stop infrastructure: £23,400
 - Libraries: £2,254
 - Health contributions: £34,680NHS University Trust: £58,138

The site would also have a policy requirement of providing 30% of the dwellings as affordable housing, although it is also proposed that this will not be committed to due to viability constraints of the site.

- 2.2 The applicant states that due to exceptionally high construction costs associated with the site, largely due to the need for significant earthworks to level part of the site off for residential development, and re-profile the slope for the country park to make for a less steep incline. There are also significant costs associated with the provision of the country park which forms part of this application. The applicant has put the cost of providing the country park at £438,936, not including the cost of ongoing maintenance. An application of this type would usually require an open space contribution, however, the provision of the country park and the significant costs associated with this, negates this requirement.
- 2.3 The applicant has submitted a viability assessment for the site, assessing build costs, land values and projected sales value. As part of this assessment the provision of the requested planning contributions are also considered. The

viability assessment concludes that the site is only viable if no planning contributions are paid, and the 30% affordable housing policy is not enforced, allowing 100% of the site to be sold as market housing if required. An independent review of this conclusion has been undertaken at the instruction of the Council, and this agrees with the conclusion of the applicant's viability assessment, that the proposal is not viable with the requested contributions. Therefore, should the requested contributions be enforced by way of a Section 106 agreement it is unlikely the site will be developed as per this application.

- 2.4 Paragraph 57 of the NPPF states that where up-to-date policies have set out the contributions expected from development, planning applications that comply with these should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision-maker (in this case the Council), having regard to all circumstances in the case. In this instance the balance to be considered is whether or not the overall benefits of the scheme, the provision of the country park and 64 new dwellings, outweighs the harm caused by the absence of contributions to education, health and bus stop infrastructure.
- 2.5 The application site has been vacant for a considerable period of time, and there is clear evidence of anti-social behaviour at the site including the riding of motorbikes and fly tipping. Therefore, there are clear benefits of bringing the site back into a positive use. The provision of the country park will provide substantial open space for the residents of the new dwellings, as well as existing communities in nearby Cossall and Awsworth. The country park will provide footpaths and play areas and will also link to the existing recreational route along the Nottingham Canal which runs along the east boundary of the site. It is considered that the provision of the country park will therefore bring significant benefits to the local and wider community.
- 2.6 The provision of 64 dwellings on a previously developed site will also significantly contribute towards the Council's housing supply. The application site is not allocated for development in the Part 2 Local Plan (2019) and therefore the dwellings will act as windfall development which will be a valuable contribution. The site is situated in close proximity to Ilkeston train station and bus routes along Coronation Road, with local facilities available in the nearby village of Awsworth and town of Ilkeston. It is considered that the provision of 64 dwellings on previously developed land, without encroaching into the countryside, and in a sustainable location close to public transport links and nearby facilities represent significant benefits.
- 2.7 Whilst the proposal is not offering any planning contributions, the provision of the country park will come at a significant cost, and will provide a public open space for the new and existing local communities. The provision of 64 new homes on an unallocated, previously developed site in a sustainable location is also considered to be of significant benefit to the Council. On balance it is therefore considered that the benefits of the scheme outweigh the potential harm of not providing the requested contributions.

3 Access

- 3.1 Since the Planning Committee meeting in January, the applicant has submitted a plan (Appendix 1) showing off site footway works along Soloman Road and through to the entrance to the industrial estate, to be carried out by the applicant to improve pedestrian access between the proposed residential development and Coronation Road.
- 3.2 The proposals include a new 2m wide pedestrian footway along the south side of Soloman Road, to be accessed directly form the proposed development. Lighting columns along this footway will be relocated to the back of the footway and dropped kerbs with tactile paving will be provided close to the junction to provide a crossing point to access the road leading out of the industrial estate. There is an existing footway along this section of road leading out of the estate, although new dropped kerbs and tactile pacing will be provided at crossing points, and at the estate entrance to facilitate crossing to the west side of the access road and onto Coronation Road leading towards the roundabout and Ilkeston train station. There is an existing footway on this section of road leading towards the roundabout, and a crossing point on the west side of the roundabout enabling access to the station on the north side of Coronation Road.
- 3.3 The proposed off site works to the footways will provide improved pedestrian access between the proposed development and Coronation Road, from where there is access to public transport including the bus route and Ilkeston train station. There will also be pedestrian access to the country park from the Nottingham canal which runs along the east boundary of the site. The Highways Authority has approved the plans for the improved footways and raise no objections to the proposal. Whilst the proposed works are outside of the application site, they are considered reasonable and necessary to enable the development. The works will take place on Highways land and the Highways Authority have agreed to the proposed works. It is therefore considered reasonable to condition the
- 3.4 The application site is in close proximity to the bus route along Coronation Road, and Ilkeston train station to the north of Coronation Road. These links will make the site accessible for local amenities with the railway providing connections further afield. The proposed off site footway works will make these transport networks accessible for the residents of the proposed development, as well as making the country park accessible for surrounding communities. Overall it is considered that the vehicular and pedestrian access for the site is acceptable.

4 Earthworks

4.1 At the January Planning Committee concerns were raised regarding the stability of the site in respect to the proposed development. The site currently has significantly varying land levels, including steep slopes running from the north of the site where the residential development is proposed, up to the highest point towards the middle section of the site, with the levels dropping off again to the south east and west.

- 4.2 The application is supported by a topographical survey showing the proposed topography of the site, as well cross sections and a technical memorandum on earthworks, detailing the works proposed. Further correspondence has also been received from HSP Consultants, seeking to provide additional assurances regarding the proposed earthworks and retaining structures.
- 4.3 The letter states that the proposed earthworks are still subject to detailed design, although this is purely due to the status of the planning application, and should not be misconstrued as being indicative of the works being undertaken in anything other than a robust and professional manner. The letter goes on to state that regulatory approvals appropriate to the design will also be obtained. The proposed earthworks therefore cannot be carried out until the design and process has been signed off by an independent regulator to ensure a safe and appropriate design is followed.
- 4.4 The letter from HSP Consultants goes on to state that whilst the landform of the application site is a constraint, it is not unique, and the investigative works undertaken to-date indicate that technical solutions, using established methods, can be applied to the site and the resulting permanent works will be suitable, durable and safe.
- 4.5 Overall it is considered that the earthworks can be carried out in a manner that will ensure the long-term safety of the site.

5. Conclusion

5.1 It is considered that the additional information provided by the applicant covers the concerns raised by the Committee in January. The main drawback of the scheme is that it will not offer any planning contributions as requested by local service providers. However, the benefits of the scheme include the provision of a publicly available country park that will be accessible for the residents of the new dwellings as well as existing nearby communities. Furthermore, the proposal will add significantly to the Council's housing supply, utilising a previously developed site in an accessible location. On balance it is therefore considered that the proposal is acceptable and that planning permission should be granted in accordance with the recommendation.

Recommendation

The Committee is asked to RESOLVE that the Interim Head of Planning and Economic Development be given delegated authority to grant planning permission subject to:

- (i) prior completion of an agreement under Section 106 of the Town and Country Planning Act 1990 to secure the provision of a fully managed and publically accessible country park, and a review of the viability of the proposed scheme should alterations to the layout and housing mix be made at reserved matters stage;
- (ii) the following conditions:
 - 1. Application for approval of reserved matters in relation to the housing scheme shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To comply with S92 of the Town and Country Planning Act 1990 as amended by S51 of the Planning and Compulsory Purchase Act 2004.

2. The housing scheme hereby permitted shall be commenced before the expiration of two years from the date of approval of the last reserved matters to be approved.

Reason: To comply with S92 of the Town and Country Planning Act 1990 as amended by S51 of the Planning and Compulsory Purchase Act 2004.

The development hereby permitted shall be carried out in accordance with drawings numbered 7067-L-01, PB103 B-03c, 7067-L-06-B; received by the Local Planning Authority on 13 September 2019.

This outline permission for housing relates to Indicative Layout Drawing 7067-L-07 (1:1250); received by the Local Planning Authority on 13 September 2019.

Reason: For the avoidance of doubt.

- 4. For the outline housing scheme details of the following reserved matters shall be submitted to and approved in writing by the Local Planning Authority before any part of the housing development is commenced:
 - a. Appearance
 - b. Landscaping

	c. Layout d. Scale
	The development shall be carried out strictly in accordance with the approved details to the satisfaction of the Local Planning Authority.
	Reason: The housing part of the application was submitted in outline only and to ensure that the details of the scheme are acceptable to the Local Planning Authority.
5.	Prior to the commencement of the development, details of the children's play area, footpaths, benches, access point control measures, shall be submitted to and approved in writing by the Local Planning Authority. These features shall be completed in accordance with the approved details, and made available for use prior to occupation of any dwelling on site.
	Reason: To ensure the community facility is delivered to a high standard of design in accordance with the Broxtowe Part 2 Local Plan (2019) Policy 17.
6.	The country park hereby approved shall be completed and available for general public use, including the associated park network, park furniture and surfaced car park, to the satisfaction of the Local Planning Authority:
	a) Prior to the first occupation of the twentieth dwelling; orb) Within 24 months of the commencement of development,
	Whichever is the sooner.
	Reason: As per the terms of the hybrid permission where the country park is essential to giving the residential element an identity and setting whilst also increasing leisure and recreational opportunities. This condition is in accordance with Policy 10 of the Broxtowe Aligned Core Strategy (2014) and Policy 17 of the Broxtowe Part 2 Local Plan (2019).
7.	No dwelling shall be first occupied until the off-site footway improvement works along Soloman Road have been carried out in accordance with the works shown indicatively on the drawing number C3274-HSP-00-XX-DR-C-0001 Rev P01; received by the Local Planning Authority on 2 February 2021, in consultation with the County Highways Authority.
	Reason: To improve pedestrian connectivity, in the general interest of highway safety.
8.	The formal written approval of the Local Planning Authority is required prior to commencement of any housing development

	with regard to parking and turning facilities, access widths, gradients, surfacing, street lighting, structures, visibility splays and drainage (hereinafter referred to as reserved matters). All details submitted to the Local Planning Authority for approval shall comply with the County Council's current Highway Design and Parking Guides and shall be implemented as approved. Reason: In the interest of highway safety.
9.	Occupation of the proposed dwellings shall not take place until their respective driveways have been surfaced in a bound material (not loose gravel) for a minimum distance of 5.0 metres behind the highway boundary, and which shall be constructed with provision to prevent the discharge of surface water from the driveways to the public highway. The bound material and the provision to prevent the discharge of surface water to the public highway shall be retained for the lifetime of the development. Reason: In the interest of highway safety.
10.	Occupation of the proposed dwellings shall not take place until the site access as shown for indicative purposes only on drawing ADC1340-DR-004 Revision P1 has been provided. Reason: In the interest of highway safety.
11.	Occupation of the proposed dwellings shall not take place until a footway improvement scheme has been provided along Solomon Road in accordance with details first submitted to and approved in writing by the Local Planning Authority. Reason: In the interest of highway safety.
12.	No part of the country park hereby permitted shall be brought into use until the site access on Solomon Road has been constructed to base course level unless otherwise agreed in writing by the Local Planning Authority. Reason: To ensure the future users of the country park have an appropriate means of access by vehicle.
13.	No part of the development hereby permitted shall take place until the country park access has been surfaced in a bound material for a minimum distance of 5.0 metres behind the highway boundary, and which shall be constructed with provision to prevent the discharge of surface water from the access to the public highway. The bound material and the provision to prevent the discharge of surface water to the public highway shall be retained for the lifetime of the development.
	Reason: In the interest of highway safety.

14.	No part of the development hereby permitted shall be brought into use until the parking and turning areas as shown for indicative purposes only on drawing 7067-L-05 have been
	provided. The parking and turning areas shall be maintained in accordance with the approved plan and shall not be used for any purpose other than the parking and turning of vehicles.
	Reason: In the interest of highway safety.
15.	No part of the development hereby permitted shall be brought into use until the country park access has been constructed in accordance with the details as shown on drawing Highway Profile 7067-L-05.
	Reason: In the interest of highway safety
16.	No part of the development hereby approved shall be commenced until an investigative survey of the site has been carried out and a report submitted to and approved in writing by the Local Planning Authority. The survey must have regard for any potential ground and water contamination, the potential for gas emissions and any associated risk to the public, buildings and/or the environment. The report shall include details of any necessary remedial measures to be taken to address any contamination or other identified problems.
	a) No building to be erected pursuant to this permission shall be occupied or brought into use until:-
	(i) All necessary remedial measures have been completed in accordance with details approved in writing by the local planning authority; and
	(ii) It has been certified to the satisfaction of the local planning authority that necessary remedial measures have been implemented in full and that they have rendered the site free from risk to human health from the contaminants identified.
	Reason: In the interest of public health and safety.
17.	Prior to works commencing on any phase of the housing development, a detailed environmental noise assessment, based on submitted reserved matters details, must be submitted to, and approved in writing by, the Local Planning Authority, specifying the measures to be taken to ensure that all noise-sensitive premises are protected from road and industrial noise, such that the following noise levels are not exceeded:
	- An LAeq, 16-hour of 55dB (free field) in outdoor living areas between 07:00 and 23:00 hours (daytime);

- An LAeq, 16-hour of 35dB inside living rooms between 07:00 and 23:00 hours (daytime);
- An LAeq, 8-hour of 30dB inside bedrooms between 23:00 and 07:00 hours (night time);
- An LAmax, fast of 45dB inside bedrooms between 23:00 and 07:00 hours (night time).

Those premises requiring the incorporation of noise mitigation measures to achieve the above levels, as well as the nature of these measures, shall be identified and agreed with the Local Planning Authority prior to construction commencing. In premises where windows must be closed to achieve the above levels, adequate acoustically treated ventilation must be provided. Should the proposals for the site layout, levels or building design/construction alter from that on which the agreed assessment is based, a further audit of the noise assessment and proposed mitigation measures shall be submitted to, and approved in writing by, the Local Planning Authority before construction of amended buildings commences.

All noise mitigation measures shall be designed and installed in accordance with the approved mitigation scheme and completed under the supervision of an acoustic engineer. All works shall be completed before any permitted dwelling is occupied unless an alternative period for completion is agreed in writing by the Local Planning Authority.

Reason: To protect future occupiers from excessive environmental noise.

- 18. No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:
 - 1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site
 - 2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
 - 3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they

are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in line with paragraph 170 of the National Planning Policy Framework (NPPF).

19. Prior to any part of the development hereby permitted being occupied, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

Reason: To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete. This is in line with paragraph 170 of the National Planning Policy Framework.

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

Reason: To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site. This is in line with paragraph 170 of the National Planning Policy Framework.

21. No part of the development hereby approved shall commence until a detailed surface water drainage scheme based on the principles set forward by the approved Flood Risk Assessment (FRA) and Drainage Strategy re: w10933-190725-FRA & Drainage Strategy, 03/10/2019,

Waterco, has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development. I addition to aforementioned document the scheme to be submitted shall:

- Provide justification for the use or not of infiltration, including the results of soakaway testing, in accordance with BRE 365.
- Demonstrate that the development will use above ground SuDS throughout the site as a primary means of surface water management and that design is in accordance with CIRIA C753.
- Provide detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
- Show that all exceedance is to be contained within the site boundary without flooding new properties in a 100year+40% storm.
- Provide details of STW approval for connections to existing network and any adoption of site drainage infrastructure.
- Show consideration has been given to potential surface water run-off from the steep area adjacent the site. To the south on the provided plans.

Reason: A detailed surface water management plan is required to ensure that the development is in accordance with NPPF and local planning policies. It should be ensured that all major developments have sufficient surface water management, are not at increased risk of flooding and do not increase flood risk off-site.

22. No development shall commence until additional survey work including a reptile translocation methodology/mitigation strategy in accordance with recommendations 1 and 2 of the Reptile Survey Project No. 15-1093.02 has been submitted to and approved in writing by the Local Planning Authority.

Reason: To protect reptile species within the site and in the interests of preserving biodiversity in accordance with Policy 31 of the Broxtowe Part 2 Local Plan (2019).

23. No development shall commence on any part of the site until further intrusive site investigation works are undertaken in order to establish the exact situation regarding shallow mineworkings. This will include:

The submission of a scheme for intrusive site investigations for areas of shallow mine workings for approval;

	The undertaking of that scheme of intrusive site investigations; The submission of a report of findings arising from the intrusive site investigations; The submission of a scheme of remedial works for approval; and
	Implementation of those remedial works.
	These details shall be first submitted and approved in writing by the Local Planning Authority in consultation with The Coal Authority.
	Reason: In the interest of public health and safety.
24.	No development shall commence on any part of the site until a management plan for the maintenance and upkeep of the country park has been submitted to and approved in writing by the Local Planning Authority.
	Reason: To ensure the country park is maintained in a manner that is safe and acceptable for use by members of the public.
25.	No development shall take place within the application site until a written scheme for archaeological investigation has been submitted to and approved in writing by the Local Planning authority. Thereafter, the scheme shall be implemented in full accordance with the approved details.
	Reason: To record archaeological features affected by development in accordance with the requirements of paragraph 189 of the NPPF.
	NOTES TO APPLICANT
1.	The Council has acted positively and proactively in the determination of this application by working to determine it within the agreed determination timescale.
2.	Coal
3.	The applicant should note that notwithstanding any planning permission that if any highway forming part of the development is to be adopted by the Highways Authority. The new roads and any highway drainage will be required to comply with the Nottinghamshire County Council's current highway design guidance and specification for roadworks.
	a) The Advanced Payments Code in the Highways Act 1980 applies and under section 219 of the Act payment will be required from the owner of the land fronting a private street on which a new building is to be erected. The developer should contact the Highway Authority with regard to compliance with the Code, or alternatively to the issue of a Section 38 Agreement and bond under the

Highways Act 1980. A Section 38 Agreement can take some time to complete. Therefore, it is recommended that the developer contact the Highway Authority as early as possible.

b) It is strongly recommended that the developer contact the Highway Authority at an early stage to clarify the codes etc. with which compliance will be required in the particular circumstance, and it is <u>essential</u> that design calculations and detailed construction drawings for the proposed works are submitted to and approved by the County Council (or District Council) in writing before any work commences on site.

Correspondence with the Highway Authority should be addressed to: hdc.south@nottscc.gov.uk

In order to carry out the off-site works required you will be undertaking work in the public highway which is land subject to the provisions of the Highways Act 1980 (as amended) and therefore land over which you have no control. In order to undertake the works you will need to enter into an agreement under Section 278 of the Act. Please contact hdc.south@nottscc.gov.uk for details.

Furthermore, any details submitted in relation to a reserved matters or discharge of condition planning application are unlikely to be considered by the Highway Authority until technical approval of the Section 38/278 Agreement is issued.

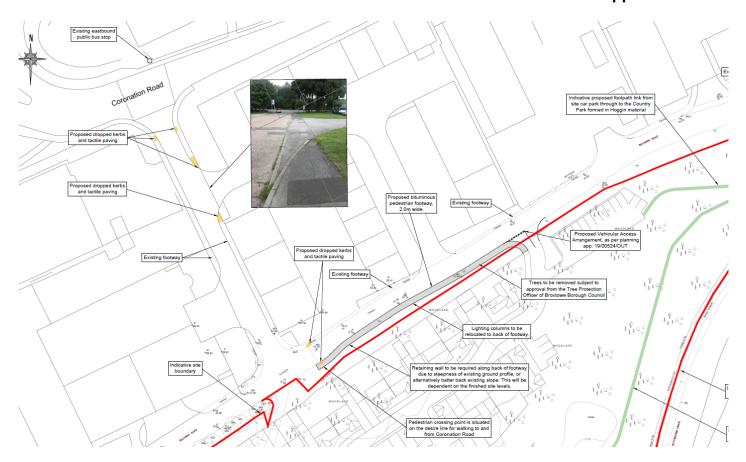
It is an offence under S148 and S151 of the Highways Act 1980 to deposit mud on the public highway and as such you should undertake every effort to prevent it occurring.

4. The Regulated Industry team have decided it is highly probable that this will require a waste permit and consultation with the EA.

The colliery spoil must be fit for purpose, in that measures are taken to avoid the risk of pollution such as treatment, containment.

Further details on applying for a waste permit can be found by visiting https://www.gov.uk/guidance/waste-environmental-permits

Appendix 1



Proposed off site footway improvements through Cossall Industrial Estate.