

Report of the Chief Executive

**15/00010/FUL
CONSTRUCT 67 No. DWELLINGS (REVISED SCHEME – 92/00730/FUL)
LAND OFF ACORN AVENUE GILTBROOK NOTTINGHAM, NG16 2UF**

This is a major application and has been brought back to Committee following the undertaking made by the Head of Neighbourhoods and Prosperity to update members on the progress made on flooding matters since the resolution to grant planning permission subject to a Section 106 Agreement at 11 November 2015 meeting.

1.0 Details of the Application

- 1.1 The application seeks planning permission for the construction of 67 dwellings at land adjacent to an existing residential development within the larger Smithurst Road development, Giltbrook. Planning permission was granted in 1993 for 107 houses and garages (reference 92/00730/FUL) to be constructed on the site and this permission was implemented soon after with the developer building 44 of the properties which have subsequently been sold and occupied. This permission is therefore extant and can be completed at any point without the need for any further planning permission. The developers also got the Building Regulations approval required to build all the properties and as such could build the remaining 63 houses without any further approvals being required by the Council.
- 1.2 At the time the existing houses were constructed, the developer, Langridge Homes Ltd, also constructed the connecting access road which joins up Acorn Avenue; Alton Drive; and partially completed Filbert Drive, the latter two being accessed from Acorn Avenue.
- 1.3 This current application relates to the remaining 63 dwellings approved under this previous permission, plus an additional 4 dwellings and consists predominantly of detached four and five bedroom properties, all of which have either detached or integral garages.

2.0 Site History

- 2.1 Planning permission for 107 houses with garages and associated works within a section of this larger site was granted in 1993 (92/00730/FUL). Part of this development has been built out and as such the permission is extant and could be built as approved at any point in the future without the need for any planning permission.
- 2.2 In 2006 planning permission (06/00967/FUL) was refused for the substitution of house types for 63 dwellings previously approved and alterations to the internal road layout. The reasons for refusal stated:

1 – The proposed residential development provides a low-density scheme, insufficient to meet the requirements of PPS3 and Policy H6 of the Broxtowe Local Plan and represents an inefficient use of land. In addition the development proposes fail to provide a satisfactory variety of housing types contrary to Policy H3 of the Broxtowe Local Plan (2004).

2 – The applicant has failed to provide the necessary information on the level changes of the site and subsequently there is a lack of detail to assess the impact of the proposal on the occupiers of the neighbouring properties and the amenity of occupiers of future residents within the site. The proposal is accordingly contrary to local plan policy H7.

2.3 In November 2015 members agreed with the resolution contained within the committee report at appendix one and took the decision to grant planning permission subject to the prior completing of a Section 106 Agreement and a number of planning conditions. Condition 6 was attached to this resolution at the request of the Environment Agency to ensure that the development dealt with any additional surface water run off created by the development and did not add to any existing issues in the area. A similar condition was not imposed on the extant permission dating back to 1993 and described at paragraph 1.1

2.4 Discussions regarding the Section 106 Agreement to ensure that sufficient land is secured to undertake any flood alleviation measures, together with the sum of £100,000 have been on-going between the Lead Local Flood Authority, the applicant and the Council. It is believed that these discussions are close to a conclusion and in anticipation of starting on site the applicant submitted some amended plans. These showed some relatively minor alterations to the layout of the development and changes to plot types and were reported to Committee on 18 April 2018.

3.0 Flood Issues

3.1 Since the resolution to grant planning permission in 2015 the Lead Local Flood Authority have been involved in commissioning work to show the feasibility of several different options of flood alleviation measures. These works involved hydrological and hydraulic modelling.

3.2 The Lead Local Flood Authority (LLFA) shared this work with Broxtowe officers in summer 2017. The study undertaken by JBA consulting contained a hydrological analysis, hydraulic modelling, four flood mitigation options, cost estimations and an economic analysis.

3.3 The four mitigation options included:

- Daylighting the Daisy brook culvert from Portland Road to Thistle Close;
- Partial daylighting of the culvert from Portland Road to Tyrian Street;
- Raised kerbs along Thorn Drive and Rolleston Drive; or
- Partial daylighting of the Daisy brook and a swale near the substation on Thorn Drive.

At this point it was understood that further works had to be undertaken to fully understand the cost-benefit analysis of each option, together with further investigations of the existing drainage system before making any decision on the final design.

3.4 The LLFA in conjunction with Severn Trent Water (STW) concluded that the most effective way of progressing with the detailed feasibility was to allow STW to act as the lead and carry out these works utilising their in house expertise. This arrangement was formalised late 2017 and STW continue to progress with the

feasibility with flow monitoring planned for June 2018. This is a critical part of understanding how the various elements of the flood mechanisms influence one another and in pursuing a mitigation proposal. Completion of detailed feasibility will allow options to reduce the level of flood risk to be considered further.

3.5 The LLFA have been involved in the Section 106 Agreement to ensure that sufficient land would be secured to undertake any remediation work required. As part of their responsibilities as a LLFA a Section 19 report was taken to their Committee. Section 19 of the Flood and Water Management Act (2010) requires the appropriate authority to:

- (1) On becoming aware of a flood in its area, a lead local flood authority must, to the extent that it considers it necessary or appropriate, investigate—
 - (a) which risk management authorities have relevant flood risk management functions, and
 - (b) whether each of those risk management authorities has exercised, or is proposing to exercise, those functions in response to the flood.
- (2) Where an authority carries out an investigation under subsection (1) it must—
 - (a) publish the results of its investigation, and
 - (b) notify any relevant risk management authorities

3.6 A copy of this report is attached at appendix 3.

3.7 The developers have not yet been issued with a decision due to the on-going work surrounding the Section 106 Agreement, however in preparation they have been in discussions with Severn Trent Water and designed the sewers for the scheme in accordance with Severn Trent Waters' requirements. They are currently awaiting technical approval of these.

4.0 Current situation and options

4.1 The application submitted in 2015 remains undetermined and to avoid any appeal by the applicant on the grounds of non-determination a decision needs to be issued.

4.2 There are three options available to the Committee;

- Resolve to grant planning permission in accordance with the recommendation taken by Committee in November 2015.
- Resolve to grant planning permission in accordance with the recommendation to Committee on 18 April 2018 which is largely the same as that of November 2015, save for some minor revisions to the layout and house types.
- Resolve to refuse planning permission.

4.3 The difficulty with refusing the application is four-fold;

- Members of this committee have previously resolved to grant planning permission. There have been no material changes to the relevant policies in this case and there have been no changes to the site circumstances which may explain this change of position.
- There are no objections to the development from the Lead Local Flood Authority or Environment Agency, subject to the use of conditions as contained within the

recommendation of both previous reports to Committee. They are of the view that subject to an appropriate scheme to deal with any surface water run-off from the site, the development will not add to the existing flooding problems in the area.

- Without the grant of planning permission there would be no requirement for the applicant to pay £100,000 towards the alleviation of flooding problems in the area. It is not clear where this shortfall in funds would come from. In addition the council does not own the land which has been suggested to be safeguarded for the flood alleviation measures, this is owned by the developer. This land would only be secured by the Council by means of a Section 106 Agreement should permission be granted.
- There are no planning reasons to prevent the applicant implementing the remaining 63 dwellings approved in 1993. This permission does not include the equivalent condition 6 regarding the requirements for drainage and does not include a requirement to contribute £100,000 to alleviate flood problems in the area.

It may therefore appear to any Inspector at appeal that the Council has behaved unreasonably if permission is refused.

5.0 Conclusions

- 5.1 There have been no material changes to the site, or policies since the resolution to grant planning permission was taken by members of the committee in November 2015. The Lead Local Flood Authority, Local Planning Authority and developers have been in discussions surrounding the Section 106 Agreement and this document, it is understood, is close to being agreed by all parties. In addition since members took this decision in November 2015 initial feasibility works have been undertaken by consultants on behalf of the Lead Local Flood Authority to inform the design of possible flood alleviation measures in the wider area. Should permission be granted the developer will pay £100,000 towards these measures.
- 5.2 The amendments reported to committee on the 18 April 2018 being layout and minor design changes which had no implications for any flooding issues within the wider area or for the site itself. It is acknowledged that the concern of members focussed on flooding issues which this report is intended to address. As there have been no material changes to the site circumstance or relevant policies affecting the development since 2015, officers request that members consider the proposal and make a resolution to approve the development in line with the recommendation to committee in April 2018. This will secure a position of betterment on flood mitigation grounds when compared to the applicants fall-back position of implementing the 63 houses already with the benefit of planning permission.

Recommendation

The Head of Neighbourhoods and Prosperity be given delegated authority to grant planning permission for application 15/00010/FUL subject to prior completion of an agreement under Section 106 of the Town and Country Planning Act 1990 and the conditions set out below.

1. The development hereby permitted shall be commenced before the expiration of three years beginning with the date of this permission.
2. The development hereby permitted shall be carried out in accordance with drawings numbered AAGDR01-SLP Revision K received by the Local Planning Authority on 4 April 2018 and drawings numbered: KB1/2017 (OSG) Rev A, KB1/2017 (HSG) Rev A, N2/2017 (HSG) REV a, K7/2017 (OSG) Rev A, K7/2017 (HSG) Rev A, received by the Local Planning Authority on 26 February 2018 and drawings numbered: KA2/2017 (HSG), KA2/2017 (OSG), A1/2018 (OSG), A1/2018 (HSG), B6/2017 (OSG), C8/2016 (OSG), C9/2016 (OSG), C9/2017(HSG), S20/2018 (OSG), S20/2018 (HSG), T20/2017 (OSG), T20/2017 (HSG), Z4/2018 (OSG), Z4/2018 (HSG), DA3/2017 (O), DA3/2017 (H), E20/2016 (OSG), E20/2017 (SG), F5/2018 (HSG), plot 223 F5/2018 (OSG) and plot 224 F5/2018 (OSG) received by the Local Planning Authority on 2nd February and 27 March 2018 and drawing numbered: Garage/DG/2/88s/B Revision A, received by the Local Planning Authority on 12 January 2015.
3. No building operations shall be carried out until details of the manufacturer, type and colour of the materials to be used in the facing walls and roofs, details of the colour of the rainwater goods, and the colour and location of the external meter cupboards have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed only in accordance with those details.
4. No part of the development hereby approved shall be commenced until the coal mining remedial works, as recommended in the Geoenvironmental Appraisal Report (March 2013) and the Interim Report on the Geological/ Mining Position of Giltbrook Farm Site, Eastwood, Nottingham (November 1979, K. Wardell and Partners) as annotated on the accompanying drawing (K. Wardell and Partners, Drawing No. 10/3176/1 have been implemented in full to the satisfaction of the Local Planning Authority.
5. (a) 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.

(b) No building to be erected pursuant to this permission shall be first occupied or brought into use until:-
 - i. All the necessary remedial measures have been completed in accordance with the approved details, unless an alternative has first been approved in writing by the Local Planning Authority; and
 - ii. It has been certified to the satisfaction of the Local Planning Authority that the 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, unless an alternative has first been approved in writing by the Local Planning Authority.

6. No part of the development hereby approved shall commence until a detailed surface water drainage scheme and foul sewage scheme, including details of the attenuation feature subject to planning application 15/00018/REG or an alternative drainage strategy based on sustainable drainage principles, and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency. The scheme shall be implemented in accordance with the approved details prior to completion of the development. The scheme to be submitted shall demonstrate:
- Surface water drainage system(s) designed in accordance with CIRIA C697 and C687 of the National SUDS Standards, should the latter be in force when the detailed design of the surface water drainage system is undertaken.
 - Limiting the discharge rate generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm ideally to Greenfield rates for the site but as a minimum not to exceed the run-off from the undeveloped site and will not increase the risk of flooding off-site.
 - Provision of surface water run-off attenuation storage in accordance with the requirements specified in 'Science Report SCO30219 Rainfall Management for Developments'.
 - 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.
 - Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.
7. No part of the development hereby approved shall take place until details of the new roads have been submitted to and approved in writing by the Local Planning Authority including longitudinal and cross sectional gradients, street lighting, drainage and outfall proposals, construction specification, provision of and diversion of utilities services and any proposed structural works. Pedestrian visibility splays of 2m x 2m shall be provided on each side of the vehicle access leading to parking spaces and/ or garages. The development shall be implemented in accordance with these details to the satisfaction of the Local Planning Authority.
8. No dwelling shall be first occupied unless and until its associated access driveway and/or parking spaces have been constructed to prevent the unregulated discharge of surface water from the driveway and/or parking spaces onto the public highway.
9. No part of the development hereby approved shall commence until wheel washing facilities have been installed on the site in accordance with details first submitted to and approved in writing by the Local Planning Authority. The wheel washing facilities shall be maintained in working order at all times and shall be used by any vehicle carrying mud, dirt or other debris on its wheels before leaving the site so that no debris is discharged or carried onto the public highway. These facilities shall be retained on the site until the substantial completion of construction work.

10. The erection of fencing for the protection of the protected trees shall be undertaken in accordance with details to be submitted to and approved by the Local Planning Authority before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.
11. No part of the development hereby approved shall take place until a landscaping scheme has been submitted to and approved by the Local Planning Authority. This scheme shall include the following details:
 - (a) trees, hedges and shrubs to be retained and measures for their protection during the course of development
 - (b) numbers, types, sizes and positions of proposed trees and shrubs
 - (c) proposed hard surfacing treatment including detailing of the footpaths
 - (d) planting, seeding/turfing of other soft landscape areas
 - (e) proposed boundary treatments including along the external boundaries.

The approved scheme shall be carried out strictly in accordance with the approved details.
12. The approved landscaping shall be carried out not later than the first planting season following which the substantial completion of the development and any trees or plants which, within a period of 5 years, die, are removed or have become seriously damaged or diseased shall be replaced in the next planting season with ones of similar size and species to the satisfaction of the Local Planning Authority, unless written consent has been obtained from the Local Planning Authority for a variation.
13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and/or re-enacting that Order) no extension or enlargement (including additions to roofs) within Schedule 2, Part 1, Classes A, B, or C shall be made to the following dwelling house(s) as shown on drawing number AAGDR01-SLP Revision K: Plots 223, 224 and 250 without the express permission in writing of the Local Planning Authority.

Reasons

1. To comply with S91 of the Town and Country Planning Act 1990 as amended by S51 of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt.
3. No such details were submitted and to ensure the development presents a satisfactory standard of external appearance, in accordance with the aims of Policy 10 of the Broxtowe Aligned Core Strategy (2014).
4. In the interests of public health and safety.
5. In the interests of public health and safety and in accordance with Policy E29 of the Broxtowe Local Plan (2004).
6. To prevent the increased risk of flooding, to improve and protect water quality; and to ensure the future maintenance of the sustainable drainage structures in accordance with Policy 1 of the Broxtowe Aligned Core Strategy (2014) and the National Planning Policy Framework (2012).
7. In the interests of highway safety.

8. In the interests of highway safety to ensure surface water from the site is not deposited on the public highway causing danger to road users
9. In the interests of highway safety.
10. To ensure the existing trees protected by a Tree Preservation Order are not adversely affected and in accordance with Policy E24 of the Broxtowe Local Plan (2004)
11. To ensure that the details are satisfactory in the interests of the appearance of the area and in accordance with the aims of Policy 10 of the Broxtowe Aligned Core Strategy (2014).
12. To ensure the development presents a more pleasant appearance in the locality and in accordance with the aims of Policy 10 of the Broxtowe Aligned Core Strategy (2014).
13. To protect the amenity of neighbouring occupiers and in accordance with Policy 10 of the Broxtowe Aligned Core Strategy (2014).

Notes to Applicant

1. The Council has acted positively and proactively in the determination of this application in line with the guidance contained within paragraphs 186 and 187 of the National Planning Policy Framework, by communicating with the agent during the course of the application.
2. Conditions 3,4,5,6,7,9 and 11 are required to be pre-commencement conditions as no/insufficient information on those matters was submitted with the application and as those parts of the development cannot proceed satisfactorily without the outstanding matters being agreed in advance of those aspects, respectively, of the development commencing.
3. Any tree works should be undertaken outside of the bird-breeding season (March-September inclusive). If works are to be carried out during this time then a suitably qualified ecologist should be on site to survey for nesting birds. Birds, their nests and eggs (except pest species) are protected by the Wildlife and Countryside Act 1981 (and as amended).
4. Greasley Footpaths Number 54 and 55 runs through the site. The footpath should remain open and unobstructed at all times. If a temporary closure of the footpath is required Nottinghamshire County Council's Countryside Access Team must be contacted at least 5 weeks before to allow for a Temporary Closure Order to be put in place. Nottinghamshire County Council can be contacted on 0300 500 8080.
5. The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity. This may result in problems to occur in the future, particularly as a result of the development taking place. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. The applicant should be aware that any intrusive activities and any subsequent treatment require the prior written permission of the Coal Authority. Failure to obtain permission will potentially result in court action. The Coal Authority can be contacted on 0845 762 6848 and further information is provided on <https://www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property>

Background papers

Application case file

Appendix 1 – Planning Committee report dated 11 November 2015

Appendix 2 – Planning Committee report dated 18 April 2018

Appendix 3 – Nottinghamshire County Council Communities and Place Committee report dated 8 February 2018