

Report of the Chief Executive

**18/00308/FUL
CONSTRUCT 6 INDUSTRIAL UNITS (CLASS B2) AND BIN STORE AND
CREATE VEHICULAR ACCESS FROM DERBY ROAD (PART REVISED
SCHEME)
FORMER DYEWORKS SITE, WEST END STREET, STAPLEFORD, NG9
7DA**

Councillor John McGrath has requested this application be determined by the Committee.

1 Details of the Application

- 1.1 The application seeks permission to construct six industrial units within Use Class B2 (General Industry), a separate bin store and a new access from Derby Road which would then connect to West End Street. A one way system would be in operation with the access from Derby Road and the egress onto West End Street. The industrial units would comprise a single building and would be single storey with a maximum height of 6m. The front elevation of each unit, facing towards the main access road, would include a door and a window. The main goods entrance would be to the rear of each unit and accessed from the car park area. The buildings will be constructed in facing brickwork and plastic coated steel cladding. The bin store would be a close boarded timber enclosure with a height of 2m and would be located to the rear of 1 West End Street. The proposed boundary treatments are identified on the plan, with a 2m brick wall retained to the residential properties on West End Street.
- 1.2 This is a revised planning application. Planning permission was previously granted for seven industrial units and an office block (reference 13/00609/FUL). The additional industrial unit and office block are along the northern section of the site but these buildings are not subject to this revised application as no changes are proposed to these elements. The changes to the six units relate to reducing the size of the units, moving the units and the access road further away from the western boundary and moving the main goods entrance and parking area to the rear of the building. The amendments have been made due to a covenant on part of the site which prevents it from being built upon and to move the development further away from land which will form part of the HS2 railway line.

2 Site and Surroundings

- 2.1 The site is predominantly open with the exception of the north east corner where there is a two storey building. The site rises from north to south and the site is currently accessed from West End Street. The site was historically used as a dye works and the Palace Cinema (now demolished) fronted onto Derby Road.
- 2.2 Beyond the north boundary there is a vacant site which was previously used for industry. The building has since been demolished. To the west of the site there is the railway line and to the south is Derby Road. To the east of the site there are a mixture of residential properties and commercial properties. The rear gardens of a

number of these properties face directly towards the application site. It is also noted that 242 to 254 Derby Road is currently subject to a separate planning application to form 11 apartments (reference 18/00288/FUL).

- 2.3 The northern part of the site lies within Flood Zone 3 (high probability of flooding). The central part of the site lies within Flood Zone 2 (medium probability of flooding) and the southern part of the site lies within Flood Zone 1 (low probability of flooding).
- 2.4 The north western corner of the site is within the HS2 Safeguarding Zone.



3 Relevant planning history

- 3.1 Planning permission (reference 13/00609/FUL) was granted in 2014 to construct 7 industrial units (Class B2), an office block, 2 bin stores and a new access to Derby Road.
- 3.2 A Certificate of Lawfulness (reference 17/00523/CLUE) was subsequently issued to confirm that the planning permission had been implemented.

4 Policy Context

4.1 **National policy**

- 4.1.1 The National Planning Policy Framework (NPPF) July 2018 states that at the heart of the NPPF is a presumption in favour of sustainable development. For decision making this means that development proposals that accord with an up-to-date development plan should be approved without delay.
- 4.1.2 Paragraph 80 states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 4.1.3 Paragraph 108 states in assessing applications for development, it should be ensured that any significant impacts from the development on the transport network can be cost effectively mitigated to an acceptable degree.
- 4.1.4 Paragraph 109 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 4.1.5 Paragraph 118 states that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.
- 4.1.6 Paragraph 127 states that planning decisions should ensure that developments will function well and add to the overall quality of the area and are sympathetic to local character and history, including the surrounding built environment and landscape setting.
- 4.1.7 Paragraph 155 outlines how inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
- 4.1.8 Paragraph 180 states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

4.2 **Broxtowe Aligned Core Strategy (2014)**

- 4.2.1 The Council adopted the Core Strategy (CS) on 17 September 2014.
- 4.2.2 Policy A 'Presumption in Favour of Sustainable Development' reflects the presumption in favour of sustainable development contained in the NPPF. Applications which accord with the Local Plan will be approved without delay unless material considerations indicate otherwise.

4.2.3 Policy 1 ‘Climate Change’ sets out how climate change will be tackled and adapted to and sets requirements for sustainable design of buildings.

4.2.4 Policy 10 ‘Design and Enhancing Local Identity’ states that development should be assessed in relation to its massing, scale, materials, design and impact on the amenity of nearby residents or occupiers.

4.2.5 Policy 15 ‘Transport Infrastructure Priorities’ states that any development permitted in or adjacent to the proposed strategic location for growth at Toton shall allow for adequate provision for the construction of the HS2 route, the station and vehicle access to it.

4.3 Saved Policies of the Broxtowe Local Plan (2004)

4.3.1 The Part 2 Local Plan is currently awaiting Examination. Until adoption, Appendix E of the Core Strategy confirms which Local Plan policies are saved. Relevant saved policies are as follows:

4.3.2 Policy E29 ‘Contaminated Land’ states development of land which may be contaminated will not be permitted unless a site investigation (using a method agreed in writing with the Council) has been carried out; details of remedial measures have been approved by the local planning authority and the relevant consultation bodies; there will be no significant risk to the health and safety of occupants of the development and there will be no contamination of any surface water, ground water or adjacent land.

4.3.3 Policy E34 ‘Control of Noise Nuisance’ states that planning permission will not be granted for development if the noise created would expose occupants of housing or other noise sensitive uses to significant noise disturbance.

4.3.4 Policy EM1 ‘New Employment Sites’ identifies new employment sites which includes the application site. The policy states that development will be limited to Class B1 uses and proposals will need to include details of investigations of possible contamination of the land and measures to deal with contamination.

4.3.5 Policy T11 ‘Guidance for Parking Provision’ and appendix 4 to the Local Plan require satisfactory provision of vehicle parking and servicing, in accordance with the latest standards.

4.4 Part 2 Local Plan (Draft)

4.4.1 The Part 2 Local Plan includes site allocations and specific development management policies. Consultation on the draft plan occurred between 18 September and 3 November 2017. The draft plan has been submitted for Examination, anticipated to take place toward the end of this year. Due to the current stage of the plan preparation and that representations have been made on all relevant Part 2 Local Plan policies only limited weight can be attached to the policies listed below.

- 4.4.2 Policy 1 'Flood Risk' states that development will not be permitted in areas at risk from any form of flooding unless: there are no suitable and reasonably available alternative locations for the proposed development in a lower-risk area outside the Green Belt; and in the case of fluvial flooding, the proposal is protected by the Nottingham Trent Left Bank Flood Alleviation Scheme or other flood defences of equivalent quality; and adequate mitigation measures are included.
- 4.4.3 Policy 9 'Retention of good quality existing employment sites' states that permission will be granted for the expansion, conversion or redevelopment of land and premises for employment purposes on allocated and protected employment sites provided: the employment use is within Use Class B1 – B8 or sui generis use of a similar nature; and the redevelopment provides the necessary quality of design, landscaping, parking and amenity in accordance with other policies in this Local Plan, having regard to the local environment and in particular the amenity of nearby and adjoining occupiers. The application site is identified within the supporting text as a viable employment site for B Class employment uses which should be retained for this purpose.
- 4.4.4 Policy 17 'Place-making, design and amenity' states that permission will be granted for development which meets a number of criteria including that it should integrate into its surroundings, have good access to public transport and ensure a satisfactory degree of amenity for occupiers of the new development and neighbouring properties.
- 4.4.5 Policy 19 'Pollution, Hazardous Substances and Ground Conditions' states that permission will not be granted for development which would result in an unacceptable level of pollution, or is likely to result in unacceptable exposure to sources of pollution or risks to safety, and that proposals must identify potential nuisance issues arising from the nature of the proposal and address impacts on that development from existing land uses.

5 Consultations

- 5.1 HS2 Ltd objects to the application as a substantial part of the site is located within land subject to the Safeguarding Directions for Phase 2b of HS2. The Safeguarding Directions have been issued by the Secretary of State for Transport to protect the entire preferred Phase 2b route of HS2 from conflicting development. HS2 Ltd considers that the revisions made from the 2013 scheme are not sufficient to allow HS2 to undertake the required works in the area and HS2 Ltd engineers have concluded that it would not be possible to relocate the development outside of the safeguarded area. The proposed development would therefore prejudice the ability to build and operate HS2 which is a project of national importance and therefore the application should be refused. HS2 Ltd highlights that if the Council is minded to grant planning permission contrary to their advice, the application must be first referred to the Secretary of State. The applicant is advised to contact the HS2 property team regarding compensation.
- 5.2 The Environment Agency has no objection subject to conditions requiring finished floor levels to be set no lower than 37.3m above Ordnance Datum (AOD), the submission of a remediation strategy to deal with contamination risks, the submission of a verification report to show any remediation works have been

completed, the halting of development if unidentified contamination is found and the need to submit a scheme for surface water disposal.

- 5.3 Nottinghamshire County Council as Highways Authority recommends that conditions included in the previous scheme (reference 13/00609/FUL) are repeated, should planning permission be granted.
- 5.4 Broxtowe Borough Council's Environmental Health Department objects to the application. This is due to the revised scheme proposing to locate parking, delivery points and main points of access to the rear, adjacent to the residential dwellings. Given the scope of B2 use, the proximity to residential dwellings and the proposed orientation, it is considered that the development is likely to give rise to unacceptable operational noise which could not be restricted by conditions.
- 5.5 58 properties, either adjoining the site, opposite or those who commented on the 2013 planning application were consulted. One letter stating objections and one letter stating observations were received. The following points were raised:
 - Concerns regarding noise and smell arising from the development in addition to existing disturbance from the railway line and scrap yard.
 - The access would be dangerous.
 - Queries the height and design of the bin store, what will be stored in the bins, and how often they will be emptied.
 - Query regarding the height of the boundary fence to properties on West End Street.

6 Appraisal

- 6.1 The main considerations relate to whether the principle of the development is acceptable, with particular regard to the impact on the HS2 safeguarded zone, if there will be an unacceptable loss of amenity to any neighbours, if an acceptable design has been achieved and if there will be any unacceptable highways impacts as a result of the development.

Principle

- 6.2 Planning permission (reference 13/00609/FUL) was previously granted for a similar scheme to the one now proposed. The changes mainly relate to a reduction in the size of six of the industrial units and moving the building further away from the western boundary. The 2013 planning permission has also already been implemented and therefore could be constructed in full. As part of the previous planning application, HS2 Ltd did not object as a decision regarding the route had not been finalised. However, they did highlight that the site may in future be required by HS2 Ltd to construct and/or operate the railway.
- 6.3 It should also be acknowledged that the site was allocated for an employment use within the Broxtowe Local Plan (2004) and is identified as a viable employment site for B Class employment uses within Policy 9 the Part 2 Local Plan.
- 6.4 Due to the extant planning permission, it is considered that the principle of the mix of industrial and office use would usually be acceptable. However, significant

weight must now be given to the objection from HS2 Ltd due to part of the site falling within the safeguarded area. Following receipt of the objection, there were discussions with HS2 Ltd about whether amendments to the scheme could overcome the objection. However, engineers working for HS2 Ltd considered that this would not be possible. HS2 Ltd also highlighted that the applicant will be entitled to compensation from the development as they have an existing planning permission which has been implemented.

- 6.5 Policy 15 of the Aligned Core Strategy refers to any development allowing for adequate provision for the construction of the HS2 route and the NPPF refers to the need for any significant impacts from the development on the transport network being able to be mitigated to an acceptable degree. It is considered that the development could not provide suitable mitigation and could have a significant impact on the delivery of HS2, contrary to both Policy 15 and the NPPF. Therefore, the development would be unacceptable and the conflict with the HS2 safeguarded area outweighs any potential 'fall back' position in respect of the implemented planning permission.

Amenity

- 6.6 The six industrial units would be constructed to the west of houses on West End Street and to the north of properties on Derby Road. In this revised scheme, the buffer between the units and the houses has been increased (the minimum distance from the units to 7 West End Street is now 5m rather than 2m) which would reduce the impact compared to the approved scheme. The units are also single storey and the height (6m) is the same as the approved scheme. Based on the relationship, it is considered the development would not be overbearing or cause unacceptable overshadowing to the occupiers of neighbouring properties. The proposed boundary treatments are identified on the plan, with a 2m brick wall retained to the residential properties on West End Street. The office block and unit 7 do not form part of this application although the relationship was judged to be acceptable as part of the previous approval.
- 6.7 A bin store is proposed to the rear of 1 West End Street. The approved scheme also included a bin store in this location and the store will not exceed 2m in height. It is considered that there will be no additional impact compared to the approved scheme.
- 6.8 A significant change from the previous approval is the relocation of the main goods entrances from the front of the units to the rear. Environmental Health has objected to this change, stating that the scope of B2 use, the proximity to residential dwellings and the proposed orientation, will give rise to unacceptable operational noise which could not be restricted or controlled by conditions. Based on these comments, it is considered that the proposed development would expose occupants of the neighbouring residential dwellings on West End Street to significant noise disturbance which would result in an unacceptable loss of amenity and would be contrary to Policy E34 of the Broxtowe Local Plan, Policy 10 of the Aligned Core Strategy and Part 2 Local Plan Policy 19.

Design

- 6.9 The units subject to this application would have an industrial appearance but would be set back from Derby Road and from West End Street. The design would be appropriate for an industrial site and it is considered that it would not harm the overall character of the area. Therefore, the proposal would accord with Aligned Core Strategy Policy 10 in respect of design.

Highways

- 6.10 The Highways Authority has no objection subject to the conditions included within the extant planning permission being repeated. This would include conditions requiring the accesses to be constructed prior to buildings being occupied and including adequate drainage. It is also considered that there would be sufficient parking within the site to serve the development and that the revisions made to the proposal would not result in any additional highways impacts above those arising from the extant scheme.

Other Issues

- 6.11 Parts of the site lie within Flood Zones 2 and 3. The Environment Agency has no objection subject to the inclusion of conditions relating to setting the height of finished floor levels, the submission of a remediation strategy and verification report to deal with contamination risks, and the need to submit a scheme for surface water disposal. With the inclusion of these conditions, it is considered the application would be acceptable in respect of flood risk.
- 6.12 A neighbour response raises concerns regarding potential smell from the development. It is considered that it is unlikely that odour from the development would be at an unacceptable level and if there were issues this could be dealt with by Environmental Health.

7 Conclusion

- 7.1 Whilst the site has an extant planning permission, significant weight must now be given to the objection from HS2 Ltd due to part of the site falling within the safeguarded area. It is considered that the development would be unacceptable due to the conflict with the HS2 line and this would be contrary to Policy 15 of the Aligned Core Strategy (2014) which requires development to allow for the delivery of the HS2 route and to the guidance contained with the NPPF which seeks to prevent development having an unacceptable impact on the transport network.
- 7.2 The proximity to residential dwellings and the proposed orientation of the units, with the main goods entrances and parking areas to the rear, would expose occupants of the neighbouring residential dwellings to significant noise disturbance resulting in an unacceptable loss of amenity. It is considered that conditions could not adequately mitigate this impact. The development would therefore be contrary to Policy E34 of the Broxtowe Local Plan (2004), Policy 10 of the Broxtowe Aligned Core Strategy (2014) and the emerging Policy 19 of Part 2 Local Plan.

Recommendation

The Committee is asked to **RESOLVE** that planning permission be refused for the following reasons:

1. The proposed development would conflict with the HS2 safeguarded route as published, emerging design developments and the Government's objective of delivering HS2, which is a project of national importance. It is considered that revised proposals or mitigation measures could not overcome these fundamental issues. The proposal is therefore contrary to the National Planning Policy Framework (NPPF) and Policy 15 of the Broxtowe Aligned Core Strategy (2014).
2. The proposed development would expose occupants of the neighbouring residential dwellings to unacceptable noise disturbance from the Class B2 uses due to the orientation of the units and the position of the main goods entrances facing towards residential properties on West End Street. This will result in an unacceptable loss of amenity to occupiers of the residential properties which would be contrary to Policy E34 of the Broxtowe Local Plan (2004), Policy 10 of the Broxtowe Aligned Core Strategy (2014) and the emerging Policy 19 of Part 2 Local Plan (Draft).

Note to Applicant

The Council has tried to act positively and proactively in the determination of this application. However, the Council concluded that the fundamental issues associated with the development could not be overcome by amendments.

Background papers
Application case file

