

Report of the Chief Executive

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| APPLICATION NUMBER: | 24/00839/FUL |
| LOCATION: | Land South of 70 and 72 Sandy Lane Beeston |
| PROPOSAL: | Construct two detached dwellings |

The application is brought to the Committee at the request of Councillor S J Carr.

1. Purpose of the Report

The application seeks planning permission for the construction of two detached dwellings on land to the south of 70 and 72 Sandy Lane.

2. Recommendation

The Committee is asked to RESOLVE that planning permission be refused for the reasons outlined in the appendix.

3. Detail

The site is an area of undeveloped land south of 70 and 72 Sandy Lane, and to the rear of 62, 64 and 66 Sandy Lane, which are to the west of the site. The site is accessed off a private drive leading from the head of Sandy Lane, and provides access to 68, 70, 72 and 74 Sandy Lane.

The proposed development consists of the construction of two detached two storey dwellings, associated landscaping, and a pond between.

The dwellings are large and whilst two storey, have accommodation at basement level, providing three floors of accommodation. Each property would have a detached garage.

The site is allocated as forming part of a Green Infrastructure Asset (GIA) (Bramcote Hills and Ridge) and has a Green Infrastructure Corridor (GIC) running through it and is allocated as part of the Alexandrina Plantation Local Wildlife Site (LWS). The site also abuts the Sandy Lane Local Nature Reserve (LNR), which sits to the south and east.

The site is predominately covered by Japanese Knotweed (JKW), a non-native invasive plant, the extent of which continues into land to the north and northeast of the site, on land within the ownership of the applicant.

The applicant intends to use the funds raised from the development to eradicate the JKW on this and the adjacent site, and also intends to create a publicly accessible park (to be known as BUP Community Woodland Park) on land outside of but adjacent to the application site.

The High Court Judgement in respect of decision and appeal for 22/00790/FUL can be accessed at [22/00790/FUL | Construct two detached dwellings | Land South Of 70 And 72 Sandy Lane Beeston Nottinghamshire](#)

The appeal decision for 22/00790/FUL [22/00790/FUL | Construct two detached dwellings | Land South Of 70 And 72 Sandy Lane Beeston Nottinghamshire](#)

Information about Japanese Knotweed can be found as follows: [Website relating to Japanese Knotweed hotspots as at 2024: Revealed: England's 2024 Japanese knotweed hotspots](#)

The draft Nottinghamshire and Nottingham Local Nature Recovery Strategy can be accessed at [Notts Nature Recovery](#)

4. Financial Implications

The comments from the Head of Finance Services were as follows:

There are no additional financial implications for the Council with the costs/income being within the normal course of business and contained within existing budgets. Any separate financial issues associated with S106s (or similar legal documents) are covered elsewhere in the report.

5. Legal Implications

The comments from the Head of Legal Services were as follows:

The Legal implications are set out in the report where relevant, a Legal advisor will also be present at the meeting should legal considerations arise.

6. Data Protection Compliance Implications

Due consideration has been given to keeping the planning process as transparent as possible, whilst ensuring that data protection legislation is complied with.

7. Background Papers

Nil.

Appendix

1. Details of the application

- 1.1 The application site (that is, the area contained within the red line boundary) seeks to construct two x two storey detached dwellings, each with basement accommodation (three floors of accommodation overall), on land to the south of 70 and 72 Sandy Lane. Within the site an access drive leading from the existing private drive will be created. A centrally positioned pond, annotated as being as part of a sustainable drainage scheme, would also be provided. It is understood that this would be maintained and managed by a private management company, along with any other common shared areas.
- 1.2 Both dwellings would have low pitched roofs and be of a contemporary design and appearance, including some full height glazing, and would have 'brown' roofs (that is, be planted). The ground floor area of each dwelling is approximately 247 square metres (approx. 750 square metres overall, including the basement). As such the dwellings are considered to be substantial in size.
- 1.3 House A – this would be located east of nos. 62, 64 and 66 Sandy Lane and would have accommodation over three floors (including the basement). It would have 4 bedrooms to the upper floor, living accommodation including home office, snug and utility room on the ground floor, and ancillary accommodation such as playroom and gym, along with storage and plant rooms, to the basement level. There would be a sunken terrace with steps leading from the basement to the garden area. The dwelling would have a large parking area to the front, with garden area to the west and south. A detached double garage, also shown to have a green roof, would be sited to the south east of the dwelling, adjacent to the pond.
- 1.4 House B – this is a mirror image of House A and would be located to the east of House A and the pond. This property would also have a detached garaged, located to the north west of this dwelling.
- 1.5 Outside of the application site (and as such outside of the consideration of this application), to the north east of the site continuing to the north and east of 68, 72 and 74 Sandy Lane, (shown on the submitted drawings as a blue line i.e. land within the ownership of the applicant), there is a privately owned large wooded / natural area which does not form part of the application proposal, and is not shown to be accessible from the application site. This site forms part of Bramcote Ridge. Aside from a tranche of land to the north east of House B, also infested with Japanese Knotweed, the majority of the 'blue line' land lies outside of the Authority boundary, being within Nottingham City Council. The application submission includes details of how the land falling outside of the application site boundary, following the granting of planning permission of this application, and proposed to be directly funded by the development, would be made publicly accessible once Japanese Knotweed (JKW), the eradication of which is also proposed to be funded by the development, has been eradicated from both the application site and land

within the ownership of the applicant. The application form and supporting statement emphasise the applicant's contention that the development of two dwellings should be considered as 'enabling works' to allow for the funding of the eradication of the JKW and the creation and forward funding for maintenance of the newly created publicly accessible 'park'.

2. Site and surroundings

- 2.1 The site is located to the south of 70 and 72 Sandy Lane, two large detached dwellings located off a private drive leading from Sandy Lane. The drive also serves two additional large detached properties, 68 and 74 Sandy Lane, which are to the north of 70 and 72.
- 2.2 To the west of the site are numbers 62, 64 and 66 Sandy Lane, three detached two storey dwellings of traditional design and modest in size (typically three beds), which face directly onto Sandy Lane. The rear gardens of these properties form the common boundary with the site. These properties are typical of the pattern of development along Sandy Lane.
- 2.3 To the south and east of the site is Sandy Lane Open Space Local Nature Reserve (LNR), a mainly wooded area, with a clearing which contains an informal football pitch and a play area with play equipment. There is a telecom mast in the wooded area between the site and the play area. This area is owned and managed by Broxtowe Borough Council.
- 2.4 The wooded area continues from Sandy Lane LNR to the north and north east of the site. This area is privately owned by the applicant, and although there is no public right of access, the land is unfenced and as such used by the public for walking through as it connects the Sandy Lane LNR to the Alexandrina Plantation LNR, to the north / north west of the top of Sandy Lane. This private owned area is predominately within Nottingham City. There is a public bridleway leading from the top of Sandy Lane northwards, separating the Alexandrina Plantation LNR from the privately owned wooded area.
- 2.5 The application site is allocated as forming part of a Green Infrastructure Asset (GIA) (Bramcote Hills and Ridge) and has a Green Infrastructure Corridor (GIC) running through it. It is allocated as part of the Alexandrina Plantation Local Wildlife Site (LWS). As such, the land is of importance for its' contribution to nature and the green character of the area, therefore should be protected from built development.
- 2.6 It is acknowledged that a large part of the application site is infested with Japanese Knotweed (JKW), which also continues into the privately owned wooded area to the north.

3. Relevant Planning History

3.1

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| 19/00465/FUL | Construct 11 dwellings and provision of infrastructure works to facilitate creation of community park | Refused and dismissed on appeal | Note: This was an application that included land within Nottingham City Council Authority boundary. |
| 22/00790/FUL | Construct two detached dwellings | Refused and dismissed on appeal | |

3.2 A planning application was submitted in 2019, which encompassed the application site and land to the north owned by the applicant, for the erection of 11 dwellings and provision of infrastructure works to facilitate the creation of a community park (reference 19/00465/FUL). This was a cross-boundary application as it included land within Nottingham City. Two dwellings were proposed within BBC land and 9 within NCC land. The application was refused planning permission at Planning Committee in July 2021, in line with officer recommendation on the following grounds:

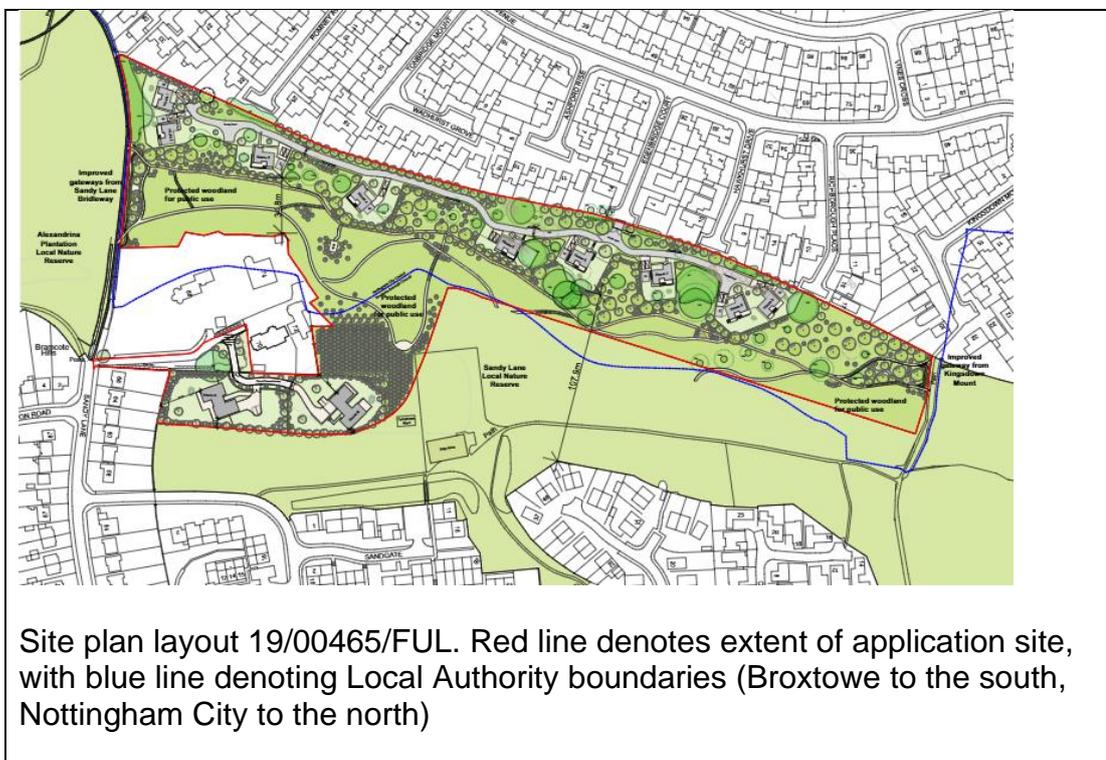
The proposed housing development, by virtue of the built development and the loss of habitats, would result in an unacceptable harm to the Green Infrastructure Asset and would result in a net loss to biodiversity. No benefits which clearly outweigh this harm have been demonstrated. Accordingly, the development is contrary to the aims of Policies 28 and 31 of the Broxtowe Part 2 Local Plan (2019), Policy 16 of the Broxtowe Aligned Core Strategy (2014) and Section 15 of the National Planning Policy Framework (NPPF) 2019.

3.3 The application submitted to NCC was similarly refused for the same reasons, with the addition of impact on visual amenity and neighbour amenity.

An appeal was lodged in response to the refusal of 19/00465/FUL and was heard by way of a public inquiry jointly with NCC. The appeal was subsequently dismissed in August 2022, with the Planning Inspector concluding:

Whilst there would be some benefits of the scheme, including the removal of JKW, I do not consider that the proposed housing can justify the enabling of any or all of these benefits due to the overall harm that would arise. The balance of harm against the benefits is stark and the harm I have found to living conditions alone outweighs the benefits even without adding the other harm I have found. I have considered all other material considerations, including letters of support from interested parties, but none outweigh the

conclusions I have reached.... The proposal conflicts with the development plans as a whole. Even if paragraph 11 (d) of the NPPF were engaged, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.



- 3.4 Following this decision, a revised application (reference 22/00790/FUL) for two detached dwellings on land within Broxtowe Borough Council authority only, was submitted in October 2022 and refused planning permission by delegated powers on 1st December 2022, on the following grounds:

The proposed housing development, by virtue of the built development and the loss of habitats, would result in an unacceptable harm to a Green Infrastructure Asset and would result in the loss of a Biodiversity Asset (Local Wildlife Site). No benefits which clearly outweigh this harm have been demonstrated. Accordingly, the development is contrary to the aims of Policies 28 and 31 of the Broxtowe Part 2 Local Plan (2019), Policies 16 and 17 of the Broxtowe Aligned Core Strategy (2014) and Section 15 of the National Planning Policy Framework (NPPF) 2019.

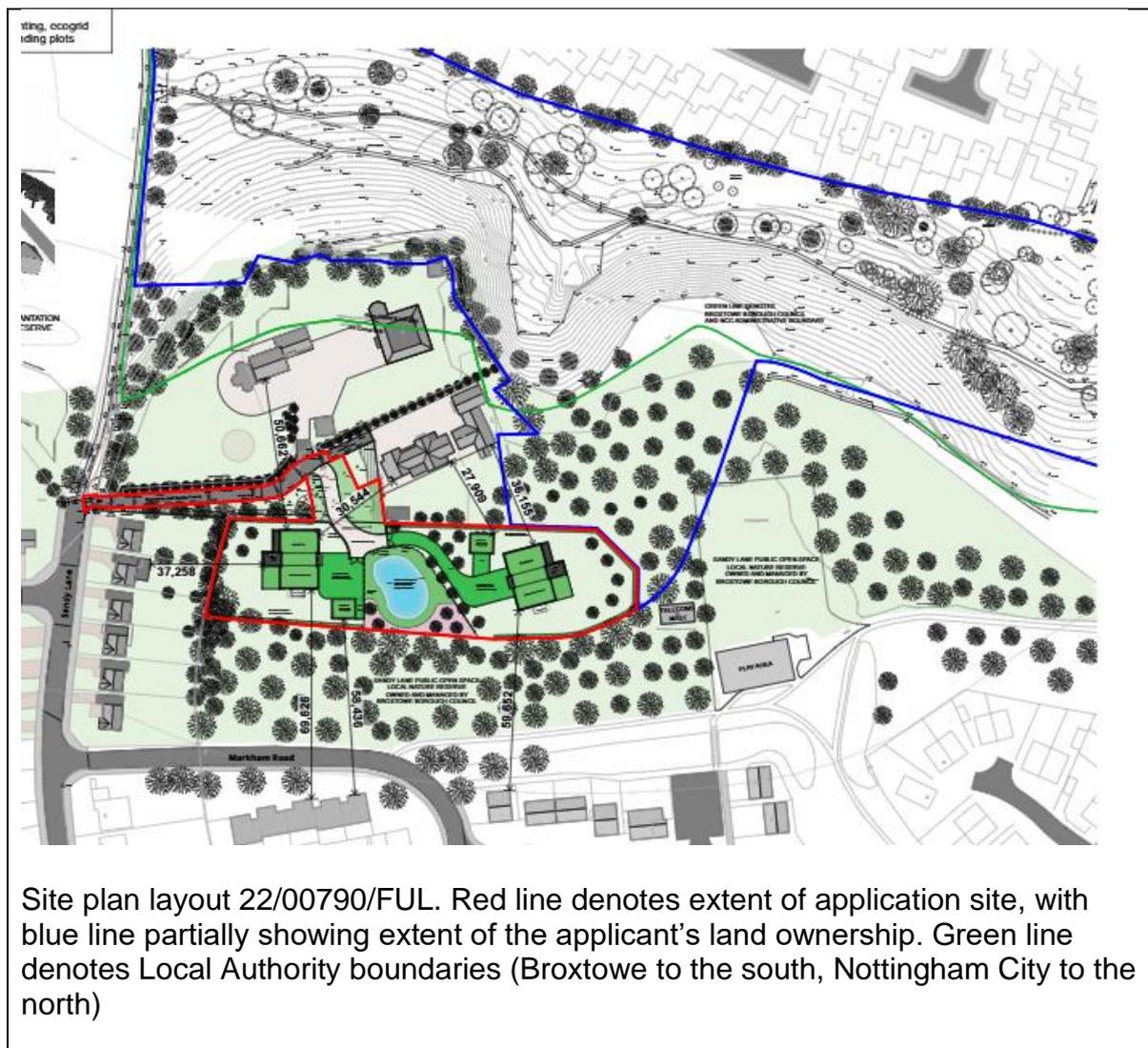
- 3.5 An appeal was submitted and subsequently dismissed in December 2023, with the Planning Inspectorate concluding:

I do not consider that, even cumulatively, the weight of the benefits in favour of the proposal would outweigh the harm and loss to the GIA and LWS. A lack of objection on certain matters that are unrelated to the main issue is a neutral consideration that does not weigh in the scheme's favour. I therefore find the

proposal would conflict with Policies 28 and 31 of the BLP (2019) and Policies 16 and 17 of the GNACS (2014), which, amongst other matters require existing GIAs to be protected and enhanced and that development would only be allowed where the benefits clearly outweigh the harm caused to the GIA and BA/LWS.

I conclude that the proposed development would conflict with the development plan taken as a whole and material considerations, including the National Planning Policy Framework, do not indicate that the appeal should be determined other than in accordance with the development plan.

- 3.6 It should be noted that a High Court Challenge was lodged by the appellant in respect of the Appeal decision for the latter appeal. The challenge rested on the appellants contention that limited weight was given by the Planning Inspector in respect of emphasis on the need for the development to fund the removal of the JKW on the appeal site and on other land in the ownership of the applicant. The High Court concluded that the Planning Inspector decision was upheld in all aspects aside from the consideration of the weight afforded to the argument to allow the development due to the cost of eradicating the JKW. The Planning Inspectorate (Secretary of State) appealed this ruling. The outcome of this challenge by the SoS was issued 7 March 2025, the judgement dismissed the claim, concluding that the Planning Inspectorate did properly assess the appeal and did apply appropriate weight to the argument to allow the development in order to fund the eradication of the JKW. As such the original appeal decision issued by the Planning Inspectorate on 19 December 2023 carries significant weight in the planning balance. Refer to [22/00790/FUL | Construct two detached dwellings | Land South Of 70 And 72 Sandy Lane Beeston Nottinghamshire](#) .



Site plan layout 22/00790/FUL. Red line denotes extent of application site, with blue line partially showing extent of the applicant's land ownership. Green line denotes Local Authority boundaries (Broxtowe to the south, Nottingham City to the north)

3.7 The application site boundary for reference 22/00790/FUL is the same as that submitted for the application brought before committee here (that is, reference 24/00839/FUL).

4. Relevant Policies and Guidance

4.1 **Broxtowe Aligned Core Strategy 2014:**

The Council adopted the Core Strategy (CS) on 17 September 2014.

- Policy A: Presumption in Favour of Sustainable Development
- Policy 1: Climate Change
- Policy 8: Housing Size, Mix and Choice
- Policy 10: Design and Enhancing Local Identity
- Policy 12: Local Services and Healthy Lifestyles
- Policy 13: Culture, Tourism and Sport
- Policy 16: Green Infrastructure, Parks and Open Space
- Policy 17: Biodiversity

4.2 Part 2 Local Plan 2019

The Council adopted the Part 2 Local Plan on 16 October 2019.

- Policy 15: Housing Size, Mix and Choice
- Policy 17: Place-making, Design and Amenity
- Policy 19: Pollution, Hazardous Substances and Ground Conditions
- Policy 28: Green Infrastructure Assets
- Policy 31: Biodiversity Assets

4.3 National Planning Policy Framework (NPPF) 2024

- Section 2 – Achieving sustainable development
- Section 5 – Delivering a sufficient supply of homes
- Section 12 – Achieving well-designed places
- Section 14 – Meeting the challenge of climate change, flooding and coastal change
- Section 15 – Conserving and enhancing the natural environment

5. Consultations

5.1 Councillors:

- **Councillor S Carr** – requested the application be brought to committee
- **Councillor B Carr** – strongly recommends the application is approved, in order to ensure the removal of the Japanese Knotweed, as neighbours are concerned in respect of the spread into neighbouring properties. Should be a condition that the JKW is removed before the houses are built.

5.1 Responses received from consultees:

- **County Council as Highways Authority:** No objection subject to a condition in respect of signage on private access being provided
- **County Council Public Rights of Way Officer:** No objections as no right of way appears to be affected
- **County Council as Lead Local Flood Authority:** No comments to make
- **Broxtowe Waste and Refuse Officer:** Sets out requirements for in provision and collection
- **Broxtowe Environmental Health Officer:** No objections subject to conditions in respect of securing updated survey of extent of the Japanese Knotweed (JKW); no commencement of development until details of method statement in regard to removal of JKW; Restriction on hours of construction; Prior approval of a Construction / Demolition Method Statement; and a Note to Applicant in respect of burning of waste on site

- **Broxtowe Environmental Development Officer (Parks and Green Spaces):** No objections. Welcomes the removal of JKW, however does acknowledge that this may take 2 to 3 years to eradicate the plant, and this would be a challenge. Landscaping in respect of the proposal is acceptable, subject to choice of planting (e.g. native species). Brown roofs to the dwellings are a nice addition. Would need to secure landscaping via condition.
- **Coal Authority:** Standing Advice applies
- **Notts Wildlife Trust:** As the site is aligned with a secondary Green Infrastructure (GI) corridor, sufficient weight should be applied to the consideration of any impact of the proposal on the GI. Would not support any proposals that would result in loss or harm to GI corridors or Biodiversity Assets. Welcome the biodiversity net gain (BNG). If the LPA were to approve the application, the removal of the JKW and securement of the publicly accessible park would be needed, and conditions to ensure that the advice in the Preliminary Ecology Assessment (PEA) is carried out, and in addition a Landscape Ecology Management Plan (LEMP) and Construction Environmental Management Plan (CEMP) to be submitted and approved prior to commencement. Whilst the extraction method for removing the JKW may be suitable for the application site, the NWT would strongly recommend that, due to the threat of loss of mature trees within the 'blue line' (park) area, other approaches to control, including chemical, should be considered, with the aim to retain all mature trees. Assuming the proposal would not be contrary to GI policies and providing that a mechanism can be found within the planning system to secure the long term management of the park [which is outside the application site boundary] and a strategy for the removal of the JKW [from both the application site and the land within the blue line] then there would be no objection.

5.2 Eight neighbouring addresses were consulted, and site notices placed at the site. 20 responses were received, 16 in support and 4 objections. The four objections were from properties adjacent to the site. Out of the letters of support, only four were noted to be from properties in the area (Wollaton and Bramcote, only one being directly adjacent to the site), one was from an address in Bulwell, and the remainder (11) did not give an address. As such it is not possible to assess whether all those in support have a direct community interest in the development as described, that is, the construction of two dwellings, or indeed on the applicant's desire to create a publicly accessible 'park'.

The objections raised the following matters:

- Development already refused twice and dismissed at appeal – the owner of the site can be prosecuted, or a Community Protection Notice given for causing a nuisance if JKW allowed to spread to anyone else's property, and the Environment Agency if JKW is to be removed
- Impact on privacy for occupiers of property to the west

- Loss of woodland home and trees for flora and fauna (due to domestication of land)
- Increase in traffic at top of Sandy Lane
- Owner of land is legally obliged to remove the JKW regardless of whether planning permission is granted or not
- The houses would harm the openness of the area, which is enjoyed by the wider community
- Whilst there would be a gain in Biodiversity, this would not outweigh the harm caused to the openness of the area

Those in support raised the following:

- The benefits of the proposed development are the removing all the Japanese Knotweed on this site and the adjacent site, which is a blight and threat to flora and fauna; would allow for the creation of a publicly accessible open space. The development is the most minimal of enabling development to achieve this. There are no negatives
- No visual impact on surrounding area
- Private land will become public open space, needed in this area
- Will result in large Biodiversity Net Gain
- Beautifully designed housing, in keeping with the area
- Removal of reference (in the application description) to enabling development and to creation of public open space – could lead to misrepresentation of the whole intention behind the development
- Failure of the LPA to engage in discussion regarding alternative routes for removal of JKW (funding)
- JKW would spread to other properties if this development not allowed
- Two houses are of little consequence – human health, wildlife and biodiversity (in respect of presence of JKW) far outweigh downside of two houses

6. Assessment

6.1 **Principle, including impact on Green Infrastructure Asset**

Assessing the site contained within the red line only (that is, within the application site boundary):

- 6.1.1 The proposed development site is allocated as both a Green Infrastructure Asset (GIA) (see Policy 28 of the P2LP - a) Green Infrastructure Corridor (GIC) and i) Prominent Area for Special Protection (Bramcote Hills and Bramcote Ridge)) and a Biodiversity Asset (Policy 31 P2LP - a) ...Local Wildlife Sites...). The site is also directly abutting a Local Nature Reserve and therefore protected by (f) Nature Reserves) of the same policy. Policies 16 (Green Infrastructure, Parks and Open Spaces) and 17 (Biodiversity) of the ACS are the corresponding policies to the P2LP.

- 6.1.2 Policy 16 ACS states that existing GICs and GIAs are protected and enhanced and that where new development has an adverse impact on these, alternative scheme designs that have little or no impact should be considered before mitigation is provided (either on-site or off site as appropriate). The need for and benefit of the development will be weighed against the harm caused.
- 6.1.3 Policy 28 P2LP states that development proposals within GIAs (in this case, the GIC and Prominent Area for Special Protection (Bramcote Hills and Bramcote Ridge) permission will not be granted for development that results in any harm or loss to the asset, unless the benefits of development are clearly shown to outweigh the harm. The policy then goes on to state in paragraph 28.4: ‘... benefits which could outweigh the harm include the replacement of equivalent or better provision in terms of quantity and quality in a suitable location or the development is for an alternative sports and recreation provision, the needs for which clearly outweigh the loss’.
- 6.1.4 It is considered that the proposed development would result in the loss of this part of the GIA, as whilst not publicly accessible, the GIA itself, even in its current state, does bring public benefit by virtue of the visual amenity it offers. Once developed, this part of the GIA would be lost altogether as it would change permanently to residential use. The GIC running through the site would potentially also be interrupted by the introduction of domestic features such as hard surfacing and impermeable enclosures to secure the domestic curtilages. As such it is considered that the development would have an adverse impact that is not clearly outweighed by the removal of the JKW both within this site and the adjacent site, and to enable the adjacent land to be publicly accessible. The loss of this part of the GIA would not be compensated for by the replacement of equivalent or better provision as required by Policy 28 P2LP. It should be noted that the enhancement / public accessibility of the privately owned land within the ownership of the applicant cannot be treated as a replacement since there would be no expansion of that land, or no replacement proposed outside of these areas.
- 6.1.5 As such the proposal would be contrary to both Policy 16 of the ACS and Policy 28 of the P2LP, and contrary to the principles set out in section 15 of the NPPF.

Assessing the site in the context of the red and blue line boundary:

- 6.1.6 As part of the application submission, the applicant states that the purpose of the development is to ‘enable’ the eradication of the JKW present on the site and also present on the remainder of the land in the applicant’s ownership, within the blue line boundary, as well as to then open up the remaining non-developed land as publicly accessible (intention is creation of a park) along with a sum of £30k to go toward the future management and maintenance of the ‘park’, all funded through the sale of the two dwellings. The applicant therefore contests that this should be viewed as ‘enabling’ development, in

order to provide funding. It is considered that, as control of the JKW would only need to safeguard immediate properties or where it may 'escape' the applicant's land, it is not essential for all the JKW in the application site or the wider area to be eradicated, and that other methods (for instance, chemical eradication to the areas at greatest need) could be an option. It is also not essential that the land within the blue line be 'publicly' accessible as there appears to be no identified need or financial benefit to this, given the publicly accessible green spaces adjacent and in the immediate surrounds, and as such the JKW could be kept under control without the expense or impact on ecology that would potentially arise from total eradication.

- 6.1.7 The Planning Inspectorate's Decision Letter, paragraph 23 states: "The case is made that the proposal would help to meet an identified need for more open space in the locality; enhanced green connectivity links, which may contribute towards the policy agendas of the Big Track and the Robin Hood Way. Although I note the contents of the Broxtowe Borough Council Green Infrastructure Strategy (2015-2030), this does not offer compelling evidence to show that there is a particular lack of public open space/amenity space provision within the local area, nor that a community park or a public open space is required to support the delivery of the proposed dwellings. Indeed, the Sandy Lane Public LNS is near to the appeal site and provides an area of publicly accessible open space. This causes me to doubt that there is a demonstrable need for the proposed development. Therefore, this reduces the weight to the benefits associated with providing an accessible and privately managed Community Park area adjacent to the appeal site."
- 6.1.8 Japanese Knotweed is classed as a non-native invasive species, which, if left untreated, can spread and which allegedly could undermine foundations of buildings. It should be noted that it is the legal responsibility of the landowner to ensure that a non-native invasive species does not 'escape' from their land (that is, cause it to be grown outside of land they control). The site and wider area within the ownership of the applicant is infested with JKW and it is acknowledged that the eradication of the JKW would be a benefit to the ecology of the land as well as bring peace of mind to nearby landowners. However, this could and should be managed outside of the planning system before it affects adjoining land. The control of the spread of the JKW could be dealt with under private rights (that is, between each of the landowners) or potentially through Section 43 of the Anti-Social Behaviour, Crime and Policing Act 2014, or action could be taken under the Wildlife and Countryside Act 1981 (Section 14(2)).
- 6.1.9 Please note the content of Mr Day's letter dated 16 March 2023 (on behalf of Environet – the applicant's technical advisor in respect of JKW) – "Legally there is no restriction in having knotweed on their land and the plant can spread naturally within the confines of their land. They're not however allowed to let the plant spread into neighbouring land, covered under Criminal Law – Wildlife and Countryside Act 1981 and Civil Law – Civil Nuisance (Encroachment). From our point of view the

landowner has taken all reasonable and responsible steps within their financial control to ensure that this doesn't happen..."

- 6.1.9 In addition, the desire to open the applicant's land as a publicly accessible space would not, in itself, require planning permission and, as there is no identified need for additional public open space within either Local Authority boundary in this area, and would not be considered as a replacement for GIA lost through the development given that it already exists as an undeveloped green area, there is no clear public benefit in securing this by way of a legal agreement or any other means such as a Grampian style condition. As such, Policies 12 and 13 of the ACS would not be relevant. It should also be noted that, should a legal agreement be drawn up, this would need to involve Nottingham City Council as the Local Planning Authority who would be the enforcing authority for the majority of the proposed 'park'.
- 6.1.10 It should be noted that, as there are areas of JKW outside of the application site boundary, and which poses the greater threat to private properties outside of the application site, should planning permission be granted there are limited mechanisms to ensure or require that the JKW outside of the site be removed, particularly as a larger swathe of the JKW falls outside of the Broxtowe Borough Council boundary. The applicant has stated that the moneys raised would be used for the eradication of the JKW and to be paid for the future management / annual payments relating to the park. However, it is considered that these benefits do not outweigh the harm. The imposition of conditions to secure removal would also fail to accord with paragraph 55 of the NPPF where conditions should satisfy the following: be reasonable; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. In particular, it is considered that the creation of the public park is not relevant to the development proposed, as it would not be necessary for the development to proceed and does not address issues directly relating to the application site, since this could be carried out independently. It should also be noted that any condition (in respect of land within the blue line) would not be enforceable as the majority of the land in the blue line is not within the borough. This is re-iterated as per the Planning Inspector decision, paragraph 6.1.7 above refers.
- 6.1.10 In addition to the above, it is noted that both the appeal decision for 22/00790/FUL and the High Court Judgement both agree that the aspiration to create a publicly accessible park (within the blue line) could be realised without the proposed development, as no substantive evidence has been provided about the specific works that would be carried out and the costs of such works, nor any explanation how this park would directly relate to the proposed development. The creation of the park therefore carries limited weight to this benefit.
- 6.1.11 The Planning Inspectorate Decision Letter, paragraph 20 states: " Additionally, I appreciate that the proposed works to land within the blue line boundary would support the aspirations of Greenwood Community Forest, and the

restoration of heathland habitats and nature recovery. However, it is not clear from the evidence provided why such aspirations could not be realised without the proposed development, as no substantive evidence has been provided about the specific works that would be carried out and the costs of such works, nor to explain how this would directly relate to the proposed development. I therefore provide limited weight to these benefits.”

6.2 **Impact on Biodiversity, including the need to comply with Biodiversity Net Gain**

- 6.2.1 Policy 17 of the ACS and Policy 31 of the P2LP are concerned with Biodiversity. Policy 17 states that designated local sites of biological or geological importance for nature conservation will be protected in line with the established hierarchy of designations, and that development on or affecting wildlife corridors with biodiversity value will only be permitted where it can be demonstrated that the need for the development outweighs any harm caused by the development, and that adequate mitigation measures are put in place. Policy 31 states that development proposals which are likely to lead to the increased use of any of the biodiversity assets (which include Local Wildlife Sites) will be required to take reasonable opportunities to enhance the asset; and that permission would not be granted for development that results in any significant harm or loss to the biodiversity asset, unless the benefits of the development are clearly shown to outweigh the harm.
- 6.2.2 Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) requires all non-exempt planning proposals, received since February 2023, to achieve a 10% Biodiversity Net Gain on the site, or, where this is not possible, off-site (either on land within the applicant's ownership, or by way of purchasing credits from a Habitat Bank), or as a last resort, by purchasing national credits. A small-sites metric Biodiversity Net Gain assessment was submitted with the application, however this was not valid as the metric used was not the latest version, and also included, as part of the assessment, land outside of the application site. A revised metric (Version 4) and amended BNG site plan was submitted, which rectified the error. The metric indicated an on-site net gain of 23.92%. Should planning permission be granted, the submission and agreement of a Biodiversity Net Gain Plan, with monitoring costs secured by way of a Section 106, to cover the application site would be imposed and secured by condition. It should be noted that whilst the BNG gain would only relate to the application site and not to the wider area (blue line), the benefits associated with biodiversity enhancements carry moderate weight in favour of the proposal.
- 6.2.3 The Planning Inspectorate Decision Letter, paragraph 19 states: “The proposed biodiversity unit uplift provided by the scheme would be higher than the mandatory 10% requirement for BNG due to come into force in 2024, under the Environment Act 2021. However, this mandatory requirement would

only relate to biodiversity units in relation to the development site itself and not to that of a wider area (blue area) also. Overall, the benefits associated with biodiversity enhancements carry moderate weight in favour of the proposal.”

- 6.2.4 It is acknowledged that, as the site is predominately over-run with Japanese Knotweed, which is classed as a non-native invasive species, the biodiversity value of the site is relatively poor when compared with the surrounds (notwithstanding presence of JKW on the adjoining site). As such the eradication of the JKW would present a Biodiversity Net Gain on its own. Together with the measures proposed as part of the development, including the SuDS attenuation pond, the introduction of brown roofs, replacement planting and other landscaping / biodiversity features, the implementation of which could be secured by condition, the measures would represent an acceptable level of biodiversity net gain on this site. However, it should be noted that aside from the pond and its surround, which would be outside the domestic curtilage of the two dwellings and managed by a separate arrangement, the majority of the enhancements would be within domestic curtilages and as such it cannot be guaranteed that these features would remain in the longer term.
- 6.2.4 Notts Wildlife Trust expects that sufficient weight is given in respect of impact of the proposal on the Green Infrastructure corridor (GI), as they would not support any proposal that would result in a loss or harm to GI corridors or Biodiversity Assets. Should it be determined that the proposal would not be contrary to policies in respect of impact on GI and biodiversity assets, then securement of long term management of the proposed publicly accessible park (outside of the application site boundary) and a strategy to for the removal of the JKW from both the application site and the adjacent land would be required.
- 6.2.5 Notts Wildlife Trust agree that the mechanical method to remove the JKW could be acceptable within the application site boundary, however other approaches to control (including chemical) should be considered beyond the site boundary, with the aim to retain all mature trees within the area affected outside the application site boundary.
- 6.2.6 Notwithstanding the above, whilst it is acknowledged that the eradication of the JKW would be a benefit to the Biodiversity Asset, this can and should be achieved separate to the need to construct built development, therefore there is no justification for the development, other than to ‘fund’ the eradication of the JKW on this and the adjacent site, and create a publicly accessible park. Limited weight would be afforded to this benefit.
- 6.3 **Design**
- 6.3.1 It is considered that, should the proposal be otherwise found to be acceptable, the design, scale and massing of the two dwellings would, subject to samples of materials, be acceptable as they would be of a scale comparable to that of numbers 68, 70, 72 and 74 Sandy Lane, which the proposed dwellings would

mainly be seen in context with. There would be no significant impact on the street scene of Sandy Lane due to the siting off the public highway, nor from the Sandy Lane Nature Reserve, subject to landscaping. Notwithstanding this, limited weight is given to the acceptability of design.

6.4 Amenity

6.4.1 It is considered that, should the proposal be otherwise found to be acceptable, the dwellings and associated infrastructure, due to the distances between the built form and the adjacent properties (minimum 28m, maximum 37m) and the relationship between, would not have a significant detrimental impact on the occupiers of neighbouring properties in terms of loss of light, outlook or privacy. Notwithstanding this, limited weight is given to the acceptability of the development on neighbour amenity.

6.5 Access and Highway Safety

6.5.1 Access to the site is considered to be acceptable, subject to a condition in respect of signage on the existing shared drive, given the width close to the junction with Sandy Lane. There is adequate space within the site to accommodate off street parking to serve the development without detriment to highway safety. Should the development have otherwise been considered acceptable, a condition in respect of a Construction / Demolition Method Statement would address any concerns regarding noise and traffic during construction and any preparation works. Notwithstanding this, limited weight is given to the minimal impact on highway safety.

6.6 Housing Need

6.6.1 The proposed development would provide two additional dwellings to contribute to the Council meeting it's housing need. This is given moderate weight.

6.7 Other Matters

6.7.1 An objection raised comments that the creation of the publicly accessible park is needed in this area. The LPA would contest this, since the immediate surroundings to the site include both Sandy Lane LNR and Alexandrina Plantation LNR, which are publicly accessible and directly adjacent, and is also within a short distance of both Bramcote Hills Park and Stapleford Hill to the west, and Wollaton Park to the east. There is no identified deficiency of access to public open spaces in this area.

6.7.2 The description of development adequately covers those matters a) which require planning permission and b) which are within the red line site boundary. The planning assessment can only afford limited weight to matters that fall outside the scope of the above.

6.8 New Material Considerations

- 6.8.1 Since the determination of the previous refused application for the same development, reference 22/00790/FUL, the provision of a minimum 10% Biodiversity Net Gain for developments is now a statutory requirement (unless a development is exempt, e.g. the size of a site, or is development by a householder). Notwithstanding this, and as the previous application already identified and was willing to provide a BNG net gain above 10%, this material change would not affect the assessment of the application to any significant degree.
- 6.8.2 A material consideration since the determination of the previous refused application is the revision to the NPPF in 2024. The relevant section of the NPPF 2024 that has been revised is 15 – Conserving and enhancing the natural environment. It is considered that there are no significant changes in this section compared to the NPPF as applied to the previous planning application that would significantly impact on the outcome of the assessment of this development.
- 6.8.3 The applicant has drawn attention to the DRAFT Nottingham and Nottinghamshire Local Nature Recovery Strategy (LNRS, public consultation version, released 6th May 2025) and in particular to references in respect of Non-native invasive species (JKW being one example). The applicant draws attention in particular to pages 5 and 32 of the Public Consultation version of the LNRS, which makes reference to non-native invasive species being a threat to biodiversity in general (page 5), and the undertaking of work to recover the County's watercourses (page 32). Whilst the content and intent are noted, the LNRS, in this non-adopted form, would carry limited weight, and in any case, the proposed development, in isolation, would not result in a significant impact in terms of contributing to the LNRS. Additionally the site is not located near to an identified watercourse (e.g. river, stream or brook).

7. Planning Balance

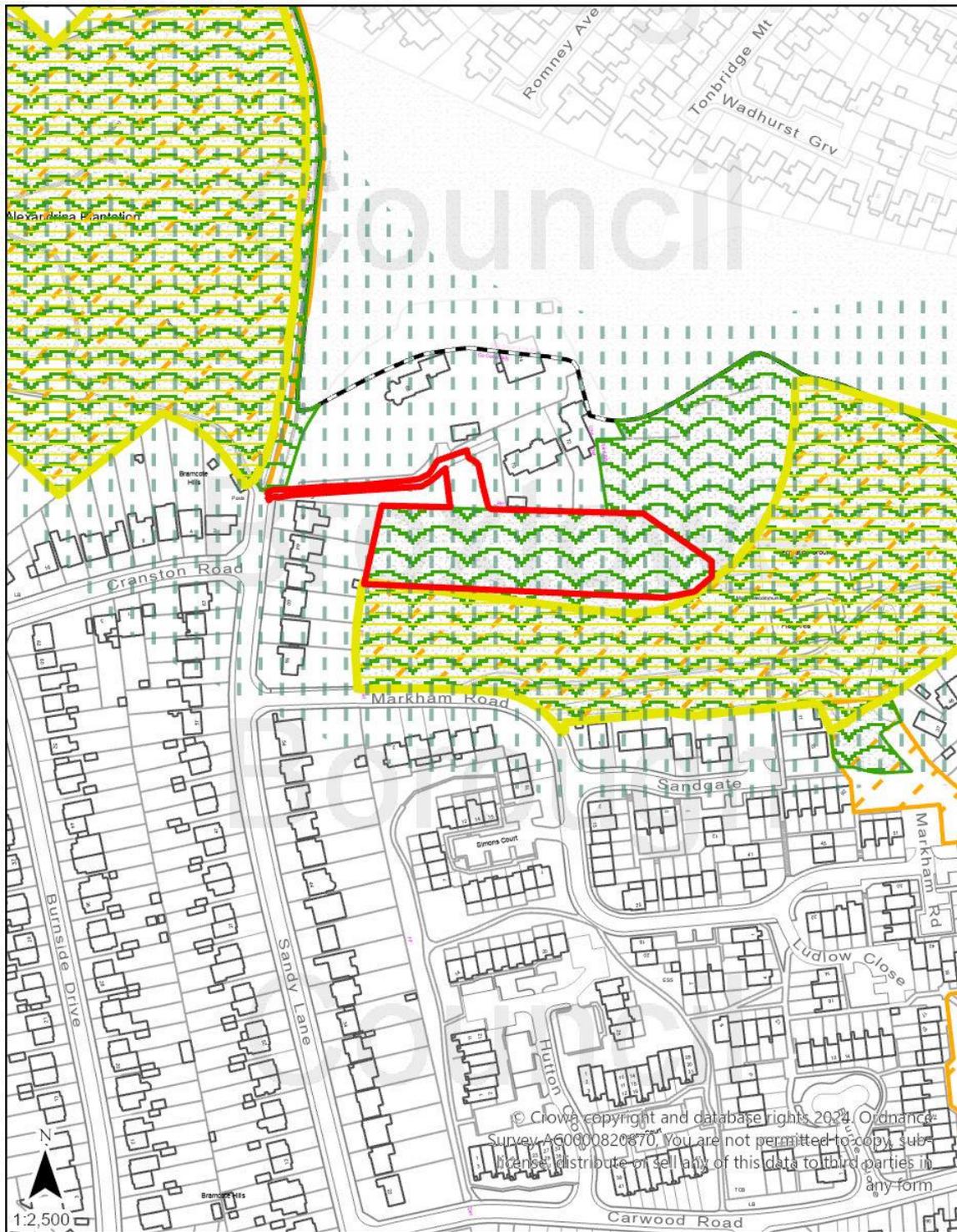
- 7.1 The eradication of the Japanese Knotweed is a benefit to the ecology of this and the adjacent site. This is afforded limited weight, since the proposals or their consequences are vague and, in any event, it is the responsibility of the landowner to control the spread of the JKW. The need for the construction of two large dwellings would not be considered necessary to ensure JKW does not encroach onto neighbouring land. Whilst the development may see an increase in Biodiversity Net Gain, this would still result in the permanent loss of part of the Local Wildlife Site to residential use. The loss of part of the GIA would have an adverse impact and has not been compensated for by a replacement of the GIA lost, the loss of which carries significant weight.
- 7.2 The net addition of two dwellings is given moderate weight.

8. Conclusion

It is concluded that, having regard to the relevant policies of the Local Plan, national planning guidance and to all other material considerations including the Public Sector Equality Duty and comments raised in representations received, the proposal would fail to accord with adopted local plan policies as inadequate justification has been provided to allow the loss of GIA and LWS for the construction of two dwellings and that any benefits would not outweigh the harm. This conclusion is supported by the dismissal of the appeal against refusal for the same scheme (22/00790/FUL) and the High Court Judgement which found no fault with the way the Planning Inspector came to the decision to dismiss that appeal.

| | |
|--|---|
| <u>Recommendation</u> | |
| <p>The Committee is asked to RESOLVE that the Head of Planning and Economic Development be given delegated authority to refuse planning permission for the following reasons:</p> | |
| 1. | <p><i>The proposed housing development, by virtue of the built development and the loss of habitats, would result in an unacceptable harm to a Green Infrastructure Asset and would result in the loss to a biodiversity asset (Local Wildlife Site). No benefits which clearly outweigh this harm have been demonstrated. Accordingly, the development is contrary to the aims of Policies 28 and 31 of the Broxtowe Part 2 Local Plan (2019), Policies 16 and 17 of the Broxtowe Aligned Core Strategy (2014) and Section 15 of the National Planning Policy Framework (NPPF) 2024.</i></p> |
| | NOTES TO APPLICANT |
| 1. | <p>The Council has acted positively and proactively in the determination of this application by working to determine it within the agreed determination timescale.</p> |

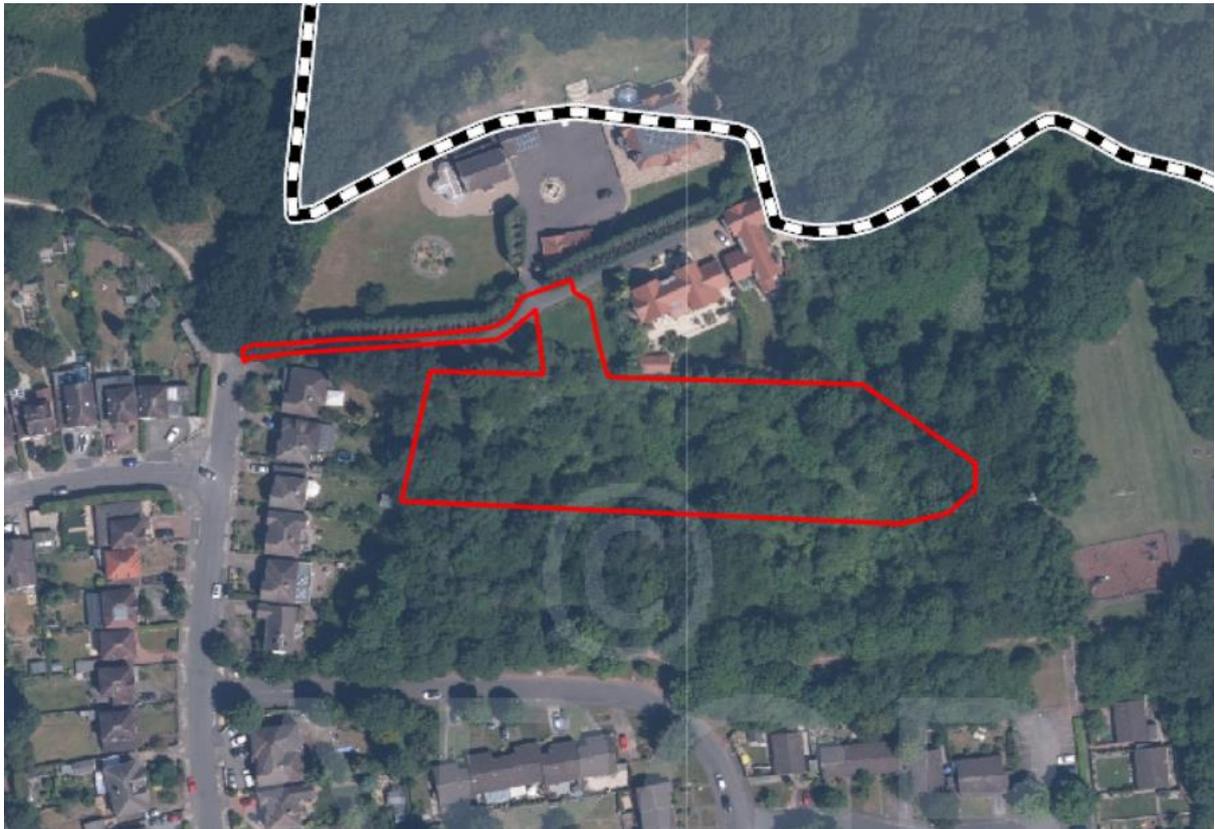
Map



Legend

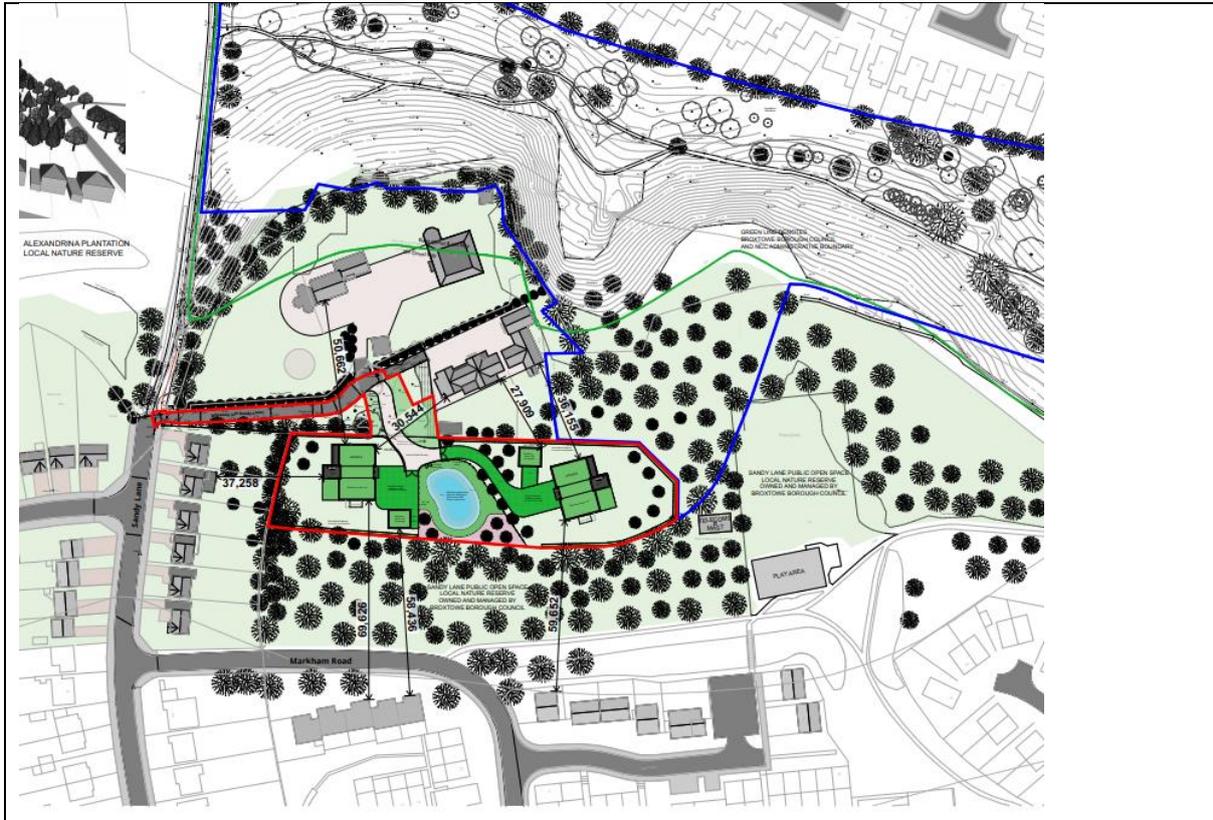
-  Open Spaces
-  GI Corridor Buffer
-  Local Wildlife Site
-  Local Nature Reserves
-  Site

Photographs



Aerial view of the site 2022 (Broxtowe Maps)

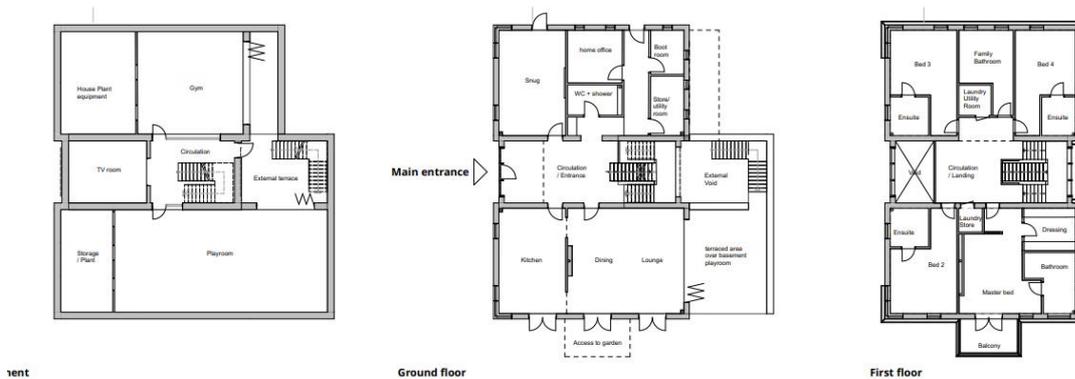
Plans (not to scale)



Proposed site layout



Artist's impression (3D render)



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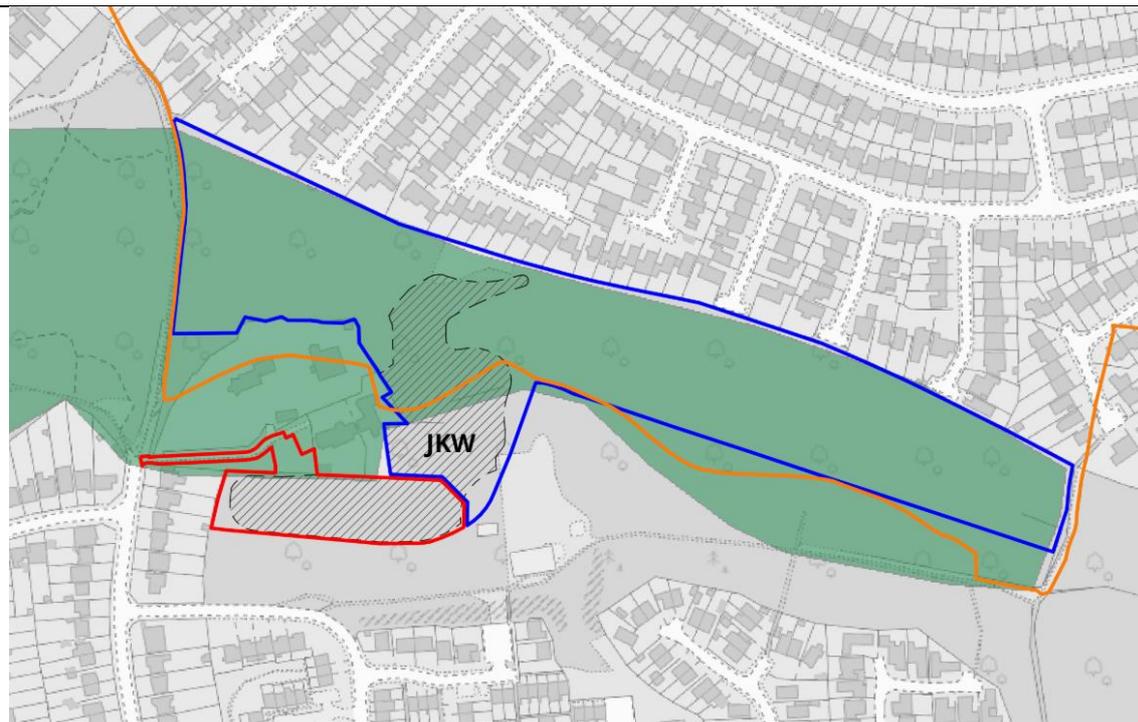
Ground floor

First floor

House Type B floor plans



House Type A elevations



Extract from drawing reference N1563_2_246_-_ titled Community Forest dated 30.05.23 submitted in support of the planning application. The hatched area denotes the applicants understanding of the extent of JKW on the application site (red line) and on the adjoining site (blue line)