

Report of the Chief Executive

APPLICATION NUMBER:	19/00756/ROC
LOCATION:	Land Off Acorn Avenue Giltbrook Nottinghamshire
PROPOSAL:	Variation of Conditions 2, 3 and 11 (approved drawings, details of materials and landscape scheme) of planning reference 15/00010/FUL (Construct 67 dwellings) to substitute house types, amend layout and remove plots, change external materials and amend landscaping scheme.

1 Executive Summary

1.1 This application was brought before Planning Committee on 22 July 2020 (Appendix 2) with a recommendation for approval. Members deferred making a decision on the application due to concerns surrounding the proposed landscaping scheme, specifically to the rear of plots 251-260.

1.2 Further discussions have taken place with the developers and they have submitted amended plans which show the following alterations from those previously considered:

- Increase in number of trees per plot to 4 (5 to plot 253).
- A two tier patio with the 'upper' patio being closest to the property at a higher level with steps down to a lower patio with space for sitting out on.
- Reduction in trees to the side of plot 260 and a timber screen installed to the side of the upper patio.

The applicants have also advised that they would give a tree to each of the existing adjoining properties on Acorn Avenue if the owners request one. However, this cannot be controlled as part of the planning process as this falls outside of the application site and relates to land not within the ownership of the developer.

1.3 The Committee is asked to resolve that planning permission be granted subject to the conditions outlined in the appendix.

1 Details of the Application

1.1 In response to the concerns expressed by Members at the Planning Committee on 22 July 2020 the developers have increased the number of trees proposed within each plot. They have clarified the boundary to the rear of plots 251-260 as being a total of 2.4m consisting of 2 gravel boards on top of a timber fence. They have also reduced the patio immediately outside plots 251-260 from 3m to 1.5m in depth and created a lower level patio. This will be 1m lower than the upper patio area accessed via steps from this area and measuring approximately 3m x 4m. They have also advised that they would provide each adjoining property on Acorn Avenue with a tree within their own garden if they request one.

1.2.1 Reconsultations have been undertaken with the properties who directly adjoin this part of the site (plots 251-260) and in addition to those comments already made four further responses have been received (including one through a local councillor). The comments made in these representations can be summarised as follows:

- Who attended the meeting when the plans were passed?
- Plans are hand drawn and do not reference elevation heights or heights of properties on Acorn Avenue
- Plans have just been tweaked and do not afford any privacy to existing residents, the provision of an 8ft fence will provide no privacy.
- The provision of 5 trees is not a considered approach. The trees will run wild and are difficult to maintain. The issue of privacy will be replaced with neighbour disputes.
- There has been no mediation or discussion with residents.
- Object to plot 260, plans incorrectly show existing properties on Acorn Avenue.
- Raised patio should be at a lower level to protect privacy.
- There has been no original plans offered by the developer showing how the site should be built.

An additional response has been received advising that independent advice had been sought and recommended that a land drain be fitted to prevent gardens becoming waterlogged.

1.3 In addition representations from 7 individuals were received as late items before the Planning Committee on 22.7.20 objecting to the proposals. These can be summarised as follows:

- Lack of adequate drainage causing flooding. Resident Informed by developer a French drain is to be installed, questions where are the plans are for this.
- Immense impact on privacy and amenity due to how close properties are and height of them.
- Development contrary to Planning Policy.
- Landscaping is not enough to cover up height differences.
- Let down by developers and BBC, amended plans do not resolve issues.
- Complete lack of regard as development continues. Questions whether the developer has permission to continue.

- Plans only available on microfiche which doesn't demonstrate an open and honest culture.
- There were no drawings indicating any properties elevations until 25th March 2020. These drawings were hand sketches, with no scale, factually incorrect in heights and distances from existing properties, totally misleading & submitted far too late for consideration, or for any residents to base an informed opinion on.
- 3 metre patios will exaggerate the loss of privacy due to the height of the new properties. The remaining garden area is negligible and virtually unusable.
- No valid reason why the ground couldn't have been graded to more suitable level. The presence of the tarmac road could have been lifted and lowered. There are no civils associated with this just tarmac.
- The Committee photographs bear no representation of the issue and are over 7 months old. They offer no useful information and Committee Members should visit the site and rear gardens to see the impact of the heights of the properties.
- Whilst plot 260 has been lowered there would need to be a 9 foot fence for there to be any privacy.
- Hope the committee will consider the amount of stress that this issue is causing and it gets resolved very soon.
- Door frames appear higher from the ground than required.
- Questions how the development be safe for its lifetime without increasing flood risk elsewhere and whether is it in accordance with the NPPF? State it is irrelevant if the LLFA objects or not the LPA has the final say. The development currently goes against the NPPF and DEFRA's Drainage guidelines in terms of managing surface flood water that exceeds the design criteria and the increased flooding risk to properties off site. Questions who will be accountable if guidelines are not adhered to.

2. History of permissions

- 2.1 Members are aware of the history of the site and this was set out in the original report at appendix 2. However, for clarity the site has the following implementable permissions:
- 92/00730/FUL - Construct 107 houses with garages and associated works
 - 15/00010/FUL - Construct 67 N° dwellings
- 2.2 The planning system in the early 1990s was different to the current day system and there was very little information required from applicants. Conditions placed on planning permission also tended to be far fewer than is the case today. From records held by the Council a site location plan, road layout plan and elevations of the house types appear to have been submitted and approved. There were 6 conditions attached to this permission as advised in the report to Committee on 22nd July. These dealt with materials, diversion of public footpaths, the retention of garages for the parking of vehicles, details of landscaping to include planting and hard paved areas, the implementation of this planting scheme and details of boundary treatments alongside the public footpaths and open space.
- 2.3 No details about the land levels of the site appear to have been submitted with the application and this information was not required by way of a condition. The land levels across the part of the site subject to the current application are significant with the north-eastern part of the site being as much as 12m higher than land in the south-west of the site.

- 2.4 Due to these level differences and the site layout, with two roads leading off the main link road, there will be significant differences in heights between plots fronting Filbert Drive and Alton Drive as well as those fronting Alton Drive and existing properties on Acorn Avenue. Whilst this is not ideal people purchasing these new properties will be aware of the level differences when they purchase them, which would have also been the case for the properties fronting Alton Drive and Acorn Avenue had they been built at the same time.
- 2.5 It can reasonably be assumed that details of the roads were approved under planning ref 92/00730/FUL as there was no condition requiring this information and the scheme was implemented and partly built out (44 homes and all roads, including Alton Drive and Filbert Drive). In addition, there are letters on the file confirming the discharge of conditions and no enforcement cases appear to have been opened to deal with construction issues during this time.
- 2.6 The internal roads have to be constructed with flat surfaces and therefore any level differences have to be dealt with vertically rather than on the horizontal emphasis. This adds further constraints on the land level changes across the site and reduces the available land for dealing with these in a more graded way without the need for significant changes in levels between plots.
- 2.7 Where there are level differences across sites and there is no information regarding build levels and these are not required by way of a condition it has been found in case law that developments can be constructed at the height of any land across the site and materials can be imported to build up parts of the site to create a level platform to construct development. This would form part of the engineering operation for which planning permission was granted and there would be no recourse available to the Council to seek amendments to these levels.
- 2.8 Permission 92/00730/FUL therefore established this principle and is an extant permission which could be built out without any further consents.
- 2.9 The principle of the form of the development, having regard to the extant permission and the works that had already taken place to implement this, could not therefore be revisited as part of the consideration of planning permission 15/00010/FUL by way of introducing a levels condition. However, in determining the application it is considered that betterment was achieved in improvements to the site's drainage bringing it in line with current guidelines. In determining this current application, it is also considered that the landscaping proposed would achieve betterment on that approved by way of 92/00730/FUL, through improved screening with the introduction of trees within the rear gardens of plots 251-260 and increased height of boundary treatments (2.4m rather than 1.8m).
- 2.10 The view of the Council's Legal team is that the earlier permission for the site (92/00730/FUL) could be constructed concurrently with the later permission (15/00010/FUL). To this end should the current application be refused the developers could still construct the row of houses which adjoin 71-99 Acorn Avenue shown on the approved layout plan for application 92/00730/FUL without any further consent from the Council. This would mean that there would be no

planting in the rear gardens and the boundary fence would measure 1.8m in height, as annotated on the approved landscaping plan for this permission.

3. Amendments

3.1 Discussions with the developer have resulted in the following changes to the landscaping to the rear of plots 251-260:

- Increase in number of trees and conifers proposed along the rear boundary from 2 to 4 (3-5 at plot 253).
- Two tier patio with 'upper tier' closest to the properties being reduced in depth to 1.5m. The lower patio will be set 1m lower than this and be 3m in depth and 4m in width.
- A tree has also been removed from the side of plot 260 due to comments made from the Parks and Environment Manager regarding the plantings proximity to the house. A 1.8m fence is proposed instead to the side of the upper tier patio of this plot to act as a screen.

The applicants have also clarified that the total height of the boundary will measure 2.4m (2 gravel boards on top of a 1.8m close boarded fence).

3.2 Consideration was also given to the position of the proposed trees within the garden. However through discussion it was considered that moving these closer to the property and planting them at the higher level would result in more conflict between the future occupants of the properties and the trees and would more likely lead to their removal once they grew to a more mature height and started to reduce light to the rear rooms. Planting them at the bottom of the gardens further away from the immediate rear of the properties would reduce any conflict.

3.3 The planting scheme includes a mix of four trees and conifer species (five to plot 253) towards the rear of the gardens. The planting will include a mix of Carpinus Betulas, Ilex Aquifolium, Thuja Occidentalis Brabant and Thuja Plicata and are proposed to be 12-14cm girth (for the trees) or in 70 litre containers (for the conifers) on planting. These species were recommended by the Councils Parks and Environment Manager as being either evergreen or holding their leaves throughout winter. It was considered that these would be preferable to Leylandii as although these will achieve a full screen within a number of years they take a lot of maintenance and can cause problems if not taken care of. The developers have noted that the trees (species dependant) will grow to between 4 and 12m in height. In reviewing details of the species it would appear that at time of planting they will be between approximately 1.75 and 2.5 metres in height, although this is tree and supplier dependant and therefore the girth of a tree is used to more accurately reflect maturity of landscape trees.

3.4 The Council's Parks and Environment manager has commented that the proposal includes a mix of trees and conifers with the trees being either evergreen or deciduous but holding their leaves in winter. He comments that the trees have good canopies and that conifers need to be maintained.

3.5 Whilst the fence height will not directly block out views from the rear of the properties, in combination with the planting it is considered that this will provide some enhanced screening to the properties on Acorn Avenue without being overbearing.

- 3.6 The developers have also advised that they would be willing to give a tree to all adjoining properties on Acorn Avenue to plant in their garden if they request one. However, this is not something that can be controlled by the planning process as it involves land outside the site and outside of the ownership of the developer. This cannot therefore be taken into consideration.
- 3.7 The amendments to the patio areas include a reduction in depth of the higher level patio from 3m to 1.5m which will reduce the opportunity to use this area immediately adjacent to the house as an outdoor seating space but rather provide a level access around the property.
- 3.8 Steps are proposed from this area down to a lower level area which will measure approximately 3m in depth by 4m in width and provide a level area for outdoor seating. This area will be approximately 1m lower than the house and will not extend the full width of the property. It is considered that these amendments reduce the opportunity for overlooking from the outdoor space around the properties and in combination with the fencing and planting will provide a satisfactory relationship with occupants of existing neighbouring properties.

4. Conclusion

- 4.1 To conclude the site benefits from an extant permission for 107 dwellings dating back to the early 1990's which did not set levels or require these to be approved. This permission has been partly implemented through the construction and occupation of a number of dwellings and the construction of internal roads. The remainder of the dwellings could be constructed without any further consents from the Council. Whilst it is acknowledged there will be some impact on the amenity of residents in terms of loss of privacy, there are no tools available to the council to revisit the principle of this. The applicants have worked with the council in attempts to reduce this impact on the residents of adjoining properties where level differences are most acute through the grading of the garden areas, planting in the rear garden and increased height of boundary treatments. It is considered that on balance these measures will ensure that the relationship is acceptable.

<u>Recommendation</u>	
The Committee is asked to RESOLVE that the application be approved subject to the following conditions.	
1.	The development hereby permitted shall be carried out in accordance with drawings referenced: - AAGDR01-SLP Rev U received by the Local Planning Authority on 4 May 2020

	<ul style="list-style-type: none"> - Block Plan AAGDR11-DSBP Rev D received by the Local Planning Authority on 10 June 2020 - Site Sections D, E, F Rev B, Landscaping Plan AADDR03-SLP Rev S, Site Sections Plot 260 sh2 AAGDR17-SS Rev D and Site Section Plot 260 AAGDR15-SS Rev D and Standard site retaining LHWD12(A3) Rev D, received by the Local Planning Authority on 17 and 18 August 2020. - Site Section Plan Plot 251/253 AAGDR14-SS Rev E and Site Section Plan Plot 256 AAGDR18-SS Rev B received by the Local Planning Authority on 26 August 2020. - DA3A-2020 (O) received by the Local Planning Authority on 12 March 2020 - K7/2019 (OSG), B6/2019 (OSG), C8/2018 (OSG), K7E/2019 (OSG) Sheet 1 and 2 and Z4/2018 (OSG) received by the Local Planning Authority on 25 November 2019 - C9/2018 (OSG) and LHDR01-ES1/2 Rev B received by the Local Planning Authority on 17 February 2020 - A1/2019 (OSG), received by the Local Planning Authority on 27 February 2020 - N2/2017 (HSG) Rev A and N2/2017 (O) received by the Local Planning Authority on 26 February 2018 - KA2/2017 (HSG) and KA2/2017 (OSG), S20/2018 (OSG) and S20/2018 (HSG), T20/2017 (OSG) and T20/2017 (HSG), DA3/2017 (O) and DA3/2017 (H), E20/2016 (OSG) and E20/2017 (SG), F5/2018 (HSG) F5/2018 (OSG) plots 223 and 224 received by the Local Planning Authority on 2nd February and 27 March 2018 - Garage/DG/2/88s/B Revision A, received by the Local Planning Authority on 12 January 2015. <p><i>Reason: For the avoidance of doubt.</i></p>
<p>2.</p>	<p>The dwellings hereby approved shall be constructed using Weinerberger Calderdale Edge roof tiles in Terracotta Red and Dark Grey (420 x 334mm), Leicester Red Stock, Eton Buff Facing and Blue Engineering bricks as shown on plan LHDR01-ES1/2 Rev B and black rainwater goods with all metre boxes located to the sides of the dwellings.</p> <p><i>Reason: 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) and Policy 17 of the Part 2 Local Plan.</i></p>
<p>3.</p>	<p>No building to be erected pursuant to this permission shall be first occupied or brought into use until:-</p> <ul style="list-style-type: none"> i. All the necessary remedial measures have been completed in accordance with the approved details contained within plans LHWD01, LHWD02 and LHWD03 and the extracts provided from the Geo-environmental assessment report together with the Visqueen gas barrier information received on 26th October 2018 GB-18, GB-02, GB-12, GB-01 GB-14 and the

	<p>data sheet, unless an alternative has first been approved in writing by the Local Planning Authority; and</p> <p>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.</p> <p><i>Reason: In the interests of public health and safety and in accordance with Policy 19 of the Part 2 Local Plan.</i></p>
<p>4.</p>	<p>The surface water drainage scheme and foul sewerage scheme, including the attenuation feature approved under planning reference 18/00687/FUL shall be implemented in accordance with the approved plans prior to the completion of the development. Details of how the drainage system shall be maintained and managed after completion and for the lifetime of the development shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development.</p> <p><i>Reason: 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).</i></p>
<p>5.</p>	<p>The public highways including street lighting, drainage, utility services and public visibility splays shall be completed in accordance with 07282-121 Rev H, 07282-123 Rev G, 07282-135 Rev C, 07282-137 Rev B, 07282-171 Rev E, 07282-120 Rev G, 07282-170 Rev J, 07282-136 Rev C, 07282-124 Rev D, 07282-122 Rev H, 07282-100 Rev J, 07282-130 Rev G, 07282-110 Rev F, 07282-131 Rev H, 07282-111 Rev F and 07282/175 Rev F</p> <p><i>Reason: In the interests of highway safety.</i></p>
<p>6.</p>	<p>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.</p> <p><i>Reason: 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.</i></p>
<p>7.</p>	<p>Wheel washing facilities as set out in the email of 4th July 2018 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.</p> <p><i>Reason: In the interests of highway safety.</i></p>
<p>8.</p>	<p>Protective fencing as shown in the Hamps Valley Limited report</p>

	<p>received on 21st August 2018 shall be erected around the two areas containing protected trees in accordance with the following detail:</p> <ul style="list-style-type: none"> - Area A4 adjacent to plot 251 (Ash Trees) require an RPA 5.7 radius from the trees. - Area A3 adjacent to plot 194 (Oaks and Hawthorne's) require an RPA 8m radius from the trees moment. <p><i>Reason: To ensure the existing trees protected by a Tree Preservation Order are not adversely affected.</i></p>
<p>9.</p>	<p>The approved landscaping scheme as shown on plan AAGDR03-SLP Rev S received on 17 August 2020 and the email of 25 August 2020 confirming container size, shall be carried out not later than the first planting season following the substantial completion of the development and any trees or plants which, within a period of 10 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.</p> <p><i>Reason: 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).</i></p>
<p>10.</p>	<p>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 U: Plots 223, 224, 251 and 260 without the express permission in writing of the Local Planning Authority.</p> <p><i>Reason: To protect the amenity of neighbouring occupiers and in accordance with Policy 10 of the Broxtowe Aligned Core Strategy (2014) and Policy 17 of the Part 2 Local Plan.</i></p>
	<p>NOTES TO APPLICANT</p>
<p>1.</p>	<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>
<p>2.</p>	<p>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).</p>
<p>3.</p>	<p>Greasley Footpaths Number 54 and 55 runs through the site. The</p>

	<p>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.</p>
<p>4.</p>	<p>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.</p> <p>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</p>



Legend

 Site Outline



Approved

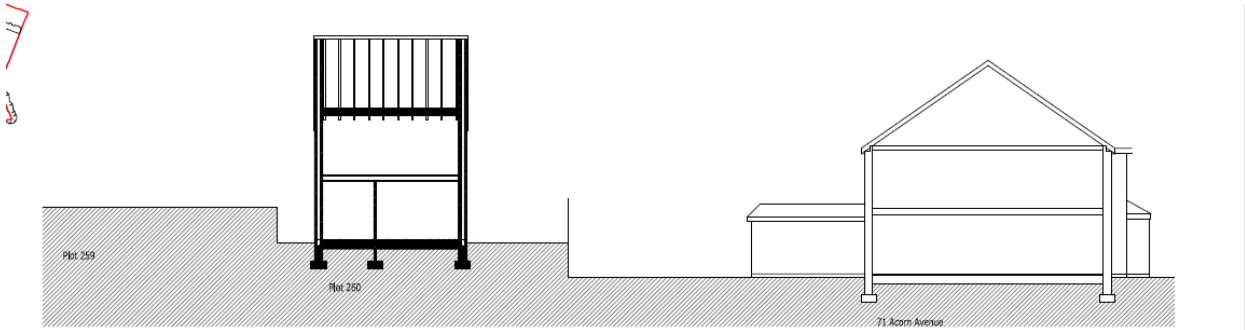
layout

plan

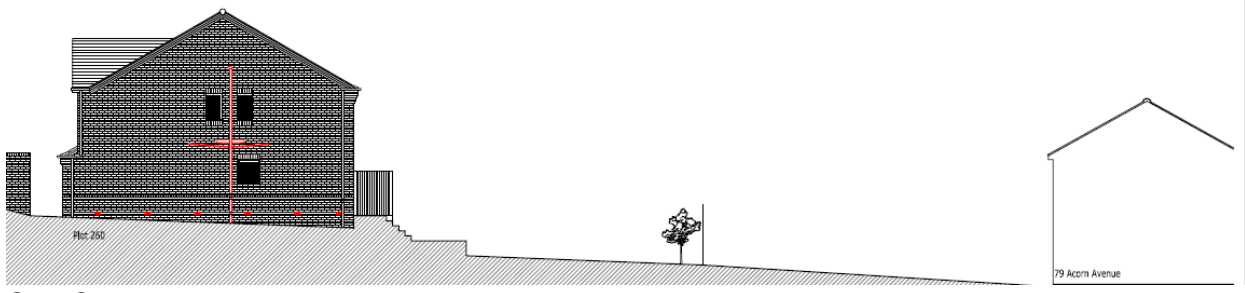
92/00730/FUL



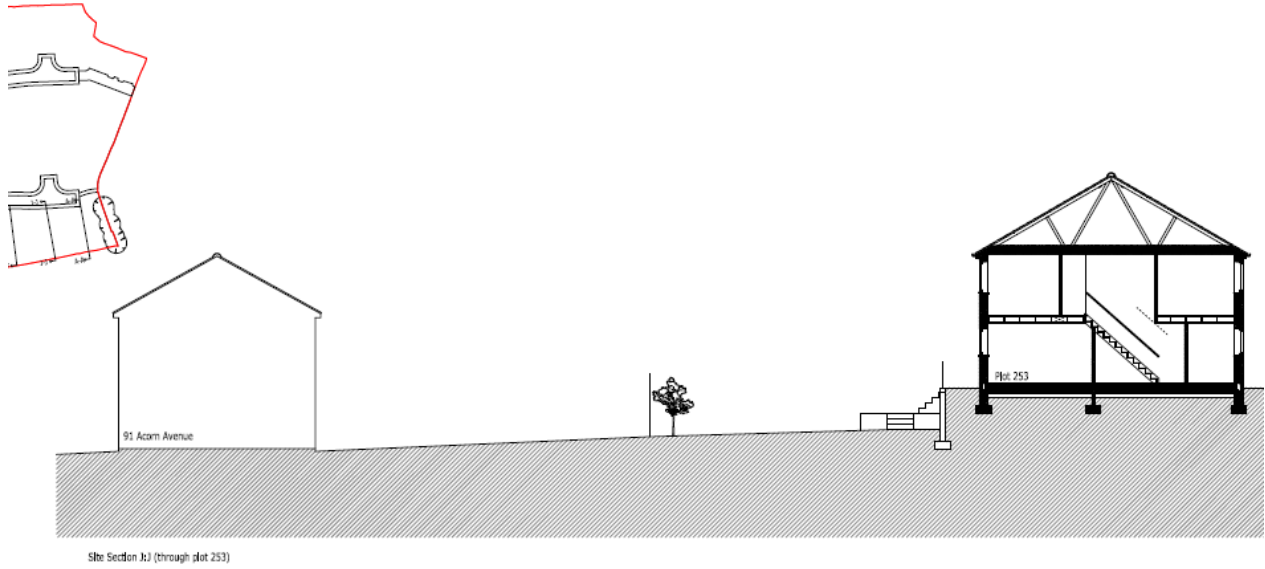
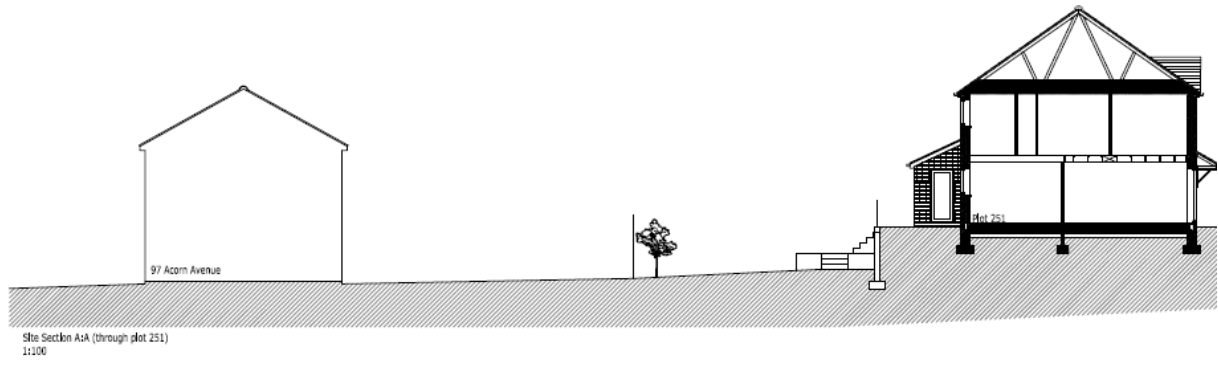
Landscaping plan



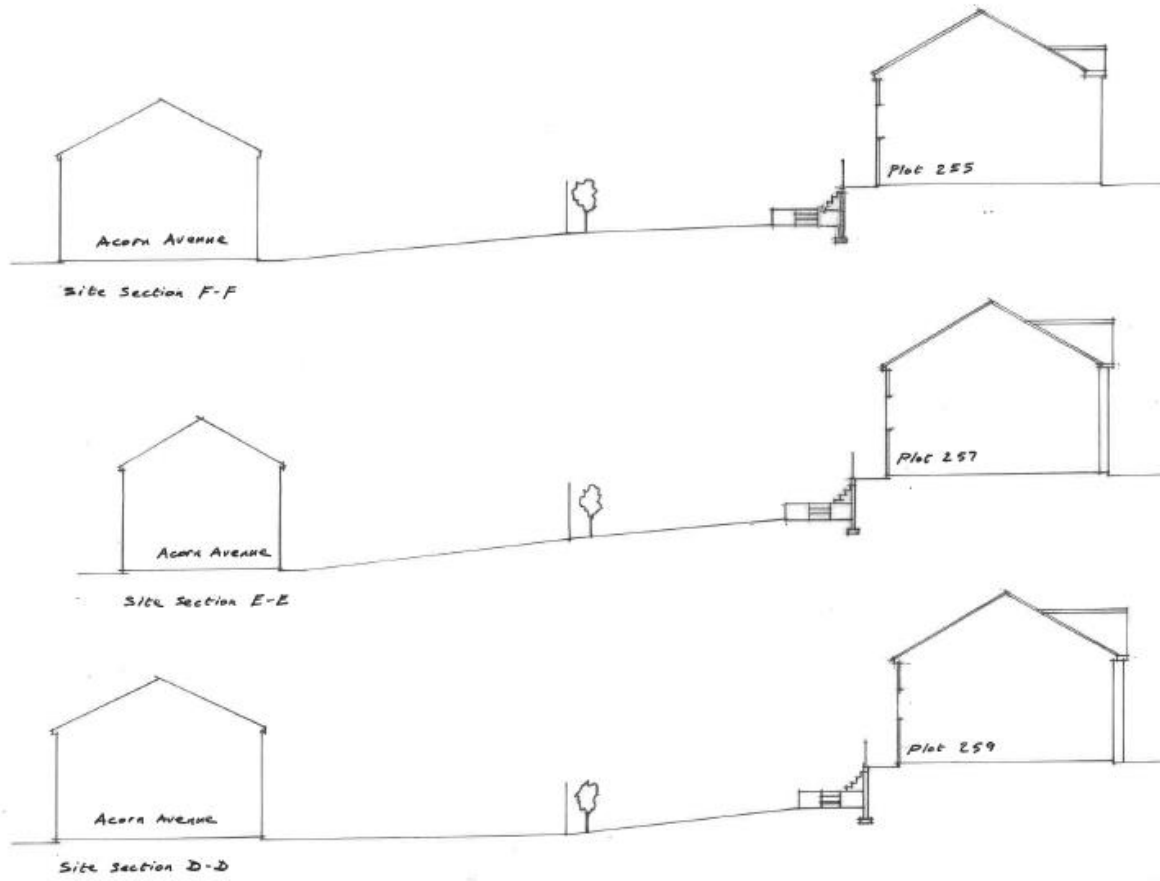
Site Section M-N (through plot 260)
1:100



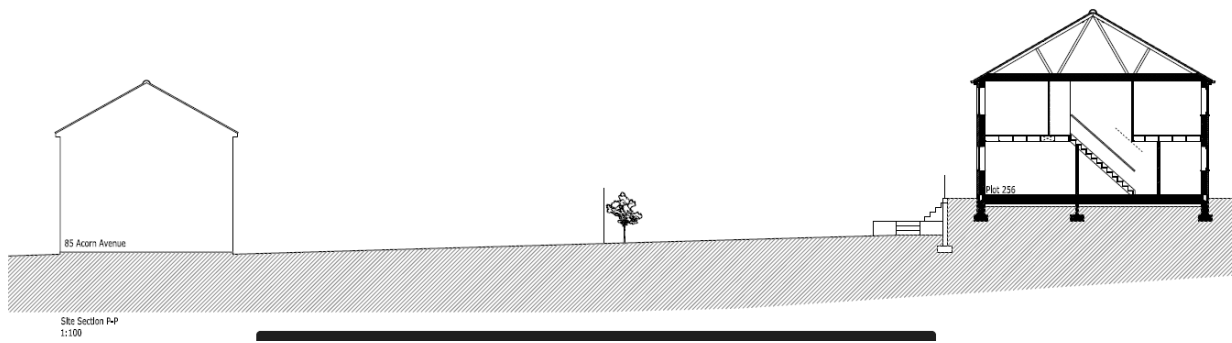
Site Section Plot 260



Site Sections Plots 251 and 253



Site Sections Plots 255, 257 and 259



Site Section Plot 256