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Dear Councillor

PLANNING COMMITTEE - TUESDAY, 1ST JUNE, 2021

Please find attached the additional Schedule of Communication.

Yours Sincerely

Catharine Saxton
Democratic Services Officer

PLANNING COMMITTEE - 1 JUNE 2021

Schedule of Communication Received after Printing of Agenda

Item	Correspondent	Date	Points Raised (Summary)	Officer's Response
5 293 Bowbridge Road, Newark 20/00580/FULM	Applicant/Agent's Counsel	26 May 2021	<p>Primacy of Section 38(6) of PCPA 2004 – determination should be in accordance with development plan. All measures have been undertaken to mitigate proposal. All (relevant) consultees support the proposal raising no objection.</p> <p>Appeal will advised to be made if refused with associated costs application.</p> <p>Appendix 1 for full document.</p>	Noted.
5 293 Bowbridge Road, Newark 20/00580/FULM	Malcolm Lawer Head of Strategic Planning & Geology – Central Email submitted	25 May 2021	<p><i>“This development is totally incompatible with the adjacent industrial uses. I note the concerns raised by Brian Beddows about noise and dust and can predict with some certainty that if this development is permitted there will be complaints made about the adjacent operations, which could impact the viability of those businesses, including that undertaken by Tarmac.</i></p> <p><i>Simply because the site is allocated for housing, that does not mean it should be given planning permission if it is not compatible with existing neighbouring uses.</i></p> <p><i>We maintain our objection to the proposal and request that it is refused given the adverse impact it is likely to have on adjacent uses.”</i></p>	Noted, the comments do not alter the assessment within the Committee Report.

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<p>5</p> <p>293 Bowbridge Road, Newark</p> <p>20/00580/FULM</p>	<p>NSDC Legal</p>	<p>28 May 2021</p>	<ol style="list-style-type: none"> 1. The Committee are legally obliged to make its decision in accordance with the development plan unless there are material consideration that indicate otherwise. This is clearly set out in section 70(2) and section 38 of the Town and Country Planning Act. 2. The development plan allocates the Site for housing and if members wish to refuse this application, members will need to provide clear and convincing reasons <u>as to there should be a departure from the Development Plan</u>. Of fundamental importance is that there is nothing within the specific development plan policy that requires the industrial uses to cease for the site to come forward for residential development. 3. As the site is designated for housing development any reason for refusal must set out why the steps put forward by the developer are not suitable and sufficient to mitigate the impacts of noise and dust from the adjacent industrial sites on the dwellings. Technical evidence will be required to support this point. By law, any reason for refusal must be clear, precise and full: Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 .Failure to produce evidence to substantiate each reason for refusal on appeal is a grounds for a costs application. 4. Failure to provide a clear and precise reason for refusal will make it extremely difficult to articulate the council's arguments at appeal. Simply to say that the allocation of the site for housing in the Development Plan was a mistake is not a sufficient ground to refuse the application given the scrutiny of the Development Plan process prior to the Plan being adopted. 	<p>Noted.</p>
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			5. Should the committee refuse this application it has to be mindful as to who will present evidence at the Inquiry to support any reason for refusal as your officers have made it clear that in the planning balance, mitigation measures make the development acceptable in planning terms.	
7 21/00535/FUL Coghill Court, Southwell	Agent/Applicant	21.05.2021	Minor amendment to the proposed site plan to extend the footpath proposed to the north of Plot 1 to meet the western boundary.	Noted – the change is minor and does not alter the assessment within the committee report. Condition 2 to be amended to change the plan reference to read: <i>02</i> <i>The development hereby permitted shall not be carried out except in complete accordance with the following approved plan references:</i> <ul style="list-style-type: none"> • <i>Site Location Plan - Ref. 00001 Rev. P01</i> • <i>Revised Proposed Site Plan - Ref. 00002 Rev. P04</i> • <i>Ground Floor Plan - Ref. 00004 Rev P01</i> • <i>Elevations - Ref. 00005 P01</i> <i>Reason: So as to define this permission.</i>

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<p>7 21/00535/FUL Coghill Court, Southwell</p>	<p>Rights of Way Officer</p>	<p>24.05.2021</p>	<p>No objection – subject to an informative note to the applicant.</p> <p><i>“Comments from Rights of Way: Public Footpath (Southwell Footpath No. 26) passes adjacent to the proposed development site alongside the western boundary. The Public Footpath starts at Westgate heading south to cross Potwell Dyke and then continues south to meet Halloughton Road.</i></p> <p><i>The footpath should remain open, unobstructed and be kept on its legal alignment at all times. Vehicles should not be parked on the footpath or materials unloaded or stored on the footpath so as to obstruct the path.</i></p> <p><i>There should be no disturbance to the surface of the footpath without prior authorisation the Rights of Way team.</i></p> <p><i>The safety of the public using the path should be observed at all times. A Temporary Closure of the Footpath may be granted to facilitate public safety during the construction phase subject to certain conditions. Further information and costs may be obtained by contacting the Rights of Way section. The applicant should be made aware that at least 5 weeks’ notice is required to process the closure and an alternative route on should be provided if possible.”</i></p>	<p>Noted, the comments do not alter the assessment within the Committee Report. Informative note to be added as requested.</p>
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8			Item withdrawn from agenda	
Staunton Industrial Estate, Alverton Road, Staunton in the Vale 21/00295/FULM				
9	Resident	25.05.2021	There is a flagrant disregard to any planning rules, with the entrance and hardstanding carried out before the application had been heard and there are now more than 2 caravans on the site along with other vehicles.	Noted. Once the planning permission is issued, any breach of the permission or condition would be open to enforcement action.
20/01405/FUL Main Street, Balderton				
9	Resident	25.05.2021	The local planning authority granted planning permission for a specified period only because the Council could find and consider a better site, so there is no reason to approve any further changes. Where will this stop, there are already 6 caravans on this site and an increase in vehicles leaving the site onto a blind bend and a permanent wall erected.	Noted. Once the planning permission is issued, any breach of the permission or condition would be open to enforcement action. The Highway Authority are investigating taking action as the wall erected is on highway land.
20/01405/FUL Main Street, Balderton				
	Resident	25.05.2021	The group of travellers who have put in the application have moved on and made the opening and surrounding land theirs. They have at least 5 caravans on the site and put up fencing and a huge brick wall, so they are not going anywhere fast.	Noted. The planning application, as submitted, needs to be assessed on its own merits. In terms of enforcement action, once the planning permission is issued
20/01405/FUL Main Street,				

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Balderton				(subject to this being the case), any breach of the permission or condition would be open to enforcement action. The Highway Authority are investigating taking action as the wall erected is on highway land.
9 20/01405/FUL Main Street, Balderton	Resident	26.05.2021	There are several caravans on the site so fire risk of so many caravans in close proximity is higher and children are living on the site. The Council should extend Tolney Lane where the children would be away from a main road and caravans are positioned further apart. Nothing is done when planning permissions/conditions are ignored.	Noted. Once the planning permission is issued (subject to this being the case), any breach of the permission or condition would be open to enforcement action.
9 20/01405/FUL Main Street, Balderton	Resident	28.05.2021	Concerned that given the digging up of the site and construction of walls etc shows that this is not a temporary site. I don't own a computer or get You Tube, web sites etc so there is no consideration for people such as myself regarding communication and I live near this site.	Noted. The Highway Authority are investigating taking action as the wall erected is on highway land.
9 20/01405/FUL Main Street, Balderton	Anonymous	28.05.2021	Cannot see how you can say no after 3 years. Clearly local neighbourhood view are not taken into account. This was given for one family and two caravans. There are at least 5 caravans on site at the time of writing, despite many comments made about the land being set up for 6 caravans, Something needs to be done. If one family had lived there as agreed I think most neighbours would have accepted it. Rules	Noted. Once the planning permission is issued (subject to this being the case), any breach of the permission or condition would be open to enforcement action.

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			are being flouted and no action appears to have been taken. Please take responsibility and sort this matter out.	
9 20/01405/FUL Main Street, Balderton	Applicant	29.05.2021	<p>In response to the current situation and neighbour's concerns, I would like to raise further information.</p> <p>I have been living on the site for the past 12 months and getting settled in with my family and the local community without problems and the children attending school.</p> <p>I have seen that neighbours are concerned regarding other caravans on the site.</p> <p>I have not authorised these to be there and I am seeking help to remove the caravans as these have nothing to do with me. I went away for the weekend and the caravans were there when I came back. I have asked them to leave on several occasions. I have contacted the Council for help and have had no response so the neighbour's concerns are also my concerns.</p> <p>At present you are only granting a 3 year permission which is obviously no good to me, my family or the site. By granting me a permanent permission will enable me to plan the site, provide the necessary that you are asking for and to secure the site to prevent further caravans arriving. On a temporary permission I would not be able to secure the funding that is needed to correct everything that you have asked for as no bank would give funding on a 3 year temporary permission.</p>	<p>The contents of the applicant's letter is noted.</p> <p>The officer's previous report and recommendation remain before Members for consideration.</p> <p>The applicant has been advised to contact the Police concerning the unauthorised occupation of the site by unknown third parties.</p> <p>Any potential enforcement action would take all circumstances into consideration within the assessment of expediency.</p>

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			<p>I am wanting the best for myself, my family and my future and the local community and I feel by giving a permanent permission that was granted for 6 apartments on this site would enable me to put security in place for all concerned.</p> <p>Concerning the noise issue, I am a traveller and have lived all my life in caravans. As the permission is only for me and my family, the concerns should be with us and we are happy with it and it does not affect us whatsoever, which is why we applied for permission on this site in the first place.</p> <p>I am anxious for my future and my family and want to make the site safe for me and the concerned community. If I don't get a permanent permission, to make the site safe, if I went away for another weekend how do I or you know there won't be even more caravans arriving further upsetting the neighbours, myself and the local community. I want the opportunity to make good of everything and meet your requests but without funding and the support of the Council, I would be unable to do so.</p>	
<p>Agenda Page 9 20/01405/FUL Main Street, Balderton</p>	<p>Resident</p>	<p>01.06.2021</p>	<p>A temporary permission has been given for 3 years for a static caravan and motorised home and two parking spaces to be placed there. There are now several caravans on the site, well in excess of those allowed. The applicant takes no account of planning as he created the hardstanding and entrance before any permission was granted. In Bolton a million pound mansion had to be pulled down because it was a third bigger</p>	<p>Noted. Once the planning permission is issued (subject to this being the case), any breach of the permission or condition would be open to enforcement action.</p>

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			than agreed in a planning application. I hope unauthorised works will be enforced as soon as possible on this application.	
9 20/01405/FUL Main Street, Balderton	Resident	29.05.2021	Please consider the number of caravans allowed to be sited. Since the residents first arrived there has been 2 or 3 caravans for the majority of the time but more recently more and more have arrived and there is now approx 10 which is a lot for a small area of land. Also empty gas bottles keep being left out on the side of the adjacent road which is unsightly.	Noted. The officer report recommends a condition restricting the number of caravans on the site to be limited to only two at any one time.

**RE: PROPOSALS FOR RESIDENTIAL DEVELOPMENT AT
293 BOWBRIDGE ROAD, NEWARK ON TRENT**

OPINION

Introduction and Scope

1. I am instructed in this matter by Matthew Williams of Williams Gallagher in respect of planning application Ref: 20/0050/FULM for the erection of 87 affordable dwellings (“**the proposals**”) at 293 Bowridge Road, Newark On Trent (“**the site**”). The application for the proposals was submitted to Newark and Sherwood District Council (“**the Council**”) and registered on 21 May 2020. The proposals went before the Council’s Planning Committee on 27 April 2021 and were deferred for a site visit and for a further response from the Council’s Environmental Health Officer.
2. The purpose of this Opinion is to provide advice on the Council’s consideration of the proposals to date, the planning policy context for the delivery of the proposals, the strategy for an appeal if the Council refuses to grant planning permission, and any recourse the applicant might have in respect of costs.

Background

3. As set out in the Officer’s Report to Committee (“**the Committee Report**”), the site is an L-shaped plot of land approximately 2.5 hectares in extent. The site is to the east of Bowbridge Road within the Newark Urban Area. The site is defined by the Proposals Map in the Allocations and Development Management DPD (“**the ADMP**”) as being allocated for housing. The reference for the site in the ADMP is Policy NUA/Ho/8, which allocates the site for around 66 dwellings, albeit that was in the context of an extant permission for a nursing home which has now lapsed.

4. That allocation is of fundamental importance to this matter. It is part of the adopted development plan, and as such, there is a presumption in favour of developing the site; see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 (at p.1449H). Determinations are to be made in accordance with the development plan unless material considerations indicate otherwise. I understand that the site was surrounded by industrial uses at the time it was allocated, and that the position has not changed since the ADMP was adopted. The policy does not require the cessation of industrial uses for the allocation to come forward. Development of the application site is therefore acceptable in principle, and that is an important material consideration in favour of the grant of planning permission.
5. The proposals have been promoted in that context and are for a 100% affordable scheme. Given the national housing and affordability crisis, such schemes are often viewed favourably by local planning authorities, because they meet a very specific and pressing need.
6. The Officer considering the scheme concluded the following:
 - a. Notwithstanding the absence of 4 bed units, the proposals provide a meaningful variety of house types and sizes.
 - b. The 14 different house types now proposed would allow the site to be visually attractive albeit readily interpreted as a modern housing development in its own right, and the proposal is considered to meet the design aspirations of Core Policy 9 and Policy DM5.
 - c. The Officer noted that the biggest constraint on site was posed by neighbouring industrial uses. The Officer notes that the Applicant had made significant intervention to ensure that those issues could be mitigated, and concluded in the overall planning balance as follows:

“Even with mitigation, there is an ongoing potential for incidental noise intrusion from neighbouring land uses.... However, the above must be balanced against the benefits of the scheme which include the delivery of a wholly affordable scheme operated by NCHA. Moreover, the applicant has accepted

developer contributions to be made towards community facilities; health; libraries and transport as well as providing a meaningful area of on site open space. Officers consider that the proposal is therefore policy compliant in respect to contributions.”

- d. There were no objections from the tree officer, and site contamination could be dealt with by condition.
 - e. In respect of highways, there was no objection from NCC Highways following detailed consultation.
 - f. The Archaeological Advisor confirmed that the remaining trenching and any further mitigation work (if required) can be controlled by condition if permission were to be forthcoming.
 - g. Subject to the imposition of appropriate conditions there was no objection on flood risk and drainage; and
 - h. Ecological mitigation measures would also be secured by condition.
7. As set out above, the application was deferred for further consideration of noise and dust impacts with Environmental Health, which has now taken place.
8. I have now had sight of the latest Officer Report for the 1 June 2021 Planning Committee. The recommendation remains to approve and includes comments from Environmental Health Officers following the previous Committee meeting, and Officers in Planning Policy. Both responses make clear that there can be no defensible objection to the proposals, that there would be no robust grounds to refuse the application, and that the Applicant has done all that can be expected in terms of securing mitigation. There is no objection to the scheme in respect of noise, dust, or any other matter.

Opinion

9. As set out above the fact that the site is allocated is of fundamental importance in the determination of the application which has now been recommended for approval **twice**. There is a presumption in favour of the development of the site, which is acceptable in principle, having been through examination as part of the development plan process. In order for the Council to reasonably refuse permission, material considerations would have to be of such weight and significance to outweigh that presumption.
10. Members have expressed concerns about the nearby industrial uses, but these have been considered and assessed as part of the scheme, and mitigation has been put in place. The scheme is supported by Planning Officers, Environmental Health Officers, and Planning Policy Officers, and that support has been reiterated again in the latest Report to Committee. There is nothing within the specific development plan policy that requires the industrial uses to cease for the site to come forward for residential development. I also note that there are existing dwellings also in close proximity to those industrial uses.
11. It is also an important material consideration that nearby uses that have the potential to cause dust (Tarmac and Centrum) are controlled by way of environmental permit, and strict requirements to control dust going beyond their boundaries. The NPPF at paragraph 183 makes clear that:

“The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively...”

12. Accordingly, the Council can and should rely on those permits to work effectively. That is not to say that the site can be delivered without any impacts at all. Most development sites will give rise to adverse effects, but that is not the test. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determinations are made in accordance with the development plan unless material considerations indicate otherwise. The Officers’ firm conclusions in this matter are that the material

considerations arising here do not indicate a departure from the development plan in this case. The planning balance has been carried out, and Members have been advised that there are no defensible reasons for refusal.

13. On that basis, and if the scheme was refused, I would recommend those instructing appeal the Council's decision. There may also be merit in submitting a costs application for the award of costs on a full substantive basis. The aim of the costs regime (in part) as set out in the Planning Practice Guidance ("PPG"), is to "*encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.*"
14. Given that the only expert and technical evidence and opinion before the Council indicates that the impacts of the scheme are acceptable and that the scheme is in accordance with the development plan, the basis of the application (also in accordance with the PPG) would be that the Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

Conclusion

15. I trust that covers the matters on which I was asked to advise, and those instructing should not hesitate to contact me if I can be of further assistance. As explained, I am content for this Opinion to be shared with the Council to inform further discussions on these issues with a view to moving matters on to a determination.

25 May 2021

Thea Osmund-Smith

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**RE: PROPOSALS FOR RESIDENTIAL
DEVELOPMENT AT 293 BOWBRIDGE ROAD,
NEWARK ON TRENT**

OPINION

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PLANNING COMMITTEE - 27 April 2021

Schedule of Communication Received after Printing of Agenda

Item	Correspondent	Date	Points Raised (Summary)	Officer's Response
9 20/01405/FUL Main Street, Balderton	Resident	29.05.2021	When considering this planning could the number of caravans allowed to be sited there be considered. Since the residents first arrived there has been two or three caravans for the majority of the time but recently more and more have arrived and there is currently now approx ten which is a lot for a small area of land. Also there is a habit of the empty gas bottles being left out on the side of the adjacent road which is unsightly when walking past that area.	Condition 2 addresses this
9 20/01405/FUL Main Street, Balderton	Resident	28.05.2021	At the meeting Mr Peterson was given temporary permission, for three years, for a static caravan and a motorised home to be positioned there. Two parking places were also shown on the details. There are now several caravans on the, well in excess of those allowed. It appears Mr Peterson takes no account of any planning as he created the hardstanding and entrance before any permission was granted. He now appears to have not adhered to the retrospect application he was given. In Bolton a million pound mansion built and the builder has been told to pull it down as it is a third bigger than agreed in a planning application. I hope that the agreed and authorised agreement on his planning application be enforced as soon as possible	Noted

PLANNING COMMITTEE - 27 April 2021

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