

**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

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