

PLANNING COMMITTEE – 5 OCTOBER 2021

Application No:	21/01831/S73M
Proposal:	Application to vary condition 11 attached to planning permission 20/00275/FULM so that only the dwellings constructed with contaminated zones require a validation report
Location:	Land At Lord Hawke Way And Bowbridge Road, Newark
Applicant:	Robert Woodhead Limited - Mr K Howard
Agent:	Jackson Design Associates - Mr Jason Wright
Registered:	20.08.2021 Target Date: 19.11.2021
Website Link:	<u>21/01831/S73M Application to vary condition 11 attached to planning permission 20/00275/FULM so that only the dwellings constructed with contaminated zones require a validation report Land At Lord Hawke Way And Bowbridge Road Newark Nottinghamshire (newark-sherwooddc.gov.uk)</u>

This application is being referred to the Planning Committee under the Scheme of Delegation as Arkwood, a company owned by Newark and Sherwood District Council have an interest in the site and the Town Council object which is contrary to the Officer recommendation.

This application is presented as a late item in order to meet timescales agreed.

The Site

The application site is approximately 2.8 hectares in size. The site is divided into two areas; the larger of which being to the north of Lord Hawke Way and a smaller area to the south fronting Bowbridge Road.

Lord Hawke Way is a recently constructed roadway which was built to serve the Leisure Centre and Gladstone House; a recently constructed retirement village. The road will also serve the recently approved Community and Activity Village further to the east of the application site which has begun construction. Other adjacent land uses include a cemetery; the car park serving the Leisure Centre and Community and Activity Village; allotment land to the south and residential and industrial uses in close proximity.

Prior to the works for the extant permission commencing, there was an informal path which crossed the site from Bowbridge Road to the cemetery but this was not formally designated as a right of way. The northern part of the site was formally a BMX cycle track. The site (again prior to development) was largely laid to grassland albeit there was a fence which bisected the site and had more rough and unmanaged grassland beyond.

The site is within the Newark Urban Area close to, but outside of, the designated Conservation Area by virtue of the separation distance afforded by the existing cemetery. The site forms part of the mixed use allocation NUA/MU/4 as defined by the Proposals Map of the Allocations

document. The policy envisaged that the overall site would deliver around 115 dwellings as well as the new leisure centre. As is inferred above, development already delivered includes the Leisure Centre but also includes Gladstone House which was not explicitly referenced by the allocation. This provides 60 single and two bed units with associated private and communal facilities.

Relevant Planning History

20/00275/FULM - Residential development for 87 dwellings and associated works (resubmission of 19/01790/FULM)

Application approved by Members at the 28th April 2020 committee meeting (decision issued 1st May 2020). Development has commenced on site.

19/01790/FULM - Residential development for 87 dwellings and associated works.

This application was presented to Members with an Officer recommendation of approval but this recommendation was overturned and the application was refused for the following reason:

The proposal will result in on-street parking to the detriment of other users of the highway due to insufficient off-street parking spaces being provided. In addition, the layout of the development will require soakaways under the carriageway as shown on drawing DR-C-0001-P1 which is not an acceptable system of drainage. The proposal is therefore contrary to Policy DM5 of the Allocations & Development Management Development Plan 2013.

The Proposal

The application has been submitted as a Section 73 application to amend the wording of condition 11 which related to land contamination. For the avoidance of doubt the condition states:

The development hereby permitted shall not begin until a scheme to deal with the contamination that has been previously identified in the Geodyne Supplementary Exploratory Investigation report dated 21st January 2020 has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall take account of Environmental Health's requirement for the top metre being free from contamination and shall propose appropriate methodology for validation of all remedial measures.

Following acceptance of the proposed remediation scheme by the local planning authority, the developer shall implement the scheme and carry out validation as agreed. A validation report shall then be produced and submitted to the LPA for approval prior to the occupation of any dwelling hereby approved.

Reason: To ensure that the risk to residential occupiers is fully understood and where appropriate mitigated against.

It is sought to amend the condition as follows (and the application submission includes the referred to plan):

The development hereby permitted shall not begin until a scheme to deal with the contamination that has been previously identified in the Geodyne Supplementary Exploratory Investigation report dated 21st January 2020 has been submitted to and approved in writing by the Local Planning Authority (LPA).

The scheme shall take account of Environmental Health's requirement for the top metre being free from contamination and shall propose appropriate methodology for validation of all remedial measures relating to contaminated areas on site as identified on plan reference 'Proposed Site Layout: Phasing Plan – 20-2286-(90)002 Rev. C5' .

Following acceptance of the proposed remediation scheme by the local planning authority, the developer shall implement the scheme and carry out validation in the remediated areas as identified on plan reference 'Proposed Site Layout: Phasing Plan – 20-2286-(90)002 Rev. C5' as agreed. Validation reports shall be submitted to the LPA for each area identified as contaminated on plan reference 'Proposed Site Layout: Phasing Plan – 20-2286-(90)002 Rev. C5' prior to the occupation of any dwelling hereby approved that is located within an affected area.

If contamination is found elsewhere on site during the works these areas will also be subject to remediation and validation in accordance with the approved details prior to occupation of any dwelling hereby approved that is located within the affected area.

Departure/Public Advertisement Procedure

Occupiers of 107 properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local press.

Planning Policy Framework

The Development Plan

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

- Spatial Policy 1 - Settlement Hierarchy
- Spatial Policy 2 - Spatial Distribution of Growth
- Spatial Policy 6 – Infrastructure for Growth
- Spatial Policy 7 - Sustainable Transport
- Core Policy 1 – Affordable Housing Provision
- Core Policy 3 – Housing Mix, Type and Density
- Core Policy 9 -Sustainable Design
- Core Policy 10 – Climate Change
- Core Policy 12 – Biodiversity and Green Infrastructure
- Core Policy 13 – Landscape Character
- Core Policy 14 – Historic Environment
- NAP1 - Newark Urban Area
- NUA/Ph/1: Newark Urban Area – Phasing Policy

Allocations & Development Management DPD

- Policy NUA/MU/4 – Newark Urban Area – Mixed Use Site 4

- DM1 – Development within Settlements Central to Delivering the Spatial Strategy
- DM2 – Development on Allocated Sites
- DM3 – Developer Contributions and Planning Obligations
- DM5 – Design
- DM7 – Biodiversity and Green Infrastructure
- DM9 – Protecting and Enhancing the Historic Environment
- DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework 2021
- Planning Practice Guidance (online resource)
- National Design Guide – Planning practice guidance for beautiful, enduring and successful places September 2019
- Residential Cycle and Car Parking Standards & Design Guide SPD June 2021

Consultations

Newark Town Council – It was AGREED to Object to this application thus retaining the existing Planning Condition.

NSDC Environmental Health (contaminated land) – Informal discussions confirming no objections.

No letters of representation have been received from interested parties.

Comments of the Business Manager

Principle of Development

An application under Section 73 is in effect a fresh planning application but should be determined in full acknowledgement that a permission exists on the site. This Section provides a different procedure for such applications for planning permission, and requires the decision maker to consider only the question of the conditions subject to which planning permission was granted. As such, the principle of the approved development cannot be revisited as part of this application.

An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. In determining such an application the local planning authority is only able to consider the question of the conditions subject to which planning permission should be granted, and—

- (a) if the authority decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, the authority shall grant planning permission accordingly, and
- (b) if the authority decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the authority shall refuse the application.

The National Planning Policy Framework (NPPF) is clear that any new permission should set out all

conditions related to it unless they have been discharged and that it cannot be used to vary the time limit for implementation which must remain unchanged from the original permission. Whilst the application has defined which conditions are sought to be varied, the local authority has the power to vary or remove other conditions if minded to grant a new planning consent.

Contaminated Land

The issue at hand relates solely to land contamination. Essentially investigation reports have revealed that there are parts of the site which are subject to contamination but other parts that are not. The way the extant condition 11 is worded would potentially prevent the sale of houses in parts of the site which are not contaminated and therefore the premise of the revised wording is to allow the sale of homes in areas which do not feature contamination whilst still allowing the LPA control over those parts of the site which are contaminated.

The applicant approached the LPA prior to the submission of the application and the revised wording was subject to discussion with colleagues in Environmental Health. Informal discussions during the life of the application have confirmed that there is no objection to the revised wording.

It is noted that the Town Council object to the proposal but no detail is given as to the basis of their objection. This has been queried with the Town Council and any response will be reported to Members through the schedule of late communication if received.

However, with reference to the suggested wording of the condition, the development has already commenced and therefore the wording of the amended condition needs to be amended accordingly and subject to previously approved details. Subject to this, there is no objection to the suggested change.

Conclusion

The application relates solely to the land contamination condition. The revised wording would still achieve the intention of the original condition but would allow flexibility to those parts of the site not subject to contamination. This in turn will allow certain plots to be sold which has clear and demonstrable benefits in terms of the Districts housing delivery.

The conditions below have been revised to take account of discharge of condition and non-material amendment applications since the original approval (a number of the original conditions have been complied with and are therefore no longer relevant meaning that although the application seeks to amend condition 11, this is now condition 6).

RECOMMENDATION

That planning permission is approved subject to the conditions and reasons shown below:

01

The development hereby permitted shall not be carried out except in complete accordance with the following approved plans and documents reference:

- Proposed Site Layout: General Arrangement – 20-2286-(90)001 Rev. C4;
- External Materials - 20-2286-(90)004 – C5;

- 20-2286-A(21)001 - C2 - GA Elevations (1)
- 20-2286-A(21)002 - C4 - GA Elevations (2)
- 20-2286-B(21)001-C1- GA Elevations (1)
- 20-2286-B(21)002-C3- GA Elevations (2)
- 20-2286-C(21)001 - C2 - GA Elevations (1)
- 20-2286-C(21)002 - C2 - GA Elevations (2)
- 20-2286-D(21)001 - C1 - Proposed Elevations (1)
- 20-2286-D(21)002 - C2 - Proposed Elevations (2)
- 20-2286-E(21)001 - C2 - GA Elevations (1)
- 20-2286-E(21)002 - C2 - GA Elevations (2)
- 20-2286-F(21)001-C2- GA Elevations (1)
- 20-2286-F(21)002-C2- GA Elevations (2)
- 20-2286-G1(21)101-C2 - GA Elevations
- 20-2286-G2(21)201-C1 - GA Elevations
- 20-2286-H(21)001-C1 - GA Elevations (1)
- 20-2286-H(21)002-C1 - GA Elevations (2)
- 20-2286-i1(21)101- C2 - GA Elevations
- 20-2286-i2(21)201- C2 - GA Elevations
- 20-2286-i3(21)301- C2 - GA Elevations (1)
- 20-2286-i3(21)302- C1 - GA Elevations (2)
- 20-2286-J1(21)101-C4- GA Elevations
- 20-2286-J1(21)101-C3- GA Elevations
- 20-2286-J2(21)201-C3- GA Elevations
- 20-2286-J3(21)301-C3- GA Elevations
- 20-2286-J4(21)401-C2- GA Elevations
- 20-2286-J5(21)501-C4 - GA Elevations
- 20-2286-J6(21)601-C4 - GA Elevations
- 20-2286-J7(21)701-C2 - GA Elevations
- 20-2286-J8(21)801-C3- GA Elevations
- 20-2286-J9(21)901-C2 - GA Elevations (1)
- 20-2286-J10(21)1001-C2- GA Elevations
- 20-2286-K(21)001-C3 - GA Elevations (1)
- 20-2286-K(21)002-C2 - GA Elevations (2)
- 20-2286-K(21)002-C3 - GA Elevations (2)
- 20-2286-L(21)001 - C2 - GA Elevations (1)
- 20-2286-L(21)002 - C1- GA Elevations (2)
- 20-2286-M(21)001-C5 - GA Elevations
- 20-2286-N(21)001 –C3- GA Elevations (1)
- 20-2286-N(21)002 -C2 - GA Elevations (2)
- 20-2286-O1(21)101-C3 - GA Elevations
- 20-2286-O2(21)201-C3 - GA Elevations
- 20-2286-O3(21)101-C2 - GA Elevations
- Garages - 19 / 2216 / GEN002 dated September 2019;
- Car Ports - 19 / 2216 / GEN003 dated September 2019;
- P200817 - Bowbridge Road – CMMP Rev. A;
- SUDS Maintenance Manual Data Sheet by bsp - 19-0197/SUDS/SOAK;
- SUDS Maintenance Manual Data Sheet by bsp - 19-0197/SUDS/PPD;
- Drainage and Levels - BRNK-BSP-ZZ-XX-DR-C-0001 – P04;

- Bowbridge Soakaway Calculations – 201029;
- Private Crate Soakaway 01-15 (individual pdf files);
- Private Pervious Paving 01-17 (individual pdf files);
- Roadway Lighting Report dated 2nd October 2020;
- Proposed Highway Lighting & Electrical Works – H08630/3627 dated October 2020;
- Proposed Site Layout: Adoption Plan – 19/ 2216 /SITE006 Rev. B;
- 2051-001 - Tree Protection Plan Phase 1 Sheet 01;
- 2051-002 - Tree Protection Plan Phase 1 Sheet 02;
- 2051-003 - Tree Protection Plan Phase 1 Sheet 03;
- 2051-004 - Tree Protection Plan Phase 1 Sheet 04;
- 2051-005 - Tree Protection Plan Phase 2 Sheet 01;
- 2051-006 - Tree Protection Plan Phase 2 Sheet 02;
- 2051-007 - Tree Protection Plan Phase 2 Sheet 03;
- 2051-008 - Tree Protection Plan Phase 1 Sheet 04;
- Drainage Details – BBRN-BSP-ZZ-XX-DR-C-0136-P02;
- Drainage Details – BBRN-BSP-ZZ-XX-DR-C-0141-P02;
- Highway Drainage Areas – BBRN-BSP-ZZ-XX-DR-C-0145-P02;
- Highway Ring Soakaway 01 – 19-0197 1 P02;
- Highway Ring Soakaway 02 – 19-0197 1 P02;
- Highway Ring Soakaway 03 – 19-0197 1 P02;
- Highway Ring Soakaway 04 – 19-0197 1 P02;
- Highway Ring Soakaway 05 – 19-0197 1 P02;
- Highway Ring Soakaway 06&07– 19-0197 1 P02;
- Highway Crate Soakaway – 19-0197 1 P02;
- Highway Crate Soakaway 02 – 19-0197 1 P02;

Reason: So as to define this permission.

02

The approved landscaping scheme shown on plan references:

- Soft Landscape Specification : North – MR20-090/101 Rev. A;
- Soft Landscape Specification : South – MR20-090/101 Rev. A;

shall be carried out within 6 months of the first occupation of any building or completion of the development, whichever is soonest, unless otherwise agreed in writing with the Local Planning Authority. If within a period of 7 years from the date of planting any tree, shrub, hedgerow or replacement is removed, uprooted, destroyed or dies then another of the same species and size of the original shall be planted at the same place. Variations may only be planted on written consent of the District Planning Authority.

Reasons: To preserve and protect existing trees and new trees which have and may have amenity value that contribute to the character and appearance of the area.

03

To avoid negative impacts to nesting birds, any clearance works of vegetation on site should be conducted between October to February inclusive, outside the bird breeding season. If works are

conducted within the breeding season, between March to September inclusive, a nesting bird survey must be carried out by a qualified ecologist prior to clearance. Any located nests must then be identified and left undisturbed until the young have left the nest.

Reason: In order to protect biodiversity on the site in accordance with the aims of Core Policy 12 of the Newark and Sherwood Core Strategy (2019).

04

No unit hereby approved shall be occupied until bin storage facilities have been provided for that unit in accordance with plan reference Fencing & Bin Stores - 20-2286-(90)005-C5.

The bin storage facilities shall be provided prior to occupation of any unit in accordance with the approved details and retained for the lifetime of the development.

Reason: To ensure that adequate bin storage is provided for occupiers in the interests of residential and visual amenity.

05

The boundary treatments for each plot as shown on plan reference Fencing & Bin Stores - 20-2286(90)005-C5 shall be implemented in full prior to the occupation of each relevant plot. The approved boundary treatments shall be retained thereafter for the lifetime of the development.

Reason: In the interests of residential amenity.

06

The development hereby permitted shall be undertaken in accordance with the details as submitted and approved within the discharge of conditions letter from the Local Planning Authority dated 13th October 2020 and subject to the requirements set out below.

The scheme shall take account of Environmental Health's requirement for the top metre being free from contamination and shall propose appropriate methodology for validation of all remedial measures relating to contaminated areas on site as identified on plan reference 'Proposed Site Layout: Phasing Plan – 20-2286- (90)002 Rev. C5' .

Following acceptance of the proposed remediation scheme by the local planning authority, the developer shall implement the scheme and carry out validation in the remediated areas as identified on plan reference 'Proposed Site Layout: Phasing Plan – 20-2286-(90)002 Rev. C5' as agreed. Validation reports shall be submitted to the LPA for each area identified as contaminated on plan reference 'Proposed Site Layout: Phasing Plan – 20-2286-(90)002 Rev. C5' prior to the occupation of any dwelling hereby approved that is located within an affected area.

If contamination is found elsewhere on site during the works these areas will also be subject to remediation and validation in accordance with the approved details prior to occupation of any dwelling hereby approved that is located within the affected area.

Reason: To ensure that the risk to residential occupiers is fully understood and where appropriate mitigated against.

07

The first floor window opening on the northern side elevation of Plot 25 shall be obscured glazed to level 3 or higher on the Pilkington scale of privacy or equivalent and shall be non-opening up to a minimum height of 1.7m above the internal floor level of the room in which it is installed. This specification shall be complied with before the development is occupied and thereafter be retained for the lifetime of the development.

Reason: To safeguard against overlooking and loss of privacy in the interests of amenity of occupiers of neighbouring properties.

08

Units 77-87 inclusive as indicated by plan reference Proposed Site Layout: General Arrangement – 20-2286-(90)001 Rev. C4 shall be occupied by at least one person over 60 years of age or their widow, widower (or recognised co-habitee, main carer or dependant).

Reason: To define the planning permission and in line with the applicants submissions.

09

The development hereby approved shall be carried out in accordance with the mitigation measures outlined by the requirements of the submitted Extended Phase 1 Habitat Survey undertaken by C Barker - P1841 / 0619 - 01 dated 18th June 2019, specifically:

- Controlled and directional vegetation clearance to enable reptiles to move away from the site.

Reason: In order to protect biodiversity in the District in accordance with the aims of Core Policy 12 of the Newark and Sherwood Core Strategy (2019).

010

The following activities must not be carried out under any circumstances.

- a. No fires to be lit on site within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on the proposal site.
- b. No equipment, signage, fencing etc. shall be attached to or be supported by any retained tree on the application site,
- c. No temporary access within designated root protection areas,
- d. No mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree/hedgerow on the application site.
- e. No soak-aways to be routed within the root protection areas of any retained tree/hedgerow on the application site.
- f. No stripping of top soils, excavations or changing of levels to occur within the root protection areas of any retained tree/hedgerow on the application site.
- g. No topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on the application site.
- h. No alterations or variations of the approved works or protection schemes shall be carried out without the prior written approval of the Local Planning Authority

Reason: To preserve and protect existing trees and new trees which have and may have amenity value that contribute to the character and appearance of the area.

011

No dwelling forming part of the development hereby permitted shall be occupied until its associated drive/parking area is surfaced in a hard bound material (not loose gravel) for a minimum of 5 metres behind the highway boundary. The surfaced drive/parking area shall then be maintained in such hard bound material for the life of the development.

Reason: To reduce the possibility of deleterious material being deposited on the public highway (loose stones etc.).

012

Any garage doors shall be set back from the highway boundary a minimum distance of 5 metres for sliding or roller shutter doors, 5.5 metres for up and over doors or 6 metres for doors opening outwards.

Reason: To enable a vehicle to stand clear of the highway whilst the garage doors are opened/closed and to protect the free and safe passage of traffic, including pedestrians, in the public highway.

013

No dwelling forming part of the development hereby permitted shall be occupied until its associated access/driveway/parking area is constructed with provision to prevent the unregulated discharge of surface water from the access/driveway/parking area to the public highway. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.

Reason: To ensure surface water from the site is not deposited on the public highway causing dangers to road users.

014

The development shall be carried out in accordance with "Section 8.0 Implementation and Monitoring" of the Travel Plan undertaken by ADC Infrastructure - ADC1938-RP-B dated 12th September 2019 specifically the role of the Travel Plan coordinator and the monitoring requirements with the exception of the references to approval from Nottinghamshire County Council. Approval shall be sought from the Local Planning Authority.

Reason: To promote sustainable measures of travel.

Notes to Applicant

01

The application as submitted is acceptable. In granting permission without unnecessary delay the District Planning Authority is implicitly working positively and proactively with the applicant. This is fully in accordance with Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

02

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at www.newark-sherwooddc.gov.uk

The proposed development has been assessed and it is the Council's view that CIL IS PAYABLE on the development hereby approved as is detailed below. Full details about the CIL Charge including, amount and process for payment will be set out in the Regulation 65 Liability Notice which will be sent to you as soon as possible after this decision notice has been issued. If the development hereby approved is for a self-build dwelling, residential extension or residential annex you may be able to apply for relief from CIL. Further details about CIL are available on the Council's website: www.newark-sherwooddc.gov.uk/cil/ or from the Planning Portal: www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil

03

The applicant should note that notwithstanding any planning permission that if any highway forming part of the development is to be adopted by the Highways Authority, the new roads and any highway drainage will be required to comply with the Nottinghamshire County Council's current highway design guidance and specification for roadworks.

BACKGROUND PAPERS

Application case file.

For further information, please contact Laura Gardner on extension 5907.

All submission documents relating to this planning application can be found on the following website www.newark-sherwooddc.gov.uk.

Lisa Hughes
Business Manager – Planning Development

