



Report to Planning Committee 16 February 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Helen Marriott, Planner, ext. 5793

Report Summary			
Application Number	22/02369/S73		
Proposal	Application for variation of Condition 02 (approved plans) 05 (tree protection measures) and 09 (tree retention) to remove reference to T1 due to tree being removed, as attached to planning permission 22/00302/FUL; 3 new dwellings.		
Location	The Drive, Clipstone, NG21 9ED		
Applicant	Mr Kevin Shutt - Newark & Sherwood District Council	Agent	Mrs Karolina Walton - SGA LLP
Web Link	22/02369/S73 Application for variation of Condition 02 (approved plans) 05 (tree protection measures) and 09 (tree retention) to remove reference to T1 due to tree being removed, as attached to planning permission 22/00302/FUL; 3 new dwellings. The Drive Clipstone NG21 9ED (newark-sherwooddc.gov.uk)		
Registered	10.01.2023	Target Date	07.03.2023
Recommendation	That planning permission is APPROVED subject to the Conditions detailed at Section 10 of this report		

This application is before the Planning Committee for determination, in accordance with the Council’s Constitution, because the applicant is the Council.

1.0 The Site

The application site comprises hard surfaced areas (used formally and informally as car parking) on both corners of the junction between The Drive and South Crescent within the settlement of Clipstone. There are trees located around the north west corner of the site.

The surrounding area is predominantly residential in nature and consists of a mixture of bungalows and 2-storey dwellings.

2.0 Relevant Planning History

22/00302/FUL 3 new dwellings – permission 05.05.2022

00/01325/FULR3 Demolition of two bungalows to construct a new car park – permission 17.11.2000

3.0 The Proposal

The application is a Section 73 application proposing the variation of Conditions 02 (approved plans), 05 (tree protection) and 09 (tree retention) attached to planning permission 22/00302/FUL approved under delegated powers (prior to the change to the Scheme of Delegation) in June 2022. This variation seeks to amend the approved plans following the removal of an existing tree (T1) after this decision was made. T1 was shown to be retained on the approved plans with an associated condition 5 requiring a scheme of tree protection to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development in addition to Condition 9 which sought its retention and/or replacement. As this tree was removed since this decision was issued, it is not currently possible for the development to be fully compliant with the current conditions attached to the permission.



Photo of T1 taken December 2021

This application would substitute the following drawing:

- 573-SGA-252-SL-DR-A-00001 P12 – Site Location and Site Plan (extract below with T1 highlighted in yellow)



With the following drawing submitted under this application:

- 573-SGA-252-SL-DR-A-00001 Rev 013 - Site Location and Site Plan

Other plans submitted with this application include:

- 573-SGA-252-XX-DR-A-3007 C01 Site Setting Out, Landscaping and Boundary Treatment

4.0 Departure/Public Advertisement Procedure

Occupiers of 27 properties have been individually notified by letter.

Site Visit undertaken on

5.0 Planning Policy Framework

The Development Plan

Newark and Sherwood Amended Core Strategy, 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
- Policy SHAP1 Sherwood Area and Sherwood Forest Regional Park

Newark and Sherwood Allocation and Development Management DPD, adopted 2013

- Policy DM1 Development within Settlements Central to Delivering the Spatial Strategy
- Policy DM5 Design
- Policy DM7 Biodiversity and Green Infrastructure
- Policy DM12 Presumption in Favour of Sustainable Development

Other Material Planning Considerations

National Planning Policy Framework (NPPF) 2021

National Planning Practice Guidance (NPPG) Online Resource

Newark and Sherwood Housing Needs Assessment and Sub Area Summaries Arc4 2020

Newark and Sherwood Affordable Housing SPD (June 2013)

Newark and Sherwood Residential Cycle and Car Parking Standards and Design Guide SPD (June 2021)

6.0 Consultations

Clipstone Parish Council – No comments received.

NSDC Tree Officer - Verbal comments received recommending replacement tree planting 3 x 14 -16cm girth nursery stock 'Pride of India' Koelreuteria paniculata trees (2 near the former T1 position and 1 on the opposite corner.

No letters of representation have been received from local residents/interested parties.

7.0 Comments of the Business Manager – Planning Development

An application under Section 73 is in effect a fresh planning application but should be determined in full acknowledgement that an existing 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 subjects 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 not be granted subject to the same conditions as those subject to which the previous permission was granted, the authority shall refuse the application.

The 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.

The principle of the development has already been established through the granting of the permission for the development in June 2022. There has been no significant material change

in the Development Plan context since this time. The main issue to consider relates to the loss of T1 and the consequential impact upon the proposed development.

Impact on Visual Amenity and Impact on Ecology and Trees

Core Policy 9 requires new development proposals to demonstrate a high standard of sustainable design that both protects and enhances the natural environment. Policy DM5 requires the local distinctiveness of the District's landscape and character of built form to be reflected in the scale, form, mass, layout, design, materials and detailing of proposals for new development. Policy DM5 further states that natural features of importance within or adjacent to development sites should, wherever possible, be protected and enhanced.

Core Policy 12 of the Core Strategy seeks to secure development that maximises the opportunities to conserve, enhance and restore biodiversity. Policy DM5 of the DPD states that natural features of importance within or adjacent to development sites should, wherever possible, be protected and enhanced.

The tree survey submitted with the original application identified 5 trees on site. 3 are Category U trees and were not recommended for retention (albeit 2 are shown as retained on the proposed plans) and 2 are Category C trees (T1 and T3). T1 and T3 were proposed for retention and tree protection measures and their retention was secured by planning condition. However, T1 was subsequently removed.

The site is located in a residential area with a mix of 20th Century bungalows and 2-storey dwellings. Front gardens tend to be enclosed by low brick walls. There are few street trees in the vicinity (with the exception of those listed within private front garden areas). As such, T1 was regarded as having good level of amenity value albeit was not protected by Tree Preservation Order.

In assessing the original application, the Officer report noted that *'whilst the openness of this land would be lost to the development, it is not considered that this would be harmful to the character of the area given its current utilitarian appearance which has a neutral impact on the street scene'*. Furthermore it was considered that the *'parking layout would somewhat hinder the ability to erect low brick walls around the front gardens in keeping with front gardens in the vicinity. However, it would still be possible to partly incorporate this as a feature into the scheme and details of boundary treatment will be required by planning condition. The communal parking space would also be highly visible (but largely positioned on existing hardstanding). A landscape scheme would also be required by condition to ensure that the area around the parking areas is soft landscaped to help ensure that the development would not be dominated by hard landscaping'*.

Overall, whilst the loss of T1 is regrettable, its removal does not impact on the original conclusion that *'development on this site would not be harmful to the established character and appearance of the area'* however this is subject to securing mitigation for the loss of T1 in the form of additional tree planting (in accordance with the advice from the Tree and Landscape Officer set out in the Consultations section above). This can be secured through amended planning conditions.

Other Matters

Given the scope of amendments are limited to the implication for the development arising from the loss of T1, there would be no impact on other material considerations such as design and layout of the proposed dwellings, highway safety, neighbouring amenity or protected species including the sites location within the 5km buffer zone of the Potential Special Protection Area (pSPA).

Assessment of the remaining conditions

The NPPG 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 Drawing No 573-SGA-252-XX-DR-A-3007 C01 Site Setting Out, Landscaping and Boundary Treatment has been submitted pursuant to the requirements of Condition 4 and 6, this plan does not contain all of the required details sufficient to discharge these conditions. As such, this plan is not referred to in the approved plan condition 2 and Condition 4 and 6 are to be re imposed.

For ease of reference the conditions as originally imposed are listed in full below (see section 9) with strikethrough text used to represent parts of the condition no longer required and bolded text used to indicate new wording where relevant.

8.0 Implications

In writing this report and in putting forward a recommendation, Officers have considered the following implications: Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have referred to these implications and added suitable expert comment where appropriate.

9.0 Conclusion

Overall, the proposed variations are considered to be acceptable. It is not considered that there are any other changes to circumstances, which affect the consideration of this application. It is therefore recommended that planning permission is approved subject to the revised conditions set out below.

10.0 Conditions

01

The development hereby permitted shall not begin later than **09.06.2025** ~~three years from the date of this permission.~~

Reason: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

02

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

- 573-SGA-252-SL-DR-A-00001 ~~P12~~ **Rev 013** – Site Location and Site Plan
- 573-SGA-252-OO-DR-A-00002 P2 – Type A3-2 Plot 1 & 2 General Arrangement Plan
- 573-SGA-252-XX-DR-A-00003 P2 – Type A3-2 Plot 1 & 2 Elevations
- 573-SGA-252-XX-DR-A-00004 P5 – Type A3 Plot 3 General Arrangement Plans & Elevations

Reason: To define this permission and for the avoidance of doubt.

03

The development hereby permitted shall be constructed entirely of the materials details submitted as part of the planning application.

Reason: In the interests of visual amenity.

04

Notwithstanding the submitted details, no part of the development shall be brought into use until details of all new boundary treatments proposed for the site including types, height, design and materials have been submitted to and approved in writing by the local planning authority. For the avoidance of doubt, this shall include:

- the erection of a 1.8 metre high fence (min.) along the rear boundary of Plot 3; and
- the continuation/rebuilding of the existing dwarf brick wall where possible, including matching coping stones.

The approved boundary treatment shall be implemented prior to the occupation of the dwellings and shall then be retained in full for a minimum period of 5 years.

Reason: In the interests of residential and visual amenity.

05

No works or development shall take place until a scheme for protection of the retained trees (~~T1 and~~ T3 as identified in the Arboricultural Report Date Feb 2022 by AWA Consultants) has been agreed in writing with the District Planning Authority. This scheme shall include:

- a. A plan showing details and positions of the ground protection areas.
- b. Details and position of protection barriers.
- c. Details and position of underground service/drainage runs/soakaways and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site.
- d. Details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g. in connection with foundations, bridging, water features, hard surfacing).

- e. Details of construction and working methods to be employed for the installation of drives and paths within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
- f. Details of working methods to be employed with the demolition of buildings, structures and surfacing within or adjacent to the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
- g. Details of any scaffolding erection and associated ground protection within the root protection areas
- h. Details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

All works/development shall be carried out in full accordance with the approved arboricultural method statement and tree/hedgerow protection scheme.

Reason: To ensure the existing trees, shrubs and or hedges are retained and thereafter properly maintained, in the interests of visual amenity and biodiversity.

06

Notwithstanding the submitted details, pPrior to first occupation of the development hereby approved full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:

full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards, and structural cells. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species and a wildlife friendly' landscape design;

proposed finished ground levels or contours;

lighting details;

hard and soft surfacing materials.

Reason: In the interests of visual amenity and biodiversity.

07

The approved landscaping scheme (as required by the condition above) 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 District 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.

Reason: To ensure the work is carried out within a reasonable period and thereafter properly maintained, in the interests of visual amenity and biodiversity.

08

During the construction period 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 or adjacent to the proposal site.
- b. No equipment, signage, fencing etc shall be attached to or be supported by any retained tree on or adjacent to the application site,
- c. No temporary access within designated root protection areas without the prior written approval of the Local Planning Authority.
- d. No mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree/hedgerow on or adjacent to the application site.
- e. No soak-aways to be routed within the root protection areas of any retained tree/hedgerow on or adjacent to 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 or adjacent to the application site.
- g. No topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on or adjacent to 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 ensure that existing trees and hedges to be retained are protected, in the interests of visual amenity and nature conservation.

09

Trees ~~T1 and T3~~ (as identified in the Arboricultural Report Date Feb 2022 by AWA Consultants), shall not be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior consent in writing of the local planning authority. Any trees, shrubs or hedges which die, are removed, or become seriously damaged or diseased within seven years of being planted, shall be replaced with trees, shrubs or hedge plants in the next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority.

Reason: To ensure the existing trees, shrubs and or hedges are retained and thereafter properly maintained, in the interests of visual amenity and biodiversity.

10

The north facing wet room window opening on Plot 1 and south facing wet room window openings on Plots 2 and 3 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 proposed and neighbouring properties.

11

No part of the development hereby permitted shall be brought into use until all drives and any parking or turning areas are surfaced in a hard-bound material (not loose gravel) for a minimum of 8.0 metres behind the highway boundary. The surfaced drives and any parking or turning areas of the private and communal parking areas (as specified on Drawing No 573-SGA-252-SL-DR-A-00001 ~~P12~~ Rev 013 – Site Location and Site Plan) shall then be maintained as such and in a hard-bound material for the life of the development.

Reason: To provide adequate off street parking and to reduce the possibility of deleterious material being deposited on the public highway (loose stones etc).

12

No part of the development hereby permitted shall be brought into use until pedestrian visibility splays of 2.0 meters x 2.0 meters are provided on each side of the vehicle access. These measurements are taken from and along the highway boundary. The area of land within these splays shall be maintained free from all obstruction over 0.6 meters above the carriageway level at all times.

Reason: In the interest of pedestrian safety.

13

No part of the development hereby permitted shall be brought into use until a dropped vehicular footway crossing is available for use and constructed in accordance with the Highway Authority specification to the satisfaction of the Local Planning Authority.

Reason: To enable vehicles to enter and leave the public highway in a slow and controlled manner and in the interests of general Highway safety.

14

No part of the development hereby permitted shall be brought into use until the access driveway is constructed with provision to prevent the discharge of surface water from the driveway area to the public highway. The provision to prevent the 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.

Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until Parts A to D of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until Part D has been complied with in relation to that contamination.

Part A: Site Characterisation

An investigation and risk assessment (to include locating and assessing the fissures), in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's ['Land contamination risk management \(LCRM\)'](#)

Part B: Submission of Remediation Scheme

A detailed remediation scheme (to include a remediation strategy for the fissures, including any foundation designs which may be required for building over the fissures) to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part C: Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Part D: Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part A, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part B, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with Part C.

Reason: To ensure that risks from land contamination/fissures to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Notes to Applicant

01

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/cil/

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development hereby approved as the development type proposed is zero rated in this location.

02

This application has been the subject of pre-application discussions and has been approved in accordance with that advice. The District Planning Authority has accordingly worked positively and pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accordance with Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

03

Except for emergency works, to protect the amenities of occupiers of other premises in the vicinity, the hours for deliveries or for the construction of the development should be restricted to:

Monday to Friday 08:00 to 18.00hrs, Saturday 08:00 to 13.00hrs and no works on site on Sundays/Bank Holidays.

04

Suitable measures must be taken to minimise dust and dirt during the construction and operation of the site using best practice methods.

05

The development makes it necessary to construct a vehicular crossing over a footway/verge of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact VIA EM Ltd, telephone: 0300 500 8080 to arrange for these works to be carried out.

06

Nesting birds are protected by the Wildlife and Countryside Act 1981 (as amended). It is an offence to intentionally or recklessly kill, injure or take any wild bird; take, damage or destroy its nest whilst in use or being built; and/or take or destroy its eggs. Normally it is good practice to avoid work potentially affecting nesting birds during the period 1st March to 31st August in any year, although birds can nest either side of this period.

07

The applicant should note that Permission is required from the Coal Authority Permit and Licensing Team before undertaking any activity, such as ground investigation and ground works, which may disturb coal property. Please note that any comments that the Coal Authority may have made in a Planning context are without prejudice to the outcomes of a Permit application.

BACKGROUND PAPERS

Application case file

Application reference - 22/02369/FUL

Committee Plan - 22/02369/S73

