

PLANNING COMMITTEE – 4 DECEMBER 2018

Application No(s):	(A) 17/00357/FULM & (B) 16/01134/FULM
Proposal (s):	(A) Residential development comprising 95 no. dwellings and associated infrastructure, including the removal 26 No. TPO trees. (B) Residential development comprising 89 dwellings and associated infrastructure, including the relocation of the school access, car parking area and sports pitches, the provision of a Multi-Use Games Area (MUGA) and the removal of 8 TPO trees (Resubmission of 14/01964/FULM)
Location:	Highfields School, London Road, Balderton, Newark On Trent NG24 3AL
Applicant:	Avant Homes (Eng) Ltd - Midlands Division – Mr. Chris Dwan

UPDATE – STATUS – CURRENTLY AT APPEAL

1.0 Background

- 1.1 Members will recall that two schemes for the Highfields School site were presented to the Planning Committee on 14th September 2017 for consideration. Members resolved to refuse scheme (A) as set out above ('the 95 Unit Scheme') contrary to officer recommendation as follows:

The LPA is aware of the advice contained within the NPPF and NPPG with respect to both viability and sustainable development when all material planning considerations are taken as a whole. In the opinion of the Local Planning Authority, the abnormal costs presented as part of this development are dis-proportionate to the development of 95 dwellings. As a consequence the scheme lacks the ability to generate full and appropriate mitigation for the level of development proposed in terms of children's play space, community facilities, and primary education. The lack of appropriate mitigation, together with clear planning harm as a result of the loss of 26 no. protected trees, and inadequate ecological protection or enhancement creates a compromised development to such a degree that the Council considers that the scheme is contrary to the aims of sustainable development. The development is thereby contrary to Spatial Policy 6 (Infrastructure for Growth), NAP1 (Newark Urban Area), Core Policy 9 (Sustainable Design) and Core Policy 12 (Biodiversity and Green Infrastructure) of the adopted Newark and Sherwood Core Strategy and Policies DM3 (Developer Contributions and Planning Obligations), DM5 (Design), DM7 (Biodiversity and Green Infrastructure) and DM12 (Presumption in Favour of Sustainable Development) of the adopted Allocations and Development Management DPD which together form the relevant policies of the Development Plan and does not constitute sustainable development for which there is a presumption in favour of as set out in paragraph 14 of the NPPF.

- 1.2 Scheme (B) as set out above ('the 89 unit scheme') was also refused contrary to the officer recommendation on the following grounds:

"In the opinion of the Local Planning Authority the measures proposed in an attempt to resolve the objections of the previous appeal Inspector in relation to the Multi Use

Games Area create new and determinative issues which cause demonstrable planning harm. The provision of a 2.4m high solid boundary, even with planting, is the only way to address noise concerns. The visual impact of such a solution, which prevents any natural surveillance in or out, will lead to an oppressive and unattractive environment and that is likely to give rise to (including perceived impacts) attracting anti-social behaviour. The development is thereby contrary to Core Policy 9 (Sustainable Design) of the adopted Newark and Sherwood Core Strategy and Policy DM5 (Design) of the adopted Allocations and Development Management DPD which together form the relevant policies of the Development Plan as well as Section 17 of the Crime and Disorder Act 1998 and the NPPF which are material planning considerations.”

1.3 The application was presented to the Planning Committee again on **6th March 2018**. In summary this was because changes to the CIL charging schedule meant that the developer could afford more in terms of developer contributions than previously offered and they were advancing an updated Section 106 Agreement/Unilateral Undertaking to secure these in the event that the appeal was allowed. As this represented material changes to the schemes that had previously been presented to the Committee, and in order that Officers could be clear with the Planning Inspectorate that the Planning Committee, as the LPA decision-makers in this instance, had been aware of ALL material planning considerations in coming to an overall planning balance, it was necessary to re-present the schemes in the interests of completeness. Having considered the matter in respect of both cases, the Planning Committee resolved that it did not change their view on either scheme.

2.0 Prior to the Appeal Hearing in September 2018.

2.1 Upon original exchange of evidence the Council’s case for the 89 unit scheme was that permission should be refused due to issues associated with the MUGA as expressed in the reason for refusal above. At that time the Council did not promote a case that insufficient mitigation in the form of developer contributions should form a reason for refusal, despite however noting the significant level of abnormal costs.

2.2 The Council’s case on the 95 unit scheme was a relatively straightforward one. In addition to identified harm by reason of ecology and loss of protected trees, the level of abnormal costs had risen yet further and disproportionately. The consequential impact upon the viability of the scheme meant, in the Council’s opinion that the inability to acceptably mitigate impacts of the development equated to an unsustainable development.

2.3 In July 2018 the new NPPF was published by the Government. This included an update on a variety of matters, most notably with respect to viability. Changes were also immediately made to the National Planning Policy Practice Guidance (NPPG). A consequence of these changes included the need for viability appraisals to be, amongst other things, open, transparent and understandable. The NPPF also made clear (paragraph 64) that:

“Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership²⁹, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

a) provides solely for Build to Rent homes;

b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);

*c) is proposed to be developed by people who wish to build or commission their own homes;
or*

d) is exclusively for affordable housing, an entry-level exception site or a rural exception site. “

29 As part of the overall affordable housing contribution from the site.

2.4 Neither appeal scheme meets any of the exemptions detailed. The Council's stance prior to the appeal hearing was therefore that both schemes failed to meet the requirements of the newly published NPPF, a new national piece of guidance which in the Council's submission should be afforded significant and determinative weight. On this basis, the Council promoted that both appeals should be dismissed.

3.0 At the Hearing

3.1 Both appeals have been co-joined (references APP/B3030/W/17/3188864 & 3188871) and were heard by way of a **Hearing on 18th and 19th September 2018**. On the second day of the co-joined Hearing with both sides have already presented their cases in respect of the impacts due to the loss of trees and ecology (in the case of Appeal A) and the impact of the MUGA and its acceptability (in the case of Appeal B) the hearing was adjourned by the Inspector. The reason for the adjournment was to enable the appellants to prepare a **fresh viability submission** in respect of both appeals on the grounds that any viability submission should be based on the new National Planning Policy Framework (NPPF). The appellants and the Council were instructed to work jointly to identify any areas of agreement and dispute.

3.2 A fresh appeal timetable dictates that the **Hearing will be re-opened on Tuesday 8th January 2019**.

4.0 Post Hearing Discussions

4.1 Since the adjournment, the appellants have been preparing a revised viability appraisal and our own appointed consultant has been working to agree common ground such that officers can form a view and report this to the Planning Committee as the decision maker.

4.2 It should be noted that public consultation has taken place on the appellants viability evidence submitted 30th October 2018 submission; responses to which are set out in **Appendix A** to this report. None of the representation responses received have raised comments on viability that alter their previous positions. The appellants have submitted additional viability evidence which Officers have reported to neighbours and interested parties but given time constraints have asked that comments be provided direct to the Inspectorate.

4.3 Attached as **Appendix B** to this Report is officer's updated position already submitted to the Planning Inspectorate given the tight deadlines involved.

4.4 Members will see that officers hold the view, based on the advice of its independent viability advisor that the schemes can and should afford contributions equating to a full policy compliant 30% affordable housing offer (based on an off-site payment). The appellant disagrees, arguing that each scheme cannot achieve 10% provision. They have, nevertheless, in the interests of seeking to agree viability, offered 15% affordable housing provision as follows:

- 95 Unit Scheme, a compromise offer of £644,000 which equates to 15% affordable provision based on a £46,000 per plot basis (14 plots); and
- 89 Unit Scheme, a compromise offer of £598,000, which equates to 15% affordable provision based on a £46,000 per plot basis (13 plots).

4.5 Full details and explanations of the positions of the Council and appellants (as captured in Appendices 1 to 11 referred to in the appeal update at Appendix B attached) can be provided upon request and indeed are available to view on the Council's public access website.

5.0 Securing any Developer Contributions

5.1 For the avoidance of doubt, both sides now agree that the full policy compliant amount of requested developer contributions can and should be paid in respect of mitigation for community facilities, children's play areas, amenity green space, highways infrastructure, primary education and libraries. Affordable housing is a matter of dispute between the parties. The appellant is preparing legal obligation(s) to present to the Inspector to secure both their position and our position the relevant one of which would come into effect if the appeal were to be allowed.

6.0 Conclusions/Consideration for Members

6.1 Members are asked to endorse the viability findings to continue to defend both appeals. Members are equally asked on Appeal B (the 89 Unit Scheme) to re-affirm that concerns regarding the MUGA remain to such a degree as to outweigh the new offer of the appellants to provide 15% affordable housing off-site.

6.2 It is expected that negotiations and exchanges of rebuttal evidence will continue until the reopening of the appeal. This is likely to incorporate discussions on sales revenue and construction costs. In the event that the Council's independent viability consultant agrees the appellants values to such a degree that the 15% offer on both appeal schemes is fair and reasonable, Officers seek confirmation as to whether this would alter the Planning Committees view on the acceptability of the appeals. In other words:

Appeal A (95 unit scheme) – does a 15 % affordable offer, when balanced alongside all other material planning considerations, including identified harm by reason of ecology and tree loss, result in an acceptable scheme in planning terms? and

Appeal B (89 unit scheme) – does a 15 % affordable offer, when balanced alongside all other material planning considerations, including identified harm by reason of the impacts of the MUGA, result in an acceptable scheme in planning terms?

7.0 **RECOMMENDATION**

In light of the above, Members are requested to ratify recommendation 1 and give a view on recommendation 2 which are set out below:

- (1) That the Council should defend the position set out in the attached Appendix A for both appeals at the appeal hearing in January 2019; and
- (2) That the Planning Committee answer the questions posed on the acceptability of each appeal set in paragraph 6.2.

Background Papers

Application/appeal case file.

For further information, please contact Clare Walker on extension 5834.

M Lamb
Business Manager – Growth & Regeneration

Appendix A

Additional Public Consultation

Public consultation was undertaken based on the Viability Analysis Updated submitted 30th October 2018 and the responses are set out below. For the avoidance of doubt a fresh-round of further public consultation on the more recent viability evidence has been undertaken but due to committee timetable's, representations will be sent direct to the Planning Inspectorate.

Balderton Parish Council – 20.11.2018 comment in respect of both appeals:

'I have been asked to advise that nothing in the documents alters this Council's original stance and previous objections to both planning applications.'

Newark Town Council – 14.11.2018

"Members considered the above additional information at the Planning Meeting on 31st October, 2018 and decided to retain their original objections below:

16/01134/FULM – Comment as follows 15.11.2018:

Residential development comprising 89 dwellings and associated infrastructure, including the relocation of the school access, car parking area and sports pitches, the provision of a Multi-Use Games Area (MUGA) and the removal of 8 TPO trees. (Re-submission of 14/01964/FULM).

- (i) It will result in the loss of green/open space between Newark and Balderton and a total loss of 8 high value trees within the TPO for the site, with lesser native replacements in gardens which offer no permanence of planting.
- (ii) The biodiversity statement is now outdated and needs revisiting and the ecological barriers within the site (width, height and location) are insufficient for ecology and inappropriate for privacy screening. The traffic impact assessment has not been updated or reviewed to take into account the southern urban extension including Fernwood and predictable traffic volume increases on London Road. The proposed Travel Plans and 5% traffic reduction target are not thought to be a meaningful or realistic means of addressing concerns. It is iterated that the original TIA was not thought appropriate for assessing impacts at peak time.
- (iii) Reassurance is sought that there will be a planning condition requiring a full archaeological management plan which, in turn, is endorsed by Nottinghamshire County Council.
- (iv) The development remains over-intensive with inappropriate boundary treatments to mitigate noise and the loss of privacy (both to existing premises and new neighbours), especially for 27 London Road, Nos 31 & 33 Glebe Park and 11a The Woodwards, whereupon rear parking (contested by NCC Highways) will increase noise levels adjacent to existing premises. As such, it is contested that the application mitigates the specific comments made by the Inspector in the Appeal hearing with regard to noise and privacy/overlooking to existing *and* new residents.
- (v) The proposed MUGA cannot be made available for meaningful community use due to the need to mitigate light pollution and noise and so is not considered to be of community value and does not mitigate for the loss of open space/play. Further, the acoustic barrier now proposed still causes noise pollution (open windows and trickle vents), as supported by Sport England and will negatively impact on visual and landscape amenity, not least due to the varying land levels and massing of the proposed boundary treatment to the MUGA.

Assurance is sought for planning conditions to maintain access for existing residents to boundary treatments (in particular 33 The Glebes) and for traffic routing during construction.

- (vi) There is concern that there is a lack of Primary school capacity to accommodate additional pupils arising from the development. There is also no provision for any Section 106 funding to mitigate the impact on local schools.”

17/00357/FULM - Residential development comprising 95 no. dwellings and associated infrastructure, including the removal of 24 no. TPO trees.

- (I) It will result in the loss of green/open space between Newark and Balderton and a total loss of 24 high value trees within the TPO for the site, with lesser native replacements in gardens which offer no permanence of planting. This also increases the loss of privacy to existing residents.
- (II) The biodiversity statement is now outdated and needs revisiting and the ecological barriers within the site (width, height and location) are insufficient for ecology and inappropriate for privacy screening.
- (III) The traffic impact assessment has not been updated or reviewed to take into account the increase in units and revised entry road, nor for the southern urban extension (including Fernwood) and predictable traffic volume increases on London Road. The proposed Travel Plans and 5% traffic reduction target are not thought to be a meaningful or realistic means of addressing concerns. It is iterated that the original TIA was not thought appropriate for assessing impacts at peak time.
- (iv) Reassurance is sought that there will be a planning condition requiring a full archaeological management plan which, in turn, is endorsed by Nottinghamshire County Council.
- (v) The development remains over-intensive with inappropriate boundary treatments to mitigate noise and the loss of privacy (both to existing premises and new neighbours), especially for 27 London Road, Nos 31 & 33 Glebe Park and 11a The Woodwards, whereupon rear parking (contested by NCC Highways) will increase noise levels adjacent to existing premises. As such, it is contested that the application mitigates the specific comments made by the Inspector in the Appeal Hearing with regard to noise and privacy/overlooking to existing *and* new residents. Furthermore, with the increase in units and revised entry road proposal, the impact will be experienced by more residences within The Woodwards and by 29 London Road.
- (vi) There is no provision for any recreational or community facilities, e.g. children’s play area, which for a housing development of this size is considered to be essential. Neither is there any re-provision for the open space that would be lost as a result of this development. To cite that the footpath to Barnby Road (ownership not clarified) gives access to play facilities adjacent to Barnby Academy via a road with poor pedestrian facilities, is not considered a meaningful response.
- (vii) There is concern that there is a lack of Primary school capacity to accommodate additional pupils arising from the development. There is also no provision for any Section 106 funding to mitigate the impact on local schools.
- (viii) There is no revised viability assessment available with the application. However, it is contested that the increased units and reduction in facilities (MUGA) require that any assessment is reviewed with specific regard to S106 for community/play facilities, public transport and school provision. Any viability assessment will reflect the costs of intensive drainage treatments, however, these are such due to the intensive development proposals and reduction in permeable open space and are, as such, not considered to be a justifiable cost assessment.

In addition under both applications, assurances are sought for planning conditions and clarity of ownership, to maintain access for existing residents to boundary treatments and for traffic routing during construction.”

NCC Developer Contributions – 15.11.2018 in respect of both appeals:

‘I am contacting you in response to your letter of the 30th October regarding the above applications, in particular with respect to the additional documents submitted by the appellants as part of the appeal. It is noted that the applicants agent has also emailed the District Council explaining the viability position and how this impacts on the contributions which are being sought to mitigate the impact of this development.

In respect of the contributions sought by the County Council for education, highways and libraries, it appears that these will remain the same as those contained with the agreed Unilateral Undertakings i.e. £229,100 Education, £14,200 Highways / Integrated Transport and £4,516.30 Libraries for the 95 dwelling scheme and £217,645 Education, £14,200 Highways / Integrated Transport and £4,231.06 Libraries for the 89 dwelling scheme.

The fact these contributions remains unchanged is welcomed by the County Council who have no additional comments to make at this time.’

Environment Agency – 01/11/2018 in respect of both appeals:

“Although the EA objected to planning application 14/01964/FULM the responsibility for surface water has now passed to the LLFA and it is they who will need to respond to the Appeal notice.”

NCC Rights of Way Officer – No further comments to make on either appeal.

Lead Local Flood Authority – No further comments on make on either appeal.

Neighbours and Interested Parties – The notification letters sent inviting comments made clear that comments should only be made in respect of the new evidence. In response one interested party has made representations relating to traffic and potential harm to pedestrians.