

## PLANNING COMMITTEE – 15 JANUARY 2019

<b>Application No:</b>	<b>18/02125/FUL</b>	
<b>Proposal:</b>	<b>Application to remove Condition No.15 (Removal of Permitted Development Rights) from Planning Permission 18/00953/FUL.</b>	
<b>Location:</b>	<b>Balderton Hydro Pool, Gilbert Way, Fernwood, Notts, NG24 3FX</b>	
<b>Applicant:</b>	<b>Lowe Construct and Build Ltd – Mr Rob Lowe</b>	
<b>Registered:</b>	<b>15 November 2018</b>	<b>Target Date: 10 January 2019</b>

**This application is brought before Members as the Officer recommendation differs from that of the host Parish Council which under the Council's current Constitution should be brought to Committee for Members to determine.**

### The Site

The application site forms a housing site for 3 dwellings which are currently under construction in a parcel of land approximately 0.14hecatres within the Newark Urban Area as defined within the Newark and Sherwood Allocations and Development Management DPD.

The site is accessed from a cul-de-sac off Gilbert Way to the north of the site. The site is bounded by 1.8m high wooden fencing and gates to the entrance with Gilbert Way. The footpath which serves to open space to the west of the site runs along to northern boundary of the site.

To the north-east, east and south-east of the site are two storey residential properties. The south of the site is an existing area of trees, to the west of the site is an area of woodland beyond which is an area of open space and footpaths serving the residential development.

The site is relatively flat.

### Relevant Planning History

18/00953/FUL - Proposed Erection of 3 Dwellings - Approved 27.07.2018

15/00846/OUT - Residential Development – Approved 08.01.2016 (this was for two detached two storey dwellings)

12/01273/OUT - Demolition of hydropool and residential development – Approved 13.11.2012 (this was for two detached two storey dwellings)

761059 - Hydrotherapy pool with changing facilities, shower and rest areas – Approved 19.11.1976

### The Proposal

The applicant seeks planning approval for the removal of condition 15 from application

18/00953/FUL which relates to the removal of permitted development rights under the Town and Country Planning Order 2015 (as amended). The condition currently states:

*“Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (and any order revoking, re-enacting or modifying that Order), other than development expressly authorised by this permission, there shall be no development to the annexe under Schedule 2, Part 1 of the Order in respect of:*

- *Class A: Enlargement, improvement or other alteration of a dwellinghouse.*
- *Class B: Additions etc. to the roof of a dwellinghouse.*
- *Class C: Any other alteration to the roof of a dwellinghouse.*
- *Class D: Porches*
- *Class E: Buildings etc incidental to the enjoyment of a dwellinghouse.*
- *Class F: Hard surfaces incidental to the enjoyment of a dwellinghouse.*

*Unless consent has firstly be granted in the form of a separate planning permission.*

*Reason: To ensure that any proposed further alterations or extensions can be controlled by the local planning authority in the interests of the amenities of the occupiers of neighbouring properties and to safeguard protected trees.”*

#### Documents/plans submitted in support of the application

Planning Statement Ref 19111 November 2018;  
DRWG no. 342/2018 Site location plan

#### Public Advertisement Procedure

Occupiers of 15 properties have been individually notified by letter and a notice has been displayed at the site.

#### Planning Policy Framework

##### The Development Plan

##### ***Fernwood Neighbourhood Plan (adopted 2018)***

NP1 – Design Principles for New Development  
NP2 – Housing Type  
NP3 – Residential Parking on New Development

##### **Newark and Sherwood District Council Core Strategy DPD (adopted March 2011)**

Spatial Policy 1 - Settlement Hierarchy  
Spatial Policy 2 - Spatial Distribution of Growth  
Spatial Policy 3 – Rural Areas  
Spatial Policy 6 - Infrastructure for Growth  
Spatial Policy 7 - Sustainable Transport  
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

### **Allocations & Development Management DPD (adopted July 2013)**

DM1 – Development within settlements central to delivering the spatial strategy  
DM5 – Design  
DM7 - Biodiversity and Green Infrastructure  
DM12 – Presumption in Favour of Sustainable Development

### **Other Material Planning Considerations**

- National Planning Policy Framework 2018
- Planning Practice Guidance 2014

### **Consultations**

**Fernwood Parish Council** – Support proposal but states the Councillors were unclear why this was not tackled as part of the original application/decision and thought this should have been raised before the builds commenced.

### **Representations**

Comments have been received from 3 neighbours/interested parties stating the following:

- Happy with the removal of the rights although some trees have been cut down to the rear of the site which I believe is contrary to the application conditions attached for protected trees;
- We object to any further extensions being allowed as the current proposal does and will impose on our property;
- Object to the removal of condition 15 as it would allow buildings closer to our property and to the felling of the trees which has been carried out by Mr Lowe.

### **Comments of the Business Manager**

The PPG acknowledges that Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area, thus providing a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.

Following public consultation and independent examination, at its council meeting on 10 October 2017 Newark and Sherwood District Council adopted the Fernwood Neighbourhood Plan. The Neighbourhood Plan now forms part of the development plan for the district and its policies are a material consideration alongside other policies in the development plan and carry weight in the determination of planning applications in Fernwood. In this instance the most relevant policies in the Neighbourhood Plan are listed above and are considered against the relevant aspects of the proposal in the assessment below.

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 previously approved development cannot be revisited as part of this application.

The application of conditions should pass the tests as set out in paragraph 55 the National Planning Policy Framework. This states that the Local Planning Authority (LPA) should keep conditions to a minimum and only impose where necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable. The applicant is challenging that the condition is not necessary for the development.

Policy DM5 of the ADMDPD states the *“layout of development within sites and separation distances from neighbouring development should be sufficient to ensure that neither suffers from an unacceptable reduction in amenity including overbearing impacts, loss of light and privacy.”*

The main consideration of this application is the impact upon neighbour amenity should the bungalows be permitted to build out to their fullest under the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The Council has considered the implications of the permitted development legislation on the development under when considering the determination of 18/00953/FUL, and how this would impact the neighbouring properties should the new occupiers be allowed to build in such a way. It was deemed then that it would be harmful and that the Council should retain the ability to manage such impacts moving forward. It is this restriction that the applicant is seeking to remove.

For clarity the rights removed under 18/00953/FUL are for the following:

- *Class A: Enlargement, improvement or other alteration of a dwellinghouse.*  
*This includes:*
  - *Erection of a rear extension up to 4m in depth from the rear elevation (8m through prior approval until 30<sup>th</sup> May 2019);*
  - *Up to 4m in height for any extension with an apex roof;*
  - *Side extensions up to half the width of the original dwelling;*
- *Class B: Additions etc. to the roof of a dwellinghouse.*  
*This includes:*
  - *Increasing the volume of the roof by 50m<sup>3</sup> regardless of the orientation to other properties;*
- *Class C: Any other alteration to the roof of a dwellinghouse.*  
*This includes:*
  - *Additional roof windows on any orientation of the roof slope;*
- *Class D: Porches*  
*This includes;*
  - *Provision of an extension over an existing doorway to 3m in maximum height and 3m<sup>2</sup> in floor area;*
- *Class E: Buildings etc. incidental to the enjoyment of a dwellinghouse.*  
*This includes;*
  - *Erection of a detached building within the amenity space beyond 2m from a boundary to 4m in height (apex roof), 2.5m within 2m of a boundary and 3m in any other case;*
- *Class F: Hard surfaces incidental to the enjoyment of a dwellinghouse.*

*This includes;*

- *New hard surfaces i.e. raised decking above 300mm from external ground level under 5m<sup>2</sup> in area;*

The site is very contrived and bounded by residential dwellings of two and single storey. The development is for the construction of single storey dwellings, plot 1 to the front (north) of the site and plots 2 and 3 to the rear (south). Each unit has shallow gardens which in the case of plots 1 and 3 bound other residential properties.

To permit the ability for the occupiers to build to their uppermost extent is considered to severely impact upon the amenities of the neighbours on Rosefield Close to which I will explain in more detail. Having tried to be pragmatic and negotiate with the applicant on a variation to the condition instead of full removal, it was suggested to the applicant that the Council would be amenable to vary the condition to remove Class C, D and F. This however was not considered favourably by the applicant and therefore the application proceeds as submitted. Therefore I will take each plot individually and explain to Members the impact of the condition on each dwelling.

### Plot 1

Plot 1 is a single storey dwelling located to the north of the site and to the west of no.9 Gilbert Way. It is orientated with its principal elevation facing north and its main amenity space and rear elevation to the south of the dwelling. Under the current Town and Country Planning (General Permitted Development) Order 2015 (as Amended) (subsequently referred to as the 'GPDO') this would not require planning permission for extensions to the rear providing it is not greater than 4m from the rear of the original property and up to 4m in maximum height for an apex roof. Under the amendments brought in by Central Government this depth can be increased to up to 8m under the Householder Prior Approval procedure which currently is due to cease on 31 May 2019. Given that the depth of the total garden (to the side of the garage) is 9m this would mean that if they built the extension to the maximum currently 'permitted' then there would be little or no amenity space remaining. In addition there is a neighbour amenity consideration which would result from the impact to no.9 Gilbert Way as this would fully enclose their western boundary and result in an oppressive outlook from their private amenity space.

The insertion of addition roof dormers within Plot 1 most notably to the rear roofslope would have the greatest impact upon the amenities of no.9 Gilbert Way from increased direct harmful overlooking upon their private amenity space. An extension to the roofspace by up to 50m<sup>3</sup> could encompass the entire rear elevation which because it is on the rear elevation, there would be no restrictions on the glazing for windows. Therefore, should the condition be removed this could result in a dominating addition to the nearest neighbour if built to its extreme extent.

The provision of outbuildings under Class E would have similar issues to those already stated above. An outbuilding located close to the boundary with no.9 Gilbert Way and built to the maximum permitted (within 2m of the boundary) of 2.5m would result in an oppressive impact to no. 9 Gilbert Way. Beyond 2m from the boundary a 4m high apex roofed extension could be constructed, however due to the relatively small garden this would have little or no impact on neighbours but would drastically reduce the amount of useable amenity space for Plot 1.

In considering Class C, D and F I am satisfied that the impact would be minimal and I would not be opposed to their removal from the condition and the restrictions imposed within the GPDO would be acceptable to self-regulate the impact.

## Plot 2

Plot 2 is a single storey dwelling located to the west of the extreme west of the site. It has its principal elevation to the north of the site and the amenity space and rear elevation to the south.

Due to the siting of this particular plot from existing neighbouring occupiers on Rosefield Close and Pine Close to the south, the only potentially harmful impacts would be upon the adjoining occupiers of Plot 3.

Again as with Plot 1 rear extensions would be up to 4m in depth and 8m under the prior approval process. This would result in an oppressive and harmful impact upon the living amenities of future occupiers of Plot 3.

The installation of roof dormers under Class B would be sited on the side of the dwelling due to the design of the roof. Under Class B any new windows in side roof dormers should be obscurely glazed and non-opening to 1.7m from internal floor level. Therefore given the juxtaposition of the two plots, I consider that the impact of the roof dormers would be self-regulating within the restrictions already in place within the GPDO.

Class E for outbuildings whilst this would have some impact upon Plot 3 I do not consider this would be so harmful if built out to the fullest extent due to the expanse of amenity space and depth of garden at Plot 3 which is larger in area than Plot 1.

## Plot 3

Plot 3 is a single storey dwelling located to the east of the site sharing side and rear boundaries with no. 4, 6, and 8 Rosefield Close. It has its principal elevation facing north and the amenity space and rear elevation facing south towards no.8 Rosefield Close. Plot 3 has the largest amenity space of the 3 plots but is also heavily bounded by existing residential properties.

The main considerations for this plot are upon the amenities of no.6 and 8 Rosefield Close from Class A, B and E.

As with the previous plots rear extensions are up to 4m in depth and 8m under the prior approval process. Whilst also impacting negatively on the future occupiers of Plot 2 an extension of between 4 and 8m in depth would fully enclose the rear boundary of no.4 Rosefield Close, which has its rear elevation approximately 11m from Plot 3, with a harsh brick elevation. Whilst this arrangement is not unusual in residential circumstances the outlook from no.4 Rosefield Close would be oppressive, stark and heavily built up, thus resulting in a negative impact to their amenity.

To permit the insertion of roof dormers to the rear elevation would increase not only the ability to directly overlook the neighbouring occupiers at no.6 and 8 Rosefield Close but the perception of overlooking upon their private amenity space. The rear elevation of Plot 3 is approximately 6m from the boundary with no.6 and approximately 12m from no.8. Should a large roof dormer be sited in the rear roofslope I consider that due to the juxtaposition with neighbouring land users the result could be detrimental to the neighbours amenity from direct overlooking and the perception of overlooking which can be equally harmful.

Class E and the erection of detached outbuildings would potentially have a detrimental impact upon the amenities of no. 6 and 8 Rosefield Close depending on the siting of the outbuilding within the plot. If the outbuildings are sited to the southern boundary then due to the location of no.8 being approximately 5m from this shared boundary, a 4m high outbuilding within Plot 3 would have a considerably oppressive impact upon their amenity. Likewise at no.6, the distance from their boundary is 8m (approximately), nonetheless this is still considered to result in an oppressive outlook should an outbuilding be 'permitted' within the grounds of Plot 3.

On the basis of the above explanation, it is still considered that Condition 15 of 18/00953/FUL complies with the 6 tests of applying conditions as set out in the NPPF and is indeed necessary to the development to secure the long-term amenity of both the existing and future occupiers. The condition does not restrict any development to the properties, it purely means that development and the siting, scale and design of such should still be managed by the LPA through a separate planning application process to ensure the impact on neighbouring occupiers is fully considered and mitigated for where possible.

### *Conclusion*

Taking the above into account and reflecting upon the condition it is considered that a variation would be acceptable to remove Class C, D and F however when approaching the applicant with this amendment they were not forthcoming and they requested for the application to proceed as submitted with the removal of the entire condition and Classes stated therein.

On that basis it is considered that for the reasons stated above the condition is still considered to pass the criteria as set out in paragraph 55 of the NPPF and is necessary to protect the amenity of nearby occupiers and any future development should be 'managed' through the planning system to ensure the development is appropriate. As such the condition should still be imposed and the application fails to accord with policy DM5 of the ADMDPD and paragraph 55 of the NPPF which is a material planning consideration.

### **RECOMMENDATION**

**That full planning permission is refused due to the following reasons:**

01

In the opinion of the Local Planning Authority, the condition is considered to pass the tests of applying conditions as set out in paragraph 55 of the National Planning Policy Framework and is still considered necessary. The condition is required to appropriately manage future development at the plots and the resulting impact upon neighbouring occupiers. It is necessary that the scale, design and siting of future development is appropriately managed by the Local Planning Authority to consider such impact upon neighbour amenity. Therefore the proposal is considered to fail to accord with policy DM5 of the ADMDPD and paragraph 55 of the National Planning Policy Framework and Planning Practice Guidance which are material planning considerations.

### **Notes to Applicant**

01

You are advised that as of 1st December 2011, the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority you are advised that CIL applies to all planning

permissions granted on or after this date. Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

02

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason(s) for refusal. Working positively and proactively with the applicants would not have afforded the opportunity to overcome these problems, giving a false sense of hope and potentially incurring the applicants further unnecessary time and/or expense.

#### BACKGROUND PAPERS

Application case file.

For further information, please contact Lynsey Tomlin on Ext 5329.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**  
**Business Manager Growth and Regeneration**



Committee Plan - 18/02125/FUL

