

PLANNING COMMITTEE – 24 JULY 2018

Application No:	16/00506/OUTM	
Proposal:	Outline planning application for a phased residential development of up to 1,800 dwellings; a mixed use Local Centre of up to 0.75ha to include up to 535sqm of A1 food retail (not exceeding 420sqm) and non-food retail (not exceeding 115sqm), A3 food and drink uses (not exceeding 115sqm), D1 community uses (not exceeding 1,413sqm); sports pavilion up to 252sqm; primary school (2.2ha) with school expansion land (0.8ha); formal and informal open space including sports pitches, pocket parks, structural landscaping / greenspace and drainage infrastructure; principal means of access, internal roads and associated works. All other matters to be reserved.	
Location:	Land At Fernwood South Nottinghamshire	
Applicant:	Persimmon Homes (East Midlands)	
Registered:	20 April 2016	Target Date: 10 August 2016 Extension of Time Agreed in Principle

Background

Members will recall that the application has been previously considered at the Planning Committee Meeting of 13th September 2016. For the avoidance of doubt, whilst Members resolved to approve the application in line with the Officer recommendation (subject to conditions and the sealing of an associated Section 106 agreement), a decision has not yet been issued and thus the application remains pending consideration.

The latest position is that the Applicant is now presenting a viability case which states that the application can no longer meet the policy aspirations of 30% affordable housing on site. On this basis the scheme is brought back before Members in order to determine whether the updated position would change the original resolution of the September 2016 meeting.

The structure of the following report will focus around the viability case presented but also identify any other material planning considerations which have changed since the time of the last Committee Meeting. The original report presented to Members as well as the Late Items and Committee Minutes has been appended for completeness.

Viability Case

At the time of the September 2016 Committee Meeting, Members resolved to approve a policy compliant scheme in terms of developer contributions including the delivery of 30% of affordable housing on site (540 units). A compromised position of 52% affordable rent and 48% intermediate provision (25% shared ownership / 75% discounted open market value (DOMV)) was however accepted. The policy aspiration of Core Policy 1 of the extant Core Strategy is for 60% affordable rented / 40% intermediate housing.

On February 16th 2018, the LPA received a 'Financial Viability Report' dated February 2018 and undertaken by Atlas Development Solutions on behalf of the applicant. The position presented by this report is that since 2016, the scale of the abnormal costs associated with the proposed development have been quantified by further works to qualify the exact costs of associated infrastructure including highways, archaeology and drainage. Whilst it is positive that further works (which themselves involve a cost) have been undertaken by the developer, a sign in itself, of the seriousness of the interest in building out, these items are predicted to cost an additional £9.7million. This amounts to approximately £5,400 per plot. On the basis of these additional costs, the report ascertains that the proposal would now seek to deliver all other contributions in full except affordable housing which would be delivered on the basis of 10% on site (180 units). The tenure split suggested by the Applicant at in the February 2018 appraisal was for a split of 50% Affordable Rent and 50% Open Market Discount Sale (to be sold at 80% of full market value).

The National Planning Policy Framework says that plans should be deliverable and that the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. The NPPG makes clear that this policy on viability also applies for decision taking and makes clear that decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible. It is further noted that the Government has specifically sought comments on a separate Viability document as part of the ongoing draft NPPF which demonstrates the direction of travel from a national perspective (albeit is solely in draft form and cannot be afforded weight at the current time).

In line with the approach taken in the determination of other schemes within the Fernwood policy allocation, the Council has commissioned an independent review to critically appraise the Applicant's submission and to provide independent advice to the Council in respect of viability. Discussions between viability expertise has been ongoing throughout the process with the *final* report of the Council's independent review from Whiteland Strategies (WLS) received on 2nd July 2018.

It should be noted that WLS has provided intermediate responses and reports throughout the discussion. The original response (received in April 2018) raised fundamental issues with the Applicant's appraisal submission due to a number of inconsistencies including in respect to matters of land value. The Applicant's viability expert has worked with WLS in an attempt to overcome these concerns. The final report concludes that on the whole, the Applicant's assumptions (which as referenced have been subject to negotiations and further submissions of evidence) are, in the most part reasonable. There does however remain areas of dispute including; land value; timing of land payments; infrastructures costs relating to preliminaries, contingency and fees; and finance costs. On the basis of these disputed matters, the independent viability Consultant acting for the LPA considers that the scheme could deliver 13% affordable housing on site rather than the suggested 10%. This position has now been agreed between the parties such that the decision of Members should be based on the completion of an associated legal agreement which secures that the scheme can deliver 13% affordable housing provision on site (234 units). At present, the agreement is that this would be based on a mix of 52% Affordable Rent and 48% Discount of Market Value.

It is however necessary to bring to Member’s attention that this level of affordable housing on site (i.e. the 13% agreed figure) would still be subject to other compromises; notably that the tenure split as appraised differs from that agreed previously (both in the context of this site but also the approval at the neighbouring sites within the overall Fernwood Strategic Site). It is also the case that, in the Applicant’s model presenting 10% affordable (which the LPA’s Consultant has extrapolated to reach the 13% position); the affordable units are smaller in housing size focused on flats and 1 and 2 bed properties (whereas the housing mix in the 30% model has 3 and 4 bed units). I shall discuss each of these matters in turn below.

Dealing firstly with housing mix, since September 2016, the village of Fernwood have adopted a Neighbourhood Plan. The implications of this in terms of it being an additional material planning consideration are identified below but for the purposes of a viability discussion, it is necessary to identify that the Neighbourhood Plan references a desired housing mix sought in respect to number of bedrooms. For the avoidance of doubt, the 13% affordable housing offer negotiated has not been broken down into a fixed unit breakdown but instead based on the mix provided by the Applicant in their 10% model. This model broadly accords with the aspirations of the Neighbourhood Plan in respect to the majority delivery of 3 bed units, followed by 2 beds, followed by 4 bed and above.

As referenced however, the viability case does skew affordable units towards 1 and 2 beds. A case could be presented that given that Officers have negotiated an additional 54 affordable units (the difference between 10% which would equate to 180 units and 13% which would equate to 234 units), there would remain the ability to adjust the final mix at the time of the reserved matters submissions to suit the latest evidence available. Indeed Officers have taken the opportunity to seek guidance towards a mix which would be preferable in respect of the affordable units in discussion with colleagues in Strategic Housing. Following discussion with Housing Associations who are likely to take the affordable units, it has been confirmed that the preference would be two bedrooms. The table below outlines a suggested mix which Officers would expect the Applicant to broadly align with at the time of reserved matters submission.

	Rent	Intermediate	Total
1 bed	24	-	24
2 bed	80	72	152
3 bed	14	40	54
4 bed	4	-	4
Total	122	112	234

It is accepted by the independent viability advice that the 13% would potentially allow the ability to adjust the mix to suit. However, this does not address the impact that the lack of shared ownership in the intermediate provision would have.

Officers have taken the opportunity to discuss with the viability Consultant as to whether the extra 3% affordable housing provision delivery would give the LPA flexibility to introduce a policy compliant mix which meets the Neighbourhood Plan aspirations AND introduces an element of shared ownership properties to align with the previous agreement for 25% of the intermediate provision to be shared ownership. The advice received is that it is difficult to be definitive on this matter as it could come down to unit size mix as much as tenure mix so the addition of shared ownership could reduce overall viability below the agreed 13%. It is acknowledged that if the affordable mix were altered to increase introduce 3 and 4 bed units as per the table above, then the larger units would deliver less value per square foot. On this basis,

the advice to Officers is that it would be unlikely that the any final mix in respect of tenure split and housing mix would be able to negotiate both larger affordable units in bedroom terms *and* introduce an element of shared ownership. To be clear therefore, whilst in agreeing the drafting of the associated Section 106 and ultimately the housing mix agreed through reserved matters, the LPA may be able to utilise the negotiated additional 3% affordable housing (i.e. 54 units on the ground) for one or the other, it is unlikely that it would amount to being able to secure shared ownership properties at 25% of the affordable provision *and* affordable units of a greater bedroom size in line with the aspirations of the Neighbourhood Plan and indeed the suggested split of Officers in Strategic Housing without reducing the overall viability below the agreed position of 13%.

As Members will be aware, the LPA have accepted compromised viability positions elsewhere within the Fernwood Strategic Site. The signed agreement for Barrat David Wilson refers to 11.5% affordable housing provision on site. The resolution of Members to grant the Larkfleet scheme was on the basis that it could secure between 14 and 15% affordable housing on site provision (pending highways infrastructure). Officers have therefore been mindful throughout negotiations that a figure around these previous agreements would be sensible and reasonable. The agreement to increase on site affordable housing from the 10% offer to 13% is considered appropriate and Officers would be reluctant to see this figure decrease on the basis of further negotiations in respect to matters of tenure and housing mix. The preference for Officers would be that the additional 3% secured should be attributed towards allowing flexibility in meeting the aspirations of the Neighbourhood Plan in respect to housing mix (i.e. securing 3 or 4 bed units for the affordable provision rather than just the 1 and 2 bed units suggested). Given the above discussion therefore, this would be on the acceptance that the associated Section 106 legal agreement would secure 52% affordable rent and 48% DOMV (i.e. no shared ownership).

Conditions and Section 106

Following the resolution of Committee in 2016, the LPA and the Applicant have been in ongoing discussions to both the conditions originally presented and the wording of the S106 agreement.

Conditions

The condition schedule at Appendix 4 largely follows the principles of the original conditions presented to Members. For clarity, the changes presented at the current time are summarized as follows:

Condition No.	Topic	Changes since 2016 drafted conditions
4	Phasing	Point II has been amended to include reference to bus stop infrastructure.
6	Design	Additional wording has been added to clarify that this includes details for the sporting provision to the north of Shire Lane.
12	Parking and Management Plan	Reserved wording to clarify that detail only required in relation to the Phase which includes the delivery of the Primary School.

13	Construction Management Plan	The final bullet point has been added in relation to how access to existing properties will be maintained during development.
23	Flood Risk	Further detail added to clarify document reference that the figures are derived from in relation to flood risk mitigation measures.
24	Travel Plan	The requirement to update the Travel Plan through each reserved matters submission has been removed.
26	Marketing Brief	<p>The wording of the final sentence has been changed to allow flexibility in respect to the delivery of the local centre.</p> <p><i>2016 drafting:</i></p> <p>The reserved matters application for the Local Centre shall be submitted in accordance with the approved Marketing Brief.</p> <p><i>Current drafting in Appendix 4:</i></p> <p>The development shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing by the local planning authority.</p>
32	NCC Highways	Drawing reference has been updated.
37	NCC Highways	Condition as drafted in 2016 (relating to bus stop infrastructure) has been deleted on the basis that it has been incorporated into condition 4 as set out above. Additional wording has been added to the 1 st informative in relation to Condition 4 for the avoidance of doubt.
38	NCC Highways	Condition 38 as drafted in 2016 is now condition 37 on basis of above deletion.

Section 106

As is expected to a scheme of this scale, the complexities of the associated legal agreement have warranted significant discussion. Officers consider that there are elements of these discussions which are relevant to bring to Members attention at the current time. Notably, there have been lengthy discussions in respect of the Education contribution which would be associated with the application including in the context of the triggers for the delivery of the Primary School associated with the development.

At the time of the September 2016 Committee Meeting the following was presented to Members within Appendix 2 in relation to the education contributions:

“Definition within S106

The sum of up to £5,751,854 to secure the provision of the Primary School

2.2ha of the site identified for future development of the Primary School

0.8ha of the site adjoining the Primary School site to be reserved for future possible expansion of the Primary School

The detailed specification for the proposed Primary School to be produced by the County Council to include (where applicable) the proposed phasing for the construction of the Primary School

Formula / SPD Requirement

A development of 1800 dwellings would generate 378 primary places

The LEA require a new 2 form entry (420 place) primary school to be constructed on site. A site allowance of 2ha would be required. Build specification should meet DfE requirements and Education Funding Building Bulletin 103

Site is required to be clear of contamination, level and serviced prior to transfer to LEA/construction of school

Secondary education is delivered through CIL

Anticipated Contribution

The delivering of a 2 form entry primary school and expansion land to allow for the creation of a 3 form entry

Trigger Points

The triggers for the delivery of the 2fe primary school if the County Council was to design and build it would be as follows:

- Transfer of the level, contamination free, serviced site to the County Council on commencement of the residential development;***
- 10% of the total costs to be paid on commencement of the residential development (to cover the design, planning and procurement;)***
- 37% on occupation of the 30Pth P dwelling;***
- 15% on occupation of the 330th dwelling***
- 23% on occupation of the 780th dwelling; and***
- 15% on occupation of the 1280th dwelling***

The triggers for the delivery of the 2fe primary school if it is to be construction by the developer would be as follows:

- Phase 1: Infrastructure for 420 places plus 4 classrooms to be completed by the occupation of the 200th dwelling OR within 16 months of commencement of the residential development(First occupation) whichever is the sooner;***

- *Phase 2: 3 additional classrooms to make 210 places to be completed by the occupation of the 450th dwelling;*
- *Phase 3: 4 additional classrooms to be completed by the occupation of the 900th dwelling;*
- *Phase 4: 4 remaining classrooms to provide 420 places to be completed by the occupation of the 1400th dwelling.”*

Discussions on the wording of the S106 agreement have stalled in recent months but since the September 2016 meeting the Applicant has sought amendments to the education provision outlined above through drafting. For the avoidance of doubt the S106 has not been signed and therefore the triggers as requested by the Applicant have not been formally agreed by the LPA.

The rationale behind the amendments sought is that the Applicant would be transferring the school expansion land for £1 (rather than based on the land value for residential development) so as a compromise would wish to move the trigger pattern for the delivery of the school places to later in the build profile when more dwellings have been built. The latest S106 draft which the Council’s Solicitor sent to the Applicant’s Solicitors on 8th September 2017 for comment incorporated the following amendments in respect to education.

Additional Definition:

“Second Form of Entry: means the final 8 classrooms together with any remaining associated buildings and additional car parking play space and associated infrastructure (if any) required to educate up to an additional 210 pupils and forming the second phase of the Primary School”

Delivery of Primary School Triggers summarized as follows:

- No more than 50 dwellings occupied until construction of the Primary School or the First Form of Entry has commenced;
- No more than 450 dwellings occupied until available for use by 210 primary school pupils;
- No more than 1400 dwellings occupied until the Second Form of Entry (as defined above) has been completed and available for use for 420 pupils.

The clear change between the triggers presented in September 2016 and the applicant’s request during the latest S106 drafting is therefore the omission of the 900th dwelling trigger. This has clearly been subject to lengthy negotiations as to whether it remains appropriate to the overall delivery of Primary Education warranted by the development. On this basis, the following response has been received from NCC Developer Contributions Practitioner dated 29th March 2018:

“I am contacting you to confirm Nottinghamshire County Councils position in respect of the education provision which will be required to mitigate the impact of the above development.

This application, which includes the delivery of up to 1,800 dwellings, a local centre, primary school and land to allow the expansion of the primary school has been approved subject to a S106 agreement. As currently set out it is proposed that

Persimmon Homes will provide a 2FE (420 Place) School along with a 0.8ha site to allow future expansion to take account of future developments in the area. Persimmon have indicated that they would be willing to transfer the school land for £1 however in agreeing to this they wish to move the trigger pattern for the delivery of the school places to later in the build profile where more dwellings have been built. The County Councils understanding of this is as follows:

1 FE provision (210 places)

The current draft agreement delivers the infrastructure and 4 classrooms at 200 dwellings (providing 120 places) which accommodates the early arrivals (42 places on formulae), a further 3 classrooms are provided at 450 dwelling providing 210 primary places in total. The proposed triggers provide the 1 FE (Form of Entry) provision in one phase at 450 dwellings. This equates to 95 primary places before school places are provided.

2 FE provision (420 places)

The current draft agreement provides an additional 120 primary places at 900 dwellings and the final 90 places at 1,400 dwellings. The proposed trigger provides the additional 1 FE at 1,400 dwellings which equates to 84 pupils without a place before the final phase is provided.

Whilst acknowledging the benefits of the school expansion land being transferred for £1, the County Council have significant concerns about the approach to the triggers. The reason being that, based on projections, this would lead to a significant shortfall in primary places in the first phase (50 – 60 places) and up to 84 places in the second phase and, as it stands, there would be nowhere for these pupils to be accommodated. To clarify these figures; in the September 2016 proposal there are 4 classrooms at 200 dwellings which, based on formula, equates to 42 primary aged students. In the July 2017 revised offer 7 classes are available at 450 dwellings which, based on formula equates to 95 students. Therefore in terms of the first phase, 95 places minus 42 places equals 53 places which is between the two figures in brackets above. In terms of the second phase; in the 2016 proposal, 11 classes become available at 900 dwellings but in the July 2017 proposal the 7 classes are the only provision until there are 1400 dwellings. Therefore, based on formula, the 1 FE school that has been provided only provides sufficient accommodation up until the 1000th dwelling at which point it could be full. Therefore there is a gap in places between the 1000th dwelling and the 1400th dwelling where there are 400 dwellings worth of pupils without a school place in this area. Utilising formula the deficit is 84 places (400 dwellings multiplied by 0.21 pupils per 100 dwellings).

The County Council have also examined the cost of providing a temporary solution should the triggers be amended. On the basis of this work it is estimated that the costs for a mobile classroom per year would be £125,000 for which a method of funding would have to be identified along with a location for this provision to be provided. Due to the costs involved and the overall uncertainty about where such provision could be accommodated such an approach is considered unacceptable.

Therefore as a result of the above it is considered that the triggers should remain and if these are to be amended the County Council would raise significant concerns due to the impact on the ability to delivery education in this part of Newark.”

Clearly it remains the case that a proposal for 1800 units would put a strain on the existing education provision. Indeed education provision within an urban extension is a key component of sustainability. In this respect, Policy NAP2C requires the Greater Fernwood allocation to deliver a new primary school. The need for Primary School delivery is not, and indeed at no point has been, a matter of dispute between any parties. Officers agree with the comments of NCC Education detailed above that the offer by the Applicant to provide the school expansion land for a nominal cost of £1 is extremely reasonable. Nevertheless, the concerns of NCC in respect to the revised triggers since the time of the September 2016 Committee Meeting are clearly relevant and must be afforded weight in the overall planning balance.

Officers have discussed the position as outlined by NCC Education with the Applicant. There has been some debate as to whether the land value of the expansion land should now be agricultural or indeed residential if the school were to be extended for a need arising from 3rd party developers. However, this is clearly a different position to that presented in the past (and indeed considered by NCC in their comments above) and therefore would not be acceptable (without appropriate discussions as to how / if this would affect the overall viability position which would clearly delay the determination).

It has therefore been confirmed by email dated 4 July 2018 that the Applicant would be willing to agree matters of education including in respect of the transfer of the land for £1 but also the delivery triggers as previously agreed such that the focus of the current re-consideration of the scheme can be towards the viability position presented in relation to affordable housing. To confirm therefore, despite lengthy discussions, the Applicant would be willing to sign an associated legal agreement which includes the triggers for education delivery which Members were minded to approve in September 2016.

Changes in Material Planning Considerations

At the time of the 2016 consideration, the Neighbourhood Plan was at the very early stages and Officers did not consider it to attract weight in planning terms. This position has clearly evolved since this time.

The NPPG 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 below.

- NP1: Design Principles for New Development
- NP2: Housing Type

- NP3: Residential Parking on New Development
- NP5: Green Spaces, Landscaping and Biodiversity
- NP7: Supporting Better Movement and Connections
- NP8: Enhancing the Provision of Community Facilities

Having reviewed the content of the made Neighbourhood Plan in detail, Officers have identified no issues which would affect the overall principle of the development. It is of course the case that the detail of the Neighbourhood Plan will become more relevant in the determination of any subsequent reserved matters applications should outline planning permission be granted. This includes in the context of the housing mix delivered on site which has been referenced through the viability discussion above (albeit the market housing which would incorporate 87% of the scheme broadly aligns with the mix sought through the Neighbourhood Plan in any case).

Additional Neighbouring Consultation Responses

In the interest of completeness, the LPA have taken the opportunity to instruct an additional period of consultation to neighbouring parties (including all properties within existing Fernwood) through a bespoke letter which presented the presented viability position (i.e. the 10% offer).

An additional 5 no. of letters have been received on the basis of this revised consultation, details of which can be summarized as follows:

- 10% affordable housing is too low – it should at least meet David Wilson figure of 11.5%
- Still concern about access and traffic problems which when coupled with the proposed school at Fernwood will rocket
- The Prime Minister and local MP have explicitly voiced that affordable housing is at the forefront of social inclusion
- The Planning Committee has the political muscle to increase social housing not decrease
- The council should enter into partnership with farmers and smaller builders to provide the houses
- To reduce from 30 to 10% affordable housing flies in the face of the Neighbourhood plan, national housing need and local need
- It is dishonest of Persimmon and they should not be allowed to get away with it
- They would have known the deficit at the outset
- Affordable housing is for young families and singletons trying to start on the housing ladder.

Conclusion

The circumstance to which the current application is being presented to Members is rare insofar as the development proposals in the same quantum have already been considered by Members with a resolution to grant in September 2016. However, a decision remains to have been issued and thus the application remains pending.

Clearly a change from 30% on site affordable housing provision to just 13% on site affordable housing provision (306 less units in real terms) is not a decision to be taken lightly. However, unfortunately the Applicant's need for requesting re-consideration of the proposals on a

viability basis is a position that Members will be more than familiar of through the determination of other applications within the Fernwood Strategic Site. It remains the case that despite the aspirations of the Core Strategy, the delivery of the Fernwood Strategic Site is yet to commence on the ground.

As with the other development proposals within the Strategic Allocation, the LPA has worked with an independent Consultant to ascertain whether the position presented is reasonable. As is outlined above, Officers have secured an additional 3% of affordable housing provision (i.e. 13% rather than the original offer of 10%) through negotiation.

The delivery of housing, in this case promoted by a regional housebuilder is a material planning consideration which must be afforded significant positive weight. Whilst this shortfall in affordable housing provision is undesirable (particularly in this specific circumstance where the original position in 2016 sought to agree a policy compliant 30%), in line with the NPPF, and through assurances from independent advice that 30% would not be viable, it is considered unreasonable to resist the application solely on this basis.

As was presented to Members in 2016, it remains the case that this planning application represents an opportunity to deliver one of the Council's allocated Strategic Urban Extension sites. It is hoped that through adopting a pragmatic approach to viability, as has been done through Member's resolution to grant other applications within the overall Strategic site, will allow for development to begin to materialize as envisaged on the ground.

All other material planning considerations have already been presented to and debated by Members through the previous committee report included at Appendix 1.

The recommendation of Officers is therefore that outline planning approval is granted subject to the conditions appended at Appendix 4 (noting as outlined above the minor changes since the last resolution to grant) and the signing of a S106 agreement to secure the contributions in Appendix 5.

RECOMMENDATION

That outline planning permission is approved subject to the completion of an associated Section 106 agreement; and the finalization of conditions in substantive accordance with those Appended through Appendix 4.

Background Papers

Application case file.

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

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

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Committee Plan - 16/00506/OUTM

