

PLANNING COMMITTEE –4 JUNE 2019

Application No:	19/00689/FUL		
Proposal:	Application for variation of conditions 02, 03, 04 and 05 of planning permission 16/01369/FUL to allow the new access junction to be constructed wholly within highway land or that owned by the applicant (Retrospective)		
Location:	Springfield Bungalow Nottingham Road Southwell NG25 0QW		
Applicant:	23.04.2019		
Registered:	9th April 2019	Target Date:	4th June 2019
	Extension of time agreed		

This application is before the Planning Committee for determination as the officer recommendation differs from the views of the Town Council and at the request of the Local Ward Member, Councillor Penny Rainbow on the grounds of highway and pedestrian safety, concerns that the conditions in the initial application have not been met and insufficient drainage plans are in place. It is also stated that the intended buffer strip does not comply with the Southwell Neighbourhood plan.

The Site

This application relates solely to an access located between no.s 36 and no.s 38 Halloughton approved by Planning Committee in March 2017 which has been now been constructed (although this is not in accordance with the previously approved plans.

Previously there has been an overgrown access in this location which has historically served land to the rear of Springfield Bungalow, a detached bungalow with an additional access close to the junction of Halloughton Road and Nottingham Road. The land to the rear of the bungalow is allocated in the Newark and Sherwood LDF Allocations and Development Management DPD (2013) for housing development - Southwell Housing Site So/Ho/2. Planning permission was issued in December 2017 for a residential development on this site for 38 dwellings and the conversion and extension of existing residential property to form 12 supported living units as detailed below.

The immediately adjoining properties to the north and North West of the site are a mix of single and two storey detached dwellings. The immediately adjoining properties No.s 36 and 38 Halloughton Road are detached bungalows.

The site lies to the west of the Conservation area.

Relevant Planning History

Access

16/01369/FUL – At a meeting on the 22nd March 2017 Members resolved to grant conditional planning permission for the alteration of an existing vehicular access on Halloughton Road, installation of kerb radii and provision of visibility splay. Condition 3 of this permission required details of drainage of the access. Condition 4 required the submission of precise details of the access.

19/00076/DISCON – An application was submitted in January 2019 seeking to discharge conditions 3 and 4 of planning permission 16/01639/FUL. These conditions were discharged by correspondence dated 1st March 2019.

The access has been constructed prior to the determination of the current application.

Residential Development

15/01295/FULM – At a meeting in June 2016 Planning Committee resolved to grant full planning permission for residential development of 38 dwellings and conversion and extension of existing residential property to form 12 supported living units subject to conditions to be delegated to the business manager, vice chair of planning committee and the leader of the Council and to the signing and sealing of a S106 Agreement. The conditions were presented to and agreed by Planning Committee in September 2016.

Following the submission of revised site location and site layout plans this application was re-presented to Planning Committee on the 22nd March 2017. Members resolved to grant full conditional planning permission subject to the signing and sealing of a Section 106 Planning Agreement to secure the provision of Springfield Bungalow being gifted to the Reach Project (including relevant pay back clause(s)), on-site affordable housing (2 no. units), and developer contributions for open space, community facilities, education, and transport enhancements. The S106 was signed and sealed and the planning permission issued in December 2017.

19/00317/DISCON – an application was submitted in February 2019 seeking to discharge conditions 3, 4, 5, 6, 11, 13, 14, 17, 19, 20 and 21 attached to planning permission 15/01295/FULM – these conditions were discharged by correspondence dated May 7th 2019.

19/00456/DISCON – an application was submitted in March 2019 seeking to discharge 14, 15 and 16 attached to planning permission 15/01295/FULM – These conditions were discharged by correspondence dated May 7th 2019.

19/00779/FULM – a S73 application has been deposited seeking to vary condition 12 of planning permission 15/01295/FULM which requires a minimum visibility splay of 2.4m x 43m to be provided at the junction with Halloughton Road. This application is also being presented to the Planning Committee as part of this agenda.

Works have commenced on site prior to the determination of the current application and are therefore in breach of the planning permission granted in 2017.

The Proposal

This is a retrospective application which seeks to vary conditions 2, 3, 4 and 5 of planning permission 16/01369/FUL as detailed below to enable an amendment to retain the redesigned access as constructed April 2019.

Condition 2 relates to the approved plan and stated that:-

'The development hereby permitted shall be carried out in accordance with the following approved plan:-

o 12/1889/750

unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the permission.'

Condition 3 stated that :-

'No development shall be commenced until details of drainage and surface water disposal have been submitted to and approved in writing by the local planning authority. The development shall be carried out thereafter in accordance with the approved details unless otherwise agreed in writing by the local planning authority.'

Condition 4 stated that :-

'No part of the development hereby permitted shall take place until details of the new access road have been submitted to and approved in writing by the Local Planning Authority including longitudinal and cross sectional gradients, street lighting, drainage and outfall proposals, construction specification, provision of utilities services, and any proposed structural works. The development shall be implemented in accordance with these details to the satisfaction of the Local Planning Authority.'

Condition 5 stated that :-

'No part of the development hereby permitted shall be brought into use until the visibility splays of 2.4m x 43m shown on drawing no. 12/1889/750 are provided. The area within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.25 metres in height unless otherwise agreed with the Highway Authority.'

The following amendments have been made to the previously approved scheme and are indicated on drg.no. HALL-BSP-ZZ-XX-DR-C-100 Rev P6 deposited 7th April 2019:-

- The 6m corner radii have been amended to 5m.
- The footway fronting Halloughton Road has been reduced from 2.0m to 1.8m in width, with a pinch point of 1.6m at the corner.
- The visibility splays have been reduced:
 - a) From 2.4m x 43m to the right/east to 2.3m x 43m

b) From 2.4m x 43m to the left/west to 2.3m x 29m

The plan deposited with the application includes details of drainage, gradients and sections.

These revisions have been made to ensure that works wholly take place within the undisputed boundary of the public highway, which has been agreed by Nottinghamshire County Council to be at least 6 feet (1.83m) from the southern carriageway kerb line. Members will see from the report and history to this site that land ownership, including that pertinent to the positioning of the site access, has been on ongoing matter of dispute between parties.

Departure/Public Advertisement Procedure

Occupiers of 116 properties have been individually notified by letter. A site notice has also been displayed near to the site.

Planning Policy Framework

The Development Plan

Southwell Neighbourhood Plan

Policy TA1: Cycle and Pedestrian Routes

Policy TA3: Highways Impact

Policy SS2: Land South of Halloughton Road (So/Ho/2)

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

Spatial Policy 7 – Sustainable Transport

Core Policy 9 – Sustainable Design

Allocations and Development Plan Development Plan Document (DPD) Adopted July 2013

Policy DM5 Design

Other Material Planning Considerations

National Planning Policy Framework (NPPF) 2019

National Planning Practice Guidance (NPPG) 2014

NCC highways Design Guide

Consultations

Southwell Town Council - Southwell Town Council reconsidered application 19/00689/FUL Springfield Bungalow Nottingham Road and agreed unanimously to object to this application and to ask a district councillor to call in to NSDC for the following reasons:

High Way and Pedestrian Safety

STC agreed that N&SDC enforces the conditions as agreed some two years ago and opposes any alteration to the conditions imposed then.

The conditions in the initial application have not been met.

-The completed visibility splays do not meet the national and local highway safety standards and the conditions of the original decision, the constructed splays are in fact only 32mtrs to the East and 26mtrs to the West. These are unsafe for the 30mph road.

The new access and pavements are in contravention of Southwell Neighbourhood Plan policy TA8.1 Pg 52 Cycle and pedestrian routes –

The pavements constructed at the access to the site are not suitable for disabled and wheelchairs users, as the camber and gradient of the pavement are too high and too close to an existing dropped kerb.

The construction of the access does not allow for larger vehicles to safely enter the site without swinging across to the other side Halloughton road, therefore causing a potential a traffic hazard.

The entrance itself is very narrow for vehicles to pass.

This site is in a high flood risk area with many natural springs. We object to the Drainage plans because the drains on the south boundary and in the north west corner will destroy the exiting hedges which form landscape barriers. These are required to be maintained in the Southwell Neighbourhood plan see Policy SS2 policy 3".

NCC Highways Authority – latest comments received 16th May 2019

Further to comments dated 2 May 2019 I wish to provide additional information that may assist the LPA consider this application.

The Highway Authority is aware that the applicant has been unable to achieve the originally conditioned standard visibility splays in land that is undisputed public highway. The applicant has therefore sought approval for a modified access arrangement. The role of the Highway Authority in advising the LPA on this variation is whether, in the opinion of the Highway Authority, it is safe for all road users. The standard local specifications relating to visibility splays are provided as guidance and as such it is within the remit of the Highway Authority to consider each case where these standard specifications cannot be achieved and make a judgement as to whether what the applicant can achieve is both safe and reasonable given the individual circumstances that are applicable. The Nottinghamshire Highway Design Guide allows flexibility to meet local circumstances.

It is recognised that the splays in the current application have been drawn slightly differently to those in the previously approved drawings i.e. to a line 1.0m offset from the kerb line, but this now matches more closely the method of measurement within this Authority's Design Guide.

On the basis of the above and for the reasons pointed out in the Highway Authority's comments dated 2 May 2019 which were prepared by an experienced and senior Highways Officer in conjunction with other experienced Highway Authority colleagues, the Authority is content that the submission details will not compromise highway safety in this instance and have therefore raised no objections.

The Highway Authority, as a Statutory Consultee, provide comments to Planning Authorities throughout Nottinghamshire on the highway aspects of approximately 3500 planning applications per year (on average). It is with this experience that a revised Transport Statement is not considered necessary by the Highway Authority.

There has been some local concern raised regarding the juxtaposition of the new access with the existing vehicle dropped kerb crossing associated with No 38 Halloughton Road. This has been considered in light of local and national guidance, and; local conditions, and found to be acceptable. There are many examples of this arrangement throughout the County.

Likewise, local concern has been raised regarding the dropped kerb pedestrian crossing point outside 38 Halloughton Road in meeting the needs of those with mobility impairment in terms of camber/gradient. The applicable standards are that the gradient of a footway should not, except in exceptional circumstances, exceed 1 in 12 and where a dropped crossing is in place the gradient should not exceed 1 in 11. The Highway Authority is of the understanding that as standard kerbs have been used in the construction of the access and that the local topography is not unduly steep the above gradients have not been exceeded. It is therefore the view of the Highway Authority that the access does meet with relevant policies and guidance and is not a barrier to those with a disability.

The Planning Authority may be aware that the access itself was constructed by the County Council's highway partner organisation, Via East Midlands, who have vast experience in constructing accesses both for third parties as well as part of their normal highway related work.

In further support to the Highway Authority's stance on considering that Halloughton Road is lightly trafficked, a traffic count suggests flows are around 900 vehicles per day (2 way flow). In the peak hour the flow is around 110 vehicles, which equates to about 1 vehicle every 33 seconds (average). The majority of pedestrians will accept a gap of 4-6 seconds at normal urban vehicle speeds to cross two lanes of traffic. Although other groups may need twice this time, it is reasonable to assume that all pedestrians should be able to cross the road safely without much delay, even at peak times. Similarly cars leaving the side road junction safely should be able to see a gap of about 3.2s or more. Again, flows are so low that there should be no difficulty in leaving the side road. I have concluded therefore that flows can be described as low.

The decision on determination of the application is within the remit of the Planning Authority. However the advice of the Highway Authority is that the application scheme is safe for all road users given the specific site constraints; is constructed such that it can be used by all road users including those with a disability, and; provides a safe access to the development.

The Planning Authority should be aware that in the judgement of the Highway Authority it would not be able to evidence a defence to a Planning Inspector should this particular application be subject of an Appeal process.

I reaffirm that no objections are raised.

Comments received 3rd May 2019

I confirm that the latest submission allows the variation to condition 2 of 15/01295/FUL to be agreed from a Highway Authority perspective.

Comments received 2nd May 2019

In terms of highway matters this application seeks a variation to conditions 4 and 5 which refer to the access details and visibility splays.

Drawing HALL-BSP-ZZ-XX-DR-C-100-P6 is acceptable to agree the variation.

This drawing has been used to construct the access under license from the Highway Authority without prejudice to the decision of the Planning Authority.

The main changes to the details from previously approved plans are:

1. 6m corner radii have been changed to 5m. This is a minor amendment and given that the access road is to remain privately owned/maintained with low flows, it is considered that this can be accepted.

2. The footway fronting Halloughton Road has been reduced from 2.0m to 1.8m in width, with a pinch point of 1.6m at the corner. This is a minor amendment and will not restrict pedestrian movements significantly. Pinch points as low as 1.2m can be allowed under the NCC Highway Design Guidance.

3. Visibility splays have been reduced:

- From 2.4m x 43m to the right/east to 2.3m x 43m

This is a marginal (almost indiscernible) change and Manual for Streets suggests that an 'x' distance as low as a 2.0m set back can be used under certain circumstances:

"A minimum figure of 2 m may be considered in some very lightly-trafficked and slow-speed situations, but using this value will mean that the front of some vehicles will protrude slightly into the running carriageway of the major arm. The ability of drivers and cyclists to see this overhang from a reasonable distance, and to manoeuvre around it without undue difficulty, should be considered".

- From 2.4m x 43m to the left/west to 2.3m x 29m (or 2.0m x 43m).

This is measured in the less critical direction where vehicles are not expected to travel along the nearside, southern kerb line. Sight distances to vehicles travelling in the eastbound lane will be significantly more than those figures quoted above. 29m is commensurate with 20mph approach speeds, but here again a splay of 2.0m x 43m is available; commensurate with the Manual for Streets statement above. 43m is commensurate with an approach speed of 30mph.

All of these changes have been made to ensure that works wholly take place within the undisputed boundary of the public highway which has been agreed to be at least 6 feet (1.83m) from the southern carriageway kerb line.

It should be emphasised that, in the opinion of the Highway Authority, the position of the highway boundary is not necessarily restricted to the 6 foot dimension mentioned above. However, the scheme submitted clearly attempts to steer clear of that argument. Should the public highway boundary be proven to extend beyond the 6 feet, increased visibility splay distances would be/are available.

Under the circumstances it is considered that the variations to conditions 4 & 5 can be agreed. No objections are raised.

Severn Trent Water - No comments received

Environment Agency – No comments received

NCC Flood Authority – The application has no impacts on surface water and as such we have no further comments to make.

Anglian Water – No comments received

Representations have been received from 14 local residents/interested parties (as of 16.05.19) which raise the following concerns:-

Retrospective Applications

- The access was approved in 2017
- The developer has flagrantly ignored permissions and conditions in the hope that works will be approved retrospectively
- Why are views being sought when the access has already been constructed?
- This is retrospective application seeking to lower highway safety standards given that the developer has control of insufficient land to enable it to meet the pre commencement conditions.
- It is a disgrace

Highway and Pedestrian Safety

- The access as constructed breaches the conditioned visibility splays and safety for the residential site.
- Given the excessive speeds along Halloughton Road visibility of and for vehicles leaving development is essential. Halloughton Road is used as a rat run and cut through to/from Nottingham Road and the speed limit rarely adhered to – highways restrictions are ignored.
- Halloughton Road is an important relief road and is heavily used at school times by school aged pedestrians and young drivers
- The application makes no reference to 15/01295/FULM which granted permission for 38 dwellings – the access is inadequate for this.
- Pedestrians will not use the designated crossing area as it is too shallow and steep and does not conform to standards and will cross at the splay head further hindering visibility for cars exiting the junction
- No Risk Assessment has been undertaken and no evidence put forward that the access is safe – one should be undertaken before permission is granted

- The Transport Assessment submitted with application 15/01295/FULM is irrelevant and out of date.
- The comments of the Highway Officer that the road is lightly trafficked are incorrect (photo evidence of Halloughton Rpad during a school run attached)
- The splays as constructed fall well short of minimum standards and cannot be improved without additional frontage land;
- A material reduction in safety standards cannot be justified on land ownership grounds
- Previous transport statements deposited on the 2015 permission related to the provision of a visibility splays of 43m being the minimum required for highway safety – reduced splays therefore go against the TS findings and national and local highway standards and no evidence or calculations have been put forward to support any relaxation of standards.
- The splays as constructed are too shallow unsafe and do not meet minimum standard on a 30mph road; this would result in stationary/ reversing vehicles on the east side of the road particularly in front of the designated pedestrian crossing exacerbating pedestrian access
- The access is poorly sited and immediately adjoins an existing vehicular dropped kerb which is not normally allowed (a safe distance is normally 10-15m to prevent pedestrian/vehicular conflict).
- Pedestrians who cross from side of Halloughton Road reach a crossing with tactile paving and then have to cross the vehicular dropped kerb access creating conflict with vehicles crossing this access. This is exacerbated by the design of the footpath given its gradient which fails to meet the minimum recommended slope for wheelchair users. Its camber is regarded as dangerous to wheelchair users who could fall into the highway.
- The footpath therefore fails to meet the relevant policies because it represents a severe barrier to the disabled.
- The proposal therefore should be refused on the grounds of health and safety, highway safety and discrimination as it fails to provide a safe access to the estate road.
- The access is too narrow -there is insufficient room for vehicles turning into or leaving the site nor passing room for two vehicles
- The development exacerbates dangers to vehicles and pedestrians – some residents of the Reach site will use this access.
- Accidents seem likely and it would be difficult for the Council to adequately defend any legal action which might result – would they be liable.
- The access and limited pavement contravene the neighbourhood plan
- The access into the junction is too narrow resulting in vehicles to swing over into oncoming traffic to manoeuvre impeding traffic flow
- The submitted drawings are inaccurate they do not show a bend in the road which further impedes visibility
- Increased traffic would exacerbate existing highway issues.

- The highways assessment of the road is flawed in their calculations and calculations misleading and incorrect.

Drainage

- The road surface deteriorates due to the amount of water it carries and is particularly bad in winter not being gritted. The camber results in much water spray. The drainage being proposed is inadequate for this junction

Breach of Conditions/permissions

- The Council should instruct the developers to cease work immediately.

Other Matters

- The application refers to land owned by the applicant – it is owned by Springfield Ecohousing Ltd – the application is therefore invalid.

Comments of the Business Manager

Background

An application (application ref. 16/01369/FUL) for the alteration of the existing access on Halloughton Road was deposited in order to resolve the issue of works on 'disputed land' previously, as part of the consideration of an original residential planning application (15/01295/FULM). The proposal was therefore assessed separately and on its own merits and in relation to highway and pedestrian safety, land ownership and Rights of Way over the land. The application was presented to planning committee on 22nd March 2017 where Members resolved to grant conditional planning permission in accordance with officer recommendation. The relevant conditions have been subsequently discharged.

The principle of the development (i.e. an access serving a residential, in this case allocated site) is therefore established through the granting of the permission for the access in March 2017

Since the approval discussions between the applicants and Nottinghamshire County Council have resulted in the proposed access being 'moved' at least 6 feet southwards from the current kerb line. This is in order, we have been informed, for the access to be sited on land which is undisputedly (in the opinion of NCC and the applicant) on the public highway ownership. The works have been installed by Via construction (wholly owned by NCC) and this application essentially seeks to retain the works constructed (in addition to various other matters, including viability splays shown on the submitted plans).

Although the Amended Core Strategy has been adopted since the granting of the original permission 16/01369/FUL and the NPPF has been updated in 2019, there has been no significant material change to policy context relevant to the consideration of the amendment of the conditions which would affect determination of this application.

Therefore the main issue to consider is whether it is appropriate to allow the development to be retained as constructed and in accordance with the amended plans deposited with the application.

Principle of Development

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 11 October 2016 Newark and Sherwood District Council adopted the Southwell 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 Southwell. In this instance the most relevant policies in the Neighbourhood Plan are listed in the policy section above and are considered against the relevant aspects of the proposal in the assessment below.

This application seeks to vary condition 2, 3 4 and 5 of planning permission 16/01369/FUL to enable the retention of an access that has already been constructed which differs to that previously approved (as detailed in the proposal section of this report).

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.

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.

The principle of development is therefore considered acceptable subject to an assessment of site specific issues including highway and pedestrian safety, land ownership.

Highways Matters

Spatial Policy 7 sets out the criteria for assessing whether a development encompasses a sustainable approach to transport. Core Policy 9 requires proposals to be accessible to all. Policy DM5 of the DPD states that provision should be made for safe and inclusive access to new development and that parking provision should be based on the scale and location of the development.

Policy TA3 of the Southwell Neighbourhood Plan seeks to ensure that new development does not adversely affect the highway network.

I acknowledge the concerns received with regards to impact on existing highway conditions, highway and pedestrian safety and increased traffic which relate to both the access on Halloughton Road and in relation to its perceived association with the residential development to the rear of Springfield Bungalow (which Members resolved to approve in March 2017 - application ref. 15/01295/FULM). You will note that there is also an application also on the agenda for debate at this planning committee meeting (application ref. 19/00779/FULM) seeking to vary a condition

attached to the planning permission for the residential development requiring the provision of a minimum visibility splay of 2.4m x 43m (minimum) at the access on Halloughton Road which has not been achieved in the access that has been constructed.

Officers have sought the professional views of the Highway Authority whose formal consultation comments are detailed above within the consultations section of this report

Specific Highway concerns that have been raised are discussed below:-

Visibility Splay

Local residents have raised concerns with regards to the revised visibility splays to the east which now measure 2.3m x 43m and measure 2.3m x 29m to the west, rather than 2.4m x 43m to both directions as previously approved.

It is acknowledged that the visibility splays are proposed to be reduced compared to those previously approved and conditioned to be retained. However, the Highway Authority has confirmed that standard local specifications in relation to visibility splays are guidance and that the Highway Authority considers each individual case where such standards are not met. Indeed the Highways Design Guide does allow for flexibility in assessing individual circumstances.

It is noted that the Highway Authority have commented that the reduction in the eastern splay is 'marginal and almost discernable' and although there is a reduction in the western splay, sight distance would be greater than that quoted.

In simple terms the Highway Authority has assessed the access and splays and has concluded that this will not compromise highway safety. This includes having been asked to reconsider the matter on several occasions given the very clear levels of local concern.

Given that these comments are made by experienced highway professionals representing the highway authority there is nothing before officers which would contradict their advice. That does not mean as a professional officer that I would advocate the process followed in this particular case of works being done in advance of obtaining a revised permission, a matter I discuss below. Nevertheless focusing solely on planning merits, the proposal is acceptable in this regard.

Reduced footway widths

The footway has been reduced in width to 1.8m (0.2m less than previously approved) with a pinch point section reduced to 1.6m. The Highway Authority considers that this complies with the minimum width of 1.2m allowed under the Highway Design Guide and therefore raises no concerns in this regard. It is therefore considered that given this advice the reduced footway width would not compromise pedestrian safety.

No updated Transport Statement

The Highway Authority has confirmed that an updated Transport Statement is not considered necessary in this instance, given the proposal is submitted via the s73 process and the short length of time which has elapsed since the original permission.

Proximity of access to existing dropped kerb

This has been considered in light of local and national guidance and in light of the local circumstances. The Highway Authority has raised no concerns that this proximity would

compromise highway or pedestrian safety and that it is not an unusual situation within the County.

Access width

The Highway Authority has confirmed with officers that the access is of sufficient width to accommodate 2 passing vehicles. It is therefore considered that the access would not result in vehicular conflict.

Disabled highway and footpath users

The comments received with regards to the safety of disabled pedestrians by virtue of the camber and gradient of the dropped kerb that has been constructed are duly noted. The Highway Authority has advised that they are satisfied that the standards in relation to the gradient of a footway have not been exceeded in this instance. The applicable standards are that the gradient of a footway should not, except in exceptional circumstances, exceed 1 in 12 and where a dropped crossing is in place the gradient should not exceed 1 in 11. The submitted drawings show a gradient of 1 in 40.

Therefore the access as constructed is considered to meet the relevant policies and highway guidance.

Drainage

The Highway Authority has assessed the drawings deposited with the application which details drainage measures and has raised no objections to the variation of conditions 4 and 5 of the original permission in relation to the access drainage details. Officers are therefore satisfied that the revised access raises no drainage issues.

Landownership

It is acknowledged that the developer has constructed the access to be within land within the ownership of the Nottinghamshire County Council, albeit notice has also been served (without prejudice) on neighbouring properties. In order to achieve this, the access has been constructed in accordance with the revised design noted within the proposals section of this report. Given the comments of the Highway Authority officers are satisfied that the revised access within land owned by the County Council does not result in a reduction in safety standards. If this land ownership is to be disputed Members will be aware that this will be a matter for the interested parties to resolve via the courts.

The agent has confirmed in writing that the applicant is Springfield Ecohousing and the application has been revised accordingly.

Inaccurate plans and highway calculations

Officers are satisfied that the details and drawings deposited with the application are satisfactory and adequate for the purposes of determining the application and as confirmed by the Highway Authority are in accordance with their Highway Design Guidance. In terms of calculation of traffic flow the Highway Authority have confirmed in their latest comments that this is considered to be low.

Other matters

Breach of Planning Conditions

I note the comments received with regards to the application being retrospective and that the development has been carried out in breach of the planning permission issued in March 2017 together with the requests that the Council should therefore take action. This Council, as with many across England, is well versed and frustrated (I say that as part of the Officer cohort) by the issue of retrospective permissions where works take place which are not in accordance with what has been consented. Indeed, there are other such examples on the agenda this evening.

As Members will be aware the National Planning Policy Framework (NPPF) captures national guidance as to when an LPA should consider enforcement action for a breach of planning control. This is supplemented by the Planning Policy Guidance (PPG) on-line tool. Both the NPPF and PPG make clear that "Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."

Specifically Paragraph: 011 (Revision date: 06 03 2014) of the PPG states that:

"In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed."

It is clear that there has been a breach of planning control in that the access has been constructed not in accordance with the plans and details approved in the 2016 application or the subsequent discharge of condition application.

The Highway Authority has advised the developer and the Council that the proposed revisions are acceptable in highways terms and have confirmed in their formal consultation comments that there are no highway objections. Being mindful of the current applications, the comments of the highway authority, and the government guidance in the NPPF and PPG with respect to when enforcement action should be taken, it was not considered appropriate to take any action at this time pending the determination of the applications on this agenda. Should Members be minded to refuse permission then this position would be reviewed.

This matter notwithstanding, the developer has been advised both verbally and in writing by the Council that they are currently in breach of planning permission and that any works that have been undertaken or any continuation of works on site are entirely at their own risk pending any decision by Planning Committee. This has already had an impact in that commencement means that any retrospective planning permission can no longer benefit from CIL affordable housing relief.

Highway Restrictions

Comments received with regards to highway users ignoring existing traffic regulations on Halloughton Road is not a matter for the Local Planning Authority but would be a police matter.

Assessment of conditions

The PPG 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. In this case as the development has begun, the time condition does not need to be re-imposed. Conditions 3 and 4 of the original permission in relation to drainage and matters such as gradients, sections, lighting, construction specifications etc. have been formally discharged. Notwithstanding this the plans submitted with this current retrospective application include these details and the Highway Authority advise no objections are raised and that conditions 2, 3, 4 and 5 can therefore be varied accordingly

For ease of reference the conditions as originally imposed are listed in full below (in the recommendation section) with strikethrough text used to represent parts of the condition no longer required and bolded text used to indicate new wording. The conditions have been reworded where details have been provided through the discharge of conditions or revised plans. Commentary is also provided where this is considered necessary.

Conclusion and Planning Balance

It should be noted that only the very narrow scope of the matters of varying the conditions imposed are open for consideration given the other matters discussed above. In this instance this relates to highway implications and acceptability of the scheme. Nottinghamshire County Council Highways Authority has been consulted as the relevant technical experts who conclude that the revised access which has been constructed by VIA East Midlands would not cause highway harm and I would accept their conclusion in light of no technical evidence to the contrary.

RECOMMENDATION

That full planning permission is approved subject to the following conditions:-

~~01~~

~~The development hereby permitted shall not begin later than 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.~~

~~02-01~~

The development hereby permitted shall be ~~carried out~~ **retained** in accordance with the following approved plan:-

~~• 12/1889/750~~

- **HALL-BSP-ZZ-XX-DR-C-100 Rev P6 deposited 7th April 2019**

~~unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the permission.~~

Reason: So as to define this permission.

~~03-02~~

~~No development shall be commenced until~~ **The development shall be retained** in accordance with details of drainage and surface water disposal ~~have been submitted to and approved in writing by the local planning authority. The development shall be carried out thereafter in accordance with the approved details unless otherwise agreed in writing by the local planning authority.~~ as shown on the plan approved by condition 1 of this permission ref: HALL-BSP-ZZ-XX-DR-C-100 Rev P6 deposited 7th April 2019

Reason: To ensure the provision of satisfactory means of foul sewage/surface water disposal.

~~04-03~~

~~No part of the development hereby permitted shall take place until details of the new access road have been submitted to and approved in writing by the Local Planning Authority including~~ **The development shall be retained in accordance** with longitudinal and cross sectional gradients, street lighting, drainage and outfall proposals and construction specification as **shown on the approved plan approved by condition 1 of this permission ref: HALL-BSP-ZZ-XX-DR-C-100 Rev P6 deposited 7th April 2019** provision of utilities services, and any proposed structural works. The development shall be implemented in accordance with these details to the satisfaction of the Local Planning Authority.

Reason: To provide a suitable standard of access and to allow for future maintenance.

~~05-04~~

~~No part of the development hereby permitted shall be brought into use until~~ The visibility splays of 2.4m x 43m shown on drawing no. 12/1889/750 are provided.

- **2.3m x 43m to the right/east of the access**
- **2.3m x 29m to the left/west of the access**

shall be retained in accordance with the plan approved by condition 1 of this permission ref: HALL-BSP-ZZ-XX-DR-C-100 Rev P6 deposited 7th April 2019

The area within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.25 metres in height unless otherwise agreed with the Highway Authority.

Reason: For the avoidance of doubt.

Note to Applicant

01

The application as submitted is acceptable. In granting permission without unnecessary delay the District Planning Authority is implicitly working positively and proactively with the applicant. This is

fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

02

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

03

Severn Trent Water have advised that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

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BACKGROUND PAPERS

Application case file.

For further information, please contact Bev Pearson on ext 5840

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

Matt Lamb
Director Growth and Regeneration

Committee Plan - 19/00689/FUI

