

PLANNING COMMITTEE – 6 AUGUST 2019

Application No:	19/00192/RMA	
Proposal:	Application for variation of condition 01 to be varied to include for Drawing No. 1G/31/2017 Site Plan Revised and 03 to be varied to include for the revised boundary treatments shown on the above drawing attached to planning permission 17/01573/RMA	
Location:	Land Off Hutchinson Road, Newark On Trent	
Applicant:	Capla Developments Ltd - Mr Paul Stubbins	
Registered:	1 February 2019	Target Date: 29 March 2019 Extension of Time: 7 August 2019

This application is before the Planning Committee for determination as the officer recommendation differs from the views of the Parish Council.

Update to Planning Committee

Members at the April Planning Committee resolved to agree contrary to Officer recommendation that planning permission be refused on the following grounds:

- (i) that the loss of previously existing hedgerow and approved new hedgerow boundary treatments and its replacement with close boarded timber fencing would be unacceptable to the appearance and amenity of the site when viewed from Hutchinson Road and the biodiversity of the area; and
- (ii) enforcement action to be delegated to the Director of Growth & Regeneration.

Officers subsequently commenced enforcement proceedings and a Planning Contravention Notice (PCN) was served on the Applicant on 10th April 2019 with the intention of issuing a breach of condition and/or enforcement notice. The decision notice for 19/00192/RMA has not yet been issued as ordinarily this should be done on the same day as an enforcement notice to avoid multiple opportunities for appeal. However, during this time a number of further discrepancies with the plans approved by 17/01573/RMA have been revealed and Officers have therefore sought to ensure that all plans to be subject of any decision on 19/00192/RMA and any subsequent enforcement proceedings are correct in order to avoid any abortive works. In addition, the Applicant has sought to remedy some of the concerns raised through the submission of a revised plan (N.b. Drawing No. 1B/31/2017 has been replaced with Drawing No. 1G/31/2017) which represents a new material consideration in the determination of the application.

It is on this basis that the application is brought back before the Planning Committee to ascertain whether these amendments have changed the views of Members.

The discrepancies and revised plans are best described through the chronology of plans received/key stages during the lifetime of the application as set out below:

1. Proposed Site Plan (1/31/2017) approved by 17/01573/RMA on 26 October 2017 including subsequent update (1A/31/2017) through the discharge of planning conditions in relation to proposed boundary treatments (details of which were required by planning condition) on 27 April 2018. This plan shows the retention of existing hedgerow along the west and part of the east boundary and the planting of a replacement hedgerow along the site frontage and along part of the east boundary:-



1A/31/2017

2. Development commenced March/April 2018. The LPA first became aware that the site had been constructed in breach of the planning condition in December 2018 and the developer was invited to submit a retrospective application to remedy the breach of planning control.
3. A S73 application (to vary the relevant condition) reference 19/00192/RMA was submitted in February 2019 and proposed an amended Proposed Site Plan (1B/31/2017) which was subsequently considered and resolved to be refused by Members at April 2019 Planning Committee. This plan showed the addition of close boarded fences to the majority of the site boundaries (marked by the letter 'J').



1B/31/2017

4. A Planning Contravention Notice (PCN) was served on the Applicant on 10th April 2019 to seek further information regarding the alleged breach of planning control in order to further clarify the accuracy and nature of the breach concerned and next steps. The Applicant was further advised that steps would be required to revert the boundary treatments back to those originally approved in order to remedy the breach of planning control through a potential breach of condition and/or enforcement notice. In accordance with Planning Practice Guidance, a PCN can be used to invite its recipient to respond constructively to the local planning authority about how any suspected breach of planning control may be satisfactorily remedied. As such, a site meeting with the Enforcement Officer took place on 10.05.2019. This site visit revealed that drawing no. 1B/31/2017 does not fully reflect the development as built on site. Of particular note, the garden for Plot 1 is 3 metres deeper at its widest point as constructed on site than as shown on 1B/31/2017. As such, it quickly became apparent to Officers that progressing enforcement action on the basis of inaccurate plans could lead to abortive works and a potential risk of costs should the enforcement notice be appealed.
5. Initially, it therefore appeared that the development had encroached beyond the approved red line boundary. However, the Agent subsequently provided a further amended Proposed Site Plan (1C/31/2017) received 21 May 2019 to demonstrate that the proposed plots have been built fully within the approved red line boundary. This revised plan has altered the position of the west boundary of the site. Following extensive discussion and investigation on this issue, Officers agree that the proposed development has been undertaken within the approved red line boundary.



1C/31/2017

6. The Proposed Site Plan (1/31/2017) approved by 17/01573/RMA below shows that the original hedgerow along the west boundary of the site was not located along the red line boundary of the site.



1/31/2017 with approved 'red line boundary' shown in blue.

7. Therein lies an issue with the full enforceability of a breach of condition in relation to compliance with Condition 3 of 17/01573/RMA in respect of all boundaries as this condition requires 'precise details of all the existing and proposed boundary treatments along the red line boundary of the site' and this hedgerow was not located along the red line boundary. Nevertheless, had Officers been aware that the true red line boundary of the application site was not located along the west boundary of the site as shown on the plans submitted at the time, it is highly likely that a replacement hedgerow would have been recommended along this boundary in any event.
8. The latest revised Site Plan Drawing No. 1G/31/2017 which according to our investigation does reflect the development as constructed on site, further demonstrates that the fence constructed to the front of Plot 7 is not located along the red line boundary of the application site either. It is set further back into the site. This means that it is not

possible to enforce against non-compliance with Condition 3 of 17/01573/RMA in relation to the requirement for a replacement hedgerow along the south boundary to the south of Plot 7. Furthermore I must stress that the fence in this position can also be erected under the benefit of permitted development rights.



1G/31/2017

9. Nevertheless, I do consider Condition 3 of 17/01573/RMA to be enforceable in relation to all other boundaries including west of Plot 7, west of Plot 2 and part of the west boundary of Plot 3. However, Members should be aware that amended Drawing No. 1G/31/2017 seeks to remedy the concerns raised by Members through the removal of the close boarded fence to the south/front of Plot 1 and its replacement with a post and rail fence with hedge, the removal of the close boarded fence to the west of Plot 1 and the provision of a replacement hedgerow and through enhanced landscaping to the front of the site as shown on the revised landscape scheme below:



Extract from 003A Detailed Landscape Plan

10. Notwithstanding my views on the limited enforceability of the breaches that have occurred in relation to Condition 3, the development as constructed on site is still in breach of Condition 1 and the approved plan 1A/31/2017 insofar as the garden areas as constructed on site are wider than those shown on the approved plans.

11. From an Officer point of view, I recommend that the changes shown on amended Drawing No. 1G/31/2017 be approved. The enlarged garden area is considered acceptable in principle and is mitigated to some degree by the replacement hedge now proposed along the west boundary of Plot 1. Members should be aware that an indicative layout for 4 town houses (approved under 18/00849/OUT) back onto Plots 1-3 immediately to the west of the site. As such, whilst a replacement hedge has been secured to the west of Plot 1, the entire boundary is not highly visible in the street scene and the visual impact of the removal of the hedge along this boundary is significantly reduced. Appropriate boundary treatments along the west boundary can also be secured in any future reserved matters application that comes forward on this site. The set back of Plot 7 enables a greater amount of landscaping to occur along the site frontage – the close boarded fence here benefits from permitted development rights. Members should also be aware that there have been/are some potential civil issues in relation to the boundary between Plot 7 and no. 1 Liburne Close and the Applicant advised that the owner of 1 Liburne Close removed the existing hedgerow along this boundary in the first instance rather than the developer – in any event it is clear that a secure boundary treatment between the two properties is required here.

Summary

It is recognised that the Applicant has made an attempt to remedy the concerns made by Members previously by improving/adding to the soft landscaping provided along the site frontage, and replacing sections of close boarded fence around Plot 1 with a post and rail fence/additional hedgerow planting. I remain satisfied that the proposed variation is acceptable and it is therefore my recommendation remains for approval.

However Members will need to form a view as to whether the amendments have allayed their previous concerns. In the event that Members are not satisfied that the concerns have been adequately addressed, I advise that enforcement action would have to be limited to the removal of the close boarded fencing and replanting of the hedgerow to the east of Plot 7 and west of Plot 2 and part of Plot 3.

UPDATED RECOMMENDATION

That full planning permission is approved subject to the conditions (as amended) set out at the end of this report.

For the avoidance of doubt, the report remains the same as previously presented at April Planning Committee other than an update to the 'Public Consultation Procedure', 'Consultations' and planning conditions sections below (shown in bold and italic text).

The Site

The application site relates to a rectangular shaped site approximately 0.39 Hectares in area on which seven detached dwellings have been recently constructed. The site is located, within a modern residential area of Newark towards the eastern edge of the settlement, to the south side of Beacon Hill Road and to the west of the A1 dual carriageway. The site borders Hutchinson Road and two storey dwellings to the south, modern two storey dwellings to the east along Lilburne Close, residential gardens to the north; and borders a densely vegetated linear open space to the west.

Relevant Planning History

17/01573/RMA Submission of reserved matters in pursuance of conditions 02, 04, 05, 06, 07, 010, 011 and 012 of outline planning permission ref. no. 15/01839/OUT for proposed residential development – permission 26.10.2017

15/01839/OUT Proposed residential development (outline) – permission 07.12.15.

The Proposal

The proposal is to vary conditions 1 & 3 of planning permission 17/01573/RMA which was for reserved matters consent for the erection of 7 dwellings and associated public open space, landscaping and infrastructure.

Condition 1 relates to the approved plans that the development must comply with.

Condition 3 relates to boundary treatments and requires the following:

Notwithstanding the submitted information, precise details of all the existing and proposed boundary treatments along the red line boundary of the site including types, height, design and materials, must be submitted to and approved in writing by the local planning authority prior to the commencement of development. The approved boundary treatment for each individual plot on site shall be implemented prior to the occupation of each individual dwelling and shall then be retained in full for a minimum period of 5 years unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of residential and visual amenity in accordance with Core Policy 9 of the Core Strategy and Policy DM5 of the DPD.

The amendments to the approved plans and submitted details pursuant to the boundary treatments condition can be summarised as:

- Proposed new brick pillars 580 x 580 x 1800mm in height with timber 5-bar gates in between measuring 1200mm in height;
- The removal of the existing hedgerow and the erection of a 1.8 metre high close boarded fence along the west, south and part of the east boundaries of the site. A replacement beech hedge has been planted (to measure 2 metres high) along the south frontage of the site (in front of the fence).

The following documents have been submitted with the application:

- 1B/31/2017 Rev B Site Plan
- Image of proposed Hutchinson Road entrance

Public Advertisement Procedure

Occupiers of 33 properties have been individually notified by letter **and reconsulted on the latest revised plan received.**

Planning Policy Framework

The Development Plan

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

- Spatial Policy 1 - Settlement Hierarchy
- Spatial Policy 2 - Spatial Distribution of 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

Allocations and Development Management DPD (adopted July 2013)

- Policy DM1 – Development within Settlements Central to Delivering the Spatial Strategy
- Policy DM3 - Developer Contributions
- Policy DM5 – Design
- Policy DM7 – Biodiversity and Green Infrastructure
- Policy DM12 – Presumption in Favour of Sustainable Development

Other Material Considerations

- National Planning Policy Framework 2019
- Planning Practice Guidance 2014

Consultations

Newark Town Council

Comments received 28.02.2019:

Members AGREED to OBJECT to this application on the following grounds:

- * the application is in breach of the conditions
- * trees with TPO's on have been removed
- * should this application be permitted, it would set a precedent for other developments in the area.

Further, the Town Council is of the view that the District Council should be satisfied that all existing conditions are fulfilled prior to any further development. If there is an existing breach of the conditions, then all necessary works should be completed before any further sales of properties take place.

NCC Highways - This application is for the variation of conditions 1 and 3 for application 17/01573/RMA, to include revised boundary treatments as shown on revised site plan, ref. 1B/31/2017. There are no highway objections to the boundary treatment now submitted.

NSDC Tree Officer – No objection.

Four ~~No~~ representations have been received from any local residents/interested parties. *The comments raised seek support for the approval of the planning application. Main issues raised include:*

- *New residents of houses on the proposed development were not advised on any outstanding planning decision when they purchased the properties;*
- *The close board fencing currently installed is fit for purpose and maintains adequate and safe boundaries. Removal/replacement of the fencing would adversely affect the safety and security of all properties located on the development, would also allow domestic animals from neighbouring gardens to easily escape increasing highway safety concerns, reducing safety young children playing in their own gardens and increase overlooking.*
- *There is a clear and unambiguous precedent for this type feather board fencing at the adjacent development at The Woodlands and at other properties on the Newbury Road Estate. A retrospective planning application was granted on 21.09.16 (16/01120/FUL) to erect 2m high fencing and landscaping to Number 10, The Woodlands - the road next to The Heights;*
- *properties on the development would be exposed to potential burglars who could easily monitor residents' movements and personal property from the empty and unmaintained sites around the development;*
- *Removal/replacement of the fencing would result in a significant disturbance to residents. The removal of the current fencing, which would damage carefully planted and well looked after gardens, to be replaced by another means of enclosure would be a waste of time. The financial implications of such a change would have to be met by residents who purchased the houses in good faith, unaware of such issues;*
- *The fencing screens the houses from adjacent potential construction sites in the future;*
- *We purchased our house on the basis of its privacy and high levels of security and would make it clear that we would not have proceeded had a low level see through fence been installed. Our patio and open plan garden faces the road which would make the plot highly visible and insecure.*
- *The developers, Capla, have removed the 1.8m featherboard fencing to Plot 1, replacing it with low level open post and rail (see Photo 3 attached) which is not in keeping with the Newbury estate being both fully open, highly visible and security risk making it highly unappealing;*
- *The denial of the amended plans has caused significant distress for residents in the area and uncertainty for those who live near it and adjacent to it;*
- *The existing fences to remain in situ should be permitted.*

Comments of the Business Manager

Principle of Development

This application is made under Section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact.

If the application is acceptable a decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity, decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original

planning permission, where appropriate. As a Section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission.

The principle of the development has already been established through the granting of the outline and subsequent reserved matters consent. There has been no significant material change in the Development Plan context relevant to the consideration of the changes to the proposed boundary treatments since the determination of these applications, albeit the adoption of the Amended Core Strategy (adopted 2019) and revised NPPF 2019 is noted.

The first matter to consider is whether the LPA are satisfied that a lawful start was made having regard to whether the pre-commencement conditions were discharged. In this case, the application is retrospective in nature and the time limits for implementation are no longer relevant as a consequence. As such, the application as made can reasonably be considered under Section 73 of the Town and Country Planning Act 1990 to vary the plans condition.

The second matter to consider is whether it is appropriate to allow the development to be approved in accordance with the amended plans proposed. Core Policy 9 requires new development proposals to demonstrate a high standard of sustainable design that both protects and enhances the natural environment. Policy DM5 requires the local distinctiveness of the District's landscape and character of built form to be reflected in the scale, form, mass, layout, design, materials and detailing of proposals for new development. Policy CP12 of the adopted Core Strategy states that proposals should provide for the continued protection of the District's ecological, biological and geological assets.

I consider the loss of the existing hedgerow to be highly regrettable especially as Officers made it clear in the determination of both the outline and reserved matters consent that existing hedgerow along the boundaries of the site should be retained through the imposition of the relevant planning conditions for both visual amenity and biodiversity reasons. As a consequence of the removal of the existing hedgerow, the development is in breach of the relevant planning conditions.

As the variation has already been implemented on site, the visual impacts are clear to see. It is worth noting that whilst the planning permission included conditions to protect against the loss of the hedgerow and trees on site, it did not remove permitted development rights for the erection of means of enclosure in the future. As a consequence, the future occupiers of the proposed dwellings would have been able to remove hedgerow along their boundary and replace it with an alternative means of enclosure following the 5 year period for retention of the approved boundary treatments required by condition 3 (provided this means of enclosure complied with permitted development rights which would be up to 2 metres in height not adjacent to the highway).

The erection of the close boarded fencing to the east and west boundaries of the site are not considered to result in a detrimental impact upon the visual amenity of the area as they are not highly visible from Hutchinson Road. The close boarded fencing erected along the site frontage is more visible. I note that a hedgerow and saplings in tubes have been planted forward of this fence. Whilst at the present time, this does not mitigate for the loss of the mature hedgerow located here, it is considered that over time, the adverse visual impact caused by the close boarded fence would be fully mitigated.

The proposed brick piers (1.8 metres high) and gates (1.2 metres high) create a gated access to the

site and did not form part of the approved plans. As they are located adjacent to the highway and exceed 1 metre in height, I consider them to require planning permission in their own right. I note that there is a similar development with a gated access located along Hutchinson Road. As such, I do not necessarily consider them to be out of keeping with the site context and do not consider them to be an addition which is harmful to the character of the street scene.

Overall, the proposal is considered to be acceptable and the proposed plans can be substituted into the plans condition.

It is not considered that there are any other changes to circumstances which affect the consideration of this application.

The relevance of other conditions attached to Application Number 17/01573/RMA

Condition 1 (approved plans) can be amended to reflect the revised plans proposed by this application.

Condition 2 (landscape scheme) is still considered relevant as no precise planting specifications have been submitted with this application which is required in order to ensure the landscaping is thereafter properly maintained.

Condition 3 (Boundary Treatments) can be deleted as it is superseded by the revised plan to be approved by Condition 1.

Condition 4 (obscure windows) is still considered relevant and should be re imposed as part of any new permission.

Condition 5 (permitted development rights removed for extensions and alteration to the approved dwellings) is still considered relevant and should be re imposed as part of any new permission.

It is noted that the amended plans submitted as part of this application are also contrary to Condition 5 of the outline consent which required the reserved matters application to include a detailed landscaping and planting scheme incorporating the retention of the existing trees and hedgerows along the north, south, east and west boundaries of the site. Members should be aware that the development would also be in breach of this condition albeit approval of this application would be tantamount to agreeing that no further action would be taken in relation to this condition.

Other issues

In relation to the comments raised by the Town Council, the Local Planning Authority is not aware of any trees with TPO's adjacent to the site being removed. There are no trees with TPOs within the application site itself albeit trees located at the south east and south west corners of the site are protected by Tree Preservation Order.

Conclusion

It is considered that subject to the attachment of the relevant conditions addressed earlier in this report that the proposed variation is considered to be acceptable and is recommended for approval.

RECOMMENDATION

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

01

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

1G/31/2017 Rev B Site Plan

2A/31/2016 Plot 1 House Plans and Elevations

3A/31/2016 Plot 2 House Plans and Elevations

4A/31/2016 Plot 3 House Plans and Elevations

5A/31/2016 Plot 4 House Plans and Elevations

6A/31/2016 Plot 5 House Plans and Elevations

7A/31/2016 Plot 6 House Plans and Elevations

8/31/2016 Plot 7 House Plans and Elevations

21A/31/2017 Site Levels Application Number: 17/01573/RMA Previous Ref: PP-06345503

9/31/2016 Garage Block Plans and Elevations

Location Plan 1:1250

Arboricultural Impact Assessment, Method Statement and Tree Protection Plan (Ref RSE_1138_01_V2 August 2017)

N0443 (96) 003A Detailed Landscape Plan (Date 23.07.19)

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 approval.

02

~~Within three months of the date of this permission, a scheme including a plan illustrating the landscaping on site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include full details of every tree, shrub, hedge planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards, and structural cells.~~

Any trees/shrubs as shown on the approved soft landscaping (in respect of Condition 1) which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority.

Reason: For the avoidance of doubt and to ensure the landscaping is thereafter properly maintained in accordance with Policy CP 9 and 14 of the Core Strategy and Policies DM5, DM7 and DM9 of the Allocations and Development Plan Development Plan Document (DPD).

03

The following window openings hereby approved shall be obscured glazed to level 3 or higher on the Pilkington scale of privacy or equivalent and shall be non-opening up to a minimum height of 1.7m above the internal floor level of the room in which it is installed:

- Plot 5 First floor ensuite window in the east facing side elevation
- Plot 6 First floor landing window in the east facing side elevation
- Plot 7 Second floor landing window and two en-suite windows in the east facing side elevation.

This specification shall be complied with before the development is occupied and thereafter be retained for the lifetime of the development unless otherwise agreed in writing by the local planning authority.

Reason: To safeguard against overlooking and loss of privacy in the interests of amenity of occupiers of neighbouring properties in accordance with Policy DM5 of the DPD.

04

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 under Schedule 2, Part 1 of the Order to Plots 5, 6 or 7 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.

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

Reason: To ensure that the local planning authority retains control over the specified classes of development normally permitted under the Town and Country Planning (General Permitted Development) Order 2015 or any amending legislation) in order that any proposed further alterations or extensions result in no adverse impact upon residential amenity.

Informatives

01

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at www.newark-sherwooddc.gov.uk/cil/

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development given that there is no net additional increase of floorspace as a result of the development.

02

This application has been the subject of pre-application discussions and has been approved in accordance with that advice. The District Planning Authority has accordingly worked positively

and pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

Background Papers

Application Case File

For further information, please contact Helen Marriott on ext 5793.

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

Matt Lamb
Director of Growth and Regeneration

Committee Plan - 19/00192/RMA

