

PLANNING COMMITTEE – 6 AUGUST 2019

Application No:	19/01160/S73	
Proposal:	Application to vary conditions 2 and 7 attached to planning permission 16/00155/FUL to lower floor level by 270mm	
Location:	8 Willow Drive North Muskham Newark On Trent Nottinghamshire NG23 6EX	
Applicant:	Mr Mark Brown	
Registered:	27.06.2019	Target Date: 22.08.2019

This application is being included on the Planning Committee agenda as the views of the Parish Council are not yet known albeit they raised an objection to the original application. The Parish Council comments are due in the period between agenda print and the Meeting and therefore will be reported to Members as a late item if they form an objection. If they form support for the proposal, the application will be removed from the agenda and approved under delegated powers.

The Site

The application site relates to a site area of approximately 0.9 hectares located at the head of a cul-de-sac within the built up area North Muskham village. The site comprises a vacant plot which was part of a comprehensive residential development of 8 dwellings granted planning consent in 2004 and is the only plot not developed.

Two storey dwellings exist to the north, south and west of the site and to the east the land is adjoined by a paddock area.

The immediately adjoining neighbour to the south (no. 6 Willow Drive) is a two storey detached dwelling. This property has principle room windows to its rear elevation and no windows to the gable facing the site. 1.8m high close boarded fence forms the boundary with the application site. There is a detached outbuilding sited within the rear garden of this property.

To the north, the adjoining properties on Willow Drive are large two storey detached dwellings with open plan frontages whilst to the west on the opposite side of Willow Drive there is a terrace of 3 two storey dwellings. The front boundary of the site comprises a 1m high brick wall.

The site lies in Flood Zone 2 as indicated on the Environment Agency's Flood Risk Maps, at medium risk of flooding. Trees along the eastern boundary are subject to protection through Tree Preservation Orders.

Relevant Planning History

16/00155/FUL – Erection of 3(No.) Three Bedroom Houses. *Application approved by committee in August 2016 subject to conditions.*

Conditional planning permission was granted in February 2005 for the erection of 8 dwellings – **04/02777/FUL**. Conditions attached to this permission were subsequently discharged. 7 of the 8 dwellings approved have been constructed and this permission therefore remains extant.

Outline planning permission was granted in July 1999 for the erection of 5 dwellings – **99/51345/OUT**. This permission was not implemented.

The Proposal

The application has been submitted as a Section 73 application to vary conditions 2 and 7 of permission 16/00155/FUL to allow the floor level of the approved dwellings to be lowered by 270mm (set at 10.470 rather than 10.740 AOD).

Condition 2 stated:

The development hereby permitted shall not be carried out except in complete accordance with the following approved plans reference:

Topographical Survey (Proposed Site Plan) – drawing no. 1D/37/2015 received 4th August 2016

Plans and Elevations as proposed – drawing no. 3/37/2015

unless otherwise agreed in writing by the local planning authority through the approval of a nonmaterial amendment to the permission.

Reason: So as to define this permission.

Condition 7 stated:

The Development shall be carried out in full accordance with the flood mitigation measures contained within the Flood Management Proposal section of the Flood Risk Assessment produced by Clive Davies dated 17th May 2016.

Reason: To prevent flooding elsewhere by ensuring that no loss of floodplain storage occurs as a result of this development.

No other external alterations are sought in comparison to the extant approval. There is also no increase to the footprint of the dwellings already approved.

The application has been considered on the basis of the following plans and documents:

- Supporting Statement Rev a received 4th July 2019;
- Proposed Site Layout – 19012.01 rev. d received 4th July 2019.

Departure/Public Advertisement Procedure

Occupiers of 13 properties have been individually notified by letter. A site notice has also been displayed near to the site.

Planning Policy Framework

The Development Plan

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

Spatial Policy 1 - Settlement Hierarchy
Spatial Policy 3 – Rural Areas
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 & Development Management DPD

DM5 – Design
DM7 – Biodiversity and Green Infrastructure
DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework 2019
- Planning Practice Guidance (online resource)

Consultations

North Muskham Parish Council – No comments received at the time of agenda print.

Environment Agency – Thank you for consulting us on the application above. The application is to vary the conditions for 'more vulnerable' residential development in Flood Zone 2, and can therefore be determined by the LPA in line with our national flood risk standing advice (FRSA). We do not ask to be consulted on development proposals of this type. The FRSA can be found at the following link:

<https://www.gov.uk/guidance/flood-risk-assessment-standing-advice#standing-advice-for-vulnerable-developments>

None the less, our FRSA clearly states that the finished floor levels (FFL) of more vulnerable development in FZ2 should be set 600mm above the 1 in 100 year flood level, including an allowance for climate change, where possible. The FRSA goes on to state that where this FFL is not possible, developments should incorporate extra flood resilient construction measures to mitigate the risks associated with water entry. It's worth highlighting that, if FFL are set below the previously conditioned level, there is a chance that floodwater could enter the ground floor of the dwellings during the more extreme flood events. That fact that the area has not been flooded recently (owing to defenses) does not remove the risk of future flooding; this has been seen in

other areas of the country where severe flooding has occurred following prolonged periods of 'no flooding'.

Ultimately, as the site is within FZ2 only, it is up to your Authority to consider the mitigation proposed by the applicant and determine whether or not you are comfortable with the residual risks that might remain.

NCC Flood – Thank you for inviting the Lead Local Flood Authority (LLFA) to comment on the above application. Having considered the application the LLFA will not be making comments on it in relation to flood risk as it falls outside of the guidance set out by Government for those applications that do require a response from the LLFA.

As a general guide the following points are recommended for all developments:

1. The development should not increase flood risk to existing properties or put the development at risk of flooding.
2. Any discharge of surface water from the site should look at infiltration – watercourse – sewer as the priority order for discharge location.
3. SUDS should be considered where feasible and consideration given to ownership and maintenance of any SUDS proposals for the lifetime of the development.
4. Any development that proposes to alter an ordinary watercourse in a manner that will have a detrimental effect on the flow of water (eg culverting / pipe crossing) must be discussed with the Flood Risk Management Team at Nottinghamshire County Council.

Trent Valley Internal Drainage Board – The site is within the Trent Valley Internal Drainage Board district.

There are no Board maintained watercourses in close proximity to the site.

Surface water run-off rates to receiving watercourses must not be increased as a result of the development.

The design, operation and future maintenance of any drainage systems must be agreed with the Lead Local Flood Authority and Local Planning Authority.

NSDC Emergency Planner - First I must clarify that I am not formally qualified in issues of hydrology or associated environmental sciences. However I am aware of the guidance and advice of the environment agency. I am also aware of the significant risk of flooding across Nottinghamshire and the strain that can be placed on agencies responding to flood events and to the distress felt by occupants who's homes are flooded.

I was not involved in considering other developments in the local area including the dwellings referred to in this application and may not have considered the FFL of those homes as appropriate.

I do not accept that it is not possible to achieve the required FFLs surely this is a matter for effective and creative design. Similarly I do not accept that it would not be possible to design a dwelling that would be accessible to less able or elderly residents. Indeed if the property were to be flooded at the lower FFL, then those less able may face considerable challenges in coping with such an event. Therefore designing a dwelling safe from flooding would appear to be desirable.

I do not believe that in assessing risk I should consider the aesthetic appeal of the property.

The flood mitigation measures described in the application are minimal, there are many other design measures that can be incorporated into a building to mitigate against flood risk. If the application is considered favourably I would expect to see more comprehensive design features.

No letters of representation have been received.

Comments of the Business Manager

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.

An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. In determining such an application the local planning authority is only able to consider the question of the conditions subject to which planning permission should be granted, and—

- (a) if the authority decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, the authority shall grant planning permission accordingly, and
- (b) if the authority decides that planning permission should not be granted subject to the same conditions as those subject to which the previous permission was granted, the authority shall refuse the 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. In this context it is worthy of note that the LPA are satisfied that the work commenced within the prescribed timeframe of the original application (i.e. by August 5th 2019).

Whilst the application has defined which conditions are sought to be varied, the local authority has the power to vary or remove other conditions if are minded to grant a new planning consent. Full planning permission was granted in August 2016 subject to a number of conditions. The conditions to be varied are numbers 02 and 07.

Impact on Flood Risk

The application site is located within Flood Zone 2 and therefore matters of flood risk were a significant consideration in the consideration of the extant permission. At this time, it was considered that the then extant permission which existed on the site formed a strong fall back position to allow the Sequential Test to be passed. It would not be appropriate to re-apply the Sequential Test at this time noting the extant permission for three dwellings.

It is however appropriate to apply the Exception Test given that the flood mitigation measures (i.e.

the finished floor levels) which were secured on the extant scheme, are now proposed to be lowered by 270mm.

The supporting statement accompanying the current submission splits the rationale for the submission into matters of practicality; aesthetics; and amenity. Briefly summarized, the reasons for lowering the proposed floor levels are:

- The levels as currently agreed but require a stepped approach making it more difficult for inclusive access;
- The levels as currently agreed would mean that the proposed dwellings would be approx.. 600mm higher than the adjacent properties;
- The levels as currently agreed would impact on the privacy of the adjacent neighbor to the south (6 Willow Drive).

The originally submitted Flood Risk Assessment (FRA) stated an assumed flood level of 10.140 AOD for the application site. It is now submitted that further data suggests the level would actually be 10.090 AOD (i.e. 50mm lower). Anecdotal evidence of a lack of flooding at the site is also referenced.

The above arguments form the basis for the current application to vary the conditions citing the approved floor levels as 'unrealistic and unachievable'. The finished floor level now proposed is 10.470 AOD (i.e. 380mm above the revised flood level). There is no intention to vary condition 08 which refers to the commitment to the Environment Agencies Flood Warning System and internally electrical sockets would be raised at 450mm above the finished floor level. Other mitigation measures include the use of engineering bricks to damp proof course level and a one way / non return valve system on the foul drainage.

The comments of the Environment Agency (listed in full above) direct assessment towards their standing advice albeit do make additional comment ultimately confirming that it falls for the LPA to consider whether the mitigation proposed would be sufficient to balance the risk to proposed occupiers in flooding terms.

The standing advice available refers to matters of surface water management; access and evacuation; and floor levels.

In respect to surface water management, the extant application was subject to a condition in relation to the appropriate drainage from the site which has already been discharged through a separate discharge of condition request. The changes in floor levels proposed would not affect this regime and therefore there is no issue in this respect.

Equally the extant permission had a condition (08) which requires the occupants to register with the Environment Agency's Flood Warning System. For the avoidance of doubt the applicant is not intending to alter this condition and neither would Officers intend to do so.

The standing advice in respect to floor levels states:

Ground floor levels should be a minimum of whichever is higher of:

- 300 millimetres (mm) above the general ground level of the site
- 600mm above the estimated river or sea flood level

State in your assessment all levels in relation to Ordnance Datum (also known as height above average sea level). You may be able to get this information from the Ordnance Survey. If not, you'll need to get a land survey carried out by a qualified surveyor.

If you cannot raise floor levels above the estimated flood level, you need to consider extra flood resistance and resilience measures.

The extra flood resistance and resilience measures of the advice is specifically for where ground floor levels are lower than the estimated flood level for the site which would not apply in this scenario noting that even the varied condition seeks finished floor levels of 380mm above the latest data on flood level. Officers are however particularly conscious of the following statement in the Environment Agency comments:

It's worth highlighting that, if FFL are set below the previously conditioned level, there is a chance that floodwater could enter the ground floor of the dwellings during the more extreme flood events. That fact that the area has not been flooded recently (owing to defences) does not remove the risk of future flooding; this has been seen in other areas of the country where severe flooding has occurred following prolonged periods of 'no flooding'.

In this respect Officers have taken the opportunity to consult the Councils Emergency Planner. The comments are listed in full above and rightly point out that flooding can cause a strain to local agencies in responding to flood events. The comments discount the aesthetics implications of lowering the floor levels as proposed and make the point that the approved levels could be delivered through effective and creative design. I do not dispute these comments and fully endorse the importance of incorporating flood mitigation measures in new developments.

However, in addition to the above, it must be material to the current decision that the application submission refers to the finished floor levels of the neighbouring plot to the north which was built as part of a wider residential scheme for 8 dwellings (one of which was intended for the current application site and still remains extant by virtue of the implementation of the rest of the scheme). This shows that the neighbouring plot has a finished floor level of 10.270 AOD and therefore would still be 200mm lower than proposed dwellings on the site. The neighbouring dwelling is subject to the same level of flood risk according to the Environment Agency maps. The finished floor levels were approved as part of the extant scheme. Officers are conscious of the fallback position which would allow for the erection of a large single detached dwelling within the site at a lower level than the approved three dwellings. This must be afforded weight in the overall balance below and ultimately consideration must be given as to whether it would be reasonable for this site to now be subjected to more onerous requirements (particularly when the latest data implies the flood level to be lower).

Other Matters

Whilst the focus of the supporting statement is in respect to the justification of the revised floor levels in flood risk terms, there is additional commentary as to the benefits of reducing the levels which have formed the rationale for submitting the application.

Officers do not dispute that a lower floor level offers the opportunity to improve amenity relationships in that potential for overbearing will be reduced. It would also be a benefit to allow level access in accessibility terms.

The statement also refers to an aesthetic value in aligning the proposed dwellings better with the existing neighbouring development. However, given the alignment of the dwellings perpendicular to the recent scheme to the north, it is not considered that this would necessarily be that perceptible on site. Nevertheless, it is considered a marginal benefit of the revised scheme in character terms.

Assessment of the remaining conditions

The NPPG 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.

For ease of reference the conditions as originally imposed are listed in full below (in the recommendation section) with ~~striketrough~~ 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.

Conclusion

Only the very narrow scope of the matters of varying the conditions imposed are open for consideration. The key matter for consideration in this case is whether or not the lower floor levels now proposed would still allow the development to pass the Exception Test in flood risk terms.

When taken in the context of the other mitigation measures which would remain to be secured (including the flood warning system and internal electricity arrangements); and noting that the finished floor levels would still be above the neighbouring site, Officers are minded to take a pragmatic approach and agree that the lower levels now intended will still provide adequate mitigation against flood risk for the end occupiers of the three units. In reaching this judgement, weight has been attached to the 2005 permission which would already allow a dwelling to be built at a lower level but also the amenity; accessibility; and visual benefits which would arise from the lower floor levels proposed. It is also notable that neither the Environment Agency nor NCC Flood Team have formally objected to the revisions sought.

RECOMMENDATION

That planning permission is approved subject to the conditions and reasons shown below:

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

The development hereby permitted shall not be carried out except in complete accordance with the following approved plans reference:

~~Topographical Survey (Proposed Site Plan) – drawing no. 1D/37/2015 received 4th August 2016~~

~~Plans and Elevations as proposed – drawing no. 3/37/2015~~

- **Proposed Site Layout – 19012.01 rev. d received 4th July 2019;**
- **Ground Floor Block Plan – 19012.10 rev. c received 4th July 2019;**
- **First Floor Plan – 19012.11 rev. b received 4th July 2019;**
- **Second Floor Plan – 19012.12 rev. b received 4th July 2019;**
- **Front (west) & Side (south) Elevations – 19012.20 rev. c received 4th July 2019;**
- **Rear (east) & Side (north) Elevations – 19012.21 rev. c received 4th July 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 samples of the materials identified below have been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing by the local planning authority.~~

- ~~Facing Materials~~
- ~~Bricks~~
- ~~Roofing tiles~~

The development hereby approved shall be carried out in accordance with the following materials:

- **Roof tiles to be Sandtoft double pantile Terracotta**
- **Facing Bricks to be Wienerberger Smoked Orange Multi Gilt Stock, Detailing Bricks to be Wienerberger Orange Gilt Stock.**
- **White upvc windows throughout, composite doors to all dwellings**

as agreed through the discharge of condition request 19/01135/DISCON discharged by letter dated 26th July 2019 in line with application 16/00155/FUL.

Reason: In the interests of visual amenity.

04

~~No development shall be commenced until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:~~

- ~~• a schedule (including planting plans and written specifications, including cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species~~
- ~~• existing trees and hedgerows, which are to be retained pending approval of a detailed scheme, together with measures for protection during construction.~~
- ~~• Measures to enhance the biodiversity benefit to the site (e.g, hedgerow enhancement)~~
- ~~• Details of hard surfacing~~

~~Reason: In the interests of visual amenity and biodiversity.~~

05

03

The approved landscaping **shown on plan reference Proposed Site Layout – 19012.01 rev. d received 4th July 2019**; shall be completed during the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the local planning authority. Any trees/shrubs 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: To ensure the work is carried out within a reasonable period and thereafter properly maintained, in the interests of visual amenity and biodiversity.

06

04

~~The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.~~

The development hereby approved shall be carried out in accordance with the drainage scheme shown on plan reference Proposed Site Layout – 19012.01 rev. d received 4th July 2019 and implemented before the development is first brought into use unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.

07

05

The Development shall be carried out in full accordance with the flood mitigation measures contained within the ~~Flood Management Proposal section of the Flood Risk Assessment produced by Clive Davies dated 17th May 2016.~~ **the Supporting Statement revision a received 4th July 2019 unless otherwise agreed in writing by the local planning authority. For the avoidance of doubt, this includes the following measures:**

- **Engineering bricks to be used in the construction from foundations to DPC level;**
- **Finished Floor Levels (FFL) set at 10.470;**
- **One way / non-return valves proposed to all foul drainage;**
- **Ground floor electrical sockets will be raised minimum 450mm above the FFL.**

Reason: To prevent flooding elsewhere by ensuring that no loss of floodplain storage occurs as a result of this development.

08

06

Before the dwelling hereby approved is first occupied potential residents shall first:

- (a) register with the Environment Agency's Floodline Warnings Direct Service (hereafter referred to as the Flood Warning Service which expression shall include any replacement for that Service provided by the Environment Agency);
- (b) within 14 days provide the local planning authority with confirmation from the Environment Agency that they have done so.
- (c) Submit to the LPA an evacuation scheme which details under what circumstances, triggers (including the Flood Warning Service), and locations occupiers will be evacuated to in the event of a Flood.

Residents shall maintain their registration with the Flood Warning Service (or any replacement service) at all times and should the dwelling be sold or occupied by new tenants registration with the Flood Warning Service will be made a condition of the sale/tenancy. Residents shall provide the local planning authority with further confirmation from the Environment Agency that they are registered within 28 days of any written request from the local planning authority for such confirmation.

Reason: In the interests of reducing flood risk in accordance with the aims of Core Policies 5 and 10 of the Newark and Sherwood Core Strategy (March 2011) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

09

07

Prior to the occupation of any dwelling the proposed boundary treatments as shown on the approved layout plans (~~drawing no. 3/37/2015 received on the 22nd July 2016~~) **Proposed Site Layout – 19012.01 rev. d received 4th July 2019** shall be implemented in accordance with the approved details. **The boundary treatments shall 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.

~~010~~

08

Prior to the occupation of any dwelling the proposed hard surfacing, including all parking spaces as shown on the approved layout plans (~~drawing no. 3/37/2015 received on the 22nd July 2016~~) **Proposed Site Layout – 19012.01 rev. d received 4th July 2019** shall be implemented in accordance with the approved details.

Reason: In the interests of residential and visual amenity.

~~011~~

09

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (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 in respect of:

Class A: The enlargement, improvement or other alteration of a dwellinghouse, including extensions to the property and the insertion or replacement of doors and windows.

Class B: The enlargement of a dwellinghouse consisting of an addition or alteration to its roof

Class C: Any other alteration to the roof of a dwellinghouse.

Class D: The erection or construction of a porch outside any external door of a dwellinghouse.

Class E: Development within the curtilage of a dwellinghouse..

Or Schedule 2, Part 2:

Class A: The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Class B: Means of access

Class C: The painting of the exterior of any building

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

Reason: To ensure that any proposed further alterations or extensions are sympathetic to the original design and layout in this sensitive location.

~~012~~

~~No part of the development shall be commenced until details of all the boundary treatments proposed for the site including types, height, design and materials, have been submitted to and approved in writing by the local planning authority. 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.~~

~~013~~

10

Prior to first occupation of any dwelling, the associated car parking facilities shall be provided and shall thereafter be retained for parking for the lifetime of the development.

Reason: In order to secure off street parking provision, in the interests of highway safety.

Notes 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 application relates to a Section 73 application which does not affect the floor space agreed through the original permission. The CIL charge applied to the extant permission therefore remains unchanged and the applicant will be charged CIL on this basis.

BACKGROUND PAPERS

Application case file.

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

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 - 19/01160/S73



