

PLANNING COMMITTEE – 5 NOVEMBER 2019

Application No:	18/02279/OUTM (MAJOR)	
Proposal:	Selective demolition and redevelopment of parts of the existing Yorke Drive Estate and the erection of new mixed tenure housing, community and recreational facilities on the adjoining Lincoln Road Playing Field site, resulting in the development of up to 320 homes	
Location:	Yorke Drive And Lincoln Road Playing Field, Lincoln Road, Newark On Trent	
Applicant:	Newark & Sherwood District Council	
Agent:	GL Hearn – Mr Ryan McTeggart	
Registered:	12 December 2018 Extension of time: TBC	Target Date: 13 March 2018
Link to Application Documents:	https://publicaccess.newark-sherwooddc.gov.uk/online-applications/simpleSearchResults.do?action=firstPage	

Introduction

Members may recall that this application was heard by the Planning Committee in April this year. Members agreed with Officer recommendation that outline planning permission be granted subject to the following:

(a) the conditions contained within the report;

(b) the further bat emergence surveys as required by the submitted Ecology Reports being undertaken before the decision notice is issued, with delegated officer responsibility for consideration of the implications of the results, mitigating them appropriately and adding ecology related conditions should they be required; and

(c) the Officer receiving confirmation from the Applicant before the decision notice is issued that the noise mitigation works at Daloon have been satisfactorily completed in accordance with the Memo dated 15.02.2019 Mitigation Options Regarding Services Noise from Daloon Foods and that delegated officer responsibility is given to ensure an appropriate mechanism for securing its future retention and maintenance is undertaken before the decision notice is issued.

Following this resolution, legal advice has been sought regarding the legality of condition 4 which required the completion of a Section 106 Planning Obligation prior to development within any phase commencing. The previous Committee report is appended as Appendix 1. In addition, there were late items from the previous Committee relating to this application and as such the late items sheet for the previous Committee is attached as Appendix 2 to this report.

Mechanism for Delivering Planning Obligations

The previous Committee report recommended a condition (condition 4 on Appendix 1) requiring that a Section 106 legal agreement be completed providing for the necessary affordable housing, open space, sports facilities, education, community facilities and transport improvements at the site. Planning obligations are usually delivered directly through the completion of a Section 106 legal agreement prior to planning permission being granted, and not through a planning condition. However, because NSDC are both the land owner and local planning authority, the legal advice states that a Section 106 legal agreement cannot be utilized. NSDC cannot enter into a planning obligation which imposes obligation upon itself as land owner enforceable by itself as Local Planning Authority. It was for this reason that condition 4 was previously recommended which duplicated the necessary elements of a S106 legal agreement. The idea being the requirements of such conditions would later form the basis of a future Section 106 legal agreement as and when the site (or elements of it) were disposed of to a third party who would then be able to enter into a legal agreement with the Local Planning Authority.

NSDC as the applicant, has sought Counsel advice regarding whether planning permission can be granted without the imposition of the condition relating to the provision of affordable housing. Specifically, Counsel advice has been sought as to whether the local planning authority can attach weight to the fact that affordable housing will be provided in any event simply because NSDC is the applicant and also future land owner (and / or the developer).

Counsel has advised that the local planning authority can attach weight to the fact that NSDC is the applicant and also future land owner (and / or developer). As such, the LPA is entitled to work on the assumption that a public authority (including itself) will act responsibly in the public interest (with obvious reputational damage if it did not).

If it were to be the case that planning permission was granted without conditions imposed to secure affordable housing provision (and the other obligations), it would seem that Homes England would rationally treat the provision of such Affordable Housing as an 'additionality' and not a requirement and therefore the scheme would qualify for Homes England funding. Furthermore, whilst the advice related to the affordable housing element, its wider construction applies to each of the obligations listed within condition 4.

In addition, following the decision of Planning Committee, information has been provided detailing the noise mitigation required under (c) above has been implemented. This requirement can therefore be removed from the recommendation.

Conclusion

It is considered that Counsel advice is clear in relation to the lawfulness of NSDC entering into a Planning Obligation with itself. It is therefore recommended that condition 4 on the appended Committee report (Appendix 1) is omitted. In addition, the noise mitigation at Daloon has been implemented.

Lastly, Policy has not changed in the intervening period and no other matters are raised which are considered to warrant a decision different to that previously reached.

RECOMMENDATION

That outline planning permission is granted subject to:

- (a) the conditions set out within Appendix 1 with the omission of condition 4; and**
- (b) the further bat emergence surveys as required by the submitted Ecology Reports being undertaken before the decision notice is issued, with delegated officer responsibility for consideration of the implications of the results, mitigating them appropriately and adding ecology related conditions should they be required.**

BACKGROUND PAPERS

Application case file.

For further information, please contact Helen Marriott on extension 5793

Lisa Hughes
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Committee Plan - 18/02279/OUTM

