

## PLANNING COMMITTEE – 1 DECEMBER 2020

<b>Application No:</b>	<b>20/00772/FUL</b>	
<b>Proposal:</b>	<b>Proposed residential development of 9 no. bungalows.</b>	
<b>Location:</b>	<b>Site Adjacent, Goldcrest Lane And Skylark Way, Clipstone NG21 9GH</b>	
<b>Applicant:</b>	<b>Beaver Homes (Mansfield) Ltd</b>	
<b>Agent:</b>	<b>Peter Dimberline Ltd</b>	
<b>Registered:</b>	<b>21 May 2020</b>	<b>Target Date: 20.08.2020 EOT: 02.12.2020</b>
<b>Website Link:</b>	<a href="https://publicaccess.newark-sherwooddc.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=QABTUBLBHAD00">https://publicaccess.newark-sherwooddc.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=QABTUBLBHAD00</a>	

The Business Manager, Planning Development, as an authorised Officer has referred the application to Planning Committee for determination as the specifics of the application warrant determination by the Planning Committee. Cllr Brown has also requested that the application be called in for determination by Planning Committee 'due to over development and the loss of land for early years project and being against the master plan and the loss of 106 funding for early start program which is desperately needed in this area'.

### The Site

The 0.3ha site (excluding the highway) is situated to the north of the settlement of Clipstone within part of a larger area allocated as a 'Mixed Use Allocation Including Housing (Mu PP)' with planning permission in the Allocations and Development Plan Document (DPD). It forms part of a larger site which originally achieved outline planning permission for development of up to 420 dwellings, B1/employment land and associated community landscaping, open space and access roads (08/01905/OUTM) on the overall Mixed Use Allocation comprising 18.2 hectares of land granted in November 2009. The site has been subsequently parceled into smaller development areas, which have been subject of separate reserved matters applications and consents.

It comprises a roughly rectangular shaped field accessed off Goldcrest Lane which leads north of the roundabout serving Cavendish Way. The site appears to slope very gradually upwards in a south to north direction and is currently surrounded by close-boarded fencing.

A housing development by Taylor Wimpey comprising 188 houses is now complete on land to the east of the site (planning application number 13/01271/FULM). Further housing development by Persimmon comprising 92 dwellings is also under construction/recently completed to the north and west of the site (14/01308/FULM).

A planning application for a proposed local centre including retail units, car parking, service yard and new site entrance was approved under planning application number 19/00490/FUL in May 2019 on land immediately to the south of the site. A Co Op store occupies the largest unit and is now open to the public and one of the two smaller unit's looks like it is ready to be opened as a hairdressers.

### Relevant Planning History

#### *Relating to site:*

12/00965/RMAM Reserved matters application on 5.8 hectares of the 18.2 hectare consented site for the erection of 201 dwellings and community facilities for the original landowner - Approved 8 February 2013.

08/01905/OUTM Outline planning application for the erection of up to 420 residential units. 1 ha of B1 office/employment uses and associated community facilities, landscaping, open space and access roads (overall site area of 18.2 hectares) - Approved 05 November 2009 subject to a legal agreement for developer contributions relating to 30% affordable housing, on-site open space, community facilities, integrated transport contribution, education contribution, off-site sports provision and buffer zone planting. A Section 106 Agreement accompanied the application (which was subsequently amended in Feb 2013) securing a number of contributions including the provision of on-site community facilities (children's nursery/retail) required to be provided 5 years from occupation of 100<sup>th</sup> dwelling or upon occupation of the 301<sup>st</sup> dwelling.

02/02296/RMAM Proposed new B1, B2 and B8 commercial development – allowed at Appeal 22.10.2003

02/02293/OUTM Variation of condition 1 from permission 98/50350/OUT relating to the time limit for submission of a reserved matters application – permission 07.03.2003

01/01403/RMA Proposed infrastructure and structural landscaping for B1, B2 and B8 development – permission 15.06.2006

98/50350/OUT Residential development (340 dwellings) industrial development and access – permission 29.12.1999

93/50350/OUT Residential development (340 dwellings) industrial development and access – permission 19.01.1995

### The Proposal

Full planning permission is sought for the erection of nine bungalows. Six of the bungalows would be 2-bed and three would be 3-bed.

The new buildings would be located around a cul-de-sac layout with off street parking provided to the side or adjacent to each dwelling. The majority of the dwellings would front onto Goldcrest Lane or Skylark Way with the remainder fronting the new cul-de-sac. A refuse bin area for these plots would be provided adjacent to the cul-de-sac entrance. The existing substation located in the north corner of the site would be retained.

The plans have been amended during the lifetime of the application to reduce the number of bungalows proposed from 10 to 9. This is so that more convenient off street parking immediately adjacent to each bungalow would be provided (as opposed to detached and to the rear) and to reposition dwellings close to the Co-Op to overcome the Environmental Health comments relating to potential adverse noise levels within the gardens.

Proposed materials would comprise a mix of facing brickwork/render/stone/cladding/timber boarding and grey concrete roof tiles.

Documents considered by this application comprise:

- Design and Access Statement and Appendices
- Location Plan (amended plan received 12.08.2020)
- 2020 01 01 Rev C Proposed Site Layout (amended plan received 29.10.2020)
- 2020 01 02 Existing Topographical Site Layout
- 2020 01 03 Dwelling Type A and AH
- 2020 01 04 Dwelling Type B and BH
- 2020 01 05 Dwelling Type C and CH
- 2020 01 06 Dwelling Type D and DH
- Noise Impact Assessment R20.1417-2-AG (revised document received 03.09.2020)
- Letter from Boyer Planning (received 02.10.2020)

#### Departure/Public Advertisement Procedure

Occupiers of 40 properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local press.

#### 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 6 - Infrastructure for Growth
- Spatial Policy 7 - Sustainable Transport
- Spatial Policy 8 – Protecting and Promoting Leisure and Community Facilities
- Spatial Policy 9 - Site Allocations
- Core Policy 1 - Affordable Housing Provision
- 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
- Core Policy 13 – Landscape Character
- MFAP 1 Mansfield Fringe Area

##### **Allocations & Development Management DPD (adopted July 2013)**

- Policy DM1 - Development within Settlements Central to Delivering the Spatial Strategy

- Policy DM2 - Development on Allocated Sites
- Policy DM3 - Developer Contributions
- Policy DM5 – Design
- Policy DM7 - Biodiversity and Green Infrastructure
- Policy DM12 - Presumption in Favour of Sustainable Development

### **Other Material Planning Considerations**

National Planning Policy Framework 2019

National Planning Practice Guidance

Newark and Sherwood Developer Contributions and Planning Obligations SPD (December 2013)

### **Consultations**

**Clipstone Parish Council** – The council is taking a neutral stance: Clipstone Parish Council acknowledges that the amended plans address the Council's previous concerns about parking. The Council, however, asks for it to be noted that the site was originally earmarked for a childcare setting. Whilst Nottinghamshire County Council's education department estimates that another formal Early Years provision is no longer required in Clipstone, the Council feels that other Early Years and child activity provision is still needed. Such provision could be provided in Multi-use community facilities like a community hub. S106 provision should be put in place to aid the development of a community hub.

**Natural England** – no comments.

**NCC Highways Authority** – There are no highway objections to the proposed scheme subject to conditions relating to the provision of dropped kerbs, provision of an adequate visibility splay at the junction with Skylark Way, driveways being surfaced in a hard-bound material and constructed to prevent the discharge of surface water onto the public highway.

**NCC Planning Policy** – Make a number of general comments and point out the Waste Local Plan which needs to be taken into account. They raise no objections from a mineral's perspective and suggest that the application needs to be accompanied by a waste audit, which can be secured by condition. They confirm there are no definitive rights of way recorded over the proposed development site. They note that the site is within the non-designated heritage asset that is Clipstone deer park. No strategic transport observations are made and no transport and travel services contributions are requested. As there is sufficient capacity to accommodate the additional primary aged pupils projected to arise from the proposed development no planning obligations for primary education is being sought and secondary education would be covered by the CIL mechanism.

**NCC Early Years Officer** – Population Estimates – There are 8.6% fewer children in the 0-1 age group in the last year. This indicates that the numbers of children in each age group is declining year on year. Population projections show that the birth rate is declining in Nottinghamshire. For example, there are currently 18,610 children aged 3 and 4 years and eligible for a funded nursery place. By 2022 there will be 17,207 (assuming migration in and out on County remains static).

**Child Population Under Five** – In April 2019, it was estimated that Nottinghamshire had a population under the age of 5 of approximately 45,000. Detailed population estimates are available from the Office of National Statistics.

Locality	0	1-year olds	2-year olds	3-year olds	4-year olds
Nottinghamshire	8,216	8,991	9,071	9,247	9,363
Newark and Sherwood	1,169	1,261	1,294	1,343	1,321

Nottinghamshire Childcare Supply – There are 1,138 Ofsted Registered Private, Voluntary and Independent (PVI) providers, including schools (June 19) delivering Childcare and Early Education across Nottinghamshire. All Childcare and Early Education providers are registered with Ofsted, and work towards the Early Years Foundation Stage (EYFS). The data below shows the number of providers registered to deliver Early Years Provision by District.

Early Years Registered Providers by district	Ashfield	Bassetlaw	Broxtowe	Gedling	Mansfield	Newark Sherwood	Rushcliffe	Total
Childminder	88	65	79	142	84	63	83	604
Day Nursery	23	18	26	21	25	27	37	177
Pre-school	8	12	12	18	3	12	24	89
School (EY)	35	49	30	35	33	42	34	258
Ind. School	0	2	1	2	1	2	2	10
TOTAL	154	146	148	218	146	146	180	1138

Data from Families Information Service also tells us that there are also 494 providers delivering some form of out of school provision – the greatest increase in provision in the last year (rising from 298 settings).

#### Childcare Sufficiency Assessment 2019

- According to our Assessment this summer, there are over 2,500 x 15 hour places for 2, 3 and 4 year old's vacant across the county. Only 5 areas reporting a deficit of places and the numbers are negligible.
- Providers are reporting some difficulty in seeking out children who are eligible for funded entitlements and our Hot Spot areas this year are based on community areas where there are children not accessing places but there are vacancies.

#### Newark and Sherwood District

- Newark and Sherwood district has one area (Bridge) which appears on the worst five ranking for take up of the extended entitlement three terms consecutively.
- Trent Villages area ranks third worst for take up of 2 year old places at 47%, but there were only 15 children eligible in the summer term, 8 of whom did not take up a place.
- In 2018 – 2019 there was a 95% take up of the universal entitlement for 3 and 4 year old's across the district and 73% take up for eligible 2 year old's, which is higher than the Nottinghamshire average.
- Four areas (Sherwood East and West, Balderton and Ollerton/Boughton) appear in the top ten localities for take up of 2 year old funded places.
- Newark and Sherwood ranks fourth for take up of supplementary funding;
- According to our Assessment this summer, there are 652 x 15-hour places for 2, 3 and 4 year old's vacant across the district. Taking into consideration this high level of vacancies across the district it is considered that there are sufficient places for all children to access their 2, 3 and 4 year entitlement in the Newark and Sherwood District.

Summary - Population projections indicate that the birth rate is dropping and by 2022, there will be about 1,400 less children needing and Early Education place in Nottinghamshire. In addition to this there are currently over 2,500 surplus 15 hour places (for 2, 3 and 4 year olds) reported across the Nottinghamshire County.

Early Childhood services are working with schools to increase awareness of the current Early Education in PVI settings and to prevent the over supply of places. Based upon the information presented in this document, there is no need for further provision in the Edwinstowe and Clipstone ward. As a local authority we would not want to see another provision opening which could potentially displace the existing provision within the area.

**NCC Lead Local Flood Authority** – 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 (e.g. culverting / pipe crossing) must be discussed with the Flood Risk Management Team at Nottinghamshire County Council.

**NSDC Community Facilities Officer** – No comments received albeit advised verbally that there is currently a current need within Clipstone to refurbish the Clipstone Welfare building.

**NSDC Environmental Health Officer (Contamination)** – No observations

**NSDC Environmental Health Officer (Reactive)** – Verbally confirmed no objection subject to conditions relating to the construction of a 2.5 metre high wall adjacent to Plot 5 to mitigate noise impacts from ventilation and extraction units located to the rear of the Co Op store, compliance with the window specifications set out in the submitted noise survey and the submission and approval of a construction management plan (confirmed at a site meeting which took place on 18.11.2020)

**NSDC Parks and Amenities Officer** - As a development of 9 dwellings this scheme would not ordinarily need to make provision for public open space in the form of provision for children and young people. I note that the development is a mix of 2 and 3 bedroom bungalows and accept that these may not be considered to be family dwellings. There are no supporting details around the type of market the bungalows are aimed at and I will thus leave it to the Planning Case Officer to decide whether a contribution is appropriate.

**One letter of representation has been received from local residents/interested parties** which highlights Condition 12 of 19/00490/FUL that has established the principle of additional extraction/plant. This isn't an objection, instead just neutral comment/observation.

## Comments of the Business Manager

### **Principle of Development**

#### *Housing Development:*

The National Planning Policy Framework promotes the principle of a presumption in favour of sustainable development and recognises that it is a duty under the Planning Acts for planning applications to be determined in accordance with the development plan.

The Council can robustly demonstrate that it has a 5 year housing land supply and for the purposes of decision making the Development Plan is up to date.

The proposal site is located in Clipstone, a Service Centre central to delivering development in the Core Strategy (adopted 2019) under Spatial Policies 1 & 2. The site is also 'Mixed Use Allocation Including Housing (Mu PP)' in the Allocations and Development Plan Document (DPD). As such, the site is located in a sustainable location for new development which is acceptable in principle subject to an assessment of all site-specific considerations set out in detail below.

#### *Legal Background:*

The provision of community facilities (retail and children's nursery) on this land is the requirement of a S106 Agreement relating to the original outline planning permission on the wider Cavendish Park site (08/01905/OUTM). The two relevant legal agreements are AG833 and AG833a. It is noted that the application site relates to only part (just over half) of the site safeguarded by the S106 for the provision of community facilities. A Deed of Modification (DoM) in respect of the proposed Co Op and retail units on land immediately to the south of the site was agreed in association with application number 19/00490/FUL. This DoM effectively released the retail site from the existing obligations, and imposed new obligations to provide the Retail Units on the Retail Site (the land to the south of the application site).

However, the application site is still subject to the requirements of the original legal agreements and the requirement for the provision of a children's nursery on site is still relevant and expected given the obligations set out in legal agreement AG833a. The definition of the 'The Day Nursery Facility' is '*a traditionally constructed building with a floor space of not less than 150 square meters (or such lesser area as approved in writing by the Council)*' and '*a nursery run on a commercial basis providing all day nursery provision and if appropriate other day care for school age children if the operator of the facility chooses at his absolute discretion to make such provision*'.

AG833a states that 'Prior to the expiry of five years from the date of the first occupation of 100 Dwellings on the Site the Owner shall provide the Community Facilities on the Community Facilities Land'. The children's nursery would need to be provided in accordance with the S.106 within 5 years from occupation of 100<sup>th</sup> dwelling on the adjacent Taylor Wimpey development site to the east of the Persimmon homes site (application number 13/01271/FULM) for 188 dwellings. The first occupation of 100 Dwellings (on the Taylor Wimpey site) was 1<sup>st</sup> March 2016 as this is when the Council's Legal Team asked for an invoice to be raised for triggers hit at 100 Dwellings. Therefore, the 5 years expires on 28 February 2021 and the LPA would currently expect to see the remaining community facilities provision by then. A planning application would also to be submitted and approved before the community facilities on the remaining land could be delivered.

### *Loss/lack of delivery of community facilities:*

The application proposes no community facilities on this land. This would be a clear breach of the existing S106 requirements for the wider Cavendish Park development and the merits of delivering the site for housing instead of delivering the community facilities therefore needs to be fully justified. A further variation to the legal agreement would also be required to effectively release the site from the legal requirement to provide a children's nursery.

As a private commercial nursery, the facility would only be of benefit to families with small children in the local area albeit it is likely that such a facility would operate with government funding to provide the possibility of free places to 2 and 3 year olds. A children's nursery does not fall within the definition of a community facility under the provisions of Spatial Policy 8. In addition, this policy relates to existing community facilities as opposed to community facilities secured by a S106 Agreement. However, the requirements of Spatial Policy 8 are still considered a useful tool to assist in determining the acceptability of the proposed variation. This states that the loss of existing community and leisure facilities will not be permitted unless it can be clearly demonstrated that:

- Its continued use as a community facility or service is no longer feasible, having had regard to appropriate marketing (over an appropriate period of time and at a price which reflects its use, condition and local market values), the demand for the use of the site or premises, its usability and the identification of a potential future occupier; or
- There is sufficient provision of such facilities in the area; or
- That sufficient alternative provision has been, or will be, made elsewhere which is equally accessible and of the same quality or better as the facility being lost.

The submitted Design and Access Statement states that 'a nursery in the locality would be an unfeasible proposition due to the costs of running the business rendering the profit margin unviable. The small nursery which would be created in accordance with S106 has been actively marketed with no interest being expressed. As such, this shows that is impracticable to deliver a small nursery on the site as the market interest has consistently been unforthcoming'.

I have not been provided with any precise details of the marketing undertaken. However, evidence has also been requested and submitted by the County Council's Early Years department (set out in full in the 'Consultations' section. This concludes that there is no need for further nursery provision in the Edwinstowe and Clipstone ward. Indeed, they state that they would not want to see another provision opening which could potentially displace the existing provision within the area.

As such, given there is already sufficient provision of children's nursery provision in the area, it is not considered necessary to retain the site for community purposes under the provisions of the existing S106 Agreement.

### *Variation of the existing S106 Agreement AG833 and AG833a:*

Given the conclusion above, it is necessary for a variation to the original S.106 Agreement, as the proposal would not comply with its requirements. This also requires consideration as to whether it is appropriate to seek developer contributions on the development of 9 units.



Spatial Policy 6 'Infrastructure for Growth' and Policy DM3 'Developer Contributions and Planning Obligations' set out the approach for delivering the infrastructure necessary to support growth. The Developer Contributions and Planning Obligations Supplementary Planning Document (SPD) provides additional detail on the Council's policy for securing planning obligations from new developments. Contributions were originally secured in relation to affordable housing, open space including children's play areas, transport, education and community facilities (to account for the previous removal of village hall requirement on this land).

Whether it is necessary to secure additional contributions for these purposes has to be based on current need requirements as circumstances are likely to have changed since 2008. In this regard, there is currently no need identified for education or transport purposes (given the Consultation responses set out above). As the development is for 2 and 3 bed bungalows, whilst children may still live in these properties, I am aware that there have now been 3 children's play areas constructed on the wider Cavendish Park site in recent years and a specific need for any additional contributions towards these areas has not been identified nor justified. However, it is considered that a legitimate need for an affordable housing and community facilities contribution still exist.

As a standalone development of 9 dwellings, there would ordinarily be no need for the development to provide any contributions. During the lifetime of the application, the applicant has disputed the need to pay any added contributions for this reason. They have also submitted extracts of Counsel advice which appears to conclude that 'A court would very likely conclude that this would not give rise to a liability to pay affordable housing contributions under the original s.106'. However, I have not been provided with a full copy of this Counsel advice to ensure it relates to this proposal and all of the relevant facts of the case and I therefore give little weight to its conclusions on this basis.

Having sought advice from NDSC's legal advisor, they have advised the following:

- There is the absence of an affordable housing policy, which provides for the aggregation of areas of land for development when applying the threshold for the provision of affordable housing.
- However, when considering the three criteria drawn from the decision in R (Westminster City Council) v First Secretary of State and Brandlrod Limited [2003] J.P.L 1066 (relating to ownership, whether the areas of land could be considered to be a single site for planning purposes, and whether the development should be treated as a single development), there is an arguable case to seek affordable housing on this site unless and until the site is in separate ownership.

The site could potentially be sold into separate ownership at any time. In addition, whilst a viability argument has not been presented in this case, this has been done on other development sites within the Cavendish Park area (in the same land ownership at the time) and the level of affordable housing contributions has been reduced as a consequence.

Having considered all of the above and given the proposal would result in the loss of community facilities land (albeit for a purpose that is not defined as a community facility under the provisions of Spatial Policy 8 nor for a purpose no longer needed), it would seem logical that an alternative greater contribution towards an off-site community facility is a matter that could potentially be weighed in the overall planning balance against the lack of affordable housing contributions in this case.

I am aware of a current need within Clipstone to improve the Clipstone Welfare building. Funding for Phase 1 of these works has been secured (as per a report agreed at Policy and Finance Committee on 24 September 2020), however I am aware that funding for subsequent phases is still required. Based on a development of 9 dwellings, the Applicant has agreed to pay a commuted sum of £13,841 plus indexation towards the refurbishment of Clipstone Welfare building. This is the amount calculated based on the community facilities contribution based on 9 dwellings as set out in the SPD.

In addition, given that the existing Section 106 agreement is binding on any successors in title, a variation to the agreement would be required before planning permission can be granted. Given that the proposal may mean that there are no further community facilities on this land, then the variation could also ensure that the existing community facilities contribution (approx. £36,000 already secured by the existing S106 in lieu of a village hall on site etc.) would also be put towards the Welfare building.

Overall, whilst I note that the community facilities sum secured would be less than a potential affordable housing contribution that could be secured, this would be subject to the Planning Inspectorate or even Courts agreeing this approach within which time, the land could be sold which could impact upon the legal advice set out above. The lack of affordable housing contributions is a negative factor to be weighed in the overall planning balance against the benefits of securing an additional community facilities contribution and any other benefits to the proposal as set out in the Conclusion.

### **Housing Mix, Type and Density**

Core Policy 3 provides that development densities should normally be no lower than 30 dwellings per hectare net. Core Policy 3 also states that the LPA will seek to secure new housing which adequately addresses the housing need of the district, namely family housing of 3 bedrooms or more, smaller houses of 2 bedrooms or less and housing for the elderly and disabled population. It goes on to say that the LPA will secure an appropriate mix of housing types to reflect the local housing need.

The proposed development comprises a mix of 2 and 3-bed bungalows. The majority of the wider Cavendish Park development has delivered two storey family properties so this development is likely to meet a need for smaller dwellings and housing for the elderly and disabled population.

Overall, I have no concerns with regards to the density or mix of development as the proposal would contribute to the need for smaller units that is required in this district as acknowledged by Core Policy 3.

### **Impact on Character and Appearance of the Area**

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. The NPPF supports development that makes efficient use of land, taking into account a number of factors including the identified need for different types of housing and the importance of securing well-designed, attractive and healthy places.

The vacant site is currently enclosed by a 2-metre high close-boarded fence and contains grass and overgrown shrubs. It appears from aerial photos that this land may have been used previously as a construction compound in association with the wider development. The site is not particularly attractive arising mainly from its blank edges created by the fence. The removal of this fence and replacement with the active frontages of the proposed bungalows would result in a visual improvement to the appearance of the site.

The surrounding residential development is predominantly characterised by 2 storey terraced properties, with a mixture of 2/2.5 storey detached, semi-detached and terraced dwellings. The proposed bungalows due to their single storey nature would therefore be a contrast to the more typical house types in the area. However, it is not considered that this contrast would necessarily be detrimental to the character of the area given their smaller scale would make them less prominent in the street scene. Plot 1 (on entry into the cul-de-sac) would project forward of No 1 Nightingale Close, however given that its lower scale and partial screening by the proposed plots along the north edge of the side, it is not considered that this set forward would be overly incongruous in the street scene.

Levels details have also been submitted with the application. This shows that land would be levelled so that levels to the north and west of the site would be similar to adjacent land levels (with slight increases in parts) but the land containing bungalows accessed directly off Goldcrest Lane to the east of the site would raise upwards away from the road. The driveways would therefore be ramped and the bungalows would be raised. Given the slightly raised level of the Co Op store located immediately adjacent to the site, it is not considered this would result in any visual harm.

Overall, I am satisfied that the proposal would not result in a development which would be detrimental to the visual amenity or character of the area in accordance with Core Policy 9 of the Core Strategy and Policy DM5 of the DPD.

### **Impact on Ecology**

Core Policy 12 of the Core Strategy seeks to secure development that maximises the opportunities to conserve, enhance and restore biodiversity. Policy DM5 of the DPD states that natural features of importance within or adjacent to development sites should, wherever possible, be protected and enhanced. Paragraph 175 of the NPPF includes that opportunities to incorporate biodiversity in and around developments should be encouraged.

No ecology survey has been submitted with the application. However, I an Ecological Appraisal incorporating an Extended Phase I survey was carried out in January 2019 on the Co-op land immediately to the south of the site (application no. 19/00490/FUL). The findings of the appraisal identified that there are no designated ecological sites or protected species on site that would prevent development. Given the there is no tree or building removal proposed and the site appears to have been used in recent years as a construction compound, I do not consider it necessary to request an ecology survey relating specifically to this site albeit it is considered to appropriate to recommend that site clearance takes place outside of bird breeding season (in relation to shrub removal) which can be controlled by planning condition.

The site is within the 5km buffer zone of the Potential Special Protection Area (pSPA) relating specifically to the presence of woodlark and nightjar. It is a requirement for a Habitat Regulations Assessment (HRA) under Regulation 61 & 62 of the Conservation of Habitats and Species

Regulations 2017 to be undertaken. HRA is the process that competent authorities must undertake to consider whether a proposed development is likely to have significant effects on a European site designated for its nature conservation interest. HRA is often referred to as 'Appropriate Assessment' (AA) although the requirement for AA is first determined by an initial 'Screening' stage undertaken as part of the full HRA.

In relation to this issue, I consider the findings of the survey carried out on adjacent land to be relevant and this stated that *'the proposed site does not provide potential habitat for breeding woodlark Lullula arborea or nightjar Caprimulgus europaeus, which typically breed on heathland or within clear fell habitats within pine forests and clearings within mixed or deciduous woodlands. The development is not located within or directly adjacent to any identified core/important breeding area for these birds being located 1.4 km from the closest such areas at its closest point, is surrounded by broadly unsuitable habitat such as housing and arable land and is unlikely to be used as a foraging or other habitat. Furthermore, given the separation of the proposed site from these core/important areas of the pSPA, it is considered extremely unlikely that proposals would lead indirect impacts including an increase in bird predation as a result of domestic pets or pollution. As a result, there are no expected effects on either species as a result of the development'*.

The nature of the proposal differs from the nature of the development subject of this survey as this proposal could increase the population living in the area that could potentially travel to the more sensitive breeding areas. However, I consider that given the minor nature of the development and the fact that there are alternative parks within which the population are encouraged to visit in the vicinity e.g. Sherwood Pines, that the impact would be negligible. It is therefore determined that there are no likely significant effects to any European sites which would arise from the development. It is therefore not necessary to continue to undertake an AA.

Overall, I consider it unlikely that the proposed development would result in any adverse impact upon protected species in accordance with Policy DM7 of the DPD and Core Policy 12 of the Amended Core Strategy.

### **Impact on residential amenity**

Policy DM5 of the DPD states that development proposals should ensure no unacceptable reduction in amenity including overbearing impacts and loss of privacy upon neighbouring development. The NPPF promotes 'an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions'.

#### *Neighbouring dwellings*

The site is immediately adjoined by residential properties to the west. The side of three two storey dwellings are located approx. 1 metre away from the application site. No 1 Nightingale Close would be located side on to Plot 1. Indeed the side elevation of No 1 would be located just over 1 metre away and run along almost the whole entirety of its rear garden area. The rear gardens of Plots 1-4 would measure 8 – 10 metres in length albeit the rear of the proposed gardens would straddle both open and built parts of these plots. These separation distances are considered to be at the cusp of acceptability in terms of creating an overbearing impact upon the rear of proposed Plots 1-4. However, given that none of the proposed rear garden areas would be fully enclosed by

two-storey high built form within 1 metre of the boundary, it is not considered that any adverse overbearing or overshadowing impact would result.

The first floor side windows in the side elevations of the existing dwellings facing the application site are small and do not serve main habitable room windows. There is a potential for views of the application site from some front and rear windows of the adjacent dwellings. However, these views are predominantly at right angles and oblique and therefore restricted to parts of the application site only. As such, it is not considered that any adverse overlooking or loss of privacy impacts would result.

It is not considered that the single story nature of the proposed bungalows would result in an adverse impact upon the existing dwellings located adjacent or close to the site.

#### *Noise impacts from retail units*

A Noise Impact Assessment has been submitted with the application to assess the impact of the noise from the ventilation and odour extraction equipment located to the rear of the retail units to the south. This assessment and the proposed plans were amended during the lifetime of the application to address issues raised by the Environmental Health Officer (to move the proposed dwellings further away). Even so, the assessment still shows an adverse impact of +5dB Excess over background noise when the ventilation and odour extraction of the other units is in operation with the Co-Op Plant during the Daytime, and +4dB below adverse impact for night time. The Environmental Health Officer was particularly concerned about the impact upon the dwelling closest to the equipment - Plot 5. The external noise levels at this property would be 51dB. BS8233 2014 guidance states that it is desirable for external amenity space such as gardens and patios to not exceed 50dB LAeq, with an upper guidance value of 55dB, acceptable in noisier environments.

Plot 5 contains no main habitable room windows in its south facing elevation and a 2.5 metre high acoustic fence has been erected along the boundary of the site with the retail units (a requirement of the retail units planning permission). The submitted assessment proposes additional mitigation in the form of trickle vents and an increased glazing specification to achieve the WHO noise guidelines for internal spaces for this plot. The Applicant has also agreed to erect a 2.5 metre high brick wall adjacent to the part of existing acoustic fence (closest to the equipment) which would further reduce noise levels. The Environmental Health Officer raises no objection to the application on the basis of the level of mitigation now proposed provided this is secured by planning condition.

Having carefully assessed the scheme it is considered that subject to conditions, the proposal would have no unacceptable impacts upon the amenity of future occupiers of the proposed dwellings or dwellings adjacent to the application site in accordance with the Policy DM5 of the Allocations and Development Management DPD.

#### **Impact on Drainage**

Policy DM5 and Core Policy 9 require that proposals pro-actively manage surface water and Core Policy 10 seeks to mitigate the impacts of climate change through ensuring that new development proposals taking into account the need to reduce the causes and impacts of climate change and flood risk. The site lies in Flood Zone 1 which is at lowest risk of fluvial flooding.

In relation to surface water flooding, the development would result in an increase in the amount of hardstanding on the site when compared to the existing situation albeit the area is not known to be at risk of surface water flooding. The application form states that both surface water and foul sewage would be disposed of by mains drains/sewer. The proposal would accord with Core Policy 9, Core Policy 10 of the Core Strategy and DM5 of the Allocations and Development Management DPD in this regard.

### **Highway Safety**

Spatial Policy 7 of the Core Strategy seeks to ensure that vehicular traffic generated does not create parking or traffic problems. Policy DM5 of the DPD requires the provision of safe access to new development and appropriate parking provision.

The Highway Authority has been consulted on the proposals and have carefully assessed the number of on-site car parking spaces proposed together with the new junction that would be created on Skylark Way. The Highway Authority have concluded that, subject to conditions, all these matters are acceptable and would not result in any detrimental impact on highway safety.

It is therefore considered that the proposed development would not result in any significant parking issues or lead to a significant impact on highway safety subject to the approval of details reserved by condition in accordance with the requirements of Spatial Policy 7 of the Core Strategy and DM5 of the Allocations and Development Management DPD.

### **Other Issues**

I note Nottinghamshire County Councils request for condition requiring a waste audit. However, given that waste material resulting from this site is likely to be relatively low, such a condition is not considered necessary in this instance.

### **Planning Balance and Conclusion**

The site is located within in Clipstone and on a mixed-use allocation including Housing (Mu PP) with planning permission in the Allocations and Development Plan Document (DPD). The principle of residential development on this site is considered to be acceptable albeit subject to the consideration of the impact of the loss of land secured for children's nursery provision by an existing S106 attached to the wider development site. Following advice from Nottinghamshire County Council, it is agreed that there is no current need for an additional nursery given the existing provision in the area.

Whilst the application proposes no pro rata uplift in contributions towards affordable housing provision, it may not be possible to sustain the need for such a request based on the legal advice given. The Applicant has agreed to pay a contribution of £13,841 plus indexation through a variation of the existing S106 Agreement which would also include amended wording so that an existing community facilities contribution of £36,000 can also be spent towards the refurbishment of the Clipstone Welfare building. On balance, I therefore consider that the benefits to local community facilities provision would outweigh the lack of uplift in affordable housing contributions in this instance.

Impacts on visual and residential amenity and highway safety have also been weighed in the balance and overall the proposal is recommended for approval, subject to conditions and the

variation to the existing S106 legal agreement.

## **RECOMMENDATION**

**That planning permission is approved subject to:-**

- (a) the conditions and reasons shown below; and**
- (b) a variation to the existing S106 legal agreement to remove the requirement to provide a children's nursery and to secure a commuted sum of £13,841 plus indexation and ensure the existing community facilities contributions are used towards the refurbishment of the Clipstone Welfare building.**

### 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:

- Location Plan (amended plan received 12.08.2020)
- 2020 01 01 Rev C Proposed Site Layout (amended plan received 29.10.2020)
- 2020 01 02 Existing Topographical Site Layout
- 2020 01 03 Dwelling Type A and AH
- 2020 01 04 Dwelling Type B and BH
- 2020 01 06 Dwelling Type DH

Reason: To define this permission and for the avoidance of doubt.

03

No development above damp proof course shall take place until details 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.

All external facing materials  
Bricks  
Render/stone cladding/timber boarding  
Roofing materials

Reason: In the interests of visual amenity.

04

Notwithstanding the submitted details, no part of the development shall be brought into use 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 shall be implemented prior to the occupation of the dwellings and shall then be retained in full for a minimum period of 5 years.

Reason: In the interests of residential and visual amenity.

05

Prior to first occupation of the development hereby approved, full details of both hard and soft landscape works shall be 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.
- details of tree planting pits including associated irrigation measures, tree staking and guards, and structural cells.
- An implementation and phasing plan.
- All hard surfacing materials including parking areas and other vehicle and pedestrian circulation areas.
- Minor artefacts and structures, for example, furniture, refuse or other storage units, signs, lighting etc.
- proposed finished ground levels or contours.

Reason: In the interests of visual amenity and biodiversity.

06

All hard and soft landscape works shall be carried out in accordance with the approved implementation and phasing plan. The works shall be carried out before any part of the development is occupied or in accordance with the programme agreed with the Local Planning Authority. Any trees/shrubs which within a period of seven years from being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

Reason: To ensure the work is carried out within a reasonable period and thereafter properly maintained, in the interests of visual amenity and biodiversity.

07

Construction works shall not take place outside the following hours:

8am to 6pm Monday to Friday  
8am to 1pm Saturday



And not at all on Sundays or bank or public holidays unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity.

08

No development shall be commenced, including any site clearance, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period unless otherwise agreed in writing by the local planning authority. The Statement shall provide for:

- a. the parking of vehicles of site operatives and visitors;
- b. loading and unloading of plant and materials;
- c. storage of plant and materials used in constructing the development;
- d. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e. wheel washing facilities;
- f. measures to control the emission of dust and dirt during construction;
- g. a scheme for recycling/disposing of waste resulting from demolition and construction works;
- h. hours of delivery;
- i. limits to the hours of operation of machinery.

Reason: In the interests of residential amenity.

09

No part of the development shall be commenced until plans showing the siting and design (including elevations and materials) of a 2.5 metre high brick wall to be erected along the south boundary of Plot 5, running parallel with the extent of the built footprint of the dwelling and linking up to its rear elevation has been submitted and approved in writing by the Local Planning Authority. The approved wall shall be implemented in full on site prior to the occupation of Plot 5 and shall thereafter be retained for the life time of the development.

Reason: in the interests of residential amenity and to reduce noise levels from the retail units to the south of the site to an acceptable level.

10

Plot 5 shall not be brought into use until its glazing has been installed in accordance with the specification requirements set out in paragraphs 5.8 and 6.9 of the Noise Impact Assessment (Dated 25.08.20 by Spire Environmental). For the avoidance of doubt, the glazing installed shall have a minimum Rw of 20 and the trickle ventilation shall have a minimum Dn,e,w of 25. Any subsequent replacements shall be of the same or better specification.

Reason: in the interests of residential amenity and to reduce noise levels from the retail units to the south of the site to an acceptable level.

11

No part of the development hereby permitted shall be brought into use until all dropped vehicular footway crossings are available for use and constructed in accordance with the Highway Authority specification to the satisfaction of the Local Planning Authority in location as shown on the submitted plan ref. Drawing no. 2020/01/01 rev. C, titled: Proposed site layout.

Reason: In the interest of highway safety.

12

No part of the development hereby permitted shall be brought into use until all the access driveways are constructed with provision to prevent the discharge of surface water from the driveway to the public highway. The provision to prevent the discharge of surface water to the public highway shall then be retained for the life of the development.

Reason: To ensure surface water from the site is not deposited on the public highway causing dangers to road users.

13

No part of the development hereby permitted shall be brought into use until the driveways and any parking or turning areas are surfaced in a hard-bound material (not loose gravel) for a minimum of 5.0 metres behind the Highway boundary. The surfaced driveways and any parking or turning areas shall then be maintained in such hard-bound material for the life of the development.

Reason: To reduce the possibility of deleterious material being deposited on the public highway (loose stones etc.)

14

No part of the development hereby permitted shall be brought into use until pedestrian visibility splays of 2.0 meters x 2.0 meters are provided on each side of the vehicle accesses as shown on the submitted plan ref. 2020 01 01 Rev C Proposed Site Layout (amended plan received 29.10.2020). These measurements are taken from and along the highway boundary. The area of land within these splays shall be maintained free from all obstruction over 0.6 meters above the carriageway level at all times.

Reason: In the interest of pedestrian safety.

15

No part of the development hereby permitted shall be brought into use until the parking/turning areas are provided in accordance with the submitted plan ref. 2020 01 01 Rev C Proposed Site Layout (amended plan received 29.10.2020). The parking/turning areas shall be maintained in the bound material for the life of the development and shall not be used for any purpose other than the parking/turning/loading and unloading of vehicles.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking in the area.

16

No shrub that is to be removed as part of the development hereby permitted shall be removed during the bird nesting period (beginning of March to end of August inclusive).

Reason: To ensure that adequate provision is made for the protection of nesting birds on site.

### **Notes to Applicant**

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/](http://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 hereby approved as the development type proposed is zero rated in this location.

02

This application has been the subject of discussions during the application process to ensure that the proposal is acceptable. 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 accord Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

03

The development makes it necessary to construct a vehicular crossing over a footway/verge of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact the County Council's Agent, Via East Midlands to arrange for these works to be carried out. Email: [licences@viaem.co.uk](mailto:licences@viaem.co.uk) Tel. 0300 500 8080 and further information at: <https://www.nottinghamshire.gov.uk/transport/licences-permits/temporary-activities>

04

As a private street, the Advance Payments Code under the Highways Act 1980 will apply unless exemption is made. To be exempt the following conditions should be met:

- The deposit of a map with the Highway Authority under Section 31 (6) of the Highways Act 1980 identifying the roads which are to remain private.
- The erection and maintenance of a road sign(s) indicating that the road is private.
- The provision of evidence that potential purchasers of the dwellings have been/will be made aware of the unadopted status of the road and what this will mean to them in practice;

- The provision of evidence that future maintenance of the road has been secured. For example, a unilateral undertaking under Section 106 of the Town and Country Planning Act to set up a maintenance company; The boundary between the private road and the publicly-maintained highway should be clearly marked by a concrete edging, boundary posts or similar.

05

Please note that the District Council no longer provides wheeled bins for residential developments free of charge. Wheeled bins can be purchased from the District Council or any other source provided they conform to appropriate standards and requirements of the Council. If you wish to purchase wheeled bins or discuss this matter further please contact the Waste Management Officer on 01636 655677 or email: [waste.management@nsdc.info](mailto:waste.management@nsdc.info).

#### BACKGROUND PAPERS

Application case file.

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

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Lisa Hughes**  
**Business Manager – Planning Development**

Committee Plan - 20/00772/FUL

