

Planning Report for 2017/1502



NOTE This map is provided only for purposes of site location and should not be read as an up to date representation of the area around the site.
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Report to Planning Committee

Application Number: 2017/1502

Location: 23 Waverley Avenue Gedling Nottinghamshire NG4 3HH

Proposal: Section 73 application to vary Conditions 2 (approved plans) and 9 (landscaping) on planning permission reference 2014/0169 with respect to elevational treatments/fenestration and site enclosures

Applicant: Mr Raak Kalaria

Agent: Mr Stuart Buckenham

Case Officer: Graham Wraight

1.0 Site Description

- 1.1 The site formerly housed a residential care home but is presently undergoing redevelopment, having received planning permission for the erection of 14 apartments under reference number 2014/0169. At the time of visiting the site, the three apartment blocks approved were substantially completed and some external groundworks, including the erection of boundary treatments, had been undertaken.
- 1.2 The site is located at the end of Waverley Avenue, on the corner of Tennyson Avenue. It fronts partly towards the public highway and partly towards the private drive that serves the dwellings on Lawn Grove, beyond which residential dwellings are located. All other boundaries are shared with residential properties.
- 1.3 The Ouse Dyke runs along the rear site boundary and the site is located within Flood Risk Zone 3.

2.0 Relevant Planning History

- 2.1 2014/0169 - Revised Plans (Resubmission) Demolition of the care home and construction of 14 apartments, car parking and associated landscaping – Approved subject to a Section 106 planning obligation.

3.0 Proposed Development

- 3.1 This proposal is submitted under Section 73 of the Town and Country Planning Act and seeks to vary Conditions 2 and 9 on planning permission

reference 2014/0169. Condition 2 identifies the plans that were approved and Condition 9 required the submission of a landscaping scheme.

- 3.2 The purpose of these variations is to allow for changes to be made to the approved elevational treatments/fenestration of the buildings and to make changes to the site enclosures both within the site and on its boundaries.

4.0 Consultations

4.1 Environment Agency

Concerns raised with the proposed fence and walls where they are located within 8 metres of the Ouse Dyke.

The Environment Agency advises that the fence requires a Flood Risk Activity Permit but that they will not pursue its removal as it is a replacement of a previous fence. However if the fence is to be retained improvements could be made to it, such as the addition of a gate for access for our field teams, and making the fence more permeable to flood water, for example leaving a space at the base.

The Environment Agency also raised disapproval of brick walls that have been erected, however the majority of these are outside of the 8 metre boundary. Furthermore, these walls have been removed from the plans and are not being considered as part of this application.

4.2 Nottinghamshire County Council Highways

No observations.

4.3 Nottinghamshire Council Flood Risk Team (Lead Local Flood Authority)

No comments to make.

4.4 Members of the public

Objections from the occupiers of 3 properties have been received and are summarised as follows:

- Increase in the size of windows resulting in an increase in overlooking
- Work has been undertaken prior to approval being granted
- Frosted glazing that has been installed only provides minimal frosting
- A number of trees have been removed and will be replaced with shrubs
- Lack of information has been provided
- Over development and out of scale
- Poor quality development with tiny apartments
- Loss of privacy

5.0 Relevant Planning Policies / Planning Considerations

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that: 'if regard is to be had to the development plan for the

purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'. The following policies are relevant to this application:

5.2 *National Planning Policy Framework 2012 (NPPF)*

5.3 *Replacement Local Plan 2005 (RLP)*

- ENV1 – Development Criteria;
- H7 – Residential Development on Unidentified Sites within the Urban Area and Defined Village Envelopes;

5.4 *Aligned Core Strategy 2014 (ACS)*

- Policy 2 – The Spatial Strategy
- Policy 8 – Housing Size, Mix and Choice
- Policy 10 – Design and Enhancing Local Identity

5.5 *Emerging Local Planning Document 2017 (LPD)*

Paragraph 216 of the NPPF outlines that weight can be given to emerging policies, relative to their advancement in preparation; the extent of unresolved objections; and consistency with the NPPF. The LPD is currently being examined in accordance with paragraph 182 of the NPPF. Until the Inspector's report is published, LPD policies cannot be given significant weight. Where the LPD policies meet the requirements set out in Paragraph 216 (i.e. they have no substantive objections) they are afforded "moderate" weight. Where the LPD policies have outstanding objections, they are afforded "limited" weight.

The following LPD policies are relevant to this application (and weight given):

- LPD 3 – Managing Flood Risk (moderate weight)
- LPD 32 – Amenity (moderate weight)
- LPD 39 – Housing Development on Unallocated Sites (moderate weight)

6.0 **Principle of the development**

6.1 Planning permission has been granted under reference 2014/0169 and development has commenced. It is noted that the changes proposed by the current application have been incorporated into the 'as built' development.

6.2 The principle of erecting 14 apartments on the site has been established through the granting of the earlier permission. This previous permission established that the scale of the development and its layout was acceptable in terms of its impact upon the surrounding area and adjacent properties.

6.3 Whilst the policies of the emerging Local Planning Document are now to be given weight in the decision notice process, it is not considered that these would justify a reassessment of the principle of the development.

6.4 It is therefore considered that only the matters relating to the design changes and the boundary changes fall to be considered under the current application.

7.0 **Visual impact**

- 7.1 The proposed changes to the elevations and fenestration would not be so significant as to visually change the character and appearance of the approved development. It is therefore considered that the proposed alterations would be visually acceptable.
- 7.2 It is not considered that the amended site enclosures have any adverse impact upon visual amenity and would meet with the objectives of the National Planning Policies Framework, Local Plan Policies ENV1 and H7, Core Strategy Policy 10 and LPD policies 32 and 39.

8.0 **Impact upon residential amenity**

- 8.1 The concerns of the occupiers of adjacent dwellings are noted, however the constructed development is predominantly the same as that which was approved under 2014/0169. In terms of the scale and layout of the buildings, these remain the same as originally approved and the impact would not be changed. It is not considered that the amended site enclosures have any adverse impact upon residential amenity.
- 8.2 The key aspect that has changed on the current application is with respect to the alterations to the windows that are proposed and whether these would have any significant impact in terms of overlooking.
- 8.3 Block A: The only amendment proposed to this block is the increase in depth of three windows on the south elevation of the building however these are located a substantial distance (approximately 20 metres) from the nearest site boundary and therefore no concerns are raised with respect to this amendment.
- 8.4 Block B: Three windows on the south facing elevation of this block have been enlarged and include a degree of obscuring which the plans indicate is to a minimum privacy level of 3. Whilst these windows have been enlarged, it is considered that they are an adequate distance from the common site boundaries with 25 Tennyson Avenue and 3 Lawn Grove in order to ensure that they would not give rise to unacceptable overlooking and their impact is further reduced by the fact that they are obscured. The only other amendments to this block are a slight increase in the size of three windows in the west facing elevation and the addition of three balcony privacy screens, which do not raise any concern.
- 8.5 Block C: A number of windows on the front (west) elevation of Block C would be changed in terms of their design but not their sizes. This would include the substitution of four balconies with windows. It is not considered that this would materially alter the impact that the development would have on the nearest property at 40 Tennyson Avenue. To the rear of Block C, a window would be substituted with a balcony but as this would be at ground floor level it would not cause concern with respect to overlooking. Two windows on the side (south) elevation of Block C would be increased in size and an additional window added at ground floor level. Whilst these would be adjacent to the

common boundary, they would face towards the blank side elevation of the adjacent dwelling at 25 Waverley Avenue. Three windows on the rear (east) elevation would also be enlarged as would six windows on the side (north) elevation. It is not considered that any of these changes would increase overlooking.

- 8.6 The proposed amendments would meet with the objectives of the National Planning Policies Framework, Local Plan Policy ENV1, Core Strategy Policy 10 and LPD policies 32 and 39.

9.0 **Flood risk**

- 9.1 The site is located within Flood Risk Zone 3 and is adjacent to the Ouse Dyke. The principal of siting the development in this location has been established through the previous approval and it therefore not necessary to assess the usual flood risk considerations such as the sequential test.

- 9.2 The Environment Agency have been consulted and have raised concern as to the fencing and walls that have been erected within 8 metres of the Ouse Dyke. However, they do accept that a fence was previously located along the rear site boundary and therefore do not propose to seek its removal under their own permit procedure. It is also noted that the fence was shown on the previously approved landscaping scheme.

- 9.3 The walls that were shown on the original plans submitted have subsequently been removed from the drawings. This being the case, they no longer fall to be considered under this application.

- 9.4 It is therefore considered that the amendments proposed by this application would not give rise to an increase in flood risk and would meet with the objective of LPD Policy 3.

10.0 **Section 106 planning obligation**

- 10.1 The original planning application carried a Section 106 planning obligation to secure a payment towards education provision. Whilst it is understood that this payment has now been received by Nottinghamshire County Council, it is necessary to carry forward to the requirements that the County Council spend this money or return it to the applicant after a specified period. This can be addressed by a deed of variation which should be completed before a decision on the current application is issued.

11.0 **Other matters**

- 11.1 It is noted that details relating to boundary treatments were also required under Condition 7 on planning permission reference 2014/0169 and that details were approved on 20th February 2017. Whilst Condition 7 was not specifically referenced on the application form submitted with respect to the current application, it is clear from the description that the application relates to site enclosures and therefore adequate information has been provided to interested parties as to what the proposed changes are.

- 11.2 Furthermore, if the variation of condition application is granted then a new planning permission would be granted and it would be necessary to consider which Conditions would need to be repeated on the new permission. Given that boundary treatments would be shown on the revised details, it would not be necessary to repeat Condition 7 on the new permission.
- 11.3 The landscaping plan has been updated to increase the amount of planting that would be undertaken adjacent to the common boundary with 3 Lawn Grove. Minor changes have also been made to the external site layout, including the provision of an additional parking space.
- 11.4 The amended plans also show solar panels on the roofs of the buildings and the provision of this source of renewable energy is welcomed.
- 11.5 The fact that the amendments have been implemented in the as built scheme does not affect the consideration of the application, which must be assessed upon its own merits.
- 11.6 It is considered that adequate information has been provided to allow for interested parties to understand the changes that are proposed and that a reasonable period has been afforded for comments to be made.

12.0 **Conclusion**

- 12.1 The principle of the development and the general design and layout of the development has been established through the granting of planning permission 2014/0169. The proposed amendments are considered to be acceptable with respect to their impact upon visual amenity and upon the residential amenities of the occupiers of adjacent properties. The proposal does not give rise to flood risk concerns and no comments have been made by the Highway Authority. It is therefore considered that the proposal meets with the objectives of the National Planning Policies Framework, Local Plan Policies ENV1 and H7, Core Strategy Policies 2, 8 and 10 and LPD policies 3, 32 and 39.

Recommendation:

Grant variation to Conditions 2 and 9 of planning permission reference 2014/0169 by issuing a replacement planning permission subject to the applicant entering into a deed of variation amending the original Section 106 agreement with the Borough Council as Local Planning Authority and the County Council as the Education Authority to secure the payment of an education contribution; and subject to the following conditions:

Conditions

1. DELETED - Time period to implement permission - development has commenced.

2. The development hereby permitted shall be constructed in accordance with the following approved plans: - o Location plan received 13 February 2014 o 108/03/A (floor plans only), 108/04/C (floor plans only) and 108/05/B (floor plans only) received November 2015 o 108/06/D and 108/07/D a received on 4 December 2017 o 108/08/E received on 24 January 2018
3. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Borough Council and development must be halted immediately on that part of the site until such time that the Borough Council has given written approval for works to recommence on site. Once contamination has been reported to the Borough Council, an assessment of contamination must be undertaken. Where remediation is necessary, a written remediation scheme, together with a timetable for its implementation and verification reporting, must be submitted to and approved in writing by the Borough Council. The Remediation Scheme shall be implemented as approved.
4. DELETED - Dust management plan - demolition has taken place and buildings have been constructed.
5. DELETED - Measures to prevent debris on highway - demolition has taken place and buildings have been constructed.
6. The drainage scheme shown on drawing 6732-01 which was approved in conjunction with Condition 6 on planning permission reference 2014/0169 shall be implemented before the development is first brought into use and shall be retained for the lifetime of the development unless otherwise agreed in writing by the Borough Council.
7. DELETED - Means of enclosure - details shown on approved plan.
8. DELETED - External materials - buildings have been constructed.
9. Landscaping shall be undertaken in accordance with the details shown on approved drawing 108/08 E and shall be carried out in the first planting season following the first occupation of the development. Any planting material which becomes diseased or dies within five years of the completion of the development shall be replaced in the next planting season.
10. No part of the development hereby permitted shall be brought into use until the dropped vehicular footway crossing has been extended and is available

for use and constructed in accordance with the Highway Authority specification to the satisfaction of the Local Planning Authority.

11. No part of the development hereby permitted shall be brought into use until the access driveway is constructed with provision to prevent the unregulated discharge of surface water from the driveway to the public highway. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.
12. The proposed access, parking and turning facilities shall be surfaced in permanent materials in accordance with details, including plans of the facilities showing their precise location, to be approved in writing by the Borough Council as local planning authority before the development hereby permitted is first occupied. The access, parking and turning facilities shall be maintained as approved for the lifetime of the development and shall not be used for any purpose other than the manoeuvring and parking of vehicles.
13. No part of the development hereby permitted shall be occupied until the access is constructed with a gradient not exceeding 1 in 20 for a distance of 5m from the rear of the highway boundary, and which never exceeds 1 in 12 thereafter.
14. The development hereby permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision D, prepared by SCC Consulting Engineers in September 2015 and submitted in support of planning application 2014/0169 and in particular the following mitigation measures detailed within the FRA: 1. The internal finished floor levels shall be set no lower than 300mm above the existing ground levels. 2. The design and layout of the building shall incorporate an 8.0m wide unobstructed easement from the top embankment of the Ouse Dyke. The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.
15. DELETED - Floodplain storage and overland flow route scheme - the approved scheme referred to increase in permeable areas as a result of the development, moving of buildings away from watercourse, additional planting and finished floor levels. A Condition is not required to control these matters.
16. The surface water drainage scheme approved in conjunction with Condition 16 on planning permission reference 2014/0169 shall be implemented before the development is first brought into use and shall be retained for the lifetime of the development unless otherwise agreed in writing by the Borough Council.

17. DELETED - Floor levels - as buildings have been constructed.
18. All balconies shall be fitted with privacy screens in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The privacy screens shall be implemented in accordance with the approved details before the development is first occupied and shall maintained thereafter for the lifetime of the development.
19. Prior to the development hereby approved first being brought into use, individual parking spaces shall be clearly marked out on site in accordance with the approved plan reference 108/08E. Parking spaces shall be kept unallocated and available for parking in association with the development thereafter.

Reasons

1. DELETED as development has commenced.
2. For the avoidance of doubt.
3. To ensure that practicable and effective measures are taken to treat, contain or control any contamination.
4. DELETED as demolition has taken place and buildings have been constructed.
5. DELETED as demolition has taken place and buildings have been constructed.
6. To ensure the development is provided with a satisfactory means of drainage and to minimise the risk of pollution.
7. DELETED as details shown on approved plan.
8. DELETED as buildings have been constructed.
9. To secure a satisfactory development, in the interests of visual amenity.
10. In the interests of road safety, in accordance with the aims of policy ENV1 of the Gedling Borough Replacement Local Plan (Certain Saved Policies 2008).
11. In the interests of road safety, in accordance with the aims of policy ENV1 of the Gedling Borough Replacement Local Plan (Certain Saved Policies 2008).
12. To ensure that adequate off-street parking provision is made to reduce the possibilities of the development leading to on-street parking in the area.

13. In the interests of road safety, in accordance with the aims of policy ENV1 of the Gedling Borough Replacement Local Plan (Certain Saved Policies 2008).
14. To reduce the risk of flooding to the proposed development and future occupants and to allow future maintenance and emergency activities relating to Ouse Dyke to be undertaken without obstruction.
15. DELETED as the approved scheme referred to increase in permeable areas as a result of the development, moving of buildings away from watercourse, additional planting and finished floor levels.
16. To prevent the increased risk of flooding; to improve and protect water quality; to improve habitat and amenity; and to ensure the future maintenance of the sustainable drainage structures.
17. DELETED as buildings have been constructed.
18. To prevent the overlooking of neighbouring properties in accordance with Policy H7 of the Gedling Borough Replacement Local Plan (Certain Policies Saved 2014).
19. In the interests of highway safety.

Reasons for Decision

In the opinion of the Borough Council the proposed development is visually acceptable, results in no significant impact on neighbouring properties, the area in general, on flood risk and is acceptable from a highway safety viewpoint. The proposal therefore accords with the National Planning Policy Framework, Local Plan Policies ENV1 and H7, Core Strategy Policies 2, 8 and 10 and LPD policies 3, 32 and 39.

Notes to Applicant

Proximity to boundary - deleted as buildings have been constructed.

Comments from Severn Trent Water - deleted as drainage has been approved.

CIL - not required as no increase in floorspace.

In order to carry out the off-site works required you will be undertaking work in the public highway which is land subject to the provisions of the Highways Act 1980 (as amended) and therefore land over which you have no control. In order to undertake these works you will need to enter into an agreement under Section 278 of the Act. Please contact Matt Leek on 0300 500 8080 for details.

Planning Statement - The Borough Council has undertaken discussions during the consideration of the application which have successfully addressed the matters raised by the Environment Agency. The Borough Council has therefore worked positively and proactively with the applicant in accordance with paragraphs 186 to 187 of the National Planning Policy Framework.