

## **Report to Planning Committee**

**Planning Enforcement Reference:** 0164/2013

**Location:** 'The Brambles' development site, land between Main Street and Hollinwood Lane, Calverton, Nottinghamshire

**Breach of Planning Control:** Breach of Condition 1 of Planning Permission 2012/0941 (Outline Appn No 2012/0057)- Existing trees onsite not protected in accordance with Landscaping Layout (101 Rev G).

### **Site Description**

The application site has an area of 3.8 hectares and is located at the western end of Calverton, adjacent to a main route into the village. It is bounded by Collyer Road to the north, Hollinwood Lane to the west and Main Street to the south. There are a number of residential properties which adjoin the site on Bartley Gardens, Main Street and Hollinwood Lane. To the eastern boundary of the site are allotment gardens on Collyer Road.

The site was formally agricultural grassland, and falls in level from the south and north-western corner down to the south-eastern and north-eastern corners of the site. Hedgerows are located around the perimeters of the site to the road boundaries and the allotments. The site is bounded by domestic fencing along its boundary with residential properties. There are no trees within the site, but there are a number of trees within the hedgerows and along the boundaries with residential properties. An avenue of street trees has been planted along Collyer Road, parallel to the northern boundary of the application site.

The existing accesses into the site are off Main Street and Collyer Road.

### **Relevant Planning History**

Outline Planning Permission was granted in August 2012 for the erection of up to 126 dwellings (Class C3) and ancillary works (Means of access from Collyer Road and pedestrian accesses to be determined, other matters reserved) – planning application 2012/0057.

Subsequently an application for approval of the matters reserved in relation to Appearance, Landscaping, Layout and Scale, pursuant to outline planning permission no: 2012/0057 was submitted. The application was granted conditional permission, subject to the development being built in accordance with the details.

Condition 1 of the reserved matters application detailed that the development should be completed in accordance with the Landscaping Layout (drawing number 101 Rev G). The drawing specifies that the rooting zone of the Poplar trees shall be protected by a 2.3 metre weldmesh fence on scaffold frame.

A complaint was received in relation to works that were being carried out at the site and potential damage to trees. Investigations were subsequently carried out in conjunction with the Nottinghamshire County Councils Senior Forestry Officer, where it was found that the developers compound and associated car park has been created close to the Poplar trees. Upon inspecting the site, Officers noted that the required protection measures have not been implemented and were concerned that the excavation and compaction works to create the car parking area may have damaged the rooting area of the Poplar trees. The Council therefore requested that the developer commission a survey of the Poplar tree roots to assess any damage that may have been caused as a result of the works within Root Protection Area.

The Borough Council received the required report in September 2013 relating to works that were taking place on the site as part of the previously approved development. The report specifically relates to works in the vicinity of a group of Poplar trees located on the boundary of the site, however not within the site itself.

The report confirms that there has been some root severance, although this is mainly confined to the fine roots found within the upper levels of the soil. The report also noted that there has been some severance of roots of a larger diameter, however the report notes that this damage is minimal to the overall stability of the trees as the main resistance is provided by the roots located closer to the bole of the tree. The report comments there are further roots below the level of those larger roots that have been damaged and that the root system has therefore not been completely severed on this side of the tree.

The report also sets out a number of measures that need to be carried out in order to ensure that the trees can be retained in the long term. Enforcement Action is required to be undertaken to ensure that these remediation works are undertaken.

### **Breach of Planning Control**

Section 171A (Expressions used in connection with enforcement) of the Town and Country Planning Act 1990 states that for the purposes of this Act;

- a) Carrying out development without the required planning permission; or
- b) failing to comply with any condition or limitation subject to which planning permission has been granted,

Constitutes a breach of planning control.

The Council considers that the development currently taking place on the site known as 'The Brambles' is taking place in breach of Condition 1 of Planning Permission 2012/0941, namely not in compliance with the details contained upon and approved under Landscaping of the site, in terms of the ability to retain the Poplar trees as indicated on the approved plans.

There has therefore been a breach of planning control.

### **Planning Considerations**

Although the development has taken place in breach of a condition placed upon the planning permission, local planning authorities are advised to consider the guidance contained within paragraph 207 of the National Planning Policy Framework (NPPF) which advises:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.”

Planning permission is unlikely to be granted for a variation to the details approved under reserved matters in relation to the trees that should be retained, due to the impact that the non-retention could have on the appearance of the development and wider area.

The remediation of the current damage and prevention of future damage, to the Poplar trees requires works to be undertaken by the developer. In order to ensure that these works are carried out to the Councils satisfaction and specification, it is my opinion that authorisation should be given to take any appropriate enforcement action to regularise the position.

### **Recommendation:**

That the Corporate Director in consultation with the Council Solicitor and Monitoring Officer be authorised to take any appropriate enforcement action including the service of relevant notices.

or

That the Council Solicitor and Monitoring Officer be authorised to take any further legal action following the service of any relevant notices, if such legal action is appropriate.