

BOROUGH OF KETTERING

Committee	Full Planning Committee - 17/12/2019	Item No: 5.1
Report Originator	James Wilson Interim Head Of Development Services	Application No: KET/2018/0519
Wards Affected	All Saints	
Location	Cowper Street (land off), Kettering	
Proposal	Full Application: Erection of 49 no. dwellings including associated access and public open space	
Applicant	Harpur Developments Ltd	

1. PURPOSE OF REPORT

- To describe the above proposals
- To identify and report on the issues arising from it
- To state a recommendation on the application

2. RECOMMENDATION

THE DEVELOPMENT CONTROL MANAGER RECOMMENDS that this application be APPROVED, subject to a S.106 OBLIGATION being entered into, and to the following conditions:-

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.

REASON: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended) and to prevent an accumulation of unimplemented planning permissions.

2. The development hereby permitted shall not be carried out except in complete accordance with the detailed shown on the submitted plans, nos

BR-2018-PLNG-02-E - Elevations;

BR-2018-PLNG-05-D - Landscaping Plan 01;

BR-2018-PLNG-06-F - Landscaping Plan 02;

BR-2018-PLNG-07-F - Landscaping Plan 03;

BR-2018-PLNG-08-C - Landscaping Plan 04;

BR-2018-PLNG-04-G - Street Scenes;

BR-2018-PLNG-09-T - Site Layout Plan (subject to vehicular access to the land in front of the bowling alley remaining suitable without crossing kerb up standings etc;

BR-2018-PLNG-03-E - Floor Plans;

TA05 A - Vehicle Tracking Turn left in and out;

TA06 A - Vehicle Tracking Turn right in and out;

TA07 A - Vehicle Tracking Turn in the Road.

BR-2018-PLNG-09-X1 - Affordable Housing Layout

REASON: In the interest of securing an appropriate form of development in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

3. No earthworks or groundworks shall take place until a plan prepared to a scale of not less than 1:500 showing details of existing and intended final ground and finished floor levels has been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

REASON: Finished Floor Levels are necessary to protect the privacy of the occupiers of adjoining properties in accordance with Policy 13 of the North Northamptonshire Joint Core Strategy.

4. Prior to the occupation of any dwelling all garden and landscaped areas shown on the approved plans shall have a capping layer of soil (top and/or sub soils) as outlined in report ref. STQ4344-G01 dated May 2018 (to a minimum depth of 600mm in private residential gardens and 300mm in general landscaped areas). A verification report to demonstrate that the required depth of cover has been achieved, to include a topographic survey or a visual inspection at numerous points across the site supported by photographic evidence, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the first dwelling. Details of the supplier and confirmation of the source(s) and total quantity of imported soil material shall be stated in the verification report. The soil should be free from asbestos, metals, plastic, wood, glass, tarmac, paper and odours associated with contaminated soils and otherwise comply with the requirements of BS 3882:2007 - Specification for topsoil and requirements for use. Occupation of the development shall only be permitted on approval of the verification report.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policies 6 and 8 of the North Northamptonshire Joint Core Strategy.

5. Prior to the commencement of development a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved CMP shall be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction.

REASON: The details are required prior to commencement of development because the CMP needs to be in place and in force throughout the construction period and in the interests of safeguarding highway safety and residential amenity in accordance with Policy 8 of the Northamptonshire Joint Core Strategy

6. In the event that unexpected contamination is found at any time when carrying out the development hereby approved, it must be reported immediately to the Local Planning Authority. Development works at the site shall cease and an investigation and risk assessment undertaken to assess the nature and extent of the unexpected contamination. A written report of the findings shall be submitted to and approved by the Local Planning Authority, together with a scheme to remediate, if required, prior to further development on site taking place. Only once written approval from the Local Planning Authority has been given shall development works recommence.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policies 6 and 8 of the North Northamptonshire Joint Core Strategy.

7. Prior to the construction of any buildings above slab level a scheme for achieving the noise levels outlined in BS8233:2014 with regards to the residential units shall be submitted and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved scheme has been implemented in full in the dwellings to be occupied. The scheme shall be retained in full thereafter and no alterations shall be made to the approved structure including roof, doors, windows and external facades, layout of the units or noise barriers.

REASON: Details are required prior to the commencement of development because any noise measures required are likely to be an integral part of the design and in the interest of safeguarding residential amenity in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

8. No development shall take place until a scheme and timetable detailing the provision of fire hydrants and their associated infrastructure has been submitted to and approved in writing by the Local Planning Authority. The fire hydrants and associated infrastructure shall thereafter be provided in accordance with the approved scheme and timetable.

REASON: To ensure adequate water infrastructure provision is made on site for the local fire service to tackle and property fire in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

9. No above ground work shall take place until full details of the surface water drainage scheme for the site, based on the approved Flood Risk Assessment ref R-FRA-9842M-01-H, rev. H, dated November 2018, prepared by JPP Consulting Ltd, have been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall include details (i.e. designs, diameters, invert and cover levels, gradients, dimensions and so on) of all elements of the proposed drainage system, to include pipes, inspection chambers, outfalls/inlets and attenuation structures (if required). Details of the drainage system are to be accompanied by full and appropriately cross-referenced supporting calculations.

REASON: To reduce the risk of flooding both on and off site in accordance with the NPPF and Policy 5 of the Core Strategy for North Northamptonshire by ensuring the satisfactory means of surface water attenuation and discharge from the site.

10. No above ground work shall take place until a detailed scheme for the ownership and maintenance for every element of the surface water drainage system proposed on the site has been submitted to and approved in writing by the Local Planning Authority and the maintenance plan shall be carried out in full thereafter.

Details are required of the organisation or body responsible for vesting and maintenance of individual aspects of the drainage system. The maintenance and/or adoption proposal for every element of the surface water drainage system proposed on the site should be considered for the lifetime of the development and a maintenance schedule setting out which assets need to be maintained, at what intervals and what method is to be used including details of expected design life of all assets with a schedule of when replacement assets may be required, should be submitted.

A maintenance schedule should be accompanied by a site plan to include access points, maintenance access easements and outfalls. Maintenance operational areas to be identified and shown on the plans, to ensure there is room to gain access to the

asset, maintain it with appropriate plant and then handle any arising's generated from the site.

REASON: To reduce the risk of flooding both on and off site in accordance with the NPPF and Policy 5 of the Core Strategy for North Northamptonshire by ensuring the satisfactory means of surface water attenuation and discharge from the site.

11. No Occupation shall take place until the Verification Report for the installed surface water drainage system for the site to be submitted in writing by a suitably qualified independent drainage engineer and approved by the Local Planning Authority prior to occupation of the site based on the approved Flood Risk Assessment ref R-FRA-9842M-01-H, rev. H, dated November 2018, prepared by JPP Consulting Ltd. These shall include:

- a) Any departure from the agreed design is keeping with the approved principles
- b) Any As-Built Drawings and accompanying photos
- c) Results of any Performance Testing undertaken as a part of the application process (if required / necessary)
- d) Copies of any Statutory Approvals, such as Land Drainage Consent for Discharges etc.

REASON: To ensure the installed Surface Water Drainage System is satisfactory and in accordance with the approved reports for the development site and in accordance with the NPPF and policy 5 of the North Northamptonshire Joint Core Strategy.

12. No development shall commence on site until full details of a scheme including phasing, for the provision of mains foul sewage infrastructure on and off site has been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the works have been carried out in accordance with the approved scheme.

REASON: To prevent flooding, pollution and detriment to public amenity through provision of suitable water infrastructure in accordance with Section 14 of the National Planning Policy Framework and policy 5 of the North Northamptonshire Joint Core Strategy.

13. No development above slab level shall take place until details of the types and colours of all external facing and roofing materials, windows and rainwater goods to be used, together with samples, have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

REASON: In the interests of the visual amenities of the area in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

14. No development above slab level shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of hard and soft landscaping works, including the layout of natural play equipment on the public open space, which shall specify species, planting sizes, spacing and numbers of trees and shrubs to be planted, the layout, contouring and surfacing of all open space areas. The works approved shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development whichever is the sooner. Any trees or plants which, within a period of 5 years from the date of planting,

die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

REASON: To improve the appearance of the site in the interests of visual amenity in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

15. No development above slab level shall take place until details of the materials to be used for hard and paved surfacing have been submitted to and approved in writing by the Local Planning Authority. The approved surfacing shall be completed before the adjoining dwellinghouses are first occupied, in accordance with the approved details.

REASON: In the interests of visual amenity in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

16. There shall be no external illumination on the site at any time other than in accordance with a detailed scheme which shall first have been submitted to and approved in writing by the Local Planning Authority.

REASON: In the interests of the amenities of the area and adjoining residential properties in particular in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

17. All dwellings shall be constructed to achieve a maximum water use of no more than 110 litres per person per day in accordance with the optional standards 36(2)(b) of the Building Regulations 2010 (as amended) as detailed within the Building Regulations 2010 Approved Document G - Sanitation, hot water safety and water efficiency (2015 edition);

REASON: In the interests of water efficiency in a designated area of water stress in accordance with Policy 9 of the North Northamptonshire Joint Core Spatial Strategy.

18. Notwithstanding the approved details no boundary treatment shall be constructed until a revised scheme for boundary treatment has been submitted to and approved in writing by the Local Planning Authority which seeks to replace closed board fencing visible within the public realm with an acceptable alternative. The dwelling, which the boundary treatment relates shall not be occupied until the relevant part of the approved scheme has been fully implemented in accordance with the approved details and retained as such thereafter.

REASON: In the interests of the visual and residential amenity in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

19. In the event that the approved layout of streets and sewers are not adopted by the Highway Authority, the development shall not be carried out other than in accordance with an approved 'Legal setup of a Management Company' document and maintained to standards that have been set out and approved by the LPA prior to and in regard to the laying out of any roads, sewers and other common facilities.

REASON: In the interest of highway safety and in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

20. Prior to completion of the development a signing strategy shall be submitted to the local planning authority in writing for approval. The Signing Strategy shall include such details, drawings, specifications, schedules and programme including but not limited to the following:-

- Plans identifying all existing signs and way marking that direct highway users (which for the avoidance of doubt shall include motorists, cyclists, pedestrians and equestrians) to the redundant football ground including repeater or graphic signage;
- A strategy setting out which existing signs and way marking are proposed to be removed, replaced, amended or modified so as to remove reference to the redundant football ground as a legend or destination;
- Full sign design details of replacement signs, modifications to existing signs and reinstatements for removed signs, such details shall include appropriate detailed location plans including, sign face design, post design and associated foundation design;

REASON: In accordance with Policy 8 b) of the North Northamptonshire Joint Core Strategy

21. No development shall take place on site until full details (in accordance with the specification of the Highway Authority) for a Toucan Crossing across Rockingham Road has been submitted to and approved in writing by the Local Planning Authority. First occupation of the site shall not occur unless provision to implement such a crossing has been first secured.

REASON: Access for prioritising the needs of pedestrians is required in accordance with Policy 8 b) of the North Northamptonshire Joint Core Strategy .

Officers Report for KET/2018/0519

This application is reported for Committee decision because the application requires an agreement under s.106.

1. PURPOSE OF REPORT

To present to Committee an update on the application KET/2018/0519 that planning Committee on 20th February 2019 resolved to approve subject to the completion of S106 and conditions. Due to a viability assessment and proposed revisions to the level of affordable housing changes are sought to planning obligations to be delivered.

2. INFORMATION

2.1 The Planning Committee approved the development of 49 dwellings including associated access and public open space on 20th February 2019 on the former site of the Kettering Town Football Stadium, subject to a s106 agreement and conditions as set out in the committee report (see attached).

2.2 In negotiating the s106 Heads of Terms it was acknowledged at the time that a fully policy compliant scheme was potentially causing viability issues for the development. Section 4 of the Committee Report sets out what the requested contributions are and Section 7.10 stated that,

'At this level the viability of delivering the scheme is brought into question and therefore a prioritisation process was undertaken seeking to achieve a reasonable contribution per dwelling within the bounds of viability but also identifying the areas of funding which could afford to be reduced and still make the development sustainable and acceptable in planning terms.'

2.3 Following the Committee decision further work was undertaken by the applicant to investigate whether the scheme could actually be delivered with this level of obligations and a detailed viability assessment was produced to demonstrate whether and how much of a viability gap existed.

2.4 The National Planning Policy Framework (NPPF) paragraph 56 states that *'Planning obligations must only be sought where they meet all of the following tests*
a) *necessary to make the development acceptable in planning terms;*
b) *directly related to the development; and*
c) *fairly and reasonably related in scale and kind to the development.*

2.5 Paragraph 57 goes on to say that *'The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.'*

2.6 The National Planning Practice Guidance (NPPG) states *"Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it.*

This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return...” “...In plan making and decision making viability helps to strike a balance between the aspirations of developers, landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permissions.”

The NPPG also states that contributions should be realistic and not compromise sustainability and that the cumulative costs of ‘all relevant policies’ will not undermine deliverability.

- 2.7 The applicant submitted a viability appraisal of the scheme carried out by a qualified practitioner and the Council has employed a similarly qualified professional to assess the appraisal. The following discussion under section 3 is an evaluation of these viability assessments.

3. PROPOSALS

- 3.1 The summary of the viability appraisal and the assessment of that by the Council’s expert is that the policy compliant scheme considered by the Planning Committee is not viable. Therefore, the recommendations of the viability consultant is that;
1. If the Council seeks a S106 focussed contribution, affordable housing would need to be c6-8 units (12-16% affordable housing) depending on the tenure mix preference.
 2. If the Council seeks an affordable housing focussed contribution S106 would need to be £244,000 to £300,000 depending on the tenure mix preference.

- 3.2 Further discussions were held between the viability experts and the basis of 2 options were agreed for the scenarios above to enable the scheme to be viable.

Option 1 For 6 houses and £457,085 s106 (full original amount)

Option 2 For 8 houses and £365,000 s106 contributions.

- 3.3 Both options would deliver a tenure mix of 50% social rent and 50% shared ownership affordable housing product which the Council’s Housing Team has indicated would be acceptable for the site and in light of the viability considerations.

- 3.4 Officers recommend that Option 2 be approved as this would retain the maximum amount of affordable housing while still providing a significant amount (almost 80%) of the original value of the s106 contributions. The breakdown of the contributions would be structured as follows.

		Viability Contrib’s
Libraries	£11,639	£0
Education (Primary)	£182,208	£146,931
Education (Secondary)	£215,238	£173,564
Off Site Mitigation for loss of KTFC Pitch	£30,000	£30,000
POS Maintenance	£18,000	£14,505
Total	£457,085	£365,000

- 3.5 It is considered that in order to achieve a sustainable development which is still acceptable in planning terms and which creates a balanced community a reduction of infrastructure and community contributions should be borne across the various s106 requirements to make the development viable. This would mean a reduction of the policy compliant scheme's affordable housing to 8 units and a reduction in the S106 contributions as set out above. The contribution towards offsite mitigation for the loss of the KTFC football pitch would remain at 100% of the previous contribution as this enables the purchase of a piece of equipment to improve the quality of the pitches at North Park. Without this level of contribution the mitigation would not be achievable and Sport England would maintain their objection to the proposals. The other allocations still allow for a significant contribution towards education and public open space maintenance.
- 3.6 However, the County Education Service and their ability to create further pupil places, which are under severe pressure within Kettering, will be the largest net loser in terms of the reductions in contributions. The Education Services has made the following comments *'Based on the information you have provided, and on the understanding that KBC's own assessment of the viability appraisal has found that the development would be unviable with the full level of s106 contribution being applied, then I am willing to accept a reduction to the s106 obligations previously requested.'* They also requested that in the event that the affordable housing be sold as market housing that a proportionate pro-rata amount be recovered to uplift the education contribution in light of a different level of viability. This can be addressed in the revised s106 which will be agreed.
- 3.7 New guidance has been issued by the Government in November 2019 regarding the securing of developer contributions for education. The Government considers that developments that generate further need in relation to pupil numbers should provide contributions towards new school places for both funding for construction and land where applicable, subject to viability assessment when strategic plans are prepared and using up-to-date cost information. It further states that *'While basic need funding can be used for new school places that are required due to housing development, we would expect this to be the minimum amount necessary to maintain development viability, having taken into account all infrastructure requirements.'* Securing Developer Contributions for Education DfE Nov 2019.
- 3.8 We have therefore sought to maximise the education contributions within the constraints provided through the reduced evidenced viability of the scheme.
- 3.9 An additional plan has been submitted setting out where the reduced affordable housing would be located. Plots 41 to 44 would be shared ownership and plots 45 to 48 would be Social Rent. Condition 2 of the original proposed consent would be altered to add in this plan so that the permission would need to be built out to this design. Condition 22 should also be deleted as it duplicates condition 13.

4. POLICY IMPLICATIONS

- 4.1 The development proposals are not strictly policy compliant now, in that they do not provide the level of affordable housing required by Policy 30 (d) of the North

Northamptonshire Joint Core Strategy (NNJCS) although it states *'the precise proportion and tenure mix ...will take into account the need identified in the SHMA toolkit ...and the viability of the development'*. The proposals also do not provide full contributions to mitigate the impact of the development as required by Policy 10 of the NNJCS. However, paragraph 57 of The National Planning Policy Framework states that it is the applicant's responsibility to demonstrate the need for a viability assessment at the application stage. It is then up to the Local Planning Authority to determine the weight that should be applied to this evidence. It is considered that the evidence is valid and has been verified by an independent expert and that the reductions in affordable housing and contributions are still consistent with achieving a sustainable development.

5. CONSULTATION AND CUSTOMER IMPACT

- 5.1 The Council is not required to consult on revisions to the s106, however, consultation has been carried out with NCC Education and KBC Housing Team who are the 2 main recipient bodies for which the reduction in funding will impact. Their agreement to the proposed changes has been sought and approved.

6. FINANCIAL RESOURCE IMPLICATIONS

- 6.1 There will be a reduction in the level of s106 contributions for community benefit that the scheme will be able to provide. The Council's grounds maintenance team is likely to have to absorb the additional costs in the short term, however, in the longer term the uptake and increase in Council tax should offset these costs. In terms of the reduction in the contributions for education the County Council should be able to apply to the Department for Education for direct grant for any short fall in funding from increased need which developers are unable to meet due to viability issues. This has been kept to a minimum in accordance with the latest guidance.

7. LEGAL IMPLICATIONS:

- 7.1 A revised s106 agreement will be concluded with the applicant on the basis of the heads of terms set out in this report.

8. CLIMATE CHANGE IMPLICATIONS

- 8.1 Addressing climate change is one of the core land use planning principles which the National Planning Policy Framework expects to underpin both plan-making and decision-taking. The National Planning Policy Framework emphasises that responding to climate change is central to the economic, social and environmental dimensions of sustainable development. National planning policy and guidance is clear that effective spatial planning is an important part of a successful response to climate change as it can influence the emission of greenhouse gases. In doing so, local planning authorities should ensure that protecting the local environment is properly considered alongside the broader issues of protecting the global environment. The adopted Development Plan for Kettering Borough is consistent with and supports these national policy aims and objectives.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise. The development plan comprising the North Northamptonshire Joint Core Strategy, Local Plan and Kettering Town Centre Action Plan makes clear the importance of climate change and seeks to create more sustainable places that are naturally resilient to future climate change. This will be further amplified by the emerging Site Specific Part 2 Local Plan once adopted which is being prepared within this context. Policies contained within the Part 2 Local Plan will help contribute towards a reduction in greenhouse gas emissions and will secure that the development and use of land contributes to the mitigation of, and adaption to, climate change.

9. RECOMMENDATION

THE DEVELOPMENT CONTROL MANAGER RECOMMENDS that this application be APPROVED, subject to a S.106 OBLIGATION being entered into on the basis set out in this report, and to the conditions agreed through the original committee report with the minor amendment to condition 2 and deletion of Condition 22.

Background Papers

Title of Document:

Date:

Contact Officer:

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Previous Reports/Minutes

Ref: KET/2018/0519

Date: 20/02/2019

