

BOROUGH OF KETTERING

Committee	Full Planning Committee - 30/03/2010	Item No: 5.1
Report Originator	Louise Holland Development Officer	Application No: KET/2008/0785
Wards Affected	Barton	
Location	Polwell Lane (Land to the west of), Barton Seagrave	
Proposal	Outline Application with EIA: Erection of up to 450 market and affordable dwellings together with associated landscaping, green space, highway works and potential mixed use development	
Applicant	Redrow Homes(South Midlands)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:-

Notes (if any) :-

Justification for Granting Planning Permission

It is recommended that the conditions set out at Appendix A of this report are agreed for the outline planning application KET/2008/0785, superseding the list of conditions set out in the 18th June 2009 committee resolution. Any further minor changes required for clarification purposes or to ensure conditions meet the Conditions Circular 11/95 tests should be delegated to the Head of Development Services for approval.

Officers Report

3.0 Information

Relevant Planning History

KET/2008/0785

The Planning Committee resolved to approve this outline planning application, on 18th June 2009, subject to planning conditions and a Section 106 agreement. This application proposed the residential use of the land to the west of Polwell Lane (a maximum of 450 dwellings) with an on-site community centre, the opportunity for some mixed use development and open space. Access was the only matter considered at the outline stage. All other matters are reserved for later approval. An Environmental Statement (ES) (a detailed appraisal of a development proposal that considers its potential positive and negative impacts in environmental and social terms) accompanied the planning application.

Site Description

The application site is located approximately 3 kilometres from the Kettering town centre, to the south of Barton Road and west of Polwell Lane. The existing built up edge of Barton Seagrave is positioned to the east of the site whilst the River Ise is positioned to the west. The Ise Valley is defined by the North Northamptonshire Core Spatial Strategy (CSS) as a Sub-Regional Green Infrastructure Corridor. Wicksteed Park, a Grade II Park and Garden of Historic Interest, is also found to the west. A disused railway line, with wooded embankment, bounds the southern edge of the site with the A14 positioned beyond this. The site extends west out from the existing urban edge, incorporating the existing farm buildings at Dale's Lodge and many rights of way originating from the existing residential area and beyond. A wooded area is found adjacent to the most northern tip of the site. Castle Field, a Scheduled Ancient Monument (SAM), is located to the north of the site. The Conservation Area of Barton Seagrave is found to the north east. The site is also located adjacent to the existing allotments accessed from Polwell Lane.

The site is currently agricultural land within the Ise Valley corridor. The land slopes down from the defined built up edge of Barton Seagrave towards the River Ise corridor. The topography of the site is undulating with a visible dip in the land found approximately in the north western area of the site. A line of poplar trees is found along the north eastern site boundary, to the rear of properties fronting Polwell Lane.

The site (south west corner) incorporates part of the Southfield Marsh Site of Special Scientific Interest (SSSI). The SSSI extends from the site to the south, over the A14 and beyond. The part of the SSSI found within the site is currently within the Environment Agency's flood zone 3a which has the highest level of risk (land assessed as having a 1 in 100 or greater annual probability of river flooding). In addition to the SSSI there are two other wildlife designations in this area, Southfield Farm Marsh Wildlife Trust Nature Reserve and a non-statutory County Wildlife Site. These three areas are overlapping in part but are not necessarily coincident. A primary and secondary school are found to the east of the site beyond Gray's Field (an existing play area). The school grounds

incorporate a community centre which is bounded by the educational buildings.

Proposed Development

The June 2009 Planning Committee resolution was to approve subject to a number of conditions and a Section 106 agreement. No changes have been made to the planning application. The applicant has asked officers to reconsider the wording of some of the original conditions and officers themselves have also identified a need to reassess others. Consequently officers now propose some amendments to the wording. Each of the condition changes are set out in the Planning Considerations section (section 7) of this report along with the case officer's justification for recommending these amendments. The new set of conditions is set out at Appendix A. The conditions agreed at the June 2009 Committee can be viewed at Appendix B.

The only matter for consideration is the changes to conditions.

Any Constraints Affecting The Site

SSSI, wildlife site, flooding, public rights of way, biodiversity, protected species, trees/hedgerows.

4.0 Consultation and Customer Impact

No consultation required. As set out above no changes have been made to the planning application.

5.0 Planning Policy

No specific planning policies are considered to be relevant to the amendments being sought. All conditions recommended are in accordance with Development Plan policies as identified in the original June 2009 report. The following Circulars are material planning considerations and are relevant to this report.

Circular 11/95 Use of Conditions in Planning Permission (dated 20 July 1995).
Circular 05/05 Planning Obligations (dated 18 July 2005).

6.0 Financial/Resource Implications

As set out in the officer's report to the Planning Committee dated 18th June 2009 the Section 106 Agreement was negotiated with the applicant to ensure that the impacts of the development are appropriately mitigated. Monitoring of the Section 106 agreement and conditions for a period of at least the lifetime of the development are associated financial implications. Reserved Matters applications and the Design Coding process were also highlighted within the June 2009 report as having financial/resource implications.

Since being approved by the Planning Committee in June 2009 subject to conditions and a Section 106 agreement, the Northamptonshire County Council's (Highways Authority) Pooled Developer Contributions Document for

Kettering has been updated. This update was required due to a review of the development quantum and scheme list by the County Council. The Pooled Developer Contribution rate for all residential development has reduced to £3,741.00 per dwelling. The reduction should be noted and applies to all developments. Securing this level of financial contribution from this development still fulfils the requirements of the Highways Authority and the aims of the Pooled Developer Contribution i.e. to mitigate the effects of development on the wider highway network and Town Centre.

7.0 Planning Considerations

Conditions should not be imposed unless they are necessary and effective and do not place unjustifiable burdens on applicants. Circular 11/95: Use of Conditions in Planning Permission sets out the six-fold test for conditions. Conditions should only be imposed where they satisfy this test.

- i. Necessary;
- ii. Relevant to planning;
- iii. Relevant to the development to be permitted;
- iv. Enforceable;
- v. Precise; and
- vi. Reasonable in all other respects.

If a condition fails the above test they are likely to be considered to be 'ultra vires' and should not be imposed. If such conditions are imposed the condition and the decision is vulnerable to challenge.

Following the committee resolution in June 2009 officers have continued to work on this major project. Through this process it has become evident that a number of conditions require amendment. Changes are needed for a variety of reasons including for clarification purposes, to enable the submission of some details on a phased basis or to ensure conditions are precise. It is essential that the conditions meet the six-fold test and secure the development requirements in the best way possible. No powers were delegated to the Head of Development Services, as part of the previous committee resolution, to agree any change to conditions where required. Consequently this report has been prepared by officers to allow committee to decide whether to approve the amendments or not. Each of the condition changes are described below and the reasons for the amendments set out (the condition numbers are taken from the June 2009 committee minutes).

Each condition is set out with any additions underlined and highlighted in bold font and any deleted wording is struck through. Two new conditions are also proposed for the reasons set out in this report. Please refer to the appendices for the new set of conditions (Appendix A) and the conditions agreed at the June 2009 Committee (Appendix B).

Condition Changes

Condition 1

Details of the appearance, landscaping, layout, and scale, (hereinafter called

“the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced (or is commenced in respect of that part of the site to which the approval of reserved matters relates) and the development shall not be carried out other than as approved.

Justification for Amendments

This change is required to ensure the condition is clear and precise.

Condition 4

Prior to the commencement of development **of each phase (as defined by the phasing programme required by condition 10)** details of the existing and proposed site levels and finished floor levels for all buildings **within that phase shall** be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with ~~these~~ **the** approved details.

Justification for Amendments

Due to its scale the development will be phased. The phasing programme, required by condition 10, will set out what each phase will comprise and requires a number of details for example timing of open space and access point delivery. It is therefore considered reasonable that the existing and proposed site levels and finished floor levels can be submitted on a phased basis.

Condition 5

~~Unless otherwise agreed by the Local Planning Authority, No reserved matters applications shall be submitted for the development until and unless a Development Brief, incorporating Design Codes, for the site has been submitted to and approved in writing by the Local Planning Authority. The Development Brief and Design Codes shall be so approved before the submission of reserved matters applications. Any proposed revisions to the Development Brief or approved Design Codes shall also be submitted to and approved by the Local Planning Authority. Any agreed revisions shall be implemented as approved.~~

Justification for Amendments

The above changes make this condition more precise by only referring to the preparation of a design code for the site. The applicant will be clear what is expected of them and what they must submit. The purpose and intention of the condition remains the same.

Condition 6

~~The~~ Each Design Code submitted to the Local Planning Authority for approval shall consist of guidance and coding relating to the following matters unless otherwise agreed in writing by the Local Planning Authority: character areas; mixed use area; public realm strategy; movement network including route hierarchy, block typologies; building typologies; boundary treatments; building heights and details; open spaces, landscape and SUDS; environmental standards; implementation. The Design Code shall accord with the principles of

the Development Framework Plan (received 25 February 2009), the Development Framework Statement (received 25 February 2009), the height parameters (received 20 February 2009) and the indicative storey heights plan (MI-BSC-02-03 dated 17 February 2009), ~~unless otherwise agreed in writing by the Local Planning Authority.~~

Justification for Amendments

This condition change is extremely minor. It is however considered necessary as only one design code for the whole site will be submitted for the Local Planning Authority's approval. The change in wording makes the requirement of the Local Planning Authority clear to the applicant.

Condition 8

Each reserved matters applications shall accord with the ~~Development Brief and approved Design Codes unless otherwise agreed by the Local Planning Authority~~, and shall be accompanied by a written statement of conformity to the design codes which demonstrates how this is the case.

Justification for Amendments

This change ensures that the condition is consistent with the Design Code conditions detailed above.

Condition 10

~~Prior to the commencement of development and no later than the first submission of any reserved matters applications, a comprehensive layout plan and phasing programme shall be submitted to and approved in writing by the Local Planning Authority. The comprehensive layout plan and phasing programme shall include:~~

- i. Phasing of the dwelling construction and predicted occupation;
- ii. Timing of off-site highway works **(identified in condition 23)**, pedestrian, cycle and emergency vehicle linkages and **vehicular** access points **(primary and secondary)** shown on the Development Framework Plan (received 25 February 2009);
- iii ~~v~~. Public Open Space;
- iv ~~v~~. Hydrological Attenuation Feature (HAF);
- v ~~vi~~. Sustainable Urban Drainage Systems (SUDS); ~~and~~
- vi ~~vii~~. Green corridors; **and**
- vii. Renewable/low-carbon energy infrastructure.**

The development shall not be carried out other than in accordance with the approved comprehensive layout plan and phasing programme.

Justification for Amendments

The additional wording makes the condition more precise and clear in accordance with Circular 11/95.

Condition 11

No development shall take place within ~~a~~ each phase, **(as defined by the phasing programme required by condition 10)** ~~as detailed in the phasing~~

~~programme pursuant to condition 10~~, until samples of the materials to be used in the construction of the external surfaces of all the buildings within the phase to which they relate have been submitted to and approved in writing by the Local Planning Authority. The development shall not take place other than in accordance with the approved details.

Justification for Amendments

This change will ensure that the wording is consistent with other conditions that refer to phasing.

Condition 12 & 13

A scheme of hard and soft landscaping for **each phase (as defined by the phasing programme required by condition 10)** shall be submitted to and approved in writing by the Local Planning Authority no later than the first submission of any reserved matters applications **relating to land within that phase**. The scheme shall include planting plans, written specifications, schedules of plants, noting species, plant sizes, proposed numbers/densities and an implementation programme. The scheme shall also indicate all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. All hard and soft landscaping works shall be carried out in accordance with the approved details and implementation programme. ~~The works shall be carried out in accordance with the implementation programme to be agreed in writing with the Local Planning Authority pursuant to condition 12.~~ If, within a period of five years from the date of planting, any trees or plants or any replacement planting is removed, uprooted, destroyed or dies (or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective), replacement trees and plants of the same species and size as that originally planted shall be planted in the next planting season, ~~in the same place, unless the Local Planning Authority gives its written consent to any variation.~~

Justification for Amendments

Conditions 12 and 13 have been amalgamated into one condition. This will ensure that the following elements are successfully linked together: the requirement for a landscaping scheme, the scheme contents, implementation and timing of the works and contingencies should landscaping require replacement.

Due to its scale the development will be phased. A phasing programme, which will include details of the public open space, the sustainable urban drainage system and the hydrological attenuation feature, is required by condition (condition 10). It is therefore considered reasonable that the hard and soft landscaping details can be submitted on a phased basis. The Design Code will help to ensure that the later phases and their landscaping successfully meet the needs and aspirations of the Local Planning Authority.

Condition 16

Prior to commencement of development **construction of any dwellings and in accordance with the phasing programme required by condition 10 of this planning permission** the Hydrological Attenuation Feature (HAF) and the main Sustainable Urban Drainage System (SUDS) ditch draining into the HAF must be completed.

Justification for Amendments

The original wording of the condition was potentially 'ultra vires'. The works detailed in the condition constitute commencement of the planning permission. Therefore requiring these works to be completed prior to commencement would be unreasonable and the requirement of the condition unclear. The changes detailed above would resolve this issue. The condition still requires the works to be completed prior to the commencement of construction of any dwellings and in accordance with the phasing programme (required by condition 10).

Condition 23

Prior to the commencement of development hereby permitted **first submission of any reserved matters applications** full engineering, drainage, signal and constructional details of the off-site highway works identified on the approved drawings **(the approved drawings are as follows: 1275/HL/13 Rev A, 1275/HL/14 Rev A, 1275/HL/15 Rev B, 1275/HL/17 Rev A, 1275/HL/18 Rev A, 1275/HL/21 Rev A, 1275/HL/23 Rev A, 1275/HL/24, 1275/SK/12 Rev A)** shall be submitted to and approved by the Local Planning Authority. The off-site highway works shall be completed in accordance with the approved details and in accordance with the Phasing Programme pursuant to condition 10.

Justification for Amendments

The insertion of drawing numbers makes it clear which are the approved drawings and the scope of the off-site highway works the Local Planning Authority requires to be completed. The change to the first part of the condition ensures that it is compatible with condition 24 (condition below). The works required by the Local Planning Authority remain as previously set out by officers and agreed by the Planning Committee.

Condition 24

~~Prior to commencement of development~~ The proposed site access junction shall be completed in accordance with drawing number 1275/HL/01 Rev E (received 9 April 2009) **prior to the commencement of any other works on the site**. The junction shall thereafter be retained as constructed.

Justification for Amendments

The original wording of the condition was potentially 'ultra vires'. The access works themselves constitute commencement. Therefore asking the applicant to do these works prior to commencement would be unreasonable and the requirement unclear. The changes detailed above would resolve this issue. The condition still requires that the primary access is the first piece of infrastructure delivered.

Condition 26

Prior to occupation commencement of any of the dwellings on the site, the A14 junction 10 mitigation works shown on drawing number 1275/HL/16 Rev D or such alternative scheme as shall have been agreed in writing by the Local Planning Authority shall have been completed.

Justification for Amendments

Since the committee in June 2009 the Highways Agency have confirmed by way of a new Direction (dated 25th February 2010) that the requirement for A14 Junction 10 mitigation works is not required until prior to the occupation of dwellings. As outlined at the start of this section of the report conditions have to meet the six-fold test set out in Circular 11/95.

Conditions have to be reasonable and necessary. Given the Highways Agency's Direction dated 25th February 2010 the above change is proposed. It would be both unreasonable and unnecessary to require these highway works earlier than prior to occupation (i.e. prior to commencement).

Condition 29

Non-residential domestic buildings shall achieve a minimum of Building Research Establishment Environment Assessment Method (BREEAM) level "very good" (or the equivalent standard which replaces BREEAM and is to be the assessment in force at the time when the non-residential commercial unit or units concerned are registered for assessment purposes). In the event that the BREEAM standard achieved for the actual building falls short of the "very good" standard (or the equivalent standard which replaces BREEAM and is the assessment in force at the time when the non-residential unit or units concerned are registered for assessment purposes) achieved at design stage, a programme of remediation works shall be agreed in writing by the Local Planning Authority and carried out in accordance with a timetable to be agreed.

Justification for Amendments

The changes are required to make the condition more precise. A community building will be delivered on-site as part of the development (to be secured through the Section 106 agreement). The wording "non-residential" is considered to be a better description of this use as opposed to the term "commercial".

Condition 30

Reserved matters applications shall be accompanied by a Sustainability Report that demonstrates how environmental sustainability issues have been addressed during the design process and sets out the way in which the credits under the relevant BREEAM Rating and relevant Code for Sustainable Homes (CSH) level (or the equivalent standards which replace BREEAM or CSH and is to be the assessment in force at the time when the non-residential or residential units concerned are registered for assessment purposes) will be achieved based on the actual design of the non-residential or residential units.

Justification for Amendments

The above change is a minor alteration to make the condition more precise in

accordance with the Conditions Circular 11/95.

Condition 31

Within six months of the completion ~~Prior to occupation~~ of any residential or non-residential unit(s) a copy of the **Post Construction** Final Certificate shall be provided to the Local Planning Authority to prove that the unit(s) have been constructed in accordance with the Sustainability Report and that the development has achieved the relevant BREEAM and CSH levels.

Justification for Amendments

Discussions with the North Northants Joint Planning Unit and the applicant have highlighted that the submission of the final certificate (a post construction review to ensure the units have achieved the required Code for Sustainable Homes level or BREEAM level for non-residential units) on completion of a unit is unachievable and therefore the applicant would frequently be in breach of this condition. There is an acknowledged time lag between submission of details relating to the construction of units to the BRE (Building Research Establishment) and the issuing the final certificate(s) by the BRE. The proposed change is therefore considered to be reasonable.

Condition 32

~~Prior to the submission of any Reserved Matters or a Development Brief/the Design Code for the site, an Energy Strategy, including timetable of works, for the site providing a proportion of the~~ **for** energy supply through **incorporating renewables sources and/or from decentralised renewable or low carbon sources** shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall demonstrate how a target of at least 30% of the demand for energy will be met on site and renewably and/or from decentralised renewable or low carbon energy supply **in accordance with the approved Energy Strategy Framework**. If the 30% target cannot be met a technical and economic feasibility assessment shall be submitted, together with the energy strategy, for the approval of the Local Planning Authority. The strategy shall include details and a timetable of the physical works on site. The strategy shall be implemented as approved and retained operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.

Justification for Amendments

The changes described above do not alter the purpose or requirements of the condition. They do however make the requirements clearer to the applicant and make the condition more precise which is one of test for conditions identified in Circular 11/95. The proposed wording follows more closely the wording of Policy 14 (a) (iii) of the Core Spatial Strategy (Energy Efficiency and Sustainable Construction).

Condition 37

~~Prior to the commencement of development and no later than~~ the first submission of any reserved matters applications an air quality assessment shall be undertaken to assess the affect of the development on local air quality and to determine the impact of existing, and projected, air quality levels on the intended use. The nature and scope of the assessment shall be agreed by the

Local Planning Authority. The assessment shall be undertaken in accordance with draft technical guidance note LAQM.TG(02) to enable the significance of the development to be assessed against the National Air Quality Standards and Objectives prescribed by the Air Quality (England) Regulations 2000. The suitability of any dispersion model used shall be agreed with the Local Planning Authority and the results of the assessment shall be validated against an agreed monitoring location.

Justification for Amendments

The changes described above do not alter the purpose of the condition. They do however ensure the condition is compatible with condition 24 (site access junction) described above.

Condition 39

A mitigation strategy for the protection of bat and red kite habitats will be submitted to the local **planning** authority for approval no later than the first submission of any reserved matters applications. The development shall not be carried out other than in accordance with the approved mitigation strategy.

Justification for Amendments

This is an extremely minor change which provides clarification.

Condition 43

No construction work shall take place onsite outside the hours of **07:30** 8:00 to 18:00 Monday to Friday and 08:30 to 13:30 on Saturday and no time whatsoever on Sundays or Public Bank Holidays, unless otherwise agreed with the Local Planning Authority. This includes deliveries to the site or work undertaken by contractors or sub-contractors.

Justification for Amendments

The applicant would like to start work at 07:30 on weekdays as proposed to 08:00 which was previously conditioned. Allowing an extra 30 minutes each weekday may assist in delivering the project within a shorter timescale. PPG 24 Planning and Noise outlines some of the main considerations which local planning authorities should take into account when determining planning applications for development which will either generate noise or be exposed to existing noise sources. PPG 24 refers to normal sleeping hours as being between 2300 and 0700 when discussing noise-sensitive development. The proposed extension to construction hours will fall outside of these 'normal sleeping' hours. Officers therefore raise no objection to this proposed change.

The applicant has been advised to inform local residents of when work will be commencing on site and the agreed construction working hours.

The working hours for weekends will remain as previously recommended to committee. No work is permitted on Sundays or Public Bank Holidays.

Condition 44

The development shall not be carried out other than in accordance with the approved plans, namely those to be submitted as part of the ~~development brief~~

design code and reserved matters.

Justification for Amendments

This change is required to ensure it is consistent with the condition relating to the Design Code (as detailed above).

Proposed New Conditions

Secondary Access Point

Prior to the first submission of any reserved matters applications full engineering, drainage, and constructional details of the secondary vehicular access point from Denford Drive shall be submitted to and approved by the Local Planning Authority. The secondary access works shall be completed in accordance with the approved details and in accordance with the Phasing Programme pursuant to condition 10.

REASON: In the interests of the transport requirements of the development in accordance with PPS 1, PPG 13, Policies 2 and 45 of the East Midlands Regional Plan and Policy 13 ((d), (e), (k) and (n)) of the CSS for North Northamptonshire.

Justification for New Condition

A review of the recommended conditions revealed that no condition relating to the secondary access point was included. Access was the only matter to be considered at the outline stage (all other matters are reserved for later approval). Therefore any access related matters that need to be secured should be done so at the outline stage. Full details of this access point, as described in the condition above, will be required.

Energy Strategy Framework

Prior to the submission of the Design Code (required by condition 5) and the Energy Strategy (required by condition 33) a Framework Energy Strategy shall be submitted to and approved by the Local Planning Authority. The Framework Strategy shall include (as a minimum) the proposed methodology for estimating the potential for renewable/low zero carbon energy and details of an overarching strategy for the provision of on site energy generating systems. The Energy Strategy required by condition 33 shall accord with the approved framework document.

REASON: In the interests of sustainable development and energy efficiency in accordance with PPS 1 and the supplement to PPS 1, PPS 22, Policy 2 of the East Midlands Regional Plan and Policy 14 (a) (iii) of the CSS for North Northamptonshire

Justification for New Condition

This condition will help to guide the development of an Energy Strategy for the site. This framework document will set out the methodology and the required components of the strategy. This will ensure that the energy strategy is developed in accordance with an agreed methodology, will help to speed up the development of the main document and ultimately the discharge of that condition. Setting out the framework first will ensure that the requirements of the Local Planning Authority are consistent between the planning permission being granted and the energy strategy being developed, which may take some

time to finalise.

Informative

Please note that the informative associated with the Highway Agency directed condition (A14 Junction 10 mitigation works) has been revised with updated Highways Agency contact details.

Conclusion

It is recommended that the conditions set out at Appendix A of this report are agreed for the outline planning application KET/2008/0785, superseding the list of conditions set out in the 18th June 2009 committee resolution. Any further minor changes required for clarification purposes or to ensure conditions meet the Conditions Circular 11/95 tests should be delegated to the Head of Development Services for approval.

Background Papers

Title of Document:

Date:

Contact Officer:

Previous Reports/Minutes

Ref:

Date:

Louise Holland, Development Officer on 01536 534316

SITE LOCATION PLAN

Polwell Lane (Land to the west of), Barton Seagrave
Application No.: KET/2008/0785



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