





**Recommendation:** - Approve, subject to the satisfactory completion of a Section 106 Agreement for:

- £34,365 for primary education and;
- Up to £10,000 towards altering the one-way system on Beech Avenue.

The conditions contained in the original report will also be attached.



- *Following the deferral and with the committee report now a public document, their client's marketing agent, Musson Liggins, marketed the site for residential development in August 2019.*
- *Consideration was given to an 100% Affordable housing scheme.*
- *Whilst there have been some expressions of interest, these have predominantly been from within the affordable housing sector and to date no offers have been received.*
- *In the context that the market testing has not delivered any firm offers, our client is unable to increase the contribution offered, which is above the viability position (i.e.: Nil).*
- *The absence of any firm offer is an indication of the precarious viability issue.*

*An assessment of the proposal is detailed within the original report, which is attached. This sets out a total of £210,315 should be provided to ensure the necessary infrastructure can be met. However, this also sets out that the viability evidence demonstrates that the scheme cannot viably provide any affordable units, or Section 106 contributions. Members, at the meeting in June, therefore sought £120,000 towards infrastructure, which is still below the total required.*

*The applicant had made an offer of £34,365 towards primary education; which is considered to be a reasonable, when taking into account the viability information, recent appeal decisions and the applicants efforts to market the site following the previous committees comments requesting a higher contribution. The applicant has agreed to meet the £34,365, but cannot agree to the additional contributions as this will make the development unviable.*

**Recommendation:** - **Approve, subject to the satisfactory completion of a Section 106 Agreement for a contribution of £34,365 towards primary education. And with the conditions contained in the original report.**

**COMMITTEE DATE** 26<sup>th</sup> June 2019                      **WARD** Huthwaite and Brierley

**APP REF** V/2018/0212

**APPLICANT** M Fishleigh

**PROPOSAL** Outline Application for Demolition of Existing Industrial Premises and Construction of Up To 23 Dwellings

**LOCATION** The Pattern House, Crossley Avenue, Huthwaite, Sutton in Ashfield, Nottingham, NG17 2NT

**BACKGROUND PAPERS** A; B; C; D; E; F; I; K

**App Registered 05/04/2018**

**Expiry Date 05/07/2018**

**Consideration has been given to the Equalities Act 2010 in processing this application.**

**This application has been referred to Planning Committee as the application is a departure from the Ashfield Local Plan Review (2002)**

**The Application**

*This is an application for Outline Planning Permission for the demolition of the existing industrial premises and construction of up to 23 dwellings. All matters, including access, are reserved for future consideration.*

**The Site**

*The application site is located at the southern end of Crossley Avenue and consists of a factory premises, formed by a collection of buildings joined together. The remainder of the site is undeveloped containing a number of trees, some of which are subject to a Tree Preservation Orders. To the south of the site lies Rockery Park, the remainder of the surrounding area is residential in character.*

**Consultations**

*Site and Press Notices have been posted together with individual notification of surrounding residents. The response from consultees and the local community are summarised as follows:*

**Coal Authority** – *The application falls within an area defined as Low Risk and as such the Coal Authority have referred to standing advice.*

**Nottinghamshire Wildlife Trust** – No comments received.

**A.D.C Place and Wellbeing** - The proposed new tree planting, enhancement of the existing hedgerows and demolition of the factory unit would comply with the landscape actions set out within the Greater Nottinghamshire Landscape Character Assessment 2009. Details should, however, be provided of the exact planting specifications.

A contribution should also be sought for the following:

- £46,000 towards public realm improvement at Low Street, or Albert Square (Sutton Town Centre) including but not limited to paving works, signage and new street furniture.
- £23,000 towards upgrading junior teenage play provision at Huthwaite Welfare or visitor car parking improvements to Brierley Forest Park.

**A.D.C Drainage** – No known drainage issues with the site, but percolation tests are required to check the grounds suitability for soakaways.

**A.D.C Environmental Health (Land Contamination)** – The site is used for a factory, which is considered to have the potential to result in land contamination. A full four stage contamination condition is therefore recommended.

**Nottinghamshire County Council Planning Policy** – Have provided comments setting out the relevant policies in relation to waste, minerals, transport and education. It has also been advised that as a number of mature trees are to be felled, bat surveys should be carried out prior to determination.

Developer contributions have been sought in respect of bus stop improvements £15,000, with Travel and Transport also wishing to negotiate with the developer regarding a bus service to the site. A contribution has also been sought for education for £57,275 (5 primary school places) and £69,040 (4 secondary places).

**Nottinghamshire County Council Highways Authority** – Have objected to the access details. Plans were submitted attempting to overcome the issues raised, however the swept path required for refuse vehicle means it would be necessary to move the access road further to the east. The HA are satisfied that an access can be achieved but details are required.

**Severn Trent Water** – Recommend a condition is attached for drainage plans to be submitted to the Local Planning Authority.

### **Community**

A total of 5 letters of objection have been received from 4 households. Their concerns are summarised below:

- *The Access to the development should be taken off Beech Avenue, as the existing entrance across from a garage may cause road safety issues;*
- *The road is inadequate to serve the development;*
- *The development is too close to existing houses;*
- *There would be a loss of natural habitat and trees;*
- *The vacation of the existing factory could result in safety issues;*
- *There is a storage tank which protrudes onto a neighbouring property;*
- *Parking would become an issue;*
- *Concerns over the boundary treatments;*
- *There may be job losses at the existing industrial premises;*

*The concerns raised by local residents are addressed within the main body of the report.*

### **Policy**

*Under the Planning and Compulsory Purchase Act 2004, section 38(6) applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Therefore, the starting point for decision-making are the policies set out in the Ashfield Local Plan Review 2002 (saved policies). The National Planning Policy Framework (NPPF) is a material consideration. The policies listed below are considered relevant to this application:*

#### **Ashfield Local Plan Review 2002 as amended by "saved policies" 2007 (ALPR)**

- *Policy ST1: Development.*
- *Policy ST2: Main Urban Areas.*
- *Policy EV6: Sites of Importance for Nature Conservation.*
- *Policy EV8: Trees and woodlands.*
- *Policy EM5: Protection of Existing Employment Sites.*
- *Policy HG3: Housing density.*
- *Policy HG4: Affordable Housing.*
- *Policy HG5: New residential development.*
- *Policy HG6: Open space in residential developments.*
- *Policy TR6: Developer contributions to transport improvements*

#### **Material considerations**

*National Planning Policy Framework (NPPF) policies relevant to the application are:*

- *Para 11: Sustainable Development.*
- *Part 5: Delivering a sufficient supply of homes.*
- *Part 6: Building a strong, competitive economy.*
- *Part 8: Promoting healthy and safe communities*
- *Part 9: Promoting sustainable transport.*
- *Part 11: Making effective use of land.*



- *Part 12: Achieving well designed places.*
- *Part 14: Meeting the challenge of climate change, flooding and coastal change*
- *Part 15: Conserving and enhancing the natural environment.*

### ***Supplementary Planning Documents***

- *Residential Design Guide SPD 2014*
- *Residential Car Parking Standards 2014*

### **Relevant Planning History**

*V/1987/0283 – Site for residential development. Consent. 30/07/1987*

*V/2008/0009 – Demolition of factory and erection of 23 houses with associated access and parking. Withdrawn.*

*V/2017/0228 – Outline Application with some matters reserved for demolition of industrial unit and erection of up 23 dwellings with associated access and parking. Withdrawn.*

### **Comment:**

*The main issues in the determination of this application are:*

- 1. Principal of Development*
- 2. Impact on Landscape Character*
- 3. Loss of Trees*
- 4. Ecology*
- 5. Residential Amenity*
- 6. Highways Safety*
- 7. Developer Contributions and Viability*
- 8. Planning Balance*

### **1. Principal of Development**

*The proposal site is located in the Main Urban Area as defined by Ashfield Local Plan Review 2002 (ALPR), Policy ST2 and the Proposals Map. The Policy identifies that development will be concentrated within the Main Urban Areas. The proposal would comply with this policy.*

*The application site is partially occupied as a factory. Policy EM5 of the Ashfield Local Plan Review 2002 sets out a policy protection for existing employment sites and buildings, as employments sites in urban areas are subject to pressures for their conversion to alternative uses. Under Policy EM5 the loss of an employment site would only be permitted where:*

- a. *Retention of the employment use would cause unacceptable environmental problems; or*
- b. *The building or site is no longer capable of providing an acceptable standard of accommodation for employment purposes and this can be demonstrated by lack of demand.*

*The Design and Access Statement and covering letter sets out that the premises are nearing the end of their functional life. The initial buildings were constructed in the 1950s and are currently in poor condition, with water ingress into the property and a number of windows missing. A substantial issue is that the property can only be accessed by either Lime Avenue, or Beech Avenue. These are both residential streets, requiring on street parking for residents, which makes it less attractive to potential occupiers. The supporting information demonstrates that the site has been marketed through a sale board, social media, direct mailing and on property websites, however no serious offers have been received.*

*Although the site is currently occupied and thus in some conflict with Policy EM5, this conflict has to be set in the context of the existing state of the employment site, lack of demand and the provisions of the NPPF. The NPPF identifies that a positive approach should be taken to alternative uses of land, which is currently developed but not allocated. This includes employment land for homes in areas of high demand. (NPPF para 121). Paragraph 118 of the NPPF also identifies that decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes.*

## **2. Impact on Landscape Character**

*The site is located on the edge of the defined main urban area at the top of a relatively steep sloping site. The land to the south of the site slopes away and comprises agricultural fields and the old landfill site, which has been redeveloped to form Rookery Park. The frontage of the site facing onto Crosseley Avenue comprises the existing factory unit.*

*The proposed new tree planting, enhancement of the existing hedgerows and demolition of the factory unit would comply with the landscape actions set out within the Greater Nottinghamshire Landscape Character Assessment 2009. The submitted layout plan shows the proposed residential development could be screened from the surrounding open areas, particularly to the south, where there are a number of TPO trees to be retained along with new planting.*

*The existing factory is currently in a poor state of repair, and although the design of the properties has not been submitted at this stage, it is likely these could be designed to enhance the appearance of the area.*

### **3. Loss of Trees**

*There is a Tree Preservation Order which covers much of the site. An up to date Tree Survey has been submitted, which identifies that a number of the trees listed by the Order have died, or are in poor health and unsuitable for retention on arboricultural grounds. The majority of trees to be removed for the site are considered to be of the lowest quality, offering fairly limited amenity value. The trees of higher quality are shown to be retained on the indicative layout. A scheme of new tree planting is also to be undertaken using a species considered more appropriate for a residential area.*

*The Councils Tree Officer has confirmed the veracity of the report and its recommendations, noting the works are considered appropriate in the context of safe tree retention and site safety. The Tree Officer has however identified further information is required in the form of an updated arboricultural method statement and a post felling works assessment of the retained trees. This information will be secured through an appropriately worded planning condition.*

*On the basis of the above, the proposal is considered not to be in conflict with Policy EV8 of the Local Plan, which seeks to protect trees worthy of retention.*

### **4. Ecology**

*The application site has no ecological designation, although it is covered by a number of trees and as a result, a Phase 1 Ecological Survey has been undertaken. The report identifies that there are mature trees on site, which have potential roosting value for bats.*

*As detailed above, the trees on site, which are being felled are being done so on the grounds of site safety and safe tree retention. The works have been considered appropriate by the Councils tree officer and therefore necessary. The submitted Ecological report identifies that prior to any felling further surveys are to be carried out. If roosts are located, then a Conservation Regulations Licence for the works will be required from Natural England.*

*In terms of mitigation and compensation, the application proposes to retain the majority of trees identified as moderate quality and value. Further tree planting is proposed to be undertaken along the sites boundaries, potentially providing additional foraging resources for a range of species. Bat friendly planting (designed to help attract bats) is also to be included in the landscaping, along with a sensitive lighting strategy. These measures are to be secured through a planning condition.*

*The tree works are considered necessary for site safety purposes and adequate mitigation/compensation will be secured, thus ensuring the favourable species status of any potential bats will be maintained. The proposal has been assessed against*

*the three licensing criteria within Natural England Guidance and in accordance with the Habitat and Species Regulations (2017).*

## **5. Residential Amenity**

*A resident has raised concerns surrounding the development being too close to existing dwellings. Although, this is an outline application, an indicative layout plan has been submitted, which shows that a development for 23 dwellings could be accommodated and achieve the Councils minimum required separation distances, as set out within supplementary planning guidance.*

*Any subsequent Reserved Matters application will be closely examined to ensure the guidance is complied with and that there would be no adverse impact on the living conditions of neighbouring occupiers, through loss of privacy, or overshadowing impacts.*

## **6. Highways Safety**

*The Highways Authority have raised concerns over the location of the proposed access shown on the submitted layout plan, noting it may be necessary to move the access road further to the east, due to the requirement to manoeuvre refuse vehicles. As this application is an Outline, with all matters reserved for future consideration, the access position will be fully considered at Reserved Matters stage*

*Residents have raised concerns regarding the adequacy of the road to service an additional 23 dwellings. The road currently serves a factory unit, along with a number of other residential dwellings and appears to be constructed to a good standard.*

*No in-principal objection has been received from the Highways Authority, and as a result, it is considered that the proposal would not give rise to any highways safety concerns. Accordingly, the proposal would comply with Policy ST1 (c), which identifies that development will be permitted where it will not adversely affect highway safety.*

## **7. Developer Contributions and Viability**

*The following contributions have been requested/required:*

- £15K Bus stop improvements by Nottinghamshire County Council Transport and Travel*
- £23k Public open space and £46k Public Realm by Ashfield District Council Place and Wellbeing.*
- £57,275 Primary Education and £69,040 Secondary education by Nottinghamshire County Council Education.*

*In accordance with the NPPF paragraph 64 it is considered that 10% affordable housing should be provided.*

*The developer has, however, confirmed that they are unable to provide any contributions for the scheme. A viability report has been submitted, which demonstrates that the scheme cannot viably provide any affordable units, or Section 106 contributions. The viability report has been assessed by the District Valuer, whom have confirmed the veracity of the report and that the scheme cannot meet any planning obligations.*

*The Council did raise concern over the land value being too high. However, the District Valuer confirmed that the figure is in line with other brownfield sites they have appraised, which have similar abnormal costs.*

*Planning Practice Guidance identifies for the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers. The submitted viability appraisal demonstrates that with no S106 contributions, developer profit would be at 18.07%, with a contribution of £69,000 – even below the figure required by the Council – this would fall to 15.5%. The district valuers appraisal identifies that at a profit margin of 17.5%, even with no developer contributions, the development would still be unviable.*

*Notwithstanding the submitted Viability Assessment, Officers of the Council have suggested a contribution of £80,275 to meet the primary education and open space requirements. The applicant has considered this request and made an offer of £34,365 for the cost of 3 primary school places. They have also provided recent appeal decisions in Gedling and Mansfield, where viability was a significant concern and the Inspector concluded that a reduced contribution would still serve a useful purpose.*

*There is a significant shortfall in terms of the required contributions that would normally be expected. However, when taking into account the viability appraisal, the contribution offered toward education is, on balance, considered to be reasonable.*

## **8. Conclusions and Planning Balance**

*There would be some degree of conflict with Policy EM5 of the Ashfield Local Plan Review, as the unit is still currently occupied, although this conflict is reduced given the current state of the building and its attractiveness to any future occupiers. Moreover, the NPPF identifies that a positive approach should be taken to alternative uses of land, which is currently developed but not allocated.*

*The proposal would involve the loss of Trees Covered by a Preservation Order, some of which hold potential for Bat roosting. However, the Councils Tree Officer has raised no objection to the removal of the trees and a scheme of replacement*

*planting is to be provided, along with other ecological mitigation and enhancement measures.*

*Given the shortfall in terms of the required infrastructure contributions, there are concerns regarding the sustainability of the development. However, following negotiation, Officers have achieved what is considered to be a reasonable contribution towards primary education. On balance, this reduced contribution is considered to be acceptable when taking into account the viability information and also recent appeal decisions in neighbouring authorities.*

*The proposal would bring substantial social benefits through the provision of 23 additional homes. The NPPF seeks to significantly boost the supply of housing and this benefit is afforded significant weight within the planning balance. Further benefits are likely to accrue from the re-development of a brownfield site and its potential to enhance the appearance of the area.*

*Overall, it is considered that the harms arising from the development do not significantly and demonstrably outweigh the benefits. Therefore, the proposals would be compliant with the NPPF when considered as a whole and amount to sustainable development.*

**Recommendation: - Approve, subject to the satisfactory completion of a Section 106 Agreement for a contribution of £34,365 towards primary education.**

## **CONDITIONS**

1. The formal approval of the Local Planning Authority shall be obtained prior to the commencement of any development with regard to the following Reserved Matters:
  - (a) Layout
  - (b) Scale
  - (c) Appearance
  - (d) Landscaping
  - (e) Access
2. Application for approval of the Reserved Matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development to which this permission relates shall be begun not later than the expiration of 2 years from the final approval of the Reserved Matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. Details of appearance, landscaping and layout required to be submitted and approved under Condition 1 shall include details of:

- i. The design, layout and form of the dwellings, including details of the external surfaces and materials to be used;
  - ii. fencing, walling, boundary treatments and means of enclosure;
  - iii. a scheme of hard and soft landscaping, including additional planting along the boundaries of the site, the specification of trees, hedges and shrub planting and details of species, density and size of stock;
  - iv. existing and proposed ground levels and those of surrounding buildings;
  - v. refuse/recycling storage and collection points;
  - vi. provision for electric vehicle charging points;
  - vii. measures to minimise the risk of crime;
5. The landscaping works shall be carried out in accordance with the approved details agreed by the Local Planning Authority and 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 a similar size and species, unless the local planning authority gives written approval to any variation.
6. No dwelling shall be occupied until an external lighting strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall ensure adequate illumination of roads and paths and avoid any unnecessary light pollution. The strategy shall: (i) identify areas and features on site that are particularly sensitive for bats, and (ii) provide details of how and where external lighting will be installed so that lit areas will not disturb and prevent bats using their territory, including breeding sites and resting places. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details.
7. The development shall be undertaken in accordance with the submitted Arboricultural Assessment dated March 2017. However, prior to the commencement of development an Arboricultural Method Statement and Management Plan shall be submitted and agreed in writing by the Local Planning Authority. These shall detail the exact nature of any engineering works required within close proximity to the retained trees detailed and a post felling works assessment of the retained trees.
8. The development shall be undertaken in accordance with the Ecological Assessment dated 22<sup>nd</sup> February 2017. Prior to the felling of any trees, further Bat Surveys shall be carried out in accordance with the submitted Ecological Assessment. The results of these bat surveys, along with the details of any Licence that may be required from Natural England, shall be submitted to and agreed in writing by the Local Planning Authority, prior to the felling of any trees.

9. Prior to the commencement of development, a detailed Landscape and Ecological Management Plan (LEMP) for the site shall be submitted to and approved in writing in accordance with the recommendations set out within the Ecological Assessment dated 22<sup>nd</sup> February 2017. The plan shall include full details of landscape and ecological management objectives, operations and maintenance prescriptions, together with their timings. The plan shall also include the following details:

- details of new habitat created on site (Inc. bird and bat boxes)
- details of maintenance regimes and management responsibilities

The LEMP shall be carried out as approved, and the site maintained thereafter in accordance with it.

10. Prior to the commencement of development, a demolition method statement shall be submitted to and approved in writing by the Local Planning Authority.

11. Prior to the commencement of development, a construction management plan shall be submitted to and approved in writing by the Local Planning Authority, this should include:

- How construction traffic will access the site;
- Proposed hours and days of working;
- The parking of vehicles of site personnel, operatives and visitors;
- Location of the site storage areas and compounds;
- Wheel washing facilities;
- A strategy for the minimization of dust and vibration;
- A strategy for the minimisation of noise, vibration and dust;
- Site contact detail in case of complaints;

The approved details shall be adhered to throughout the construction period.

12. The dwellings shall not be occupied until a travel plan to promote and encourage the use of alternative modes of transport to the car has been submitted to and approved in writing by the local planning authority. The travel plan shall include raising awareness in respect of cycling, walking, car share initiatives, car clubs and providing details of a nominated travel plan co-ordinator. The scheme shall include, for the first occupier of each dwellings, the provision of a travel information welcome pack to raise awareness in respect of sustainable transport modes.

13. The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and



approved by the Local Planning Authority. The surface water drainage scheme shall include sustainable drainage principles and be implemented in accordance with the approved details before the development is first brought into use.

14. Prior to the commencement of any works pursuant to this permission the applicant shall submit the following to the Local Planning Authority (LPA):

1. A Desktop Study/Phase I Report documenting the historical use(s) of the site and its immediate environs. This shall include a conceptual site model indicating all potential pollutant linkages.

2. A Site Investigation/Phase II Report where any previous use of the site indicates a potential contaminative use. The applicant/developer shall submit a Site Investigation/Phase II Report documenting the characteristics of the ground at the site. The Site Investigation should establish the full extent, depth and cross-section, nature and composition of the contamination. Ground gas monitoring and chemical analysis, identified as being appropriate by the Desktop Study, should be carried out in accordance with current guidance using UKAS/MCERTS accredited methods. All technical data must be submitted to the LPA.

3. A Scheme of Remedial Works where the Site Investigation has identified the presence of significant levels of harmful ground gas and/or significant levels of chemical contamination. The scheme should include a Remediation Statement and Risk Assessment Strategy to prevent any significant risk arising when the site is being developed or subsequently occupied.

Any variation to the Remediation Scheme shall be agreed in writing with the LPA, in advance of works being undertaken.

All remediation should be carried out safely, ensuring that no significant risk(s) remain. The applicant will need to have a contingency plan should the primary remediation or subsequent construction phase reveal any additional contamination. Where additional contamination is found the applicant must submit in writing, details of the contingency plan for written approval by the LPA.

On completion of remedial works and prior to the occupation/use of the development, the applicant must submit to the LPA:

4. A Validation Report with confirmation that all remedial works have been completed and validated, in accordance with the agreed details. The Validation Report must be submitted for the written approval of the LPA prior to the development being put to its intended use.

15. Prior to the commencement of any works on site, full details of the new roads shall be submitted to and approved in writing by the Local Planning Authority, including longitudinal and cross sectional gradients, street lighting, parking & turning facilities, access widths, gradients, surfacing, visibility splays, drainage & outfall proposals, construction specification, provision of and diversion of utilities services, materials and any proposed structural works. Drawings must indicate key dimensions. All details submitted for approval shall comply with the Nottinghamshire County Council's current Highway Design Guide and shall be implemented in accordance with these details to the satisfaction of the Local Planning Authority.

### **Reasons**

1. To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.
2. To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.
3. To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.
4. In the interests of visual amenity.
5. In the interests of visual amenity.
6. To ensure an adequate lighting strategy is employed that does not affect bats.
7. To protect trees worthy of retention.
8. To protect protected species.
9. In the interest of visual amenity and ensuring the site is maintained.
10. To protect residential amenity.
11. To protect residential amenity.
12. In the interests of sustainability.
13. To ensure the site is adequately drained.
14. To ensure the site is developed free from contamination.
15. In the interests of highways safety.