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NOTTINGHAM CITY COUNCIL

PLANNING COMMITTEE

MINUTES of the meeting held at Ground Floor Committee Room - Loxley House, Station Street, Nottingham, NG2 3NG on 18 January 2017 from 14.30 - 16.45

Membership

Present

Councillor Chris Gibson (Chair)
Councillor Cat Arnold (Vice Chair)
Councillor Graham Chapman
Councillor Alan Clark
Councillor Michael Edwards
Councillor Rosemary Healy
Councillor Gul Nawaz Khan
Councillor Sally Longford
Councillor Brian Parbutt
Councillor Wendy Smith
Councillor Malcolm Wood
Councillor Linda Woodings
Councillor Andrew Rule
Councillor Josh Cook

Absent

Councillor Azad Choudhry
Councillor Steve Young

Colleagues, partners and others in attendance:

Richard Bines - Solicitor
Rob Percival) Area Planning Managers
Marin Poole)
Caroline Nash - Traffic Service and Delivery Service Manager
Lisa Guest - Principal Officer Highway Programmes Development Control
Catherine Ziane-Pryor - Governance Officer

55 APOLOGIES FOR ABSENCE

Councillor Steve Young – ill health

56 DECLARATIONS OF INTERESTS

None.

57 MINUTES

Subject to including the apologies for Councillor Gul Khan as leave, the minutes of the meeting held on 21 December 2016 were confirmed and signed by the Chair.

58 SITE OF FORMER HICKING PENTECOST AND COMPANY, LAND BETWEEN CROCUS STREET, SUMMER LEYS LANE, AND EUGENE STREET,

Rob Percival, Area Planning Manager, presented application 16/02688/PVAR3 by Jake Crompton on behalf of Cassidy Group Property Ltd for variation of conditions 2, 14 and 15 of 10/01814/PFUL3 (APP/Q3060/A/11/2143439) (design changes and flood risk).

The application is brought to Committee because the planning obligation proposed is substantially less than required by current adopted planning policies.

The Committee were informed that planning permission had previously been granted on appeal and therefore the scheme in its entirety was not eligible for the consideration of the Committee, only matters subject to the conditions proposed to be varied, as set out within the report and Update Sheet.

Rob Percival delivered a brief presentation which illustrated, with Computer Generated Images (CGIs) of street and elevated views, the appearance and lay out of both the formerly agreed application, and the revised application, with different brick colour options. Plans of each application were also presented.

By varying the conditions in question, the revised scheme proposed the following changes to the previously approved development:

- variations of brick colours (including an option for red or buff bricks for the main body of the building);
- textured and recessed brick work;
- the replacement of the ground floor live/work units with street entry apartments;
- a small building proposed for the northern end of the site is omitted;
- the revised mix of accommodation is proposed as 179 x 1 bed units, 87 x 2 bed 3 person units, and 84 x 2 bed 4 person units;
- changes to the parking arrangements, including removal of the basement car park;
- improved storage facilities cycle provision and landscaping.

Further information regarding amendments to the proposal following a revised flood risk assessment is included within the update sheet along with a revised recommendation.

A further recommendation was proposed to include a condition for 'management and maintenance arrangements for all the landscaped areas and features will be implemented at all times'.

It was noted that the proposed Section 106 contribution is in line with the previously agreed contribution on appeal but does not meet the current planning obligation requirements following changes in the law brought about by the Community Infrastructure Regulations as to the purposes for which Section 106 obligations can be required .

Members of the Committee commented as follows:

- (a) one of the residents of a neighbouring property had commented that the building would cast a shadow on their home. It should be emphasised for the benefit of objectors that the Committee is unable to consider issues beyond the revisions to conditions as presented within this current application;

- (b) the change of style and finish should be welcomed as much improved on that of the 2005/2011 application;
- (c) materialist would be beneficial for the Committee to consider details of the proposed materials;
- (d) purely from the CGIs, the red brick option is more attractive and in keeping with the neighbouring buildings and surrounding area;
- (e) the addition of the 4 electric vehicle charging points is welcomed;
- (f) the differing size of space to the front of the ground floor apartments was queried although it is recognised that the building footprint does not sit within a regular site boundary;
- (g) care must be taken with the 'living wall' to ensure it succeeds on a north facing, shaded wall and that consideration is given to the surfaces behind the living wall in case it does not prove viable;
- (h) further development in this area is to be expected but community consideration should be given as how to ensure that residents of these new buildings can easily identify and engage with the Meadows communities and not be made to feel that they are an add on to the City Centre. Including local historical reference, possibly the locally famous crocus flowers, could be considered;
- (i) further clarity of detail is required with regard to brick colour and quality (as opposed to purely CGI indications), the view of the building from London Road, the changing character of Crocus Street and the lighting for ground floor apartment entrances;
- (j) the building appears plain and requires more detail, particularly at the corner of Crocus Street and Summer Leys Lane;
- (k) although an additional condition regarding landscaping maintenance is proposed, careful consideration should be given to the use of hedging which can act as a litter trap and become unsightly;
- (l) further detail is required on why the Section 106 contributions do not meet the current policy requirements and proper consideration needs to be given to whether this significant difference should be accepted. Previously the Committee has requested that viability appraisals be assessed by the District Valuer to determine the projected value and enable a realistic gauge of potential Section 106 contribution. This process should be considered for this application as property values have increased significantly since 2011 and the City Council will be losing significant resources.

Rob Percival responded:

- (m) although the space to the front of the ground floor apartments varies, even the smallest space can be considered as valuable 'defendable space' which provides distance between people walking on the street and property windows;

- (n) the living wall is proposed to cover the end brick surfaces of the three building faces of the north elevation and the proposed condition regarding management and maintenance of all landscape areas and features will ensure that the living wall is appropriately maintained;
- (o) further details, including the brick specifications, are yet to be agreed, but an indication from the Committee on the preferred brick colour is welcomed;
- (p) the site is not flat and as such, having regard to the flood risk assessment, some of the ground floor apartment entrances are raised from street level either by steps or a short ramp. Should flood water reach the building in the 1/1000 event of a flood on this site, resilience measures will be in place for the building. It is noted that the Environment Agency have retained their request for finished floor levels to be set higher level proposed to be addressed through a combination of raised floor levels and flood resilience measures. However, this would result in a difficult relationship between the building and pavement level. Given the package of flood mitigation measures proposed, the fact that the building is in flood zone 2 and that the threat of flood waters would be in a scenario were the recent constructed flood defences would be breached, the proposed approach to flood risk is considered to be acceptable;
- (q) Since the previous permission for this site, the legislation regarding Section 106 contributions has changed. Whilst the original application required a contribution of £520,000, if a fresh application for an entirely new scheme was submitted at this time, the contribution would be within the region of £2,700 000. However, this is not a new application for full planning permission. Furthermore when the current owner and developer acquired the site from the receiver, only the initial Section 106 contribution was accounted for, given that it related an existent permission. The developer can legitimately proceed with the formerly approved scheme without any of the beneficial amendments proposed and regardless of the outcome of a District Valuer assessment. This is not a new application and as the substantive design of the proposal has not changed, a revised Section 106 assessment of the amount of the obligations cannot be justified.

59 EXCLUSION OF THE PUBLIC

RESOLVED, under the Local Government Act 1972 s100A (4) and (5), s100I and Schedule 12A, the Committee determined to exclude the public during part of discussion of the item satisfied that because the nature of the discussion concerning the Section 106 of the Town and Country Planning Act 1990 obligation, if members of the public were present there would be disclosure of exempt information, namely information in respect of which legal professional privilege could be maintained in any legal proceedings and that there was a greater public interest in maintaining the exemption than in disclosing the information , as it would enable free, open and frank discussion and advice that might otherwise be impeded if the discussion were not confidential.

60 RE-ADMITTANCE OF THE PUBLIC

61 SITE OF FORMER HICKING PENTECOST AND COMPANY, LAND BETWEEN CROCUS STREET, SUMMER LEYS LANE, AND EUGENE STREET (CONTINUATION)

RESOLVED

- (1) to grant planning permission subject to:**
- (a) prior completion of a Section 106 planning agreement, which shall include contributions of:**
 - (i) 389,792 towards affordable housing,**
 - (ii) £45,760 towards public open space and**
 - (iii) £84,448 towards education;**
 - (b) completion of a deed of discharge under S106A of the Town and Country Planning Act 1990 of the S106 obligation in relation to planning permission 10/010814/ PFUL3 (APP/Q3060/A/11/2143439), on completion/occupation of the development subject to planning permission 16/02688/PVAR3;**
 - (c) the indicative conditions substantially in the form of those listed in the draft decision notice at the end of the report and within the Update Sheet, to include:**
 - (i) management and maintenance arrangements for all the landscaped areas and features will be implemented at all times;**
 - (ii) the internal finished floor levels of dwellings shall be no lower than 25.40m AOD with flood resilience measures to 26.00m AOD in accordance with details to be submitted to and approved in writing by the Local Planning Authority;**
 - (d) the power to determine the final details of the conditions to be delegated to the Chief Planner, and with regard to the external details, shall be in consultation with the Chair, Vice-Chair and Opposition Spokesperson;**
- (2) that Councillors are satisfied that Regulation 122(2) Community Infrastructure Levy Regulations 2010 is complied with, in that the planning obligation sought is:**
- (a) necessary to make the development acceptable in planning terms;**
 - (b) directly related to the development;**
 - (c) fairly and reasonably related in scale and kind to the development;**
- (3) that Councillors are satisfied that the section 106 obligation(s) sought that relate to infrastructure would not exceed the permissible number of obligations according to the Regulation 123 (3) Community Infrastructure Levy Regulations 2010;**

- (4) to ensure clarity and consistency, that a report is submitted to Executive Board to determine the Council's approach to Section 106 negotiations and setting out the circumstances where external advice is to be taken, including from the District Valuer.**

62 2 PRIVATE ROAD

Martin Poole, Area Planning Manager, presented application 16/02151/PFUL3 by Mr Andrew Pike for planning permission to erect a single storey side extension and increase the number of child places at the day nursery from 47 to 62.

The application is brought to Committee because it has generated significant public interest that is contrary to officer recommendation.

Martin Poole, Area Planning Manager, delivered a brief presentation which included a plan of the site as it is and with the proposed extension, including parking facilities, and street views of the site from Mansfield Road and different approaches to the property entrance on Private Road.

Further information, including correspondence from objectors and a proposed revision of a condition, is included within the Update Sheet.

Objections to the application are summarised in the report and added to within the Update Sheet and primarily focus on the unwelcome additional use of the road if the application were to succeed, including increased safety and access concerns at the junction of Private Road and Mansfield Road, and the potential impact on the conservation area and fabric of the road.

Private Road is not an adopted route and therefore the City Council does not have the same powers or obligations which are applied to adopted roads. However, there are mechanisms by which residents/owners of properties on Private Road could arrange for independent restrictions, including parking and waiting.

Resident objections, including points raised in a letter from the Chairman of the Private Road Members Association, are acknowledged, however, following a thorough assessment by Planning, Highway and Road Safety Officers, the conclusion is that if successful, the application:

- (i) will not fundamentally change the character of the conservation area, even if a portion of the boundary wall were to be removed to improve access to the site;
- (ii) provides an appropriate amount of parking spaces in excess of those required by the Emerging Local Plan;
- (iii) would not have any significant impact on road safety and no adverse concerns were identified following the same assessment that is undertaken on adopted roads;
- (iv) would not result in any significant impact on the condition of the road as a result of increased traffic;

Further points included:

- (v) the City Council does not have authority to implement traffic regulation or parking orders on non-adopted roads;
- (vi) although not adopted, public access rights are likely to have already been established, furthermore reasonable access rights of owners are likely to provide a defence to any proceedings under Section 34 of the Road Traffic Act 1988;
- (vii) the owners/residents of properties on Private Road have a right of access, as do their visitors;
- (viii) the condition regarding car-park layout is proposed to be amended, as set out in the Update Sheet;
- (ix) there is enough space in the car park for refuse bins to be sited to the rear of the property so they could be collected within the property;
- (x) Highways and Road Safety Officers seek the opinion of the Fire and Rescue Services regarding any potential emergency access issues, but as this is a non-adopted road, it is suggested that residents may wish to make this approach independently. However, if necessary emergency vehicles will force a path and damage vehicles blocking their route if attending an emergency;
- (xi) the 'blind' junction arrangement where drivers cannot see traffic approaching on the other road, is now commonly used in modern developments as a preferred safety measure as it ensures that drivers slow on approaching the junction.

Members of the Committee commented:

- (a) the safety and access concerns of residents are noted, particularly with regard to people parking on Private Road pavements, but Highways and Road Safety have not identified any specific safety issues;
- (b) there is an indication that many parents who are dropping off children park across the road and walk children to the nursery, but no evidence, such as photographs, has been provided but would be helpful for the Committee's consideration;
- (c) residents' concerns are acknowledged as it is recognised that this is a narrow road with very limited passing points and few opportunities for vehicles to turn;
- (d) if the resident's group could provide key times of the busiest nursery traffic, it would be beneficial for Committee members to independently observe traffic activity around the nursery before further considering the application;
- (e) if consideration is to be deferred pending informal site visits, it would be helpful if the applicant and members of the residents' group liaised to seek a solution. A compromise on the number of child places has already been made by the applicant so it would be helpful if both parties communicated;

- (f) it would be sensible to defer the decision until members of the Committee are able to witness traffic activity at times that objectors to the application feel are most congested.

It is noted that whilst the application property and residencies of objectors are sited within Councillor Brian Parbutt's ward of Sherwood, to avoid any conflict of interest, fellow Ward Councillor, Councillor Alex Ball, has dealt with all correspondence in this matter and Councillor Parbutt has not been involved in any correspondence with any party regarding this application.

RESOLVED to defer further consideration on the application until the February meeting of the Committee, to enable members of the Committee to independently consider the busiest traffic activity periods around the nursery.

PLANNING COMMITTEE

UPDATE SHEET

(List of additional information, amendments and changes to items since publication of the agenda)

18 January 2017

4a Hicking Pentecost

1. As a S73 variation of condition application the applicant will have 3 years to implement this permission. The standard condition regarding this has therefore been added to the decision notice.
2. The application as submitted proposed that the condition relating to flood risk would have required that all dwellings would be constructed in accordance with the recommendations of the Flood Risk Assessment. The Environment Agency (EA) had concerns about this approach and recommended that the internal finished floor level should be set no lower than 26.0m AOD. This figure was based upon a new figure for a 1 in 100 year plus climate change 'breach' flood level of 25.7m AOD (i.e. 300mm above 25.7m AOD).

This issue has been further considered and additional information has now been submitted in order to address the concerns of the EA. It is proposed that the internal finished floor level of any of the ground floor units would not be less than 25.40m AOD and also that up to 600mm of flood resilience measures would be provided to provide flood protection to a level of 26.00m AOD. This does not fully address the requirements of the EA but to further increase the internal finished floor levels would present a significant issue to the deliverability of the scheme, which is based upon floor levels set to suit the adjacent highway, where there are level access requirements to be considered. It is therefore considered that the combination of the minimum internal finished floor level and flood resilience measures now proposed is a pragmatic response to the EA's concerns. This is particularly the case given the following:

- the site falls in a Flood Zone 2 for which the flood risk is 1in1000 years
- the requested flood protection is to address a 'breach' scenario, ie. in the event of the flood protection measures constructed by the EA failing
- Of the 350 apartments in the development, 21 are at ground-floor level. Of these, only 10 need a varying degree of stepped or ramped treatment to achieve a FFL of 25.40m AOD. All would have additional flood resilience measures to a height of 26.00m AOD

The following condition is recommended to secure the above:

"The internal finished floor levels of dwellings shall be no lower than 25.40m AOD with flood resilience measures to 26.00m AOD in accordance with details to be submitted to and approved in writing by the Local Planning Authority".

3. The applicant has agreed to install four electric car charging points within the undercroft car park. An additional condition is proposed to secure this.

4b 2 Private Road

1. A further 7 written representations expressing objections to the proposed development have been received. The reasons for objection are as follows:
 - The development would be out of keeping with the conservation area, and demolition of walls is contrary to the conservation area management plan
 - The increased no. of vehicles accessing 2 Private Road would pose a serious risk to the safety of pedestrians and cyclists. The likelihood of a fatal accident would be significantly increased
 - Private Road has been designated as a cycling 'safe route'. The proposal would pose a threat to the safety of all road users
 - The single entry and exit would reduce visibility for cyclists
 - Obstructions caused by vehicles turning into the site could back up onto Mansfield Road
 - Inconsiderate parking on Private Road by users of the day nursery poses a hazard to cyclists
 - The residents of Private Road, Victoria Crescent, Yew Close and Fairlawn Place have rights to safe passage along their private roads
 - The applicant has not made any attempt to consult with residents of Private Road and has not complied with 'Development in Private Roads: A code of Practice'. He does not have automatic rights of way.
 - Driving in a private road without a sufficient right of way is an offence under s. 34 of the Road Traffic Act 1988.
 - The Council should impose condition should planning permission be granted requiring the applicant to repair any damage caused to Private Road

One representation providing general observations about the development has also been received. The observations are as follows:

- Overall, there is no demonstrable evidence to suggest the proposal should be refused. However, the permission could be improved;
- The Highway Authority has a duty to consider highway safety. The car park should be reconfigured to allow 12 spaces, including a disabled space. The layout should demonstrate a designated area for bin storage within this
- It needs to be established that the widening of the access can be accommodated. Could this be agreed before permission is granted.
- The applicant states that staff won't park here. This would be difficult to enforce but signs could be displayed in some spaces to read 'drop off and visitor parking only'.

Finally, two representations in response to some of the points of objection that have been raised, has been received from the applicant:

- The nursery car has been parked outside the Methodist church as the nursery have had Christmas carol concerts with Toddlers and Preschool children in their hall. Parents and carers do not park on Private road as there is always space in the car park.

- The submitted plans are accurate
- 60% of the objections appear to be a duplicate of one letter.
- The mini bus is used to transport children for woodland activities at Bestwood Country Park. It is used on a three week rota, taking children from the Private Road site, three times, once every 3 weeks. The mini bus is stored at all other times, at the applicant's own home.
- The bins are currently stored within the car park.

Comments

Issues relating to highway safety, including that of pedestrians and cyclists, have been addressed within the main report.

With regard to the demolition of walls within the conservation area, the management plan states:

'12.3 In view of their overall visual contribution to the Conservation Area, the Council will resist the demolition of any historic Bulwell stone or brick boundary walls.

12.4 In new development proposals, where alterations to any existing boundary walls are shown to be necessary, such as to form a new vehicular access, the Council will expect that any works will be limited to the minimum necessary and that any new openings are defined by gate piers.'

It is considered that paragraph 12.3 is intended to address the threat to the character of the area from total demolition of significant the proposed alterations fall within the scope of paragraph 12.4. Subject to satisfactory details, the widened access can be accommodated without harm to the character and appearance of the conservation area. It is considered reasonable that these details can be agreed by condition.

The Highway Officer has considered the proposals alongside the Road Safety Officer and the view remains that the proposed development would not have any significant impact upon highway safety. The car park The size of the car park proposed is acceptable for the number of children that would attend the nursery. The Emerging Local Plan states that a nursery should have a maximum off-street parking provision of 1 space per 8 children which for 70 children is 9 spaces. Providing 12 spaces in the car park for 62 places is therefore considered acceptable.

The Development code to which the objections refer has no legislative force. It is there as a guide for the purposes of assisting residents and developers and does not relate to instances of changes in the level of use where rights of access are already established.

Section 34 of the Road Traffic Act 1988 relates to offences on land that are not roads. In relation to England and Wales, 'road' means any highway and any other road to which the public has access. The public have access to Private Road. It is well established in law that reasonable access rights would be a perfectly valid defence to an alleged offence of damage to the highway by use of vehicles gaining access. Furthermore Highways have concluded that what limited increase in traffic there would be due to the rise in numbers of places

would have no discernible effect on the highway. As such it would not be justifiable or reasonable to impose a condition requiring the applicant make good the highway.

The widening of the car park access will allow two vehicles to access and egress the car park at the same time and is welcomed. The car park is set out satisfactorily and has sufficient turning facilities for cars to enter and leave in a forward gear. There is no evidence to suggest that the proposals to widen the access could not be achieved and in fact the access appears to have been narrowed at some point in the past. In addition to the condition requiring details of how this will be achieved, a further condition which restricts the number of children within the nursery to 47 until such a time that the access has been widened in accordance with the approved details, is recommended.

The existing condition relating to the car park layout should be re-worded to include specific reference to a requirement for designated area for bin storage and a scheme of signage to aid in the effective management of the car park as follows;

Notwithstanding the details shown on the submitted plans, the development hereby permitted shall not commence until details of the car park layout, which shall include provision of one disabled parking space, a designated area for bin storage and a scheme of signage to assist in the effective management of the car park, has been submitted to and approved in writing by the Local Planning Authority.

The comments received from the applicant are noted.

(Additional Background papers:

1. Letter from local resident dated 9.1.17
2. 2 x Emails from local resident dated 12.1.17
3. Email from interested party dated 12.1.17
4. Email from applicant dated 12.1.17
5. Email from applicant dated 13.1.17
6. 3 x letters from local residents dated 16.1.17
7. Email from local resident dated 17.1.17)

Appendix to item 4b

From: The Chairman, Private Road Members Association

To: Members of the Nottingham City Council Planning Committee

18 January 2017

Application 16/02151/PFUL3

Dear Councillor,

I would like to be able to address the Committee in person, but as this is not permitted, I am writing my final submission which I ask you to consider. At this late stage, you will have had the opportunity to see the large amount of correspondence, interest and anxiety generated by the above proposal. I am suggesting to you, today, that you may not be in a position to make a properly informed and reasonable decision in this case unless you insist on a site visit to see the actual situation in Private Road for yourself.

If you have had time to read the letters of objection, you may be struck by the curious differences between the statements in the Chief Planner's report before you and the carefully expressed views, observations and experience of the residents and of the Private Road Members Association, of which I am the elected Chairman.

May I tell you that, in the twenty-one years I have lived in the road, the fifteen years that I have been a member of the PRMA Executive Committee and the two years that I have been Chairman, I have not known an issue cause so much widespread concern, dismay or worry. These concerns were magnified when the Planner's report was published and people realised their fears. There is a commonly-held feeling that, although it may not be true, the City Council simply does not listen to people. The standard response to a letter of objection is: "I cannot respond on specific matters, but I can assure you that your comments will be taken into account when the application is determined." This statement does not engender confidence and, unfortunately, the discrepancy between our letters and the information contained in the report is, in parts, quite striking. This is very worrying and makes individuals question if their responses were worth making at all.

Two particular aspects illustrate the point. Firstly, the "agreement" by the applicant to reduce to 62 from 70 the number of children who may be accommodated at the nursery does not, in any way, lessen the dangers implicit in any expansion, nor the adverse effect on the character and amenity of the conservation area. Secondly, the input of highways to the report, on the one hand appearing to wash their hands of any problems, and on the other, welcoming the intention to provide a wider opening and insist on the provision of a disabled parking space, is woefully inadequate.

To an outsider, it might seem that this planning issue is a simple one; but it isn't. There are some fundamental facts that must be appreciated. The nursery exists within a conservation area, with access from an unadopted, narrow, private road which is collectively owned by the residents. The nursery's owners, staff and customers are not residents. It may be that an application to establish a nursery in its current location would not be allowed today, but we understand that the nursery does exist and we accept that. However, its activities do cause and have caused problems, largely related to inconsiderate parking, traffic congestion and safety. Residents have had to cope with these difficulties, but all are agreed that the increase in numbers is potentially very unsafe, not reasonable and totally out of keeping with the location of the nursery in the conservation area.

You have the opportunity today to defer a decision until you can make a site visit. This would enable you to establish for yourself the limitations of the site and its location in Private Road and the real potential for a serious accident were the application ever to be granted approval. Please take this opportunity.

Glyn Archer

Chairman

Private Road Members Association

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