

Report of Director of Planning and Regeneration

Island Business Centre, City Link

1 Summary

Application No: 20/01527/PFUL3 for planning permission
20/01528/LLIS1 for listed building consent

Application by: AXIS David Jones on behalf of Conygar Nottingham Ltd Mr Chris Ware

Proposal: (Planning permission) Mixed-use commercial development comprising enabling works (demolition and earthworks), retail (Classes A3/A4/A5), assembly and leisure (Class D2) uses, access modifications, utility infrastructure and drainage, new areas of public realm/landscaping and alterations to the listed Turnover Bridge (Phase 1A of the Island Quarter development).

(Listed building consent) Alterations to the listed Turnover Bridge in association with mixed-use commercial development comprising enabling works (demolition and earthworks), retail (Classes A3/A4/A5), assembly and leisure (Class D2) uses, access modifications, utility infrastructure and drainage, and new areas of public realm/landscaping (Phase 1A of the Island Quarter).

The report is brought to Committee as an urgent item because of the significant risk of a delay to the issuing of a planning permission and listed building consent pending confirmation from the Environment Agency that their objection to the applicant's Flood Risk Assessment has been overcome. The report seeks authorisation to refer the matter to the Secretary of State in the event that this may be required in order to ensure that the applicant's programme for the implementation of this major and significant first phase of development is able to be achieved.

To meet the Council's Performance Targets this application should be determined by 3rd December 2020.

2 Recommendations

2.1 In the event that the Environment Agency has not been able to withdraw its objection following conclusion of further flood modelling, power to **GRANT PLANNING PERMISSION and LISTED BUILDING CONSENT** be delegated to the Director of Planning and Regeneration in consultation with the Chair, Vice Chair and opposition spokesperson subject to:

- (i) being satisfied that the development complies with national and local policies on flood risk, including consultation with the Secretary of State;

- (ii) the indicative conditions substantially in the form of those listed in the draft decision notices appended to the report to the September Planning Committee with the addition of the condition relating to the design of the linear ridge as detailed in the report on the planning permission;
- (iii) prior completion of a Section 106 planning obligation to secure:
 - (a) a financial contribution towards highways improvements in the total sum of £1,050,000
 - (b) local employment and training benefits including opportunities in the construction and operational phases of development together with payment of a financial contribution towards employment and training;

- 2.2 Power to determine the final details of both the terms of the Planning Obligation and the conditions of planning permission to be delegated to the Director of Planning and Regeneration.
- 2.3 That Committee are satisfied that Regulation 122(2) Community Infrastructure Levy Regulations 2010 is complied with, in that the planning obligations sought are (a) necessary to make the development acceptable in planning terms, (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development.

3 Background

- 3.1 Committee resolved to grant planning permission and listed building consent for the above proposed development on 23 September 2020, subject to matters including receipt of the further response of the Environment Agency confirming that the objection to the applicant's Flood Risk Assessment had been overcome. This report is made to advise Committee that the objection of the Environment Agency has not yet been overcome and that the programme for the development is now facing a potential significant delay.
- 3.2 Circular 02/2009 requires local planning authorities in England to consult the Secretary of State before granting planning permission for certain types of development and, in this particular instance, 'major' category development within a flood risk area to which the Environment Agency has made an objection that it has not been able to withdraw. The purpose of the direction is to give the Secretary of State an opportunity to consider whether to exercise his call-in powers under Section 77 of the Town and Country Planning Act 1990. Planning permission is not able to be granted until the expiry of a period of 21 days beginning with the date which the Secretary of State confirms that he has received all necessary information.
- 3.3 It is therefore recommended that power to determine the applications be delegated to the Director of Planning and Regeneration in order to provide the flexibility to consult the Secretary of State for his decision on whether or not to exercise his right of call-in, should this be required, in order to allow for planning permission and Listed Building Consent to be granted and for the development to proceed. Planning permission and Listed Building Consent would then be granted in accordance with the above recommendations.

4 Details of the proposal

- 5 The details and appraisal of the applications remain as per the September report with the only issue outstanding being the resolution of the Environment Agency objection. This is not a material consideration for the purposes of the application for Listed Building Consent but does affect the issue of the grant of planning permission. No issues have arisen as a consequence of the revised Certificate of Ownership submitted with the application and the s106 Agreement is near to completion.
- 4.2 The outstanding Environment Agency objection is now placing the applicant's programme for the implementation of this major and significant first phase of development at significant risk of being delayed. In the event that the Environment Agency subsequently maintains their objection to the proposed development then the development may be delayed further. With the resolution as it stands, any Environment Agency objection to the development, however minor, would require referral back to the planning committee for a decision and the process for referral to the Secretary of State could not begin until after the committee's decision. Since the December committee would be the earliest meeting at which a committee decision could be taken, this would mean that a decision following referral to the Secretary of State could not be issued until January at the earliest. In this case, the public benefits of the development, in terms of jobs and other economic benefits, at a crucial time for the city, are considered to be at significant risk from any delay. The amended resolution above would facilitate a determination of the application on a shorter timescale, whilst still ensuring that proper consideration is given to the flood risk arising from the development.

5 Consultation response of the Environment Agency:

- 5.1 Committee were advised of the response of the Environment Agency at the meeting of 23 September. This has now been updated on 4 and 16 November, concluding:

"In the applications current state the Environment Agency would advise the Local Planning Authority to refuse the granting of planning permission to the proposed development. This is because the Flood Risk Assessment is considered inadequate as it doesn't assess all sources of flood risk to the site and others. We are also objecting due to the potential of the proposed development to increase the flood risk to others. As such, the development would be unable to meet the requirements of the National Planning Policy Framework.

The Flood Risk Assessment must ensure all sources of flood risk to the development and to others has been adequately assessed, this includes residual risk and extreme events (PPG).

- The applicant should undertake a breach assessment on the linear ridge during a 1% (annual exceedance probability) River Trent Breach Scenario plus 30% (climate change).
- We would also like confirmation of who the owner of the proposed flood defence asset (Linear Ridge) will be and who will be responsible for its maintenance.

The applicant has only proposed 50mm of freeboard from the top of the linear ridge. We advise the applicant considers including an additional 250mm of freeboard to the top of the defence; this is so the defence will provide a total of 300mm of freeboard."

6 Relevant policies and guidance

Aligned Core Strategies (ACS) – Local Plan Part 1 (2014)

Policy A: Presumption in Favour of Sustainable Development
Policy 1: Climate Change

Land and Planning Policies (LAPP) – Local Plan Part 2 (2020)

Policy CC3: Water

NPPF (2019):

Paragraph 163 of the NPPF states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

7. Appraisal of the proposed development with regard to the Environment Agency's objection

- 7.1 The applications were appraised in detail in the September report and there has been no change in circumstances in relation to other aspects of the applications since that this report was written. This report therefore solely considers the applications, more specifically the application for planning permission, in relation to the ongoing Environment Agency objection. The NPPF, Policy 1 of the ACS and Policy CC3 of the LAPP all require that new development should not increase the risk of flooding elsewhere and that any residual risk can be safely managed.
- 7.2 Since the September report was presented the applicant has submitted further information to the Environment Agency, to which the Environment Agency responded on 4 November. The applicant, officers and the Environment Agency held a meeting on 12 November where some further progress was made, but this has not been deemed to be sufficient to satisfy the Environment Agency to withdraw their objection.
- 7.3 The point at dispute between the parties relates to a proposed "linear ridge feature" that is to be incorporated into the details of the pedestrian/cycle path around the northern boundary of the proposed development. This "linear ridge", is in the form of a low wall, tapering to a kerb upstand as the pedestrian/cycle path rises across this boundary. This replacement flood defence feature would only become operational as an additional flood protection measure in the event of a breach of the primary flood defence and therefore provides a secondary defence, i.e. addressing a residual risk. It would only become operational in the event of the worst case

breach scenario of 100+30%. In such an event, flood levels around the canal basin and therefore on neighbouring sites would also be exceeded due to the lower defence level of the existing canal basin wall.

- 7.4 It is the view of officers that the applicant has substantially addressed the flood risk matters in accordance with the requirements of the NPPF. The Environment Agency have required a modelled breach assessment of the linear ridge in order to demonstrate the consequence of a breach of this secondary flood defence feature and therefore the extent of the residual risk involved. Officers consider that with appropriate design and robust arrangements for future maintenance this would be a reasonable response to the level of secondary residual risk involved, albeit that it is recognised that in the absence of the modelling requested by the Environment Agency that the level of risk cannot be accurately quantified. For this reason officers intend to await the conclusions of this modelling work before final conclusions are made in relation to the NPPF and planning policies referred to above. In the event that the Director of Planning and Regeneration, in consultation with the Chair, Vice Chair and opposition spokesperson, is satisfied that any additional risks identified through the modelling are capable of being appropriately mitigated it is intended that the following planning condition be imposed on any planning permission granted in accordance with the recommendation as above.

Condition

No development shall take place to reduce the existing ground levels formed by existing structures across the northern boundary of the application site until full construction details and arrangement for the future maintenance of the "linear ridge" flood defence feature that is to replace those existing structures has been submitted to and approved by the Local Planning Authority in consultation with the Environment Agency. The submitted details of the "linear ridge" flood defence feature shall demonstrate a quality of robust construction that confirms that the flood defence purpose of this feature has been recognised. Development shall thereafter be implemented in accordance with the approved details and the "linear ridge" flood defence feature shall be retained in perpetuity unless otherwise altered with the written consent of the Local Planning Authority.

Reason: In order to ensure that the residual flood risk to neighbouring sites is mitigated in accordance with Paragraph 163 of the National Planning Policy Framework 2019, Policy 1 of the Aligned Core Strategies, and Policy CC3 of the Land and Planning Policies Development Plan Document - Local Plan Part 2 (2020).

- 7.5 Under the recommendation agreed in September the resolution to grant planning permission is conditional upon the Environment Agency confirming that they have no objection. Whilst this remains a possibility upon the conclusion of the further modelling work, it is also the case that an objection may be maintained in the event of that modelling showing an increased residual risk. In this eventuality it is open to the Local Planning Authority to make its own assessment of that risk and to make its own conclusion that the residual risk can be safely managed. Due to the significant risk of delay to the implementation of the project it is therefore recommended that the decision be delegated to the Director of Planning and Regeneration and to provide the flexibility to consult the Secretary of State for his decision on whether or not to exercise his right of call-in where the Environment

Agency have not withdrawn their objection.

8 Legal Implications

8.1 Should legal considerations arise these will be addressed at the meeting.

9 Equality and Diversity Implications

None.

10 Risk Management Issues

None.

11 Strategic Priorities

None.

12 Crime and Disorder Act implications

None.

13 Value for money

None.

14 List of background papers other than published works or those disclosing confidential or exempt information

1. Application No: 20/01527/PFUL3 - link to online case file:

<http://publicaccess.nottinghamcity.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=QE0GP9LYK2800>

2. Environment Agency, 4.11.20

3. Environment Agency, 16.11.20

15 Published documents referred to in compiling this report

Aligned Core Strategies – Local Plan Part 1 (2014)

Land and Planning Policies – Local Plan Part 2 (2020)

NPPF (2019)

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