

Report of Director of Planning and Regeneration

Land at Kingsthorpe Close, Kildare Road

1 Summary

Application No: 21/00861/PVAR3

Application by: Smith & Love Planning Consultants on behalf of Keepmoat Homes Ltd

Proposal: Deletion of condition 10 (provision of memorial/artwork) and variation of condition 14 (provision of play area) of planning permission reference 13/01367/PFUL3

The application is brought to Committee because the proposed development seeks amendments to an approved scheme that was previously determined at committee and developer contributions secured via s106 would not be policy compliant.

To meet the Council's Performance Targets this application should be determined by 8th November 2021.

2 Recommendations

To **GRANT PLANNING PERMISSION** subject to the indicative conditions substantially in the form of those listed in the draft decision notice at the end of this report and subject to:

- (a) The prior completion of a Section 106A deed of variation to amend the existing Section 106 Planning Obligation, or a further planning obligation, which shall include:
 - (i) A financial contribution of £40,000 towards play area enhancement in the local area;
 - (ii) A financial contribution of £1,500 towards provision of a memorial stone/artwork and provision for it to be installed on the land;
 - (iii) Requirement to landscape an area of on-site open space and the on-going maintenance and management that area.
- (b) Power to determine the final details of both the terms of the section 106A deed of variation to amend the existing Planning Obligation, or a further planning obligation, and the conditions of planning permission to be delegated to the Director of Planning and Regeneration.

3 Background

The application relates to properties which were constructed off Kingsthorpe Close to the west of The Wells Road. The development site known as Kildare Road was sold by the Council in 2013 to Keepmoat Homes, and 70 houses constructed pursuant to planning permission reference 13/01367/PFUL3, with the build largely

completed in 2016/2017. A number of conditions were attached to that permission, most of which were discharged in 2015/2016. However conditions 10 and 14 relating to an area of open space on the western boundary of the site remain outstanding. The area of open space is triangular in shape, approximately 13m in width and 40m in length. The land is covered in scrub vegetation and slopes steeply to The Wells Road to the west. The change in land level from Kildare Road to The Wells Road is approximately 10m.

4 Details of the proposal

4.1 Condition 10 of the 2013 consent stated:

“Development shall not be commenced until details of a memorial or artwork that recognises the historical significance of the site have been submitted to and approved in writing by the Local Planning Authority. This shall include details of the future maintenance of the agreed feature. The agreed memorial / artwork shall be installed in accordance with a timetable to be agreed in writing by the Local Planning Authority.”

This application seeks to delete this condition in lieu of provision of a contribution of £1,500 to the City Council to provide a suitable memorial stone (or similar) on the site.

4.2 Condition 14 of the 2013 consent stated:

“Notwithstanding the details submitted, prior to commencement of the development, full details of the specification of the play area and associated equipment, and a timetable for its implementation and completion, shall be submitted to and approved in writing by the Local Planning Authority.”

Condition 14 seeking to secure a play area was in lieu of the developer paying for any off site open space enhancement.

4.3 This application seeks to vary this condition to landscape the area which was proposed as a play area with tree planting, grass and wild flower meadow seeding and provide a contribution of £40,000 to the City Council for play area enhancement in the local area.

5 Consultations and observations of other officers

Adjoining occupiers consulted:

8 neighbouring properties on Kildare Road notified which front onto the area of open space.

One letter of representation received, stating the following:

Keepmoat planned to put a park here but all the residents surrounding the park didn't want it and we let the council and Keepmoat know. We had a park near here a few years ago and it's was used by drug addicts and gangs of youths causing trouble.

Keepmoat said they would scrap the idea but now we find out they are going to build the park yet again but we would like our feelings and thoughts took into

consideration we are the ones who are going to have to put up with the noise and the stress it causes, it's outside our homes it's not wanted there are plenty of other green areas they could put a park like on the wells Rd where they used to be a park that area is still unused, we live here we don't want or need a park outside our homes.

Additional consultation letters sent to:

Drainage Officer:

Is there scope for use of this green space for SuDs and blue infrastructure?

6 Relevant policies and guidance

National Planning Policy Framework (2021)

The NPPF advises that there is a presumption in favour of sustainable development and that applications for sustainable development should be approved where possible. Paragraph 126 notes that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve, and that good design is a key aspect of sustainable development.

Paragraph 130 of the NPPF states that planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Aligned Core Strategies (2014):

Policy 1 - Climate Change

Policy 10 - Design and Enhancing Local Identity

Policy 17 - Biodiversity

Policy 19 - Developer Contributions

Local Plan Part 2 - Land and Planning Policies (January 2020)

Policy CC3 - Water

Policy DE1 - Building Design and Use

Policy DE2 - Context and Place Making

Policy EN2 - Open Space in New Development

7. Appraisal of proposed development

Main Issues

(i) Principle of deletion of condition 10

- 7.1 The applicant is seeking to delete condition 10; the provision of a memorial or artwork that recognises the historical significance of the site. In lieu of provision of a memorial or artwork the applicant has agreed to provide of a contribution of a sum of £1,500 secured by a variation to the existing S106 agreement relating to this site which would be used by the Council's Parks and Open Spaces Team to secure the installation of a memorial or artwork in consultation with local residents and councillors. It is considered that a contribution in lieu of the applicant providing the memorial or artwork is in this instance acceptable.

(ii) Principle of variation of condition 14

- 7.2 The applicant is seeking to vary condition 14; the provision of a play area and associated equipment. Indicative details of a proposed play area were shown on the consent granted in 2013 and condition 14 stipulated to secure greater clarification regarding what would be installed before the works were undertaken. A discharge of condition was submitted in 2015 providing greater detail regarding the provision of a play area, however following submission of the application Keepmoat detailed that they would be unable to provide the proposed play area due site constraints, namely levels rendering the proposal unviable. The requirements of the condition were therefore never discharged. A financial contribution of £10,000 towards off site open space enhancement was offered by Keepmoat to the City Council in 2018 in lieu of on-site provision, however this figure was not deemed to be acceptable and no communication had been received from Keepmoat.
- 7.3 In discussion with colleagues in the Parks and Open Spaces Team the play area provision outlined in the 2015 discharge of condition was costed up and negotiation undertaken with Keepmoat. The current 'best and final' offer from Keepmoat is £40,000 towards off-site play area enhancement and Parks and Open Spaces Team colleagues have detailed that they consider this sum to be commensurate with provision of the play equipment outlined in 2015 (although the 2015 submission was never agreed, due to difficulties resolving the technical problems associated with the ground levels, the scale and extent of play facilities then proposed were acceptable). Keepmoat have also detailed that they will landscape the area of land previously proposed to house the play area and the details of this are outlined on the submitted landscaping plan. Notwithstanding the comments received from a neighbouring occupier, it is considered that landscaping this triangular area of land, planting trees, adding grass and wildflower seeding would be beneficial to the character of the area. The developer will be required to put in place acceptable management and maintenance arrangements for this area through the proposed Section 106.
- 7.4 It should be noted that the original on-site open space provision was below the area that would have been required under the open space policies at the time, although it was deemed acceptable for the development having regard to all the

circumstances, including some viability concerns. For this reason it is considered that an appropriate 'like for like' costing of play equipment is an appropriate approach, rather than requiring a full Section 106 contribution based on current council figures.

- 7.5 In conclusion the provision of a financial contribution in lieu of a play area, landscaping and maintaining the existing area of open space on Kildare Road is considered to be acceptable and would resolve an outstanding breach of planning permission and improve the character of this section of Kildare Road to the benefit of local occupiers.

8. Sustainability / Biodiversity

Planting as outlined in the proposed landscaping plan would be beneficial towards biodiversity enhancement in the local area.

9 Financial Implications

The applicant has historically provided a viability assessment detailing that the site could not justify a policy compliant open space contribution which in 2015 was estimated as being circa £130,000 (£150,000 at current figures). A contribution of £10,000 was offered towards off-site open space enhancement in 2018 which was not deemed to be acceptable. This year following negotiation the off-site open space contribution has now risen to £40,000 in addition to the provision of landscaping and on-going maintenance of an area of open space which will be secured via S106.

10 Legal Implications

The issues raised in this report are primarily ones of planning judgement. Should legal considerations arise these will be addressed at the meeting. The Council has the power to vary the section 106 Agreement as suggested which would appear to be a pragmatic solution to the issues which have arisen on site due to technical difficulties.

11 Equality and Diversity Implications

None.

12 Risk Management Issues

None.

13 Strategic Priorities

Neighbourhood Nottingham: Providing a high quality and sustainable development

14 Crime and Disorder Act implications

None

15 Value for money

None.

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

1. Application No: 21/00861/PVAR3 - link to online case file:

<http://publicaccess.nottinghamcity.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=QRN7ENLYMRQ00>

17 Published documents referred to in compiling this report

Nottingham Local Plan Part 2 (January 2020)

Aligned Core Strategies (September 2014)

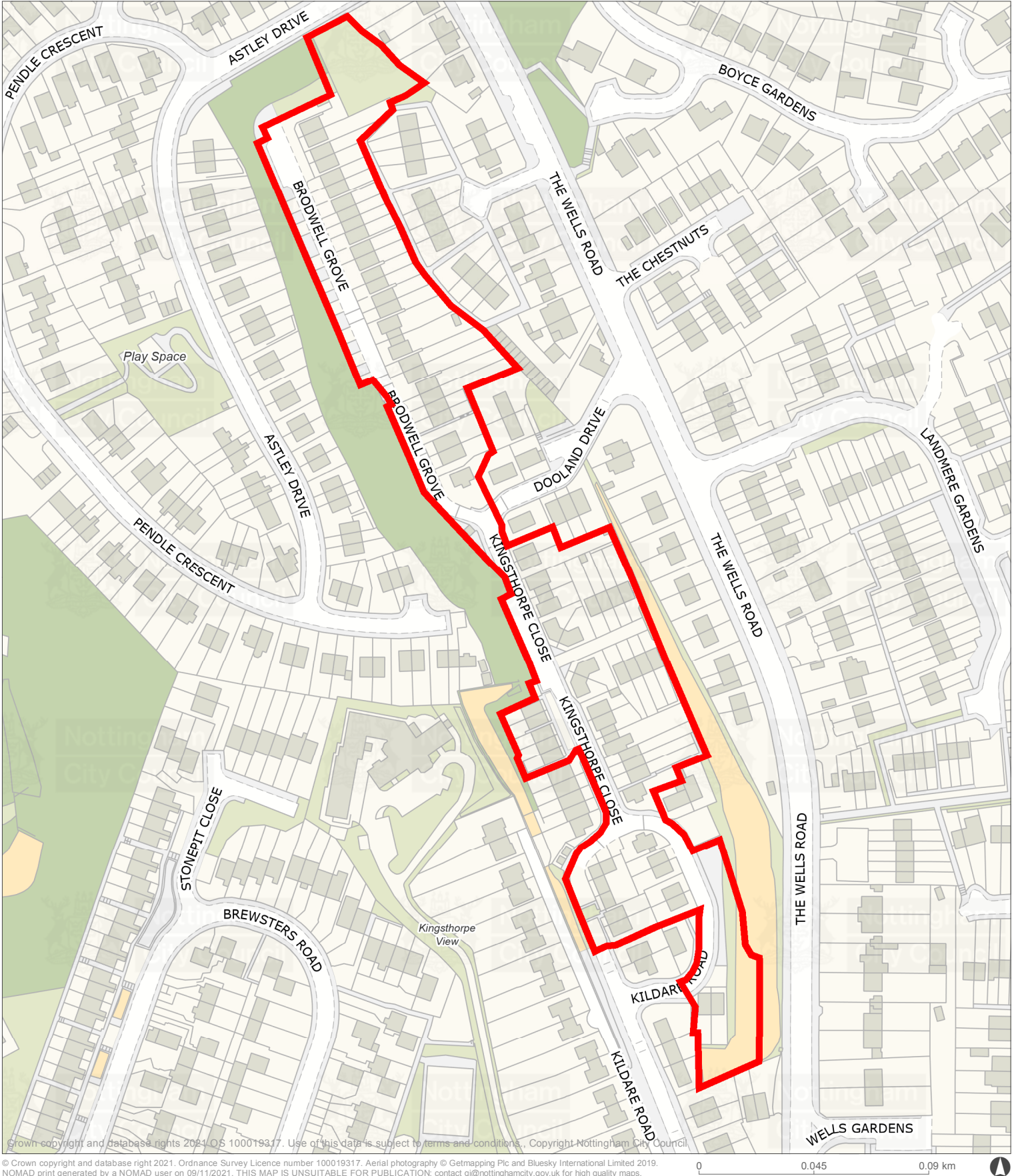
NPPF (2021)

Contact Officer:

Mr James Mountain, Case Officer, Development Management.

Email: James.Mountain@nottinghamcity.gov.uk. Telephone: 0115 8764065

NOMAD printed map



Key

City Boundary

Description

No description provided

My Ref: 21/00861/PVAR3 (PP-09710151)

Your Ref:

Contact: Mr Martin Poole

Email: development.management@nottinghamcity.gov.uk



**Nottingham
City Council**

Development Management
City Planning
Loxley House
Station Street
Nottingham
NG2 3NG

Tel: 0115 8764447
www.nottinghamcity.gov.uk

Smith & Love Planning Consultants
FAO Ms Sonja Swift
Rational House
32 Winckley Square
Preston
PR1 3JJ

Date of decision:

**TOWN AND COUNTRY PLANNING ACT 1990
APPLICATION FOR PLANNING PERMISSION**

Application No: 21/00861/PVAR3 (PP-09710151)
Application by: Keepmoat Homes Ltd
Location: Land At Kingsthorpe Close, Kildare Road, Nottingham
Proposal: Deletion of condition 10 (provision of memorial/artwork) and variation of condition 14 (provision of play area) of planning permission reference 13/01367/PFUL3

Nottingham City Council as Local Planning Authority hereby **GRANTS PLANNING PERMISSION** for the development described in the above application subject to the following conditions:-

Time limit
. There are no conditions in this section.
Pre-commencement conditions (The conditions in this section require further matters to be submitted to the local planning authority for approval before starting work)
There are no conditions in this section.
Pre-occupation conditions (The conditions in this section must be complied with before the development is occupied)
There are no conditions in this section.
Regulatory/ongoing conditions (Conditions relating to the subsequent use of the development and other regulatory matters)

1. The approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of each dwelling or the completion of the development, whichever is the sooner, and any trees or plants which die or are removed or become seriously damaged or diseased within five years shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure that the appearance of the development is satisfactory to comply with Policy 10 of the Aligned Core Strategies and Policy DE1 of the Local Plan Part 2.

2. No construction work, landscaping or other activity shall be undertaken following the initial occupation of the development which may compromise the remediation measures implemented to deal with ground and groundwater contamination of the site.

Reason: To ensure that the site can be developed without health or safety risks to the occupiers of the development and/or adjoining occupiers to comply with Policy IN2 Local Plan Part 2.

3. No construction work, landscaping or other activity shall be undertaken following the initial occupation of the development which may compromise the remediation measures implemented to deal with potential risks from made ground on site.

Reason: To ensure that the site can be developed without health or safety risks to the occupiers of the development and/or adjoining occupiers to comply with Policy IN2 of the Local Plan Part 2.

4. The area shown in green hatching and labelled 'play area' on approved drawing ref. 01-Rev-B Outline Landscape Proposals received 11 September 2013, shall be landscaped in accordance with the planting details shown on drawing ref. c-1928-01 hereby approved within 6 months of the date of this planning permission, and it shall be thereafter maintained as part of the completed housing development in accordance with a maintenance schedule that shall first have been submitted to and approved in writing by the local planning authority.

Reason: To ensure that the appearance of the development is satisfactory to comply with Policy 10 of the Aligned Core Strategies and Policy DE1 of the Local Plan Part 2.

Standard condition- scope of permission

- S1. Except as may be modified by the conditions listed above, the development shall be carried out in complete accordance with the details described in the forms, drawings and other documents comprising the application as validated by the council on 9 August 2021.

Reason: To determine the scope of this permission.

Informatives

1. This permission is valid only for the purposes of Part III of the Town & Country Planning Act 1990. It does not remove the need to obtain any other consents that may be necessary, nor does it imply that such other consents will necessarily be forthcoming. It does not override any restrictions contained in the deeds to the property or the rights of neighbours. You are advised to check what other restrictions there are and what other consents may be needed, for example from the landowner, statutory bodies and neighbours. This permission is not an approval under the Building Regulations.

2. The reason for this decision, and a summary of the policies the local planning authority has had regard to are set out in the committee report, enclosed herewith and forming part of this decision.

Where a condition specified in this decision notice requires any further details to be submitted for approval, please note that an application fee will be payable at the time such details are submitted to the City Council. A form is available from the City Council for this purpose.

Your attention is drawn to the rights of appeal set out on the attached sheet.

RIGHTS OF APPEAL

Application No: 21/00861/PVAR3 (PP-09710151)

If the applicant is aggrieved by the decision of the City Council to impose conditions on the grant of permission for the proposed development, then he or she can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

Any appeal must be submitted within six months of the date of this notice. You can obtain an appeal form from the Customer Support Unit, The Planning Inspectorate, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Phone: 0117 372 6372. Appeal forms can also be downloaded from the Planning Inspectorate website at <http://www.planning-inspectorate.gov.uk/pins/index.htm>. Alternatively, the Planning Inspectorate have introduced an online appeals service which you can use to make your appeal online. You can find the service through the Appeals area of the Planning Portal - see www.planningportal.gov.uk/pcs.

The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay.

The Secretary of State need not consider an appeal if the City Council could not for legal reasons have granted permission or approved the proposals without the conditions it imposed.

In practice, the Secretary of State does not refuse to consider appeals solely because the City Council based its decision on a direction given by him.

PURCHASE NOTICES

If either the City Council or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. This procedure is set out in Part VI of the Town and Country Planning Act 1990.

COMPENSATION

In certain limited circumstances, a claim may be made against the City Council for compensation where permission is refused or granted subject to conditions by the Secretary of State. The circumstances in which compensation is payable are set out in Section 114 of the Town & Country Planning Act 1990.



DRAFT ONLY

Not for issue