

Strategic Planning Board

Date of Meeting: 23rd September 2020

Report Title: Update following the resolution to approve application 17/5070C – Outline Planning Permission (Revisions to 09/2083C) in respect of zones 2, 5 and 6 to provide up to 100 residential units (C3) plus care home (C2) or 120 residential units, up to 2,600sqm of commercial uses including retail (A1), restaurant/pub (A3/A4) plus offices (B1) with associated infrastructure at the Former Albion Chemical Works, Moston

Senior Officer: David Malcolm, Head of Planning

1. Report Summary

- 1.1. This report seeks approval to amend the SPB resolution for this application. This follows the submission of a viability report by the applicant, which has been assessed by an independent viability consultant.
- 1.2. The report recommends that the affordable housing provision on the development is reduced to 10% and that the Canal Towpath contribution is removed to allow the footpath upgrade along Booth Lane.

2. Recommendations

- 2.1. That the Strategic Planning Board amend the Committee resolution for this application as follows;
- 2.2. The Heads of Terms for the S106 Agreement are amended and an additional condition imposed (as stated below).

That the application be delegated to the Head of Planning (Regulation) in consultation with the Chairman of the Strategic Planning Board for further details of the Spatial Design Code. The rest of the Section 106 Agreement to include the following:-

| S106 | Amount | Triggers |
|--------------------|-----------------------------------|--|
| Affordable Housing | 10% (65% Affordable Rent / 35% | In accordance with phasing plan to be submitted at the |

| | | |
|------------------------|--|--|
| | Intermediate) | reserved matters stage. No more than 80% open market occupied prior to affordable provision in each phase. |
| Education | For a development of 100 dwellings; Primary £195,233 Secondary £245,140 SEN £45,500 For a development of 120 dwellings; Primary £238,618 Secondary £294,168 SEN £45,500 | 50% of the total education sum to be paid on the occupation of the 25 th dwelling. The next 25% of the total education sum to be paid on the occupation of the 50 th dwelling. The final 25% of the total education sum to be paid on the occupation of the 75 th dwelling. |
| Indoor recreation | For a development of 100 dwellings a contribution of £18,200. For a development of 120 dwellings a contribution of £21,450. | Prior to first occupation. |
| Outdoor recreation | £1,000 per family dwelling or £500 per 2 bed pace (or more) apartment | Prior to the occupation of the 75 th dwelling. |
| Allotment Contribution | £230.70 per dwelling | Prior to the occupation of the 75 th dwelling. |
| Public Open Space | Private Management Company Provision of a NEAP and the open space | On first occupation On occupation of 50% of the dwellings |

| | | |
|---------------------------------------|---------|----------------------------|
| Biodiversity Off-Setting Contribution | £30,000 | Prior to first occupation. |
|---------------------------------------|---------|----------------------------|

And subject to the following conditions:-

1. Standard Outline 1
2. Standard Outline 2
3. Standard Outline 3
4. Approved Plans
5. Contaminated land – submission of a remediation strategy
6. Contaminated land – No occupation prior to the submission of a verification report
7. Contaminated land – works to stop if further unknown contaminated land is uncovered
8. Reserved Matters application to include details of existing and proposed levels
9. Each Reserved Matters application for residential development shall include an updated acoustic appraisal together with any mitigation measures.
10. Piling works
11. Travel Plan – Residential development
12. Travel Plan – Commercial development
13. Electric Vehicle Charging Provision
14. Reserved matters application for the commercial units to include a scheme of brown roofs
15. Reserved matters application to include a scheme of replacement hedgerow planting
16. The proposed development to proceed in strict accordance with the measures detailed in paragraph 5.2.5 of the submitted Preliminary Ecological Appraisal prepared by enzygo
17. Reserved Matters application for the housing to include a phasing plan
18. Development to be carried out in accordance with the submitted FRA
19. No development shall take place until a detailed strategy / design and associated management / maintenance plan of surface water drainage for the site has been submitted to and approved in writing by the Local Planning Authority.
20. Scheme to ensure that the site boundary will need to be adequately protected to ensure that any flood risk is contained and managed onsite and not transferred off site.
21. External Lighting to be submitted and approved
22. Each phase of the development hereby approved shall incorporate a mix of units of -
 - 1bed and/or 2 bed dwellings – between 10% and 30% of the number of dwellings
 - 3 bed dwellings – between 20% and 40% of the number of dwellings
 - 4 bed and/or 5 bed dwellings – between 20% and 40% of the number of dwelling
 and a minimum of 5 % of the units shall be bungalows or units for single storey living. The 1st reserved matters application shall provide a strategy for the distribution of all the housing across the site in accordance with these parameters. Thereafter the housing on each phase of development shall

accord with the housing mix details provided unless otherwise approved in writing by the Local Planning Authority

23. The first Reserved matters application shall include a survey the trees within the grass verge and provide and implement a scheme of re-planting of tree (and removal if necessary) within the grass verge.

24. Visibility splays

25. Booth Lane improvement works details to be submitted within 2 months of the date of decision and to be implemented within 6 months of the date of decision.

In order to give proper effect to the Board`s intent and without changing the substance of its decision, authority is delegated to the Head of Planning (Regulation) in consultation with the Chairman (or in their absence the Vice Chairman) to correct any technical slip or omission in the resolution, before issue of the decision notice.

2.3. The committee resolution also gives approval to enter into a S106 Agreement in the event of an appeal. This will need to be included as above within the committee resolution.

3. Reasons for Recommendations

3.1. The allow a development of a previously developed site to be brought forward.

4. Other Options Considered

4.1. The Council is obliged to consider the viability information provided by the applicant. The viability report has been assessed by the Councils own viability consultant. In relation to viability the NPPF states at paragraph 57 that

‘It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force’

5. Background

5.1. Planning application 17/5070C was referred to Strategic Planning Board on 26th September 2018. The minutes from the meeting are as follows:

RESOLVED

That the application be delegated to the Head of Planning (Regulation) in consultation with the Chairman of the Strategic Planning Board for further discussion on the Section 106 contributions for upgrading of the public footpath to Mill Lane in liaison with the Ward Councillor and for further details

of the Spatial Design Code. The rest of the Section 106 Agreement to include the following:-

| S106 | Amount | Triggers |
|---------------------------|--|--|
| <i>Affordable Housing</i> | 30% (65% Affordable Rent / 35% Intermediate) | <i>In accordance with phasing plan to be submitted at the reserved matters stage.</i> <i>No more than 80% open market occupied prior to affordable provision in each phase.</i> |
| <i>Education</i> | <i>For a development of 100 dwellings;</i> <i>Primary £195,233</i> <i>Secondary £245,140</i> <i>SEN £45,500</i> <i>For a development of 120 dwellings;</i> <i>Primary £238,618</i> <i>Secondary £294,168</i> <i>SEN £45,500</i> | <i>50% of the total education sum to be paid on the occupation of the 25th dwelling.</i> <i>The next 25% of the total education sum to be paid on the occupation of the 50th dwelling.</i> <i>The final 25% of the total education sum to be paid on the occupation of the 75th dwelling.</i> |
| <i>Health</i> | <i>If the care home is provided as part of this application.</i> <i>£23,760</i> <i>(Ashfields Medical Centre)</i> | <i>Prior to first occupation.</i> |
| <i>Indoor recreation</i> | <i>For a development of 100 dwellings a contribution of £18,200.</i> <i>For a development of 120</i> | <i>Prior to first occupation.</i> |

| | | |
|---|--|--|
| | <i>dwellings a contribution of £21,450.</i> | |
| <i>Outdoor recreation</i> | <i>£1,000 per family dwelling or £500 per 2 bed pace (or more) apartment</i> | <i>Prior to the occupation of the 75th dwelling.</i> |
| <i>Allotment Contribution</i> | <i>£230.70 per dwelling</i> | <i>Prior to the occupation of the 75th dwelling.</i> |
| <i>Public Open Space</i> | <i>Private Management Company</i> <i>Provision of a NEAP and the open space</i> | <i>On first occupation</i> <i>On occupation of 50% of the dwellings</i> |
| <i>Biodiversity Off-Setting Contribution</i> | <i>£30,000</i> | <i>Prior to first occupation.</i> |
| <i>Canal Towpath improvement contribution</i> | <i>£150,000</i> | <i>50% to be paid on the occupation of the 25th dwelling.</i> <i>The final 50% to be paid on the occupation of the 50th dwelling.</i> |

And subject to the following conditions:-

- 1. Standard Outline 1*
- 2. Standard Outline 2*
- 3. Standard Outline 3*
- 4. Approved Plans*
- 5. Contaminated land – submission of a remediation strategy*
- 6. Contaminated land – No occupation prior to the submission of a verification report*
- 7. Contaminated land – works to stop if further unknown contaminated land is uncovered*
- 8. Reserved Matters application to include details of existing and proposed levels*
- 9. Each Reserved Matters application for residential development shall include an updated acoustic appraisal together with any mitigation measures.*
- 10. Piling works*

11. *Travel Plan – Residential development*
12. *Travel Plan – Commercial development*
13. *Electric Vehicle Charging Provision*
14. *Reserved matters application for the commercial units to include a scheme of brown roofs*
15. *Reserved matters application to include a scheme of replacement hedgerow planting*
16. *The proposed development to proceed in strict accordance with the measures detailed in paragraph 5.2.5 of the submitted Preliminary Ecological Appraisal prepared by enzygo*
17. *Reserved Matters application for the housing to include a phasing plan*
18. *Development to be carried out in accordance with the submitted FRA*
19. *No development shall take place until a detailed strategy / design and associated management / maintenance plan of surface water drainage for the site has been submitted to and approved in writing by the Local Planning Authority.*
20. *Scheme to ensure that the site boundary will need to be adequately protected to ensure that any flood risk is contained and managed onsite and not transferred off site.*
21. *External Lighting to be submitted and approved*
22. *Each phase of the development hereby approved shall incorporate a mix of units of -*
 - *1bed and/or 2 bed dwellings – between 10% and 30% of the number of dwellings*
 - *3 bed dwellings – between 20% and 40% of the number of dwellings*
 - *4 bed and/or 5 bed dwellings – between 20% and 40% of the number of dwelling**and a minimum of 5 % of the units shall be bungalows or units for single storey living. The 1st reserved matters application shall provide a strategy for the distribution of all the housing across the site in accordance with these parameters. Thereafter the housing on each phase of development shall accord with the housing mix details provided unless otherwise approved in writing by the Local Planning Authority*
23. *The first Reserved matters application shall include a survey the trees within the grass verge and provide and implement a scheme of re-planting of tree (and removal if necessary) within the grass verge.*
24. *Visibility splays*
In order to give proper effect to the Board`s intent and without changing the substance of its decision, authority is delegated to the Head of Planning (Regulation) in consultation with the Chairman (or in their absence the Vice Chairman) to correct any technical slip or omission in the resolution, before issue of the decision notice.

5.2. Since the SPB resolution, the applicant has raised viability issues associated with the S106 Heads of Terms. There have also been further discussions between the applicant and the Highways Department regarding the upgrading of the footway along Booth Lane to Mill Lane (as requested by SPB in 2018).

5.3. The site of the proposed development is situated 3.6km north west of Sandbach Town Centre, and is 4.5km south east of Middlewich.

- 5.4. The site is a former chemical works which has now been cleared and some remediation has taken place on this site. On the west, the site has a long frontage to the A533 (with a tree lined grass verge), and it is bound by the Sandbach to Middlewich railway line to the east. The site also lies adjacent to the Trent and Mersey Canal which is a designated Conservation Area. There is a retained industrial site to the north.
- 5.5. The outline planning permission that the Council resolved to approve in 2018 is for zones 2, 5 and 6 to provide up to 100 residential units (C3) plus care home (C2) or up to 120 residential units; and up to 2,600sqm of commercial uses including retail (A1), restaurant/pub (A3/A4) plus offices with public open space and associated infrastructure. All matters are reserved apart from access. The access would be via a single junction off Booth Lane.
- 5.6. It should be noted that since the committee resolution for application 17/5070C that the care home on the site has been built out. This follows the approval of application 17/5223C. As a result this application now relates to 100 dwellings and a care home (and not 120 dwellings).
- 5.7. Although 2 years have passed since the application was first determined at Strategic Planning Board, the principle of development is still considered to be acceptable. The site is an extensive brownfield site which has been undergoing works associated with the extensive contamination on the site. As a result the principle of this development is still considered to be acceptable.
- 5.8. Since the Committee Resolution for this application there have been on-going discussions between the applicants Viability Consultant (BNP) and the Councils appointed Viability Consultant (Cushman & Wakefield – C&W). The Viability Appraisal submitted by the applicant originally suggested that the scheme cannot viably provide affordable housing and provide the requested S106 contributions.
- 5.9. As expected the site has significant abnormal costs associated with its previous use as a chemical works. On this site the applicant has already spent £2,710,288 associated with the abnormal costs. The applicants Viability Appraisal identifies that there are further abnormal costs totalling £2,695,025 which includes the remaining mercury remediation, the construction of a noise bund, general remediation, earthworks, gas membranes, foundations and clean cover. C&W have assessed the abnormal costs and consider that some appear high. C&W consider that a figure of £2,073,577 is more appropriate.
- 5.10. There has also been a difference between the parties in terms of build cost (BNP have suggested £115.51psf compared to C&W suggested figure of £106.65psf); finance costs (BNP have suggested £476,582 compared to the

C&W suggestion of £359,328); profit level (BNP have suggested rounding the figure to 18% and C&W have suggested a Blended Profit based on the individual elements of the scheme of 17.82%).

5.11. C&W state that based on their figures that the viability can support 10% affordable housing and the full S106 costs.

5.12. The applicant has responded by stating that there is much that could still be debated between the parties and this is before any allowance is made for market uncertainty due to the current pandemic. However Bluefield 'do not wish to see the viability prolonged any further; it is over 12 months since they submitted their viability assessment to the Council and as a consequence they would like to draw matters to a conclusion so that revised Heads of Terms can be agreed with the Council. This will enable a Section 106 Agreement to then be signed and planning permission issued so that Bluefield can get on with the next phase of the site's redevelopment'

5.13. Following these discussions the applicant has requested that S106 Heads of Terms are varied as follows;

- Affordable Housing to be reduced to 10% of the total units
- The delivery of the Booth Lane footpath upgrade works (including the installation of street lighting) to be completed within 6 months of the grant of outline planning permission
- The requirement for the £150,000 contribution towards the canal towpath to be removed.

5.14. As can be seen within the original Committee Resolution a request was made that the developer upgrades the footpath along Booth Lane towards Mill Lane. Based on the detailed design review of the footpath works which has been considered by the Highways Authority these works will cost a total of £221,250 (this is more than the original estimate given by the Highways Engineer at SPB of £140,000). In order to accept this higher figure Bluefield have requested that the S106 contributions be amended to reflect the negative residual land value and increased footpath costs and as a result it is requested that the canal towpath contribution be removed.

5.15. This is considered to be a reasonable approach as the Canal Towpath contribution was intended to improve the sustainability of this site and the same will be done by the Booth Lane footpath improvements.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. The viability information provided by the applicant is a material consideration and it is necessary for the Local Planning Authority to consider this information prior to the decision being issued.

6.2. Finance Implications

6.2.1. If the SPB do not accept the recommendation then the application could be the subject of an appeal. This would have finance implications in defending the appeal.

6.3. Policy Implications

6.3.1. The policy implications are considered within the original SPB Report and this update report. Clearly the affordable housing provision would fall below the level expected in policy SC5 but the LPA is required to balance this against the viability issues associated with this development.

6.4. Equality Implications

6.4.1. Under the Council's public sector equality duty, the authority needs to consider the effect of its policies on members of society with protected characteristics.

6.4.2. This has not identified any actual or potential negative impact on people with protected characteristics.

6.5. Human Resources Implications

6.5.1. The change to the Heads of Terms will not require additional staff resources to implement.

6.6. Risk Management Implications

6.6.1. The decision to update the Heads of Terms like all decisions of a public authority, open to challenge by Judicial Review. The risk of any legal challenge has been minimised by the process through which the amendments are prepared and checked by both officers and members.

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People/Cared for Children

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1. There are no direct public health implications..

6.10. Climate Change Implications

6.10.1. The proposal to provide a footpath link along Booth Lane will improve the sustainability credentials of the development. The redevelopment of this previously developed site is encouraged and is considered to represent sustainable development.

7. Ward Members Affected

7.1. Cllr Wray – Brereton Rural

8. Consultation & Engagement

8.1. There is no requirement to formally consult on the change to the SPB resolution. Cllr Wray has been made aware that the application will be referred back to SPB.

9. Access to Information

9.1. The Council's website includes the original report to SPB which can be found using the link below;

<https://moderngov.cheshireeast.gov.uk/ecminutes/ieListDocuments.aspx?CId=279&MId=7134&Ver=4>

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Daniel Evans

Job Title: Principal Planning Officer

Email: Daniel.Evans@Cheshireeast.gov.uk

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