

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No: 4/12/00357/VOC

FULL APPLICATION DESCRIPTION: Removal of condition 12 of planning application 06/00631/OUT (Outline application including details of means of access for employment use and residential development with associated play areas, landscaping, parking and access) relating to the provision of 30% affordable housing

NAME OF APPLICANT: Dunelm Homes

ADDRESS: Land at Former Cape Site Durham Road Bowburn DH6 5AT

ELECTORAL DIVISION: Durham South

CASE OFFICER: Henry Jones
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DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site relates to the former Cape asbestos works and lies within the northern extremity of the Bowburn North Industrial Estate, adjoining the northern boundary of the village as defined on the City of Durham Local Plan proposals map. To the north is open countryside, to the east is the north-south A177 with residential development beyond. The site is bound to the west by the old Leamside railway line and to the south lies industrial land. The site is in the process of redevelopment following the grant of planning permission for a mixed use of residential and employment development following an appeal in 2007.
2. The more eastern sections of the site closest to the A177 have been developed thus far and 165 dwellings have been constructed to date of a total of 293 sought. The original outline planning permission proposes office and employment generating development as well though this does not yet have detailed approval.

The Proposal

3. This application seeks to remove condition 12 on the original 2007 outline approval. This condition requires that 30% of all housing on the site is affordable.

4. The applicant, in submitting this planning application, now seeks to restrict the number of affordable units on site to a total of 59. Although detailed planning permission has not been granted for the entirety of the site the applicant was proposing to build a total of 293 dwellings on the site. The provision of 59 affordable units within this would equate to 20% affordable housing across the site.
5. In addition the applicant is also proposing a further financial contribution to the offsite delivery of up to a further 4 no. affordable homes. This would bring the net affordable provision to 21.5%.
6. It is now considered more appropriate to resolve affordable housing provision and any off-site contributions via a section 106 legal agreement as oppose to a condition on a planning permission. The application is therefore accompanied by a S106 agreement to establish the final on site affordable provision and financial contribution towards off-site provision.
7. This application is being referred to Committee as it relates to the variance of a condition on a major mixed use development.

PLANNING HISTORY

8. In 2002 planning permission was refused for a residential development in outline on the former Cape Asbestos Works site.
9. In 2006 the former City Council refused planning permission, in outline, for a mixed use development of residential and employment uses. At appeal the Inspectorate allowed the appeal following a public inquiry. This decision had to be referred to the Secretary of State who agreed with the findings of the Inspectorate and planning permission was granted. This current application directly relates to that outline planning permission granted in 2007.
10. Since this original approval, the reserved matters for phase one of the development, 121 no. dwellings was approved in 2009. The reserved matters for the phase 2 of 62 no. dwellings was approved in August 2010.
11. Later in 2010 the reserved matters were approved for a further 10 no. dwellings.
12. The substitution of some house types has occurred during the course of the development with the substitution of house types resulting in 10 no. bungalows and 17 no. houses approved in 2010 and the substitution of house types and removal of 2 no. units on 13 plots in 2011.
13. A series of variation of condition applications have also previously been submitted and approved. In 2008 approval was given for the variation of condition 10 of the outline planning permission to allow the construction of up to 150 dwellings prior to the completion of highways and drainage infrastructure works for the employment site rather than the originally agreed 50 dwellings.
14. In 2009 condition 6 of the outline approval was varied so as to permit the phasing of highway infrastructure improvements and in 2010 a variation of condition allowed for 10 no. affordable housing units to no longer be required to be affordable in perpetuity.

PLANNING POLICY

NATIONAL POLICY

15. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.
16. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve ‘core planning principles’
17. The following elements are considered relevant to this proposal;
18. *NPPF Part 1 – Building a Strong and Competitive Economy.* The Government attaches significant weight on the need to support economic growth through the planning system. Local Planning Authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.
19. *NPPF Part 4 – Promoting Sustainable Transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
20. *NPPF Part 6 – Delivering a Wide Choice of High Quality Homes.* Local Planning Authorities should use evidence bases to ensure that their Local Plan meets the needs for market and affordable housing in the area. Housing applications should be considered in the context of the presumption in favour of sustainable development. A wide choice of homes, widened opportunities for home ownership and the creation of sustainable, inclusive and mixed communities should be delivered. Where there is an identified need for affordable housing, policies should be met for meeting this need unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and such policies should also be sufficiently flexible to take account of changing market conditions over time.
21. *NPPF Part 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
22. *NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change.* Planning plays a key role in helping shape places to secure Local Planning Authorities should adopt proactive strategies to mitigate and adapt to climate change. Local Planning Authorities should have a positive strategy to promote energy from renewable and low carbon sources. Inappropriate development in areas at risk of flooding should be avoided.

23. *NPPF Part 11 – Conserving and Enhancing the Natural Environment.* The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.

The above represents a summary of the NPPF considered most relevant the full text may be accessed at:

<http://www.communities.gov.uk/publications/planningandbuilding/nppf>

REGIONAL PLANNING POLICY

24. *The North East of England Plan - Regional Spatial Strategy to 2021 (RSS) July 2008,* sets out the broad spatial development strategy for the North East region for the period of 2004 to 2021. The RSS sets out the region's housing provision and the priorities in economic development, retail growth, transport investment, the environment, minerals and waste treatment and disposal. Some policies have an end date of 2021 but the overall vision, strategy, and general policies will guide development over a longer timescale.
25. In July 2010 the Local Government Secretary signalled his intention to revoke Regional Spatial Strategies with immediate effect, and that this was to be treated as a material consideration in subsequent planning decisions. This was successfully challenged in the High Court in November 2010, thus for the moment reinstating the RSS. However, it remains the Government's intention to abolish Regional Spatial Strategies when the forthcoming Local Government Bill becomes law. Both the RSS and the stated intention to abolish are material planning considerations and it is a matter for each Planning Authority to decide how much weight can be attached to this stated intention, having regard to the evidence base which informs the RSS. Policies of particular relevance to this application are as follows:
26. *Policy 2 - Sustainable Development* planning proposals should seek to promote sustainable development through social, economic and environmental objectives.
27. *Policy 4 - The Sequential Approach to Development* establishes that priority should be given to previously developed land within sustainable locations.
28. *Policy 7 - Connectivity and Accessibility* which requires new development proposals to reduce travel demands, and promote opportunities to use public transport, cycle and walk.
29. *Policy 8 - Protecting and Enhancing the Environment* which requires new development to be of high quality and maintain local distinctiveness.
30. *Policy 12 – Sustainable Economic Development* states that new economic development should be focused in urban centres, on brownfield mixed use locations and at key employment locations.
31. *Policy 13 – Brownfield Mixed Use Locations* states that strategies, plans and programmes should support brownfield mixed use developments in sustainable locations throughout the Region.
32. *Policy 18 – Employment Land Portfolio* establishes appropriate employment land provision throughout the region.

33. *Policy 24 - Delivering Sustainable Communities* states that planning proposals should seek through design to promote social cohesion, reduce inequalities as well as meeting sustainable development objectives.
34. *Policy 30 - Improving Inclusivity and Affordability* sets out that developments should provide a range of housing types and sizes responding to the needs of all members of the community as well as addressing affordability issues.
35. *Policy 33 - Biodiversity and Geodiversity* requires planning proposals to ensure that the Region's ecological and geological resources are protected and enhanced to return key biodiversity resources to viable levels.
36. *Policy 35 - Flood Risk* promotes a proactive approach to reducing flood risk and advises that risk should be managed with regards to tidal effects, fluvial flooding and flooding from surface water runoff. The requirements of PPS25 with regards to the sequential approach and submission of flood risk assessments.
37. *Policy 38 - Sustainable Construction* seeks to promote development which minimises energy consumption and promotes energy efficiency. On major development proposals 10% of their energy supply should come from decentralised and renewable or low-carbon sources.

LOCAL PLAN POLICY: (City of Durham Local Plan 2004)

38. *Policy E16 - Protection and Promotion of Nature Conservation* is aimed at protecting and enhancing the nature conservation assets of the district. Development proposals outside specifically protected sites will be required to identify any significant nature conservation interests that may exist on or adjacent to the site by submitting surveys of wildlife habitats, protected species and features of ecological, geological and geomorphological interest. Unacceptable harm to nature conservation interests will be avoided, and mitigation measures to minimise adverse impacts upon nature conservation interests should be identified.
39. *Policy E24 - Ancient Monuments and Archaeological Remains* sets out that the Council will preserve scheduled ancient monuments and other nationally significant archaeological remains and their setting in situ. Development likely to damage these monuments will not be permitted. Archaeological remains of regional and local importance, which may be adversely affected by development proposals, will be protected by seeking preservation in situ.
40. *Policy H3 - New Housing Development within the Villages* allows for windfall development of previously developed sites within the settlement boundaries of a number of specified former coalfield villages across the District, provided that the scheme is appropriate in scale, design location and number of units.
41. *Policy H12 - Affordable Housing* seeks the provision of an element of affordable housing on schemes where over 25 units are provided or where the site area would exceed 1.0ha. Affordable housing should meet the needs of eligible households including availability at low cost and should include provision for the homes to remain affordable in perpetuity.
42. *Policy H13 - Residential Areas – Impact upon Character and Amenity* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.

43. *Policy EMP5 - Prestige Industrial Sites – General* states that on designated prestige industrial sites, business uses and general industry uses will be permitted provided that there is no detrimental effect on the environment, the amenity of neighbouring occupiers and the development of neighbouring areas. High standards of design and landscape will also be required.
44. *Policy T1 - Traffic – General* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and/or have a significant effect on the amenity of occupiers of neighbouring property.
45. *Policy T10 - Parking – General Provision* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
46. *Policy R2 - Provision of Open Space – New Residential Development* states that in new residential development of 10 or more units, open space will be required to be provided within or adjacent to the development in accordance with the Council's standards. Where there is an identified deficiency and it is considered appropriate, the Council will seek to enter into a planning agreement with developers to facilitate the provision of new or improved equipped play areas and recreational/leisure facilities to serve the development in accordance with Policy Q8.
47. *Policy Q8 - Layout and Design – Residential Development* sets out the Council's standards for the layout of new residential development. Amongst other things, new dwellings must be appropriate in scale, form, density and materials to the character of their surroundings. The impact on the occupants of existing nearby properties should be minimised.
48. *Policy U5 - Pollution Prevention* seeks to control development that will result in an unacceptable impact upon the quality of the local environment.
49. *Policy U8a - Disposal of Foul and Surface Water* requires developments to provide satisfactory arrangements for disposing foul and surface water discharges. Where satisfactory arrangements are not available, then proposals may be approved subject to the submission of a satisfactory scheme and its implementation before the development is brought into use.
50. *Policy U11 - Development on Contaminated Land* sets out the criteria against which schemes for the redevelopment of sites which are known or suspected to be contaminated. Before development takes place it is important that the nature and extent of contamination should be fully understood.
51. *Policy U15 - Energy Conservation – Renewable Resources* permits the generation of energy from renewable resources provided there is no adverse effect on the visual appearance of the landscape, nature conservation, amenity of residents or an archaeological or historic interest.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at:

<http://www.durham.gov.uk/Pages/Service.aspx?ServiceId=494>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

52. Shincliffe Parish Council and Cassop-cum-Quarrington Parish Council have raised objection to the removal of the condition which requires 30% affordable housing provision.
53. The Highway Authority have raised no objections to the application. Consideration has been given to the impact the increase in market housing would have on congestion and highway safety. The provision of 20% on site affordable housing as oppose to 30% would result in 29 additional open market homes on the site. Using an industry tool to calculate the traffic generation rates for private housing as oppose to affordable housing a difference in generation of only 0.12 movements in the morning and 0.104 movements in the evening would result per unit. This would equate to an extra 3 trips in the morning and 3 trips in an evening emerging from the additional open market homes. Such a degree of increase is considered to be insignificant.

INTERNAL CONSULTEE RESPONSES:

54. Asset Management have been consulted on the application specifically to assess the submitted development appraisals and evaluate their content using an industry tool.
55. The submitted appraisal figures are considered accurate and reflect standard figures and assumptions used in evaluating development costs. No inaccuracies or anomalies were found in assessing the development appraisals. Asset Management support the figures submitted, considering that the submitted appraisals provide an accurate depiction of the site and development.

PUBLIC RESPONSES:

56. Two letters of representation have been received in relation to the application.
57. The Bowburn and Parkhill Community Partnership have objected to the application. In granting planning permission the Secretary of State paid particular attention to the need for affordable housing in Durham. The NPPF supports the requirement for affordable housing where there is an identified need. Bowburn and Parkhill Community Partnership consider that there has not been a substantial change in this need and as a result the application should be refused.
58. Highway issues have also been a key issue at the site and a condition has previously been imposed requiring housing to be occupied as affordable units only and it is understood that this is because occupiers of affordable housing would be less likely to own cars. If this application is approved this may lead to greater car ownership on the estate causing traffic problems. In addition the Planning Inspector considered within the original application that the site had reasonable access to public transport. The nearest bus stop at Dallymore Drive is now considered practically redundant without a daytime service for the residents, particularly those in affordable homes to utilise.
59. The Campaign to Protect Rural England support the comments of the Bowburn and Parkhill Community Partnership, the provision of affordable housing should only differ if evidence shows that need has changed since the grant of planning permission.

APPLICANTS STATEMENT:

60. The application has been accompanied by a letter in support of the application and seeking to explain the background to the application.
61. The applicant states that since the date the site was purchased and remediated the housing market has collapsed, dramatically reducing selling prices on the site.
62. Due to the difficult trading conditions the applicants successfully applied to receive Government Kickstart funding which together with subsidised preliminaries covered by the build of the affordable houses and enabled the site to commence. Without such assistance the site would have remained undeveloped to this date. The majority of houses sold thus far by Dunelm Homes have been through shared equity, Government First Buy or Homebuy Direct schemes and other sales initiatives.
63. 62 no. plots were sold on license to Taylor Wimpey to assist with the cash flow on site. Supplementary documentation in the form of development appraisals, abnormal foundations costs and site remediation costs have been included to demonstrate the lack of viability of the existing planning permission.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at:

<HTTP://217.23.233.227/WAM/SHOWCASEFILE.DO?ACTION=SHOW&APPTYPE=PLANNING&APPNUMBER=4/12/00357/VOC>

PLANNING CONSIDERATIONS AND ASSESSMENT

64. Planning permission is sought to remove condition 12 of planning application 06/00631/OUT (Outline application including details of means of access for employment use and residential development with associated play areas, landscaping, parking and access) relating to the provision of 30% affordable housing. In the determination of this type of application the Local Authority must have due regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the development plan and other material considerations and a new grant of planning permission would result if the proposal is approved. However, the original permission will continue to subsist whatever the outcome of the sec. 73 application.
65. The key issue relates to the justification and acceptability of the removal of condition 12 of the outline planning approval requiring 30% affordable housing on site. However, as a new planning permission would be granted, the issues pertaining to the original grant of planning permission namely the degree of compliance with the principle of the development, impact on the character and appearance of the area, highways issues and any other material matters should be considered in the decision making process though they have previously been deemed acceptable and the focus should be on the affect revised levels of affordable housing would have. Consideration should also be given to any changes in the Development Plan or material considerations which have emerged since the previous grant of planning permission.

The Principle of the Development

66. The application site lies on land allocated for employment generating purposes. Durham City Council refused the original planning application on the grounds of the loss of employment land contrary to the Local Plan.

67. Following a public inquiry the Planning Inspectorate recommended approval of the original planning application and the Secretary of State agreed with the Inspectorates' recommendations. It was considered that there existed ample employment land in the district to meet the needs of demand up to and beyond the next 25 years. Seeking to wholly redevelopment the land for employment generating purposes without subsidy was considered unviable. As a result, the loss of the land wholly for employment purposes and so as to include residential development was considered acceptable.
68. This application proposing to vary the amount of affordable housing to be delivered on the site is not considered to impact upon the previously considered acceptability of the principle of the mixed use development as such. A following section of this report deals more specifically with the discussion on affordable housing.

Impact Upon the Character and Appearance of the Area

69. The Secretary of State found that the original indicative masterplan for the site was appropriate and would enhance the character and appearance of the site from its condition at that time.
70. Reserved matters applications have been approved since this time establishing the detailed appearance and layout of the residential properties on the site.
71. This application proposing to remove the 30% affordable housing provision requirement is not considered to have an impact upon the character or appearance of the area.

Highways Issues

72. The Secretary of State found that the original outline consent was acceptable with regards highways and transport matters. Impacts on highway safety were considered acceptable and the site was considered to be in a sustainable location.
73. With this application ultimately proposing an increase in the proportion of open market housing and reduction in affordable housing there is the likelihood that an increase in car ownership levels would result and in turn increased vehicular movements.
74. This is a point raised within the response issued from Bowburn and Parkhill Community Partnership and reference is also made to a condition previously placed on an approval requiring that houses are retained as affordable units at the request of the Highway Authority.
75. The Highway Authority have been consulted on these highways implications and no objections have been raised. The provision of 20% on site affordable housing as oppose to 30% would effectively result in 29 additional open market homes on the site. Using an industry tool to calculate the traffic generation rates for such housing as oppose to affordable housing, a difference in generation of only 0.12 movements in the morning and 0.104 movements in the evening was found to result per unit. This would equate to an extra 3 trips in the morning and 3 trips in an evening emerging from the additional 29 private homes. Such a degree of increase is considered to be insignificant.
76. With regards to the specific condition that the Bowburn and Parkhill Community Partnership make reference to in their comments, a condition was placed on the reserved matters approval 10/00799/RM which required the 10 no. dwellings approved to be retained as affordable housing in perpetuity. The Highway Authority were satisfied with the layout of the development provided that those dwellings were retained as affordable units in perpetuity.

77. This condition was later varied so that the houses must constitute affordable units, however, the in perpetuity element was removed so as to enable a future tenant to increase their shared equity in the property with the social landlord until ultimately said tenant would own the property. The Highway Authority raised no objection to this considering that the future phases of development can address any possible parking shortfall.
78. Ultimately as this reserved matters condition requires these ten dwellings to be affordable units this variation of the outline consent would have no bearing on this and these properties would have to be affordable dwellings unless a further reserved matters application is submitted proposing that these dwellings are no longer affordable units.
79. The Bowburn and Parkhill Community Partnership have also raised the issue that the application was originally approved on the basis that the site was sustainable with good access to public transport. The Partnership have stated that the Dallymore Drive bus stop, nearest to the site, no longer has a daytime service.
80. Officers understand that the Arriva 57 service to Durham does still stop at Bowburn estate providing a bus service to local residents, however. In the light of the comments from Bowburn and Parkhill Community Partnership it would potentially appear that the local bus service is not as convenient as it may have been in the past for residents within the dwellings on the former Cape site. However, it must be considered that the extant planning permission exists for the overall redevelopment of the site and the alterations to the availability of the local bus service is not considered to be a reason to raise objection to granting planning permission once more.
81. On balance officers raise no objection to the potential impact of the removal of condition 12 of the outline planning permission upon highway safety nor upon the considered sustainability of the site for housing having regards to Local Plan Policies T1 and T10, Policy 2 of the RSS and the provisions of part 4 of the NPPF.

Affordable Housing Provision

82. The key issue within this application is the discussion on affordable housing provision. The original outline approval granted by the Secretary of State attached a condition (No. 12) requiring that across the entirety of the development site 30% affordable housing would be provided in accordance with the guidance of PPS3. The Planning Inspectorate and Secretary of State considered it was appropriate to control the affordable housing provision via condition.
83. The applicant has now come forward seeking to renegotiate the amount of affordable housing proposed across the site. The applicant has stated that the development at the site could only commence at a time of difficult trading conditions due to the benefits of Government Kickstart funding and additional subsidies. The Governments Kickstart programme is credited with providing invaluable support to the housebuilding industry through the worst of the market downturn and it is estimated that the funding programme will have delivered 20,000 homes on 299 stalled developments. Together with the economic downturn the Cape site had very high site specific remediation costs totalling £1.98 million. The subsidised funding contributions are now no longer available to the applicant at the site and for this reason the developer now considers that completing the site with the 30% affordable housing provision cannot be achieved.
84. The applicant has submitted detailed development appraisals breaking down the income and expenditure at the site for the period of the development thus far and also the data for the full completion of the site. Further enclosures on the costs of site remediation and abnormal foundation costs have been submitted.

85. The development appraisals have been assessed using an industry tool “Pro Val” and with the benefit of advice from Asset Management with specialist knowledge in land and development costs.
86. Comments have been received from Asset Management and the submitted appraisal figures are considered accurate and reflect standard figures and assumptions used in evaluating development costs. No inaccuracies or anomalies were found in assessing the development appraisals. In summary the submitted development appraisal data is considered an accurate depiction of the site and development.
87. The submitted data demonstrates that the application site was bought at the height of the market with the purchase price approaching £4 million. Site remediation costs were very high, totalling £1.98 million. On the development to date considerable losses of over £3 million have occurred whilst if the remainder of the housing site was to be built out with 30% affordable then losses in the region of £4.5 million would occur.
88. Through the removal of the requirement for 30% affordable housing the applicant is proposing that the remainder of the site would be developed solely for open market housing. The site would still run at a loss, the reduction in affordable units would not allow for the development to generate a profit. However, the reduction in the affordable housing units would allow for a new license to be granted to a housebuilder and “drip feed” income. This would allow for the development to continue, with the 30% affordable housing requirement the site is a wholly unattractive proposition to any other developer and would not be implemented, remaining “moth-balled” for the foreseeable future.
89. It must be made clear that a significant proportion of the site would retain affordable dwellings. Already, 59 no. affordable units have been provided at the site which out of the whole development (once complete) would equate to 20% affordable housing at the site. Furthermore, the developer has offered within a S106 agreement a further financial contribution of over £147,000 which the Council can utilise to provide further off-site affordable homes. Such a sum would equate to the provision of 4 additional affordable homes meaning that in total 63 affordable units would emerge from the site.
90. It should also be noted that the Cape site is not the only recently developed site in Bowburn to have provided additional affordable housing. The development of 73 no. dwellings at land At Prince Charles Avenue and Horton Crescent has made provision for 23 affordable homes equalling 32%.
91. Objection has been received from The Bowburn and Parkhill Community Partnership, The Campaign to Protect Rural England, Shincliffe Parish Council and Cassop-cum-Quarrington Parish Council to the requirement for 30% affordable housing to be removed.
92. The provision of affordable housing remains a key consideration for the Local Planning Authority and the NPPF does at part 6 require Local Planning Authorities to establish and meet the affordable housing need in their district.
93. Equally paragraph 173 of the NPPF stresses the importance of viability as a material planning consideration; “sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable”.

94. Paragraph 160 also advises that Local Planning Authorities must consider the needs of businesses and any changes in circumstances “work closely with the business community to understand their changing needs and identify and address barriers to investment, including a lack of housing, infrastructure or viability”.
95. On balance taking into consideration the weight that must be attributed to site viability in assessing planning applications, the demonstration made by the applicant of the lack of viability of additional affordable housing development on site and also taking into account that a significant total of 63 affordable homes would have emerged from the site, officers recommend that the removal of the condition requiring 30% affordable housing is accepted.

Other Issues

96. Condition number 3 on the original planning approval related to a scheme to deal with contamination on the application site. A final report dated March 2009 was submitted to the Local Planning Authority detailing the remediation of the land and it was considered to satisfy the condition. However, as the report recommends on matters such as foundation design and with not all houses complete on the site it is considered appropriate that a condition is attached on any approval requiring that all development accords with the content of the report having regards to Policy U11 of the Local Plan.
97. Condition 4 on the original planning permission required the submission of an art scheme. Although provisional details have been submitted previously of a scheme for art on open space within the site, a final proposal has not been agreed. Policy Q15 of the Local Plan relates to the provision of art in development and officers consider that a condition should once again be attached to any approval to finalise the provision of a scheme on site.
98. Condition 5 on the original planning permission related to agreeing means by which foul and surface water would be catered for in the development. With all dwellings not yet approved or built, it is considered that such a condition should be attached again to any approval in accordance with Policy U8A of the Local Plan.
99. Condition 6 on the original planning application related to highway improvements and required alterations to junction 61 of the A1 (M), construction of a ghost island priority junction and pedestrian crossing. Under application 09/00620/VOC this condition was varied, the improvements to the motorway junction were not considered necessary and did not form part of the revised condition. The priority T junction and bus layby were to be provided prior to the commencement of development on the first dwelling. The protected right turn, ghost island and pedestrian crossing to be installed before the occupation of the 25th dwelling on site.
100. These timescales have not been met, the highway improvements are currently ongoing at the site and are being implemented by the Highway Authority. As the works are not yet complete, it is considered necessary that such a condition is attached again in the interests of highway safety having regards to Policy T1 of the Local Plan. The condition should be reworded, however, so that the highway improvements are implemented to the revised timescales to be agreed by the Highway Authority.
101. Condition 7 required that no dwellings could be occupied until an expansion of the Bowburn Sewage Works had been implemented. Previous discussions have been held with Northumbrian Water and improvements and expansion of the Bowburn Sewage Works have been undertaken and it is now no longer considered necessary to attach a condition restricting the occupation of dwellings.

102. Condition 8 related to matters of archaeology and simply required that access shall be available to the County Archaeologist to allow for observations of excavations when sought. Such a condition can be attached once again on any approval having regards to Policy E24 of the Local Plan.
103. Condition 9 required a travel plan to be devised within six months of the occupation of any of the approved commercial buildings. Such a condition should be attached once again to any approval having regards to Policy T1 of the Local Plan and part 4 of the NPPF.
104. Condition 10 required that no more than 50 dwellings could be occupied until all necessary highways and drainage infrastructure for the employment element of the site has been provided. Under application 08/00848/VOC this condition was varied to allow the construction of up to 150 dwellings before the highways and drainage infrastructure had to be provided. The applicant argued at the time that due to the significant financial outlay that the infrastructure works entailed, coupled with the low financial returns received varying the condition would provide greater flexibility and contingency. The highways and drainage infrastructure has still not been provided with the applicant confirming that 165 dwellings are on site. The applicant has informally requested that the number of dwellings that could be constructed prior to the infrastructure requiring to be implemented be extended again. Taking into consideration the same depressed market conditions and the point at which the development is now at, it is considered reasonable to reapply the condition but requiring that the infrastructure works are implemented prior to the construction of the 200th dwelling.
105. Condition 11 required that the provision of open space in the form of informal play and amenity space to form an integral part of any reserved matters application in accordance with the provisions of Policy R2 of the Local Plan. The phase 1 and phase 2 elements of the development included provision in accordance with Policy R2. This condition should be reapplied on any approval to ensure that future phases of the development provide for adequate levels of open space.
106. Condition 13 of the original planning permission required that the development is carried out in broad accordance with the submitted masterplan for the site and in addition in accordance with the BRE Ecohomes, BREEAM, Building for Life and Secured by Design guidance and standards. Such a condition can be attached once again with regards to the accordance with the masterplan for the site, however, it is not recommended that the accordance with the BRE Ecohomes, BREEAM, Building for Life and Secured by Design standards is attached on this planning permission. Some of this guidance has now been superseded and in addition it is considered through the combination of the 10% energy reduction condition (also recommended for the site) and the statutory obligations housing developments must adhere to through Building Regulations that the adherence to other further sustainable build guidance is not entirely necessary or reasonable.
107. Condition 14 related to protected species and required that the development accords with the mitigation, compensation and enhancement proposals within the submitted protected species report. The presence of protected species is a material planning consideration. The requirements of the Habitats Directive were brought into effect by the Conservation (Natural Habitats etc) Regulations 1994 (since amended). These regulations established a regime for dealing with derogations which involved the setting up of a licensing regime administered by Natural England. Under the requirements of the Regulations, it is a criminal offence to kill injure or disturb the nesting or breeding places of protected species unless it is carried out with the benefit of a license from Natural England.

108. The species protection provisions of the Habitats Directive, as implemented by the Conservation (Natural Habitats etc) Regulations 1994 (as amended) contain 3 no. "derogation tests" which must be applied by Natural England when deciding whether to grant a license to a person carrying out an activity which would harm an European Protected Species (EPS). For development activities this license is normally obtained after planning permission has been granted. The three derogation tests are as follows; the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety; there must be no satisfactory alternative and; favourable conservation status of the species must be maintained
109. Notwithstanding the licensing regime the Local Planning Authority must discharge its duty under Regulation 3(4) and also address its mind these three tests when deciding to grant planning permission. Through the attachment of the condition relating to the mitigation, compensation and enhancement proposals within the submitted protected species report it is considered that the favourable conservation status of protected species would be retained in accordance with the requirements of Policy E16 of the Local Plan and part 11 of the NPPF. The alteration to the level of affordable housing provision sought in this particular planning application is considered to have no impact upon protected species.
110. Condition 15 of the original approval required that a minimum of 10% of the sites energy requirements be provided by embedded energy. A condition to the same affect is proposed for attachment on this approval though a reworded version inline with the standard condition to achieve 10% energy reduction that the Local Planning Authority has now adopted.
111. Officers recommend the inclusion of further conditions in the interests of ensuring that the development has an acceptable impact upon the character and appearance of the area, relating to materials, landscaping, hard surfaces and means of enclosures.

CONCLUSION

112. This application seeks to remove condition 12 on the original outline planning permission so that 30% affordable housing provision is not required across the site.
113. The County Durham Strategic Housing Market Assessment (SHMA) provides the evidence base for affordable housing need and considers that 30% affordable housing should be sought within Durham City. The revised provision for the Cape site would be 20% onsite with the additional off-site financial contribution amounting to a total of 21.5% affordable housing to emerge from the site.
114. The viability of development sites must be considered in the current financial climate. The submitted development appraisals and accompanying enclosures have been robustly assessed using an industry tool and the findings are considered to be an accurate account of the site and the lack of viability of the 30% affordable housing within the development.
115. As a result, officers recommend that the condition requiring 30% affordable housing is removed and the existing on site and off-site contribution formalised via a S106 agreement, establishing the revised provision of affordable housing.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions and subject to the entering into of a Section 106 agreement to secure:

- i. The provision of 59 no. affordable dwellings onsite
- ii. A contribution of £147,472 towards the offsite provision of 4 no. affordable homes

1. Approval of the details of appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority before the development is commenced.

Reason: Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Application for approval of reserved matters shall be made to the Local Planning Authority before 29th October 2012 and the development must be begun not later than the expiration of two years from the final approval of the reserved matters, or in the case of approval on different dates, the date of approval of the last of the reserved matters to be approved.

Reason: To ensure planning permissions are not extended by Section 73 applications and that the time limit remains consistent to the original consent 06/00631/OUT pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. The development shall be implemented in full accordance with the provisions of the Completion Statement for the remedial and preparatory works report C0681C dated March 2009 prepared by Sirius Geotechnical and Environmental Ltd.

Reason: To ensure that risks from land contamination are minimised in accordance with Policy U11 of the City of Durham Local Plan 2004.

4. Prior to the commencement of development pertaining to any reserved matters, a scheme for the delivery of an art project in accordance with the objectives and provisions of Policy Q15 of the City of Durham Local Plan 2004 shall be submitted to and agreed in writing with the Local Planning Authority. The agreed scheme shall thereafter be implemented within a timescale that will form part of the aforementioned agreement.

Reason: To ensure a contribution towards art on major development proposals is achieved in accordance with the Policy Q15 of the City of Durham Local Plan 2004.

5. Prior to the commencement of development pertaining to any reserved matters, a scheme, including sustainable urban drainage measures, showing the means by which foul sewage and surface water generated as a result of the development are to be catered for, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the agreed details.

Reason: To ensure adequate drainage of the site having regards to Policy U8A of the City of Durham Local Plan 2004.

6. The highways improvements shown on the submitted and approved plan (drawing no. 758/0001/03/01 Rev 0 – Engineering Details) consisting of priority T – junction, bus lay-by, protected right turn facility, ghost island and signalised pedestrian crossing facilities shall be implemented by the May 31st 2013.

Reason: In order that the required highway improvements are provided at an appropriate stage of the development in the interests of highway safety and accessibility in accordance with Policy T1 of the City of Durham Local Plan 2004.

7. The developer shall afford access at all reasonable times to an archaeologist nominated by the Local Planning Authority and shall allow that person to observe the excavations and record items of interest.

Reason: In the interests of recording and preserving any features or remains of archaeological interest in accordance with Policy E24 of the City of Durham Local Plan 2004.

8. Within six months of the occupation of any of the approved commercial buildings, a detailed travel plan, based upon the draft scheme submitted shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter the measures contained within that detailed travel plan shall be full implemented.

Reason: In the interests of promoting sustainable transport having regards to Policy T1 of the City of Durham Local Plan 2004 and having regards to Part 4 of the National Planning Policy Framework.

9. No more than 200 dwellings shall be occupied until all necessary highways and drainage infrastructure for the employment element of the site has been provided.

Reason: To provide assurance on the likelihood of the employment elements of the development proposal coming into fruition whilst having regards to the material considerations of site viability having regards to Policy EMP5 of the City of Durham Local Plan and the provisions of Part of the National Planning Policy Framework.

10. The provision of open space in the form of informal play and amenity space shall form an integral part of any reserved matter planning application, in accordance with the provisions of Policy R2 of the City of Durham Local Plan 2004.

Reason: To ensure that adequate play and amenity space are provided for major residential developments having regards to Policy R2 of the City of Durham Local Plan 2004.

11. The development shall be carried out in accordance with the submitted Masterplan detailed on page 33 of the submitted Design and Access Statement received 23rd June 2006.

Reason: To define the consent and ensure that the development is implemented in accordance with the principles of the devised Masterplan having regards to Policies H3, H13, EMP5 and T1 of the City of Durham Local Plan 2004.

12. The development hereby approved shall be implemented in full accordance with the mitigation, compensation and enhancement proposals contained within paragraphs 8.108 – 8.126 of the submitted protected species report (Environmental Impact Assessment Section 2: Written Statement)

Reason: To ensure the protection and conservation of nature conservation assets having regards to Policy E16 of the City of Durham Local Plan 2004.

13. Prior to the commencement of development pertaining to any reserved matters, a scheme to minimise energy consumption shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of energy from renewable or low carbon sources provided on-site, to a minimum level of at least 10% of the total energy demand from the development, or an equivalent scheme that minimises carbon emissions to an equal level through energy efficient measures. Thereafter the development shall be carried out in complete accordance with the approved scheme and retained so in perpetuity.

Reason: In the interests of sustainable construction and energy generation in accordance with the aims of Policy U14 of the City of Durham Local Plan and Policy 38 of the Regional Spatial Strategy for the North East.

14. The hereby approved development shall be carried out in accordance with a scheme of landscaping to be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of any development pertaining to any reserved matters, and such a scheme may provide for the planting of trees and / or shrubs (including species, sizes, numbers and densities), the provision of screen fences or walls, the movement of earth, the formation of banks or slopes, the seeding of land with grass, or other works for improving the appearance of the development. The works agreed to shall be carried out within the first planting season following completion of development of the site (or of that phase of development in the case of phased development) and shall thereafter be maintained for a period of 5 yrs following planting.

Reason: In the interests of the visual amenity of the area having regards to Policy Q8 of the City of Durham Local Plan 2004.

15. Prior to the commencement of development pertaining to any reserved matters, details of all means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The enclosures shall be constructed in accordance with the approved details prior to the occupation of the dwelling to which they relate.

Reason: In the interests of visual amenity having regards to Policy Q8 of the City of Durham Local Plan 2004.

16. Prior to the commencement of development pertaining to any reserved matters, details of the make, colour and texture of all walling and roofing materials shall be submitted to and approved in writing by the Local planning authority. The development shall be constructed in accordance with the approved details.

Reason: In the interests of visual amenity having regards to Policy Q8 of the City of Durham Local Plan 2004.

17. Prior to the commencement of development pertaining to any reserved matters details of the surface treatment and construction of all hardsurfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

Reason: In the interests of visual amenity having regards to Policy Q8 of the City of Durham Local Plan 2004.

REASONS FOR THE RECOMMENDATION

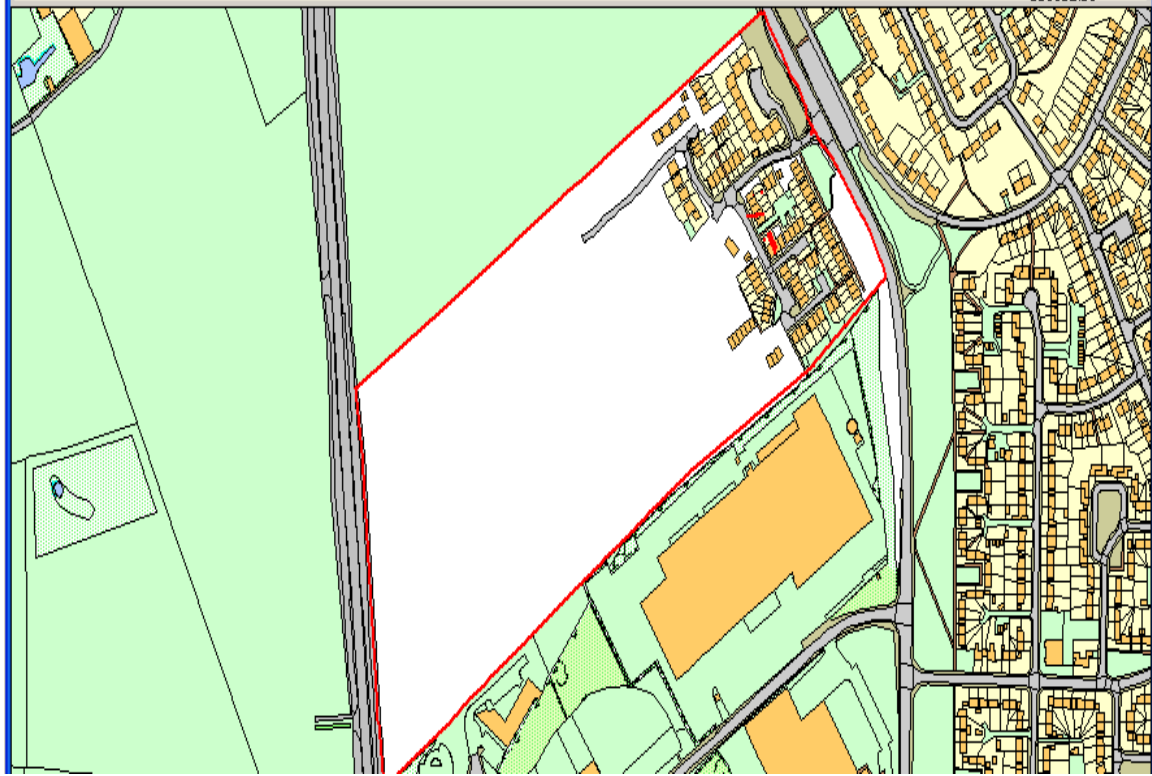
1. The development proposes a mixed use development including housing on a designated industrial estate. Adequate employment land is considered to be available in the Durham City area and the development reuses previously developed land within a suitable location. The proposed development is considered to be an acceptable development in principle although does constitute a departure from Local Plan Policy EMP5 albeit the principle is established. No harm to the character of the area, highway safety or the amenities of neighbouring occupiers is considered to occur through the development. With regards to affordable housing, the submitted application and enclosures are considered to demonstrate that providing 30% affordable housing on site is not viable and the provision of 59 no. affordable units on site and contribution towards 4 no. units off site via S106 agreement is considered acceptable. The development is considered to accord with relevant Policies E16, E24, H3, H12, H13, T1, T10, Q8, R2, U5, U8A, U11 and U15 of the City of Durham Local Plan 2004. With regards to protected species the development is considered to accord with the requirements of the Habitats Directive brought into effect through The Conservation (Natural Habitats etc) Regulations 1994

This decision has been taken having regard to the policies and proposals of the North East of England Plan - Regional Spatial Strategy to 2021 (RSS) July 2008, the City of Durham Local Plan 2004 and the provisions of the National Planning Policy Framework.

2. In particular the removal of condition 12 on the original planning permission requiring the provision of 30% affordable housing is considered acceptable having regards to the viability of the site which is a material planning consideration.
3. A total of 4 no. objections have been received in relation to the application with objection raised to the removal of the 30% affordable housing requirement and with regards to highway issues and site sustainability. An assessment of the viability of affordable housing at the site has been undertaken and 30% affordable housing is considered unfeasible at the site. No objections are raised with regards to the impact of additional open market housing with regards to highway safety whilst the site is considered to constitute sustainable development with adequate accessibility to public transport.

BACKGROUND PAPERS

Submitted Application Forms, Plans and supporting documentation
City of Durham Local Plan 2004
Regional Spatial Strategy
National Planning Policy Framework
Internal consultee responses
Public responses
Response of the Highway Authority
Parish Council Responses
Planning Circular 11/95



Planning Services

Removal of condition 12 of planning application 06/00631/OUT (Outline application including details of means of access for employment use and residential development with associated play areas, landscaping, parking and access) relating to the provision of 30% affordable housing

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Date 10th July 2012