

Item 4.1

Site: Land at Red House Farm, Lower Outwoods Road, Burton upon Trent, Staffordshire, DE13 0QX

Proposal: Reserved Matters application for the erection of 246 dwellings, including details of appearance, landscaping, layout and scale

Report of Head of Service (Section 151 Officer)

This report has been checked on behalf of Legal Services by John Kirkham

[Hyperlink to Drawing and Forms](#)

Application No. P/2015/01229
Case Officer: Rob Duckworth
Application Type: Reserved Matters

Applicant: Davidsons Developments Ltd & Strata Homes (Yorkshire) Ltd

Ward: Outwoods
Ward Member(s): Councillor D H Goodfellow
Councillor S P Gaskin

Registered: 24 September, 2015
Expires: 26 February, 2016

1.0 Summary

1.1. Following a deferral of this application at the January Planning Committee (January Committee Report included as Appendix 1) the below issues were highlighted to be resolved:

- Affordable housing distribution and clustering. In particular there was a large cluster towards the north of the site which needed addressing to break up the number;
- Compliance with Outwoods Neighbourhood Plan and how much weight is to be afforded to the made plan. This issue relates to the relationship of the Neighbourhood Plan and the Local Plan and the application of both in relation to the application. Specifically landscape buffers were raised at committee and specific advice is provided on this.

- Public Open Space (POS) – its form and amount. This issue is tied in with the Neighbourhood Plan and the different requirements set out in that document when compared to requirements in the Local Plan;
 - Bus gate details
- 1.2. Planning Officer Rob Duckworth and Planning Manager Anna Miller have engaged with the applicants, agents and Outwoods Parish Council following the last Planning Committee to discuss the matters.

Affordable Housing

- 1.3. Following the January committee meeting, the Borough Council met with the agents, Pegasus Group, and the applicants, Strata and Davidson. The outcome of the meeting was the submission of an amended affordable housing distribution and clustering drawing. The amended drawing shows a spread compliant with the requests of the Planning Committee with the largest group being comprised of 8 dwellings and the clusters are now distributed in a way to ensure that they are not adjoining and the large group towards the north has been broken up. The position is one that the Registered Provider has agreed is acceptable. It is considered that the dispersal of affordable housing adequately complies with Local Plan Policy SP17 (Policy SP17 included as Appendix 2).
- 1.4. The landscape proposals have also been superseded owing to the redistribution of affordable housing. The revised landscaping plan has been uploaded to the web for public viewing. The changes allow for the comprehensive and cohesive landscape to work with the slight layout changes.
- 1.5. Officers consider that the plans comply with Policy SP17.

Neighbourhood Plan

- 1.6. The Borough Council has sought legal advice on the weight to be applied to Neighbourhood Plan policies in these circumstances.
- 1.7. Outline planning permission was granted by the Secretary of State by a decision letter dated 12 November 2013. The permitted development was described as the erection of up to 250 dwellings, associated structural landscaping including woodland planting, public open space, access, drainage, associated infrastructure, earthworks and other ancillary and enabling works including the demolition of all buildings at land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent, DE13 0QX.
- 1.8. Access, appearance, landscaping, layout and scale are all reserved matters. Condition 4 of the permission required the development to be in accordance with the principles of the Design and Access Statement and plans which included an Illustrative Master Plan (whose reference is set out in the

condition). Paragraph 1.5 of the Inspector's report states that the Illustrative Master Plan identifies areas of open space and landscaping.

- 1.9. Condition 7 required detail of boundary treatments. Condition 9 required an open space strategy to be submitted, approved and implemented. It was to include detail of equipment for children's play spaces and other matters.
- 1.10. The Borough Council's position, which is reinforced by counsel's advice, is that the policies of the Outwoods Neighbourhood Plan are relevant insofar as they relate to matters within the scope of the Reserved Matters Application. The outline permission is the grant of planning permission which authorises the development and its terms cannot be revisited at the reserved matters stage. So, the principle of developing the site for up to 250 dwellings is settled. The conditions of the outline permission should form the framework for the consideration of the reserved matters application. The reserved matters application is not an application for planning permission and is not an opportunity to revisit matters which have been permitted or regulated by the outline planning permission.
- 1.11. Therefore whilst the policies in the Neighbourhood Plan can be given full weight now that the plan has been 'Made', their application to the proposal is only relevant to those matters within the scope of the Reserved Matters application. Revisiting the outline application and those matters conditioned is not considered to be relevant.
- 1.12. To demonstrate that the proposal accords with those policies in the Neighbourhood Plan a table demonstrating compliance is attached to this report as Appendix 3.
- 1.13. Specific reference needs to be made to the 20 metre landscape buffer and policy LR4 of the Neighbourhood Plan. The policy states that:
- 1.14. 'Any landscape buffer zones should provide the dual functions of foiling views and providing a wildlife corridor in support of the strategy set out in policy LR3 and should include opportunities to improve biodiversity and introduce native planting.'
- 1.15. The policy clearly sets out what buffers should do if they are provided. It does not require them to be provided in the first place. It is also the case that the reference to having a 20 m buffer is in the supporting text and so does not have the status of a policy requirement. Supporting text is relevant to the interpretation of a policy but is not policy or part of policy. In any event the 20m distance is said in the supporting text to be 'flexible' and the width will depend upon site specific factors.
- 1.16. Regarding the requirement of a 20m buffer the proposal accords with the Neighbourhood Plan because it is not a policy requirement of the Neighbourhood Plan.
- 1.17. Officers consider that the proposal complies with the Neighbourhood Plan.

Public Open Space

- 1.18. Following the committee meeting sections of the Public Open Space (POS) were received by the Local Planning Authority which demonstrated the general topography of the site and how the term 'hill' was a misrepresentation of the grading of the land. The sections also demonstrated that with the movement of some of the landscaping/trees an informal 'kick-about' area is provided on the flattest part of the site. Achieving this did not require any re-grading of the land.
- 1.19. Since then and following a meeting with the Parish Council the POS has been amended, by re-grading the 'hill' and moving the centre high point further north. The combination of tree relocation and re-grading the profile of the 'hill' has allowed for a larger area for informal play.
- 1.20. A key issue raised by the Parish Council in relation to the POS was that the Parish Council did not consider that the Borough Council was applying policy correctly and that the applicant should provide a NEAP on the site in accordance with their own 'made' Neighbourhood Plan. Counsel's advice confirms the following:
 - 1.21. The permission was granted subject to the section 106 obligation. The Section 106 makes provision for open space by way of a Local Equipped Area of Play ("LEAP"). The LEAP provision has been arrived at by the Borough Council based upon the terms of the planning obligation dated 23rd August 2013, which requires that provision is in accordance with the Leisure and Community Facilities Chapter of the East Staffordshire Local Plan.
 - 1.22. Provisions of the Section 106 need to be complied with when formulating and determining a reserved matters application. The obligation clearly operates so that the open space provision to be provided through the reserved matters application should accord with the 2006 Local Plan. Therefore the terms of the obligation provide a proper basis for requiring the reserved matters application to be in accordance with the 2006 Local Plan and not the Neighbourhood Plan, if there is a difference in what the plans require.
- 1.23. In addition the reserved matters application accords with the Illustrative Master Plan approved at the outline stage.
- 1.24. POS provision was requested of the Public Open Spaces Team at the Borough Council, with particular interest to the need for a LEAP or NEAP (a LEAP is a locally equipped area of play for young children and a NEAP is a neighbourhood equipped area of play and is designed for older children and teens). Based on the number of houses the amount of equipped play was calculated to be 0.2ha which falls in line with the best practice guide size of a LEAP whereas a NEAP would normally be around 0.4ha. It is the opinion of the Public Open Spaces Team that LEAPs are required in greater number than NEAPs due to the distances older children and teens are willing to travel to a NEAP and the fact that Shobnall Leisure Complex (NEAP quality) is approximately 400m away. Therefore the provision of both would be over

supply and the informal grassed play area gives some scope for teen play as an additional benefit to the scheme. It is considered that the contribution and provision of the POS meets the requirements of the 2006 Local Plan, which was the policy framework the Outline permission was determined upon, as the Outwoods Neighbourhood Plan was not 'made' at that point in time.

- 1.25. Officers consider that the POS complies with the Local Plan as agreed in the outline consent and its associated Section 106.

Bus Gate

- 1.26. The matter of the bus gate was raised in respect of Condition 20 of the outline application, P/2012/01215 / APP/B3410/A/13/2197299, which is stated below:
- 1.27. *No phase of the development hereby permitted shall take place until details of a scheme to provide vehicular access to the development have been submitted to and approved in writing by the local planning authority at reserved matters stage. The scheme shall prevent vehicular access to the development from Lower Outwoods Road apart from by public service and emergency vehicles. The scheme shall be implemented in accordance with the approved details before the development is first occupied and retained for the life of the development.*
- 1.28. The key point of that condition is the wording relating to the reserved matters stage. It is the view of the Planning Team that the details of the bollards preventing vehicular access can fall into two categories, broad detail (raising bollards and fixed bollards are to be installed within a pinch point in the road where it joins Lower Outwoods Road) and fine details (how the bollards physically operate, the speed they raise and lower, safety measures, heights, etc). It is considered that the broad details have been submitted and therefore satisfy Condition 20, with the finer and precise detail to be agreed at a later stage via a condition attached to a reserved matters approval. This process would be in full accordance with the spirit of the condition and in doing it this way does not prejudice the application or the function of the raising bollard. By submitting fine details via condition the County Highways will be required to agree the details and, as they will be adopting them, they will certainly be seeking a solution that does not mirror the issues that Members highlighted about the Town Centre bollards. Furthermore the Chair of the Planning Committee and Local Ward Members will be party to the decision making of this particular detail.
- 1.29. It should be noted that various methods preventing access have been assessed, in conjunction with County Highways, and the raising bollard solution was considered to be the only viable option. Barriers were considered to snap too easily; signage is easily abused; ANPR (Automatic Number Plate Recognition) Cameras could be successful but require a monitoring and significant long term cost to the County; build outs and tyre

gullies were too restrictive with buses, fire engines, ambulances and police cars all having different wheelbases.

1.30. Therefore based on the above officers consider that the broad details submitted are satisfactory for this reserved matters stage with the finer details to be agreed at a later date via condition as recommended in the report.

1.31. Late on Friday 5th February amended drawings were submitted by Pegasus showing the affordable housing spread, re-grading/contouring of the POS and sections to match. These have been sent to Outwoods Council to discuss at their Monday evening meeting in preparation of the next Planning Committee. Any further comments received will be reported to Members in an update. Amended plans are available to Members to view via this link.

<http://www.eaststaffsbc.gov.uk/MVM/Online/dms/DocumentViewer.aspx?PK=627495&SearchType=Planning%20Application>

Newt Tunnels

1.32. Amended Plans removed the provision of Great Crested Newt tunnels under both Reservoir Road and Lower Outwoods Road access points. This is in line with an updated Great Crested Newt Mitigation Strategy that was also submitted. This updated GCN Strategy has been seen by and agreed with Natural England who issue the licence for works and are the authority on the matter.

RECOMMENDATION:

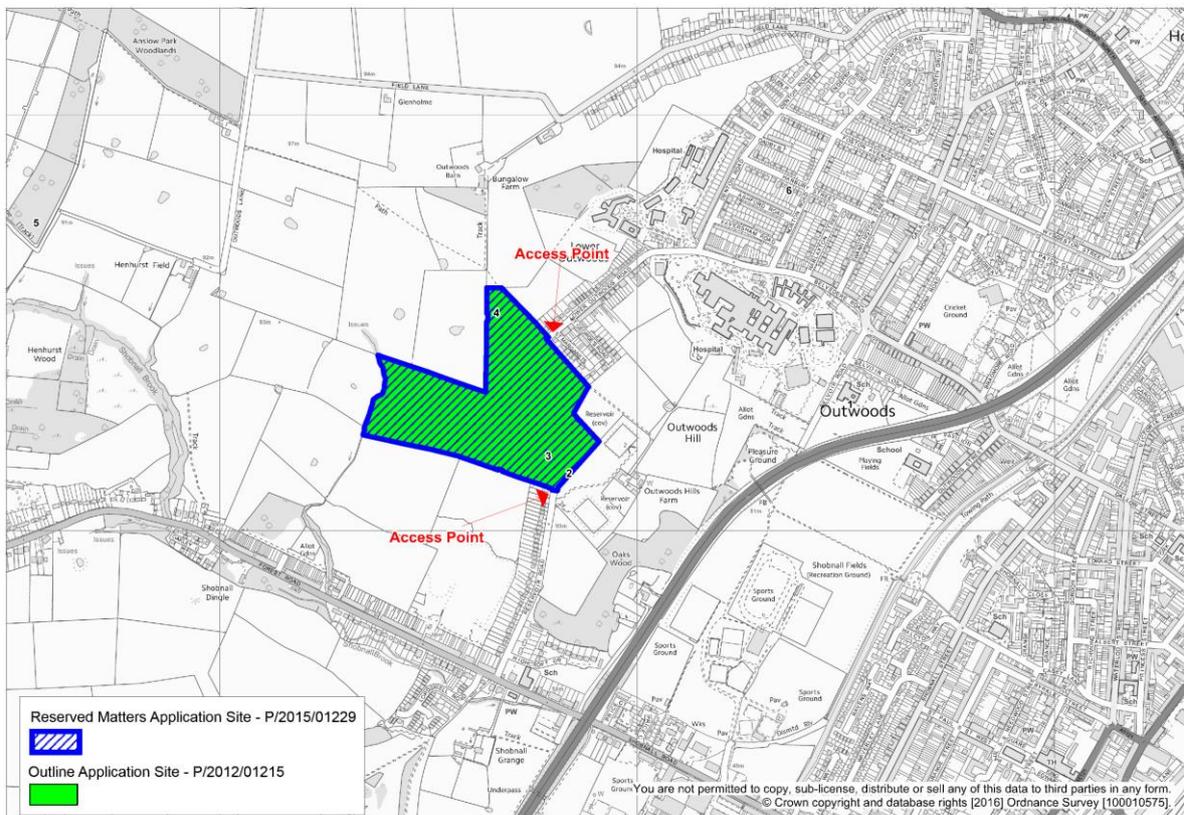
1.32 For the reasons set out in the above report then APPROVE RESERVED MATTERS subject to the following conditions:-

- 1. Compliance with the approved plans**
- 2. Garages to be made available for parking at all times with permitted development rights removed where applicable**
- 3. Finer details of raising bollard to be submitted prior to commencement of development.**
- 4. Buffer zones shall be a minimum of 5m wide and shall be maintained as buffer zones and wildlife corridors throughout the perpetuity of the life of the development with the sales of homes on the periphery of the site having a legal restriction of their use as domestic curtilage.**

1.33 Informatives:

- 1. Standard engagement informative.**

2. The applicant is advised to note and act upon as necessary the attached comments of the Police Architectural Liaison Officer. However, where there is any conflict between the recommendations of the Architectural Liaison Officer and the terms of the planning consents the latter take precedence.
3. Notification of outline permission conditions addressed by the reserved matters submission and which remain outstanding.
4. Pre-commencement conditions standard informative.
5. Where a private access falls toward the public highway a surface water drainage interceptor, connected to a surface water outfall, shall be provided across the access immediately to the rear of the highway boundary.



Background Papers

The following papers were used in the preparation of this report:

- NPPF (National Planning Policy Framework)
- NPPG (National Planning Policy Guidance)
- ESBC Local Plan 2012-2031
- ESBC Local Plan 2006
- Outwoods Neighbourhood Development Plan August 2015
- Open Space SPD Sept 2010
- Appeal Decision for Red House Farm 12 Nov 2013

- S.106 between Skipper, ESBC and Staffs CC
- P/2015/01229 file documents
- P/2012/01215 file documents
- Report to ESBC on the Independent Examination of the Draft Outwoods Neighbourhood Development Plan by John Mattocks Feb – April 2015.

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Appendix 1

P/2015/01229 Red House Farm Phase I Reserved Matters Committee Report

Appendix 2

ESBC Local Plan Policy SP17

Appendix 3

Compliance with Outwoods Neighbourhood Development Plan.