

**Date of Meeting: 16<sup>th</sup> July 2020**

**APPLICATION NO's : 17/2493/OUT and 17/2494/OUT**

**DATE OF APPLICATION: 22 December 2017**

**STATUTORY START DATE: 30 August 2018**

**SITE LOCATION's**

Land Off Cowley Hill and Land North of Potters Lane Borehamwood, Hertfordshire,

**DEVELOPMENT**

**17/2493/OUT**

Outline planning application for the provision of a 2 form entry primary school to include access (All other matters reserved). Amended plans received 30 August 2018.

**17/2494/OUT**

Outline planning application for the erection of 58 dwellings to include access, layout and scale. (All other matters reserved, Revised Application form received 18th January 2018)

**AGENT**

Mr Steven Brown  
The Mitfords  
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Three Mile Cross  
Reading  
RG7 1AT

**APPLICANT**

n/a  
c/o agent

**1.0 Summary of Recommendation**

Recommendation 1 – Application 17/2493/OUT

- 1.1 That this supplemental report is to be read with and be considered as forming part of the main report attached at Appendix 1 along with the update sheet at Appendix 3. Based on the content of the main reports, the update sheet and this supplemental report, it is recommended that:
- 1.2 That powers be delegated to the Head of Planning and Economic Development to grant planning permission subject to no call-in powers being exercised by the Secretary of State and the receipt of an agreement under S106 of the Town and Country Planning Act.

- 1.3 Should the agreement under Section 106 not be completed and signed 16<sup>th</sup> September 2020, or at a later date to be agreed in writing it is recommended that the Head of Planning and Economic Development be given delegated powers to refuse the planning application, for the reasons set out below:
- 1.4 *Suitable mechanisms have not been secured to ensure the provision of the proposed highway improvement works, or the transfer and securement of the land intended for the school site including provisions for a further application if required. Therefore the development would not be acceptable in planning terms contrary to the NPPF, Policies SP1, CS4, CS13 and CS24 of the Core Strategy, Policies SADM22, SADM26 and SADM40 of the Site Allocations and Development Management Policies Plan 2016 and the Affordable Housing SPD 2015.*

#### Recommendation 2 – Application 17/2494/OUT

- 1.5 That this supplemental report is to be read with and be considered as forming part of the main report attached at Appendix 4 along with the update sheet at Appendix 3. Based on the content of the main reports, the update sheet and this supplemental report, it is recommended that:
- 1.6 That powers be delegated to the Head of Planning and Economic Development to grant planning permission subject to no call-in powers being exercised by the Secretary of State and the receipt of an agreement under S106 of the Town and Country Planning Act.
- 1.7 Should the agreement under Section 106 not be completed and signed 16<sup>th</sup> September 2020, or at a later date to be agreed in writing it is recommended that the Head of Planning and Economic Development be given delegated powers to refuse the planning application, for the reasons set out below:
- 1.8 *Suitable mechanisms have not been secured to ensure the provision of the proposed highway improvement works, affordable housing provision or the transfer and securement of the land intended for the school site including provisions for a further application if required. Therefore the development would not be acceptable in planning terms contrary to the NPPF, Policies SP1, CS4, CS13 and CS24 of the Core Strategy, Policies SADM22, SADM26 and SADM40 of the Site Allocations and Development Management Policies Plan 2016 and the Affordable Housing SPD 2015.*

## **2.0 Purpose of this Supplemental report**

- 2.1 At the committee meeting on 11 October 2018, Members recommended conditional outline approval of two planning applications being:
- The erection of 58 dwellings to include access, layout and scale with all other matters reserved on land north of Potters Lane Borehamwood (17/2494/OUT)and

- The provision of a 2 form entry (2FE) primary school to include access with all other matters reserved on land off Cowley Hill, Borehamwood (17/2493/OUT).

2.2 Both of these applications were subject to a linked s106 and a full copy of each of these reports, their appendices, the update sheet and the minutes from this committee meeting are attached at the appendices to this report.

2.3 As detailed within these appended reports, the first reported heads of term was as follows:

*To ensure the delivery of the school and the appropriateness of the housing development in Green Belt terms the school shall be practically completed before commencement of application 17/2494/OUT.*

However, the update sheet prepared for that committee detailed that whilst it was demonstrated that a new 2FE primary school would be required to meet pupil demand from the significant housing development within the area, Hertfordshire County Council could not specify the date as to when the new school would be required. With the housing development being restricted to the practical completion of the school, concerns were raised over the timeliness of the implementation of the housing development. Therefore, prior to the committee meeting the heads of terms were amended to the following:

*The trigger point for the housing and school delivery will be further discussed with County, the applicant and the LPA to agree timelines for delivery and should there be any variation from that set out in the report that this is delegated to the Head of Planning in consultation with the Chair of Planning to agree any amendments.*

2.4 Since this time negotiations between Officers, the applicants, colleagues at Hertfordshire County Council and legal representatives have taken place. These negotiations sought to find acceptable solutions to allow for both the implementation of the housing development and the school whilst maintaining the integrity of the material planning considerations of the proposals.

2.5 It is noted that the previous resolution granted delegated powers to the Head of Planning in consultation with the Chair to determine the applications. However, it is considered that due to the length of time that has passed since the previous resolutions, along with nature of the applications, that it is procedurally correct to first refer the applications back to committee for a further resolution and then, if approved to refer them to the Secretary of State (MHCLG).

### **3.0 Commentary**

*Principle of both applications (summary)*

3.1 The appended 17/2493/OUT committee report was submitted with detailed needs assessment prepared by Hertfordshire County Council, as the

Education Authority. This report concluded that there was clear evidence that a new 2 FE primary school would be required to meet pupil demand from existing and future development, and a provision of this school well located to the Elstree Way Corridor (EWC) would provide for both those pupils living in the area. The pupil forecast provided at that time estimated that this school would be required by 2021.

- 3.2 In addition to the requirement for the new school an assessment was undertaken in relation to an appropriate location for the school. As detailed in the appended 17/2493/OUT report, in recognition of the need for additional primary school places, the Elstree Way Corridor Area Action Plan (EWCAAP) reserved the site of Maxwell Park Community Centre and Girl Guide Hut for a new 2FE primary school. However, whilst the EWCAAP indicates that the site at Maxwell Park is reserved for such a use, the assessment concludes that it would be better to preserve the open space and community use of Maxwell Park.
- 3.3 A sequential site assessment was submitted in support of the 17/2493/OUT application detailing the limited opportunities of a site of sufficient size to accommodate the new school. In the absence of any other suitable and available sites within reasonable accessibility to the Elstree Way Corridor, along with the then pressing need to provide a new school by 2021, it was considered that the application site was the most suitable and that very special circumstances in terms of need had been demonstrated which clearly outweighed the potential harm to the Green Belt and any other harm.
- 3.4 The delivery of the school is contingent on the provision of a suitable site of sufficient size and in a location that would meet the pupil demand from existing and future development including that in the EWC. The proposals would result in this land being transferred to Hertfordshire County Council by the applicants and in doing so would facilitate significant benefits being delivered through the provision of a new school.
- 3.5 Intrinsicly linked with the application for the provision of the school is the outline application for the provision of 58 dwellings on land north of Potters Lane. Unless the residential development is permitted the applicant will not make the school site available for a school.
- 3.6 Furthermore, the application site for the residential development was highlighted as having a limited role in maintaining the essential characteristics of Green Belt land. The development was not considered to have a significant impact on the openness of the Green Belt or conflict with the Green Belt principles. On that basis it was considered that the delivery of primary school constituted a case of very special circumstances that outweighed any limited harm to the Green Belt relating to the residential development.
- 3.7 It was therefore resolved at the Planning Committee meeting of 11<sup>th</sup> October 2018 that planning permission be granted subject to a s106 which, amongst other clauses, would provide a suitable trigger for the implementation of the

housing development without undermining the case of very special circumstances.

*Current situation*

- 3.8 Since the resolution to grant permission of the two planning applications in 2018 there have been numerous discussions to find an acceptable solution for all parties which would enable the commencement of the residential development whilst safeguarding the delivery of the new primary school when pupil demands reach such a level for its provision.
- 3.9 At the time that the feasibility work was being undertaken for the two applications, HCC as the education authority advised of the likelihood that the new school would be required around 2021. Since this time however, the predicated forecasts have moved this date further back. During the course of the negotiations this delay raised concerns with Officers especially in relation to Green Belt policy and the established case of very special circumstances.
- 3.10 HCC have since prepared an updated education statement (appendix 7) which includes an updated analysis of existing pupil demographics and additional yield expected from new development in and around the EWC in the coming years. In line with the HCC's original representations it is maintained that there is still a clear requirement for a site, well located to the EWC and capable of accommodating a 2FE primary school. HCC will continue to assess pupil forecast and other demographic information and the demand for school places in the town. Currently data indicates that the need for a new school would most likely materialise in the period post 2025, although a school could be brought forward sooner if pupil numbers were to substantiate the need.
- 3.11 With the updated education statement still identifying a need for a school in the foreseeable future, Officers are satisfied that the original case of very special circumstances can still be justified subject to robust clauses within the s106 agreement to secure the transfer of the site.
- 3.12 The proposals have been reassessed in light of the updated NPPF and are still considered to be in accordance with the framework. There have been no other changes in policy or other circumstances since the application was last reported to committee.
- 3.13 Officers in conjunction with legal representatives have been in consultation with HCC to discuss solutions to enable the implementation of the school when the demand requires it. With HCC's preference not to take the land until such a time the school is to be delivered, it has been agreed that the school site should be transferred to HBC to hold until it is required. The land is currently grazed and therefore it will be leased back to the applicants under a grazing licence for upkeep.

### *Head of terms*

- 3.14 Arising from the negotiations it is recommended that the applications be subject to a s106 agreement requiring the transfer of the school land. Along with the established heads of terms, as detailed in the 17/2493/OUT and 17/2494/OUT committee reports relating to the provision of affordable housing and the highway improvements, the additional terms are proposed:
- After the end of any challenge period for the permissions and prior to the implementation of the residential scheme the land for the school site shall be transferred to HBC;
  - Wrotham Park Estates will accept a lease back of the school site to secure the on-going maintenance of the land and minimise any costs to the Council;
  - The land to be transferred shall be safeguarded for an education use for a an agreed period following which if pupil yield has not demanded a new school the land will be used for an alternative public purpose.
  - Should the school development not be implemented before construction of 80% houses on the residential site, a commuted sum of £20,000 will be required to be used either implement the school permission (access) and thereby negating the need for a further application before its 5 year expiry, or to submit a further application to extend the permission.
- 3.15 As detailed above, the school land is proposed to be transferred and safeguarded for a period of 12 years as to not dilute the case of very special circumstances and to ensure that an extant permission is always in place. To facilitate this, the time limit to submit for reserved matters (condition 2 of 17/2493/OUT) is recommended to be extended from 3 years to 5 years. Should the development not come forward in this time, the s106 will secure monetary provisions for either that permission to be implemented (the provision of the access) or for a further application to be submitted to maintain a continued permission.

## **4.0 Conclusion**

- 4.1 Officers are content that the heads of terms proposed along with the transfer of the land to the Council, to hold until such a time the school is required, are sufficient safeguards to ensure that the original case of very special circumstances are not diluted following the implementation of the residential development to comply with Green Belt policy.

## **5.0 Recommendation**

### **5.1 Recommendation 1 – Application 17/2493/OUT**

- 5.2 That this supplemental report is to be read with and be considered as forming part of the main report attached at Appendix 1 along with the update sheet at Appendix 3. Based on the content of the main reports, the update sheet and this supplemental report, it is recommended that:

- 5.3 That powers be delegated to the Head of Planning and Economic Development to grant planning permission subject to no call-in powers being exercised by the Secretary of State and the receipt of an agreement under S106 of the Town and Country Planning Act.
- 5.4 Should the agreement under Section 106 not be completed and signed 16<sup>th</sup> September 2020, or at a later date to be agreed in writing it is recommended that the Head of Planning and Economic Development be given delegated powers to refuse the planning application, for the reasons set out below:
- 5.5 *Suitable mechanisms have not been secured to ensure the provision of the proposed highway improvement works, or the transfer and securement of the land intended for the school site including provisions for a further application if required. Therefore the development would not be acceptable in planning terms contrary to the NPPF, Policies SP1, CS4, CS13 and CS24 of the Core Strategy, Policies SADM22, SADM26 and SADM40 of the Site Allocations and Development Management Policies Plan 2016 and the Affordable Housing SPD 2015.*

Recommendation 2 – Application 17/2494/OUT

- 5.6 That this supplemental report is to be read with and be considered as forming part of the main report attached at Appendix 2 along with the update sheet at Appendix 3. Based on the content of the main reports, the update sheet and this supplemental report, it is recommended that:
- 5.7 That powers be delegated to the Head of Planning and Economic Development to grant planning permission subject to no call-in powers being exercised by the Secretary of State and the receipt of an agreement under S106 of the Town and Country Planning Act.
- 5.8 Should the agreement under Section 106 not be completed and signed 16<sup>th</sup> September 2020, or at a later date to be agreed in writing it is recommended that the Head of Planning and Economic Development be given delegated powers to refuse the planning application, for the reasons set out below:
- 5.9 *Suitable mechanisms have not been secured to ensure the provision of the proposed highway improvement works, affordable housing provision or the transfer and securement of the land intended for the school site including provisions for a further application if required. Therefore the development would not be acceptable in planning terms contrary to the NPPF, Policies SP1, CS4, CS13 and CS24 of the Core Strategy, Policies SADM22, SADM26 and SADM40 of the Site Allocations and Development Management Policies Plan 2016 and the Affordable Housing SPD 2015.*

Revised condition 2 to 17/2493/OUT

- 5.10 Details of the Reserved Matters shall be submitted to and approved in writing by the Local Planning Authority before the expiration of 5 years from the date of this permission.

The development to which this permission relates must be begun not later than the expiration of 2 years from the final approval of the reserved matters referred to in condition 1 above, or in the case of approval on different dates the final approval of the last such matter to be approved.

Reason: To prevent the accumulation of unimplemented planning permissions, to enable the Local Planning Authority to review the suitability of the development in the light of altered circumstances, and to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended.

## **6.0 BACKGROUND PAPERS**

1. The Planning application (17/2493/OUT & 17/2494/OUT) comprising application forms, certificate, drawings and any letters from the applicant in support of the application.
2. Replies from Statutory consultees and correspondence from third parties.
3. Any other individual document specifically referred to in the agenda report.
4. Published policies / guidance

## **7.0 Appendices**

Appendix 1 – 17/2493/OUT Committee Report

Appendix 2 – 17/2493/OUT Needs Assessment

Appendix 3 – 17/2493/OUT Sequential Site Assessment;

Appendix 4 – 17/2494/OUT Committee Report

Appendix 5 – Update Sheet to Planning Committee of 11<sup>th</sup> October 2018

Appendix 6 – Printed minutes of 11<sup>th</sup> October 2018 Planning Committee

Appendix 7 – Updated Education Statement

Case Officer Details

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