

<b>Agenda Item:</b>	<b>5.1 Supplementary Report to Planning Committee</b> <u>(to be read in conjunction with the officer report to the Planning Committee of 19<sup>th</sup> February 2019 and its associated update sheet which are attached as Agenda Item 5.1A).</u>
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<b>Site:</b>	Bamford Works Pinfold Street Uttoxeter
<b>Proposal:</b>	Outline application (including details of access with other matters reserved) for the erection of up to 148 No. dwellings, the formation of a 'town park' and re-naturalisation of Picknall Brook and alteration of existing vehicular access off Hockley Road, Pinfold Street and Old Knotty Way.

### Report of Head of Service (Section 151 Officer)

This report has been checked on behalf of Legal Services by Sherrie Grant

### [Hyperlink to Application Details](#)

<b>Application Number:</b>	P/2017/01307	
<b>Planning Officer:</b>	Alan Harvey	
<b>Type of Application:</b>	Outline	
<b>Applicant:</b>	JCB	
<b>Ward:</b>	Town	
	Councillor Mrs S J McGarry	
	Councillor P Hudson	
<b>Date Registered:</b>	07 November 2017	
<b>Date Expires:</b>	5 February 2018 - series of ongoing extensions of time were previously agreed until <b>14 December 2018</b> by the applicants to seek to resolve technical issues and to progress the affordable housing viability assessment process.	

## 1. Introduction

- 1.1 Members will recall that a decision on this application was deferred at the meeting of the Planning Committee of 19 February 2019. Specifically the Committee resolution was *“that this application be **DEFERRED** in order that officers could negotiate with the applicant and seek their agreement that the issue of final affordable housing levels be deferred for resolution under the Section 106 Agreement as part of any reserved matters application”*.

- 1.2 As the affordable housing contribution is the reason the application was deferred, the affordable housing contribution is the only matter in respect of this application that should be considered and debated upon at committee.
- 1.3 As requested by members officers initiated negotiations with JCB to try and agree that the quantum of Affordable Housing calculation is deferred until the housing scheme is detailed; so the appropriate time is at reserved matters stage. A meeting was arranged with officers and JCB representatives for the 19<sup>th</sup> March.
- 1.4 In addition, officers also received a letter following the February committee (annexed at Appendix F) which contends there were material errors of fact that arose during the debate that meant the Committee resolution was 'flawed'. The contents of the letter were part of the discussions at the officer/applicants meeting of 19<sup>th</sup> March 2019 and the Council's solicitor subsequently responded to JCB on the legal points and advised JCB that their concerns regarding the February committee meeting debate, would also be addressed by way of the updated report and/or verbally by officers at the committee meeting. The Council's solicitor specifically responded *inter alia* to JCB as follows:

*“With regard to your references of perceived material errors of facts provided by officers to members at the committee, notwithstanding this is not the Council’s understanding, we [as officers] shall address your particular concerns either verbally at the April planning committee meeting when this application shall be considered further and/or within the updated report being written for planning committee members*

- 1.5 At the applicants/officer meeting that took place on 19 March 2019, JCB agreed upon an officer request that they would submit further details of the marketing exercise referred to in the Savills letter to market the site on behalf of JCB.
- 1.6 The marketing information documents submitted by JCB following the 19<sup>th</sup> March meeting with officers are annexed at Appendices I, J and K (at the applicants request; although they were originally submitted on a confidential basis and were marked as such). These documents were forwarded to CPV for review so as to examine the JCB contention that a high(er) density scheme would be unlikely to come forward at the reserved matters stage and thus in turn to 'test' the applicants contention that a specific affordable housing quantum could be put in the Section 106 Agreement at the outline stage. The review of the marketing information is detailed in point 2 below.

## **2. The Review of the Marketing Information**

- 2.1 As per Appendix D to the February Committee report (and also common an Appendix to this report) the applicants submitted documentation from Savills which the applicants agent (**paragraph 4.17**) advised comprised *“evidence from JCBs agents (Savills) which confirms the extensive marketing campaign for the higher density scheme which has been undertaken since May 2016 has been unsuccessful in attracting a development partner/purchaser.”*

2.2 The applicants agent therefore contended that it had effectively been demonstrated by Savills that the high density scheme would not be likely to come forward at the reserved matters stage, although in doing so that JCB were willing to offer as a clause of any Section 106 to be attached to the outline application (at either 2% or 5% affordable housing provision) with the proviso that the viability appraisal for affordable housing provision could be re-run with the reserved matters submissions (**see paragraphs 22.12-22.13**).

2.3 The officer report to the February Planning Committee (**paragraph 22.14**) advised that:

*“No supporting evidence was produced by JCB of the “extensive market testing” referred to in their agent’s letter of 10<sup>th</sup> January 2019 (as recorded in the officer report to the Committee of 22 January 2019). In respect of the applicants 19<sup>th</sup> January 2019 documentation, which included the site marketing statement prepared by Savills (as per Appendix D of the report), CPV comments that;*

- (i) *“(there is reference) to a marketing campaign which ran from May 2016 to 2018. If there was no interest during this period why did the applicant’s viability appraisal still refer to a higher density scheme as late as Summer 2018. It was only Nov 2018 when they (the applicants) indicated that a higher density scheme couldn’t be delivered. If they truly believed this was the case then they would have known by then (particularly if the marketing and been ongoing for over 2 years).*
- (ii) *The Council still have no firm details of what the marketing campaign actually entailed (in terms of who was approached, how the scheme was marketed, what the feedback was).”*

2.4 CPV thus concluded (**in paragraph 22.15**) that *“the 19<sup>th</sup> January 2019 documentation submissions are not sufficiently material to affect their previous conclusions on matters relating to viability”* (i.e. that in this particular case the Council should defer viability testing until the scheme is fully designed and thus until the reserved matters stage).

2.5 As noted in Section 1 above the marketing information referred to in the Savills letter was furnished to officers on 26<sup>th</sup> March 2019 and made available to CPV. The CPV review is attached at Appendix G.

2.6 CPV in their conclusions (on page 7 of Appendix G) state that :-

*“It is clear that formal marketing for the subject property has previously been undertaken. Furthermore, this followed a process which we consider to be in line with expectations given the nature of the scheme that was being marketed at the time in 2016.*

*However, the last marketing undertaken dates back to the summer of 2016 and in the interim period market conditions have changed. Furthermore, since this time there has also been an increased pressure from central government to optimise sites in urban locations.*

*More fundamentally, though, what was previously marketed was based on a significantly different scheme, comprising up to 257 dwellings, with unusual 4 storey dwellings and enhanced standards to a prescriptive design code (which appeared to include some ancillary uses). The current application (ref P/2017/01307) seeks less units (up to 148) is a solely residential scheme and does not seek to meet the previous costly enhanced design standards. From the information provided by the applicant it is clear that the scheme in its current guise has not been formally tested in the market place. In our view, it is therefore premature to draw any conclusions regarding whether a ‘policy compliant’ scheme can only be brought forward or whether there is an opportunity to provide a proportion of 3 storey dwellings (i.e. a higher density scheme when compared to the policy compliant scheme).*

*Having considered all of the above factors, for the purposes of the viability testing we consider that it remains appropriate to test a higher density scheme which incorporates 3 storey dwellings (based on the current proposal for up to 148 dwellings). This is because the use of 3 storey dwellings cannot, in our professional view, be discounted based on the marketing undertaken for the reasons set out above.”*

- 2.7 Essentially, therefore, CPV are again advising the Local Planning Authority that the detailed marketing information does not change their opinion that the Council should defer viability testing on Affordable Housing until the scheme is fully designed at the reserved matters stage.
- 2.8 The applicants agents (see Appendix H) in turn in correspondence of 8<sup>th</sup> April advised that they did not wish to comment further in detail on the CPV report, but did wish to make the following points :-

*“What is unarguable is that JCB instructed JLL, an international firm of standing with a specialist and recognised residential land agency team to advise it on the marketing process which has been undertaken in respect of the site. JCB has also now retained Savills, another international firm with a specialism in residential land agency, to advise on the marketing of the site moving forward. As you will be aware from the Savills letter dated 18 January 2019, they have advised in the light of the marketing and exposure of the site to date that the high density scheme is unlikely to come forward and that a policy compliant scheme is far more likely to form their basis of development delivered on the site.*

*We think the views of those two specialist firms should carry significantly more weight on marketing issues than the views of CPV who, originally appointed to advise on viability issues, now appear from the comments in their letter to also be claiming expertise in relation to residential agency, the residential market and also planning policy.”*

- 2.9 The applicants agent further points out that :-

*“The other point that CPV repeatedly fail to appreciate is that there is no policy requirement for JCB to pursue a high density scheme on this site. The Council has an approved policy in its Housing Choices SPD which sets out the housing mix/densities that development is expected to achieve to comply with policy. It is both unreasonable and unsustainable for CPV to*

*suggest that JCB should not be entitled to pursue a policy compliant scheme on the site or that JCB should only be entitled to pursue such a scheme if it is able to demonstrate to CPV's satisfaction that a high density scheme cannot be delivered."*

- 2.10 CPV maintain their position on their review of the marketing information notwithstanding the subsequent correspondence of the applicants. It is acknowledged that JCB (as an applicant) could pursue a scheme that is 'policy compliant' at the reserved matters stage in which case if they were to be the developers there would be 'little or no risk' to them in accepting the Committee resolution of February 2019 as they would be doing so on a fully informed basis. It is nevertheless understood that the site is going to be taken to open market for sale - and as such any other future purchaser/developer could seek to pursue either a high or low(er) density scheme.

### 3. Assessment

- 3.1 The various documents submitted and the salient matters raised and considered after the 19th February Committee meeting in the light of the member deferral resolution are dealt with in the remaining sections of this report below; and in the case of Appendix F will also be addressed in the Update Sheet. Otherwise, in terms of the technical planning merits of the case and the relevant consultee responses, these fundamentally remain as per that detailed in the agenda report prepared for the February Committee meeting and on its associated update sheet (both at Item 5.1A on this Agenda). The correspondence sent by the applicants to members the day before the February Committee - and included with the update sheet to that Committee - is attached as Appendix E.
- 3.2 The February Committee report also set out amongst other things the site description (in its Section 2), the planning history (Section 3) and the relevant local and national development plan policies (Section 7). The issue of affordable housing viability, including the review work undertaken by CPV, was set out in Section 22 of the February Agenda report – along with other 'Section 106 Issues' - with a further supplementary comment/assessment set out on the update sheet (both again at Item 5.1A on this Agenda). Appendix A is the correspondence of the applicant's agent to the officers dated 10th January 2019 (also previously attached as Appendix A to the February Committee report). The bracketed 'paragraph'/'section' references (**in bold**) in this report are the relevant cross references to the contents of the February Committee report.
- 3.3 Members will also recall that previously this application was withdrawn by officers from the agenda of the Planning Committee meeting of 22nd January 2019 in the light of the fact that the applicants submitted (on 19th January) documentation comprising legal advice, a statement on the marketing of the application site from Savills and supporting letters from the applicant's agents to be taken into account ahead of the Committee meeting (these documents are attached as Appendices B, C and D to this report; these references being common to the February 2019 report). The withdrawal from the January meeting enabled the Council to seek its own legal advice on the matter.

- 3.4 That necessary legal opinion was obtained prior to the February 19th Committee and confirmed that the officer (refusal) recommendation as set out in the 22 January Committee report would not have been unlawful. Further, the legal opinion advises that whilst it is usual for the level of affordable housing to be fixed at outline stage that does not mean it is necessarily unlawful to do otherwise. This opinion remains salient in the light of the applicant's submissions since the 19th February Committee resolution.
- 3.5 As was concluded in the officer report to the Committee on 19<sup>th</sup> February 2019 (**Agenda Item 5.1A - Section 23**) in overall locational terms, the scheme is considered to represent a sustainable residential development that would fully meet the housing delivery strategies set out in national and local planning policies.
- 3.6 There are also no other technical issues, including highway safety and drainage infrastructure/flood risk, which could not be dealt with successfully by way of a condition of any outline approval or a clause of a Section 106 Agreement.
- 3.7 It is also considered that the scheme would provide for the improvement of the visual amenities of this urban locality and could be accommodated without giving rise to any detrimental impact on residential amenities. The scheme would also be able to address biodiversity and ecological aims and in its provision of open space could provide much needed additional green space in this town centre environment. The re-naturalisation works to the Picknall Brook could also represent a visual enhancement to the locality as well as having ecological benefits. The scheme would not give rise to increased flood risks subject to technical mitigations.
- 3.8 The scheme could also afford an opportunity to enhance the character and appearance and setting Conservation Area - as well as the wider townscape - and to enhance the setting of listed buildings. The statutory duties under Section 66 (1) and 72 would therefore be successfully addressed.
- 3.9 In order to allow any such scheme to proceed, however, it would also be necessary to deliver associated provisions and wider off-site mitigation/infrastructure contributions as part of the developer's obligations under a Section 106 Agreement. In this respect the applicants have indicated that they are agreeable to the clauses of such an Agreement (as set out in the table in Section 22) in all respects other than affordable housing provision.
- 3.10 On this issue alone, therefore, and notwithstanding the dialogue with the applicants after the February Committee resolution, there still remains a matter of disagreement with the applicants. Specifically, the issue relates to the point in the development process at which an accurate calculation can be made of the level of the provision of affordable housing.
- 3.11 The current national guidance relating to viability appraisal information which informs reduced contributions on a particular site the National Planning Guidance sets out the government's recommended approach to viability assessment for planning. The approach supports accountability for

communities by enabling them to understand the key inputs to and outcomes of viability assessment. Any viability assessment should be supported by appropriate available evidence informed by engagement with developers, landowners, and infrastructure and affordable housing providers. Any viability assessment should follow the government's recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available. Improving transparency of data associated with viability assessment will, over time, improve the data available for future assessment as well as provide more accountability regarding how viability informs decision making

- 3.12 In respect to this application case, the applicants continue to maintain that having regard to the conclusion of their "robust" viability assessment submissions that this can be determined at this outline stage - with a 2% affordable housing allocation (of 3 No. dwellings) - as part of a 'low density' policy compliant scheme (i.e. Local Plan/SPD Housing Choice SPD dwelling composition policies).
- 3.13 It is considered, however, by CPV that a 2% affordable housing quantum on a low density scheme being put forward by JCB is not a percentage of affordable housing that can be demonstrated on the evidence submitted by JCB as being the viable quantum of affordable housing on the site.
- 3.14 Notwithstanding the applicants are maintaining that the 2% affordable housing allocation is appropriate JCB have alternatively suggested that to take into account the possibility of a high density scheme coming forward the affordable housing be set at outline stage with parameters of 2% up to a maximum of 8.7% with an offsite contribution of £625,000; these being the parameters at a reserved matters within which the Council can re-consider viability. The applicants correspondence of 8<sup>th</sup> April (Appendix H) specifically comments that :-

*"As stated in Savills letter, they consider a policy compliant scheme by far the most likely scheme to come forward. Ultimately, however, it will be the market which will determine which scheme comes forward. If a high density scheme comes forward then JCB accepts that the level of affordable housing may be different to a policy compliant scheme. The viability appraisal undertaken demonstrates for the high density scheme that affordable housing can be achieved at a level which achieves 8.7% on site with an offsite contribution of £625,000.*

*In order to provide some certainty for JCB (for the reasons outlined at our meeting) but at the same time ensure there is flexibility to cater for whichever scheme comes forward, we propose that a range of affordable housing for the site is set at the outline stage. This is an approach which has been used by the Council elsewhere. That range would be between 2% and 8.7% on-site provision plus £625,000 off-site contribution reflecting the policy compliant scheme and the high density scheme. The range would set the lower and upper parameters for the level of affordable housing to be provided by the site. That could be set out in a section 106 agreement.*

*We would also propose that the section 106 agreement provides that if the policy compliant scheme comes forward then the affordable housing will be*

*set at 2% but that for any scheme proposing a higher density then the affordable housing will be determined at the reserved matters stage within the approved range.*

*We would welcome the opportunity to discuss this proposal with officers with a view to enabling the application to be reported back to the April Committee with a positive recommendation”*

- 3.15 The request made in the correspondence of 8th April 2019 (Appendix H) by the applicants agent to hold a further meeting with officers to discuss their (most recent) amended proposed affordable housing consideration' is noted. However, notwithstanding JCB's determination to fix the affordable housing quantum at outline stage at 2% or parameters, neither can be taken on board by the Council due to the viability evidence submitted to demonstrate the decrease in any affordable housing contribution.
- 3.16 The fundamental concern highlighted by CPV is that in this particular case the Council should defer viability testing until the scheme is fully designed - and thus until the reserved matters stage - because the applicants in changing their design approach from one of a high density scheme to a lower density scheme during the viability assessment process have essentially demonstrated that a higher density scheme can generate a higher level of affordable housing when compared to a lower density scheme. It is of course, also the case that since their previous advice on taking this approach that CPV have been able to review the marketing information (referred to in the Savills letter) in relation to be which it is concluded (by CPV) that it does not demonstrate that the Council can reasonably rule out the possibility of a high(er) density being brought forward at the reserved matters stage.
- 3.17 Further, in addition to finalising density, a reserved matters submission will also mean that dwelling mixes/types will be available, that construction costs will be better known and that any abnormal costs (such as foundation construction requirements) can be more readily understood. It is also pointed out that a grant of outline planning permission for this application would allow this specific application to be marketed with the security that any prospective purchaser would be aware of the known planning conditions and the other Section 106 requirements (where these have been agreed between officers and the applicants). Further, whilst there will be a need for further viability work/testing work to be done at the reserved matters stage these deliberations will be informed by the work already done on that matter as part of the current outline application. The marketing/development of this current site would also involve land wholly in the applicant's ownership; which was not the case when the earlier scheme (approved in 2014) for the larger site was being marketed with its detailed design code in 2016-2018.



#### 4. Conclusion

- 4.1 It is therefore considered that there have been reasonable endeavours on behalf of officers to engage with the applicants to seek to secure the agreement of the applicants to accept - as per the February Committee resolution - an outline approval with the issue of final affordable housing levels being deferred for resolution under the Section 106 Agreement as part of any reserved matters application. This has, however, not been possible for the reasons set out above.
- 4.2 In the light of the circumstances that prevail therefore, and whilst the benefits of the development scheme are clearly acknowledged and recognised in terms of bringing forward sustainable new housing and open space in the centre of Uttoxeter on a brownfield site (as set out in this report and that of February 2019), on balance this application is being **recommended for refusal** solely as being contrary to the requirements of Local Plan Policy SP17 and Policy H2 of the 'made' Uttoxeter Neighbourhood Plan. Specifically, it is concluded in this instance that the applicants are not in a position at this outline stage to demonstrate that the allocation of a level of affordable housing set out in their agents correspondence of 8<sup>th</sup> April 2019 (Appendix H) is an appropriate and commensurate level of provision in relation to the development of this site.
- 4.3 Notwithstanding the above recommendation, the applicants have been advised - by officers and Committee - that if they agree to change their stance and accept a clause in a Section 106 at this outline stage to defer the agreement on affordable housing levels to the reserved matters stage then the recommendation would be one of conditional approval. Officers have of course re-iterated this offer further to the Committee resolution of 19<sup>th</sup> February. As members have previously been advised officers also furnished the applicants with a draft list of conditions for their comment that would be attached to any grant of outline planning permission (and in terms of the conditions themselves, it is pointed out in the discussions that have taken place further to the February Committee meeting the applicants have indicated that they had no comments to make on technical grounds).
- 4.4 **RECOMMENDATION - THAT OUTLINE PLANNING PERMISSION BE REFUSED FOR A SCHEME WITH A PROPOSED PROVISION OF AFFORDABLE HOUSING AT A LEVEL/WITHIN THE PARAMETER LEVELS AS SET OUT IN THE APPLICANTS AGENTS LETTER OF 8<sup>TH</sup> APRIL 2019 FOR THE DEVELOPMENT OF THE SITE FOR THE FOLLOWING REASON :-**

The National Planning Policy Framework (in Section 5) expects Local Planning Authorities to address the need for all types of housing, including affordable housing. Strategic Policy 17 (Policy SP17) of the East Staffordshire Local Plan, Policy H2 of the 'made' Uttoxeter Neighbourhood Plan along with the guidance set out in the adopted Housing Choice Supplementary Planning Document (2016) all respond to this requirement in seeking that affordable housing provision is made at an appropriate and commensurate level on any application scheme for residential development in Uttoxeter.

In respect of the current application scheme, and further to a review of the affordable housing viability submissions of the applicants and associated documentation, it is concluded that the applicants are not in a position at this outline stage for this particular site to demonstrate that the provision of affordable housing as per the details set out in the applicants agent letter of 8<sup>th</sup> April 2019 on the site is an appropriate and commensurate level of provision for the development of the application site. As such the determination of this outline application with a affordable housing provision as per the applicants agent letter of 8th April 2019 is considered to be contrary to Policy SP17 of the East Staffordshire Local Plan, Policy H2 of the 'made' Uttoxeter Neighbourhood Plan and the guidance set out in the adopted Housing Choice Supplementary Planning Document (2016).

## **5. Background papers**

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

- The Local and National Planning policies outlined in Section 7 of the officer report to the Planning Committee of 19<sup>th</sup> February 2019
- Papers on the Planning Application file reference P/2017/01307
- Papers on the Planning Application file reference P/2014/00969 and the associated discharge of condition application files.
- Papers on the Planning Application file reference OU/05254/018

## **6. Human Rights Act 1998**

6.1 There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these potential issues are in this case amply covered by consideration of the environmental impact of the application under the policies of the development plan and other relevant policy guidance.

## **7. Crime and Disorder Implications**

7.1 It is considered that the proposal does not raise any crime and disorder implications.

## **8. Equalities Act 2010**

8.1 Due regard, where relevant, has been had to the East Staffordshire Borough Council's equality duty as contained within the Equalities Act 2010.

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