

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 11 March 2009**

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<b>APPLICATION REF. NO:</b>	<b>07/00388/FUL</b>
<b>STATUTORY DECISION DATE:</b>	<b>12 July 2007</b>
<b>WARD/PARISH:</b>	<b>LINGFIELD</b>
<b>LOCATION:</b>	<b>Land off Heron Drive</b>
<b>DESCRIPTION:</b>	<b>Erection of 48 Two Storey Dwellinghouses</b>
<b>APPLICANT:</b>	<b>McInerney Homes</b>

**APPLICATION AND SITE DESCRIPTION**

The site which extends to some 1.3 hectares of land lies to the rear of the Yarm Road Local Centre. It is bounded by the Iceland and Aldi stores to the south and residential development to the east and west. An area of public open space also adjoins the eastern boundary of the site. Heathfield Primary School abuts the northern boundary of the site. Formerly a builders yard, the site has been vacant for a number of years. It is overgrown with large areas of coarse grass, scrub, brambles and several seedling trees. Piles of building material are also scattered around the site. The site is flat and there are no discernable differences in ground levels with adjoining properties.

This is a full application for the erection of 48 two storey dwelling houses. Forty four of the dwellings would be detached comprising 26 three bedroom houses and 18 four bedroom units. The remaining four houses would consist of 2 pairs of 3 bedroom semi-detached properties.

The submitted scheme also provides for additional two off street parking spaces adjacent to Phoenix Court.

Access to the land would be via Heron Drive.

The development is one that falls within the thresholds set out in Schedule II of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI/1999/293) (the "1999 Regulations). As required by the 1999 Regulations, the Local Planning Authority is required to adopt a formal opinion as to whether an Environmental Impact Assessment (EIA) is required for the development. This process has been undertaken and, having taken into account the criteria set out in Schedule 3 to the 1999 Regulations, the LPA has determined that the proposal does not constitute EIA development.

## **PLANNING HISTORY**

There is a long planning history to the site only the most recent entries of which are included below:-

91/703 – In December 1991 planning permission was granted for the erection of a food store (1,300 m<sup>2</sup>) and frozen food store (790 m<sup>2</sup>) – in detail – and residential development (in outline) at the former Edgar Lawson Company premises in Yarm Road. This planning permission has been partially implemented, in that the food stores have been erected (the Aldi/Iceland stores which front onto Yarm Road).

92/537 – In February 1993 permission was granted for a variation of condition (xxvi) of 91/703 to enable the condition to be split between the retail development and the residential development in respect of carrying out and investigation regarding landfill gas problems.

94/869 – Variation to Condition (xix) of 91/703 to extend the time period for the submission of reserved matters in respect of residential development was refused in April 1995.

91/703/RM1- A reserved matters application for the erection of 48 No. dwellings under planning permission 91/703/OUT was submitted in January 2007 which was subsequently withdrawn in April 2007 and replaced with the current application.

## **PLANNING POLICY BACKGROUND**

The starting point for considering the proposal is the statutory development plan. The relevant parts in respect of the proposed development are as follows:-

### **The North East of England Plan Regional Spatial Strategy (RSS) to 2021**

- Policy 2 - Sustainable Development
- Policy 4 - Sequential Approach to Development
- Policy 7 - Connectivity and Accessibility
- Policy 24 – Delivering Sustainable Communities
- Policy 30 – Improving Inclusivity and Affordability
- Policy 38 - Sustainable Construction
- Policy 54 - Parking and Travel Plans

### **Borough of Darlington Local Plan 1997**

- E2 – Development Limits
- E29 – The Setting of New Development
- E17 – Landscape Improvements
- E46 - Safety and Security
- E47 – Contamination and Unstable Land and Development
- H3 – Locations for New Housing Development
- H4 – New Housing Development In and Around the Town Centre and Other Centres

H11 – Design and Layout of New Housing Development  
R4 - Open Space Provision  
R6 - Open Space Provision in New Housing Development  
T12 – New Development – Road Capacity  
T13 – New Development –Standards  
T24 – Parking and Servicing Requirements for New Development

### **Government Planning Policies**

PPS3 - Housing  
PPS23 - Planning and Pollution Control  
PPS25 - Development and Flood Risk

The following documents are also relevant: -

### **Darlington Open Space Strategy 2007 -2017**

#### **Supplementary Guidance Notes -**

- Affordable Housing; and
- Commuted Sums from New Housing Developments for existing Equipped Play Areas

### **RESULTS OF CONSULTATION AND PUBLICITY**

Ten letters of objection and two letters of representation have been received from local residents and the following issues have been raised:

- Loss of privacy
- Overlooking
- Loss of light
- Increase in traffic, which would exacerbate existing congestion problems on the surrounding road network and would be hazardous to other highway users including pedestrians.
- An additional access road into the site should be considered
- Far to many houses, why not bungalows?
- I do not want houses to the rear of my bungalow
- The land is contaminated
- The existing concrete boundary wall should be retained
- Loss of wildlife habitat
- Potential flooding of adjacent garden areas if the site is developed
- There is already a problem with the existing drainage network in the area, which has led to localised flooding around the Teal Road/Heron Drive road junction. The proposed development could make this worse. Consequently the existing drainage problem should be resolved first.
- The path behind the garages would attract kids and make it unsafe.
- Devaluation of existing properties.

**Campaign to Protect Rural England** has objected to the development on the following grounds: -

- Overdevelopment
- Limited car parking. Little or no provision for visitors.

**Northumbrian Water**

No objections are raised to the development.

**Environment Agency**

The Agency had originally objected to the scheme on the grounds of lack of information with the application to enable them to make a satisfactory assessment regarding flood risk. Following the submission of further details by the applicant this objection has been withdrawn. However the Agency has requested a condition in respect of surface water drainage.

**CE Electric UK**

CE Electric UK has raised no objections to the proposed development.

**Durham Constabulary Architectural Liaison Officer**

No observations are made to the proposal.

## **PLANNING ISSUES**

The location of the development and its status as previously developed land makes it generally acceptable for housing development in policy terms. In addition it is within the urban area on land not safeguarded for any particular use in the Local Plan and as such it is supported by Policy H3.

The surroundings are predominantly residential and the site is close to the Yarm Road local centre. It is also relatively close to the key employment area at Yarm Road and, in this regard is seen as being in an area with reasonable linkages both to employment areas and the local centre whilst reasonably close to a main travel route. Locationally therefore the site is considered to be sustainable and its development for housing is supported in PPS3.

Local Plan policy E17 identifies this site as a location for landscape improvement, this was on the basis that housing development would be unlikely be achieved. Members may be familiar with the outstanding issues of landfill gas and ground contamination on the site. Borehole testing for landfill gas and has been taking place since the original planning permission was granted in 1991.

Previous information indicated that given the production of significant levels of gas, the use of the land for residential development was in doubt. Hence the decision, taken in April 1995, to refuse permission to extend the time limit for the submission of reserved matters in respect of the original permission. The Public Protection Division of the Council is now satisfied that issues affecting housing development can be effectively remediated, and consideration can be given again to the possibility of housing development on the site. Policy E17 looks to positively influence the condition of a site, but it does not seek to safeguard those sites in the interests of securing them solely for tree planting, landscape creation and wildlife habitat creation. In this

regard if housing is established as a possible approach to the site's reclamation, it may be acceptable.

Requirements of the Darlington Open Space Strategy would normally be applied when considering development such as this. However the application predates the adoption of the Strategy and therefore it would be inappropriate to retrospectively apply the policies contained within it.

### *Affordable Housing*

The Borough of Darlington Local Plan defines affordable housing as housing designed for those whose incomes generally deny them the opportunity to purchase houses on the open market as a result of the local relationship between income and market price.

Under the provisions of the Affordable Housing Supplementary Planning Guidance (SPG), the site falls in the south east sub area within the Lingfield Ward the demand for affordable housing is considered to be moderate. The affordable housing target for this development would be 15% of the total number of units. However the SPG states that in exceptional circumstances this requirement may be reduced or waived if the applicant can demonstrate that there are exceptional unforeseen costs that taken together with the provision of affordable housing set out in the SPG, would make the development unviable. In this particular instance the applicant has provided financial evidence to indicate that the remediation measures which are necessary to make this contaminated site developable for residential purposes would make the development unviable. The costs have been independently assessed by the Council's consultants who have confirmed this to be the case. Officers are therefore satisfied that the requirement to provide an element of affordable housing should be waived in this instance.

### **Design and Appearance**

The surrounding area is generally characterised by single and two storey semi-detached dwellings. The residential area which adjoins the site to the east has its origins in the mid 1960's and comprises mainly of two storey semi-detached houses and dormer bungalows. Whereas to the west the site is bounded by pre-second world war semi-detached bungalows.

The proposed dwellings are two storey in height and are to be constructed of brick with tiled roofs and therefore in terms of both their scale and constructional materials would fit comfortably within the surrounding built environment. Overall the Council's Urban Design Officer is satisfied with the proposed scheme.

### **Residential Amenity**

Policy H11 (Design and Layout of New Housing Development) sets out a number of criteria against which new housing development must be assessed, which relate to the need to provide an attractive and safe environment, adequate privacy standards in rooms and gardens, the relationship of the proposed dwellings with existing dwellings, car parking standards and safe pedestrian access.

In terms of the relationship with the bungalows in The Byway, which back onto the western boundary of the site, a minimum back to back distance of approximately 26m is provided between the existing properties and the proposed dwellings which extend along this boundary. This is considered to be a satisfactory separation distance to safeguard both the privacy of

existing occupiers and also future residents of the proposed dwellings. Similarly there is unlikely to be any material harm caused to the amenities of existing properties by way of loss of light or overbearing impact.

A number of properties in Heron Drive also back onto part of the southern boundary to the site, which are likely to be affected to some degree. The minimum separation distance afforded between the rear facing elevations of the respective dwellings in all but one instance meets the normal 21m privacy distance requirement. The one exception provides a separation distance of approximately 20m. Whilst this is marginally below the normal requirement the proposed dwelling would be set at a slightly oblique angle to existing properties and therefore direct overlooking of facing windows is unlikely to result in an unacceptable loss of privacy. Overall the relationship between the existing and proposed dwellings is acceptable. The remainder of the proposed dwellings near the southern site boundary either adjoin or face towards the service yards of the Iceland/Aldi stores.

The eastern boundary of the site, for most of its part, abuts an area of open space and therefore no residential amenity issues are likely to arise. Only in the top north eastern corner of the site is there a relatively close relationship with existing properties in Shearwater Avenue. In this instance there is a relationship of rear elevations of proposed dwellings facing the gable ends of those in Shearwater Avenue, the nearest of which would be approximately 27m away. Again there is unlikely to be any undue harm caused to the amenities of existing residents here.

Proposed dwellings along the northern boundary back onto the playing fields of Heathfield Primary School which provide a significant buffer for existing properties further to the north to such an extent that they would not be affected.

### **Contamination**

Part of the site is situated on a former clay pit which according to records held by the Council's Public Protection Division was infilled by 1969 reportedly with earth spoil, granular fill and household waste and capped with earth. A further infilled pit lies immediately to the south of the site.

As mentioned earlier in this report landfill gas monitoring and ground investigation has been carried out on the site and adjoining land at various times since the early 1990's, by a number of environmental consultants which indicated that significant levels of gas were being produced to question whether the site was capable of being developed for residential purposes.

Initial information submitted with the current application was insufficient for the Principal Environmental Health Officer (Pollution) to be convinced that the site was now fit for residential development. However following long and protracted discussions with the applicant further, and more extensive gas monitoring has been undertaken and a subsequent Gas Risk Assessment report submitted indicating that the site is capable of being remediated to allow the development to precede and that such remediation measures will include passive venting. The Council's Principal Environmental Health Officer (Pollution) is satisfied with the general findings of the report subject to the imposition of a condition requiring details of the remediation scheme to be submitted should approval be granted for the development. In addition a condition is sought to remove Permitted Development rights from the dwellings to ensure that any future extensions, garages etc. incorporate gas protection measures.

**Drainage**

A number of objectors to the scheme have expressed concerns with regard to the potential for off site flooding problems, including rear garden areas. Both Northumbrian Water and the Environment Agency have been consulted on the issue. Neither have objected to the scheme based upon the potential for flooding. Following the precautionary approach however, the applicants have submitted a Flood Risk Assessment (FRA) for the development in line with Planning Policy Guidance Note 25 (Development and Flood Risk). The assessment fully considers the impact of surface water drainage from the site. The Environment Agency has however requested details of a surface water drainage system to be submitted including means by which run-off will be attenuated. This issue can be covered satisfactorily by condition.

**Trees**

There are no trees within the site of any significant visual value. However there are a number of trees within the grounds of Heathfield School to the north of and close to the site boundary which potentially could be affected during construction work. To limit possible damage to their root plates it would be prudent to attach a condition requiring protection measures to be in place prior to the commencement of development.

**Highway Implications**

Vehicular access would be from Heron Drive in accordance with the planning brief when the original outline application was approved in December 1991. The Council's Highways Engineer is satisfied with the general layout of the scheme including car parking provision which accords with adopted standards. However, he has stated that the site will be required to be a 20mph zone. The developer has agreed to fund the associated signage and legal/advertising costs for putting this zone in place, which will need to be secured through a 106 Agreement.

**Other Matters**

The issue raised by objectors that the proposed development may have a negative impact on the value of existing properties is not a material planning consideration.

**SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

**CONCLUSION**

The site lies within the defined development limits for the urban area. The application site lies within development limits identified in the development plan. The design and layout of the development accords with the relevant policy in the development plan. The development respects the amenity and general character of the area. It would not adversely affect the amenities of neighbouring occupiers and the application satisfactorily addresses issues of contamination and flooding and is not considered to raise any issues in relation to car parking provision, highway safety or crime prevention.

**RECOMMENDATION**

THAT THE ASSISTANT CHIEF EXECUTIVE (REGENERATION) BE AUTHORISED TO NEGOTIATE AN AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 TO SECURE THE FOLLOWING:

1. A financial contribution towards the upgrading and maintenance of an off site equipped play area in accordance with supplementary planning guidance.
2. A financial contribution towards the provision of a 20 mph. Zone.

THAT UPON SATISFACTORY COMPLETION AND SIGNING OF THAT AGREEMENT, PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS

1. A3 – Implementation Limit (Three Years).
2. B4 - Details of Materials (Samples).
3. B5 - Detailed Application
4. B9 - Fencing, Walls, Enclosures
5. E2 - Landscaping (Submission)
6. E11- Tree Protection
7. Notwithstanding the provisions of the Town and Country Planning (General Development) Order 1995 (or order revoking or re-enacting that Order) no development within Schedule 2, Part1, Classes A to H and within Schedule 2, Part2, Classes A and B of the Order shall take place without the prior written consent of the Local Planning Authority, to whom an application must be made.

REASON- The site may be contaminated as a result of past uses and /or is within 250 metres of a site which has been landfilled and the Local Planning Authority wishes to ensure that any future development can be carried out with adequate regard to environmental and public protection.

8. Development shall not begin until a detailed remediation scheme to deal with contamination of the site and bring the site to a suitable condition for the use hereby approved has been submitted to and approved in writing by the Local Planning Authority.
  - A) The above scheme shall include:-  
A Remediation Action Plan based upon the GeoEnvironmental Appraisal reports Gas Risk Assessments submitted as part of the planning application. This shall include an Environmental Management Plan showing how contamination (in soil, aqueous, gas or vapour form) will be managed during the development without causing harm to human health or the environment both during construction and once



the site is developed. The Remediation Action Plan shall be written in accordance with a protocol which shall be submitted to and approved by the Local Planning Authority.

- B) The Remediation Action Plan shall be fully implemented (either in relation to the development as a whole, or the relevant phase, as appropriate) in accordance with:
- i) An implementation plan submitted to and approved in writing by the Local Planning Authority.
  - ii) A monitoring and maintenance plan submitted to and approved in writing by the Local Planning Authority .
  - iii) A strategy to deal with unforeseen contamination discovered during the development submitted to and approved in writing by the Local Planning Authority.
  - iv) A “validation strategy” and verification report validating the works undertaken as a result of the implementation plan, monitoring and maintenance plan and strategy to deal with unforeseen contamination submitted to and approved in writing by the Local Planning Authority.
- C) Unless otherwise agreed in writing by the Local Planning Authority development shall not commence until the measures approved in the remediation scheme have been fully implemented and completed.
- D) The approved Remediation Scheme shall be carried out in accordance with the agreed remediation action plan, implementation plan, strategy to deal with unforeseen contamination and validation strategy, no alteration to the approved remediation scheme must be made without the prior approval of the Local Planning Authority.

REASON:- To ensure that a satisfactory strategy is put in place for addressing contaminated land, making the land suitable for the development hereby approved without resulting in risk to construction workers, future users of the land, occupiers of nearby land and the environment generally.

9. No development shall take place until the Local Planning Authority has approved in writing a report provided by the applicant identifying how the predicted CO<sub>2</sub> emissions of the development will be reduced by at least 10% through the use of on site renewable energy equipment. The carbon savings, which result from, this will be above and beyond what is required by Part L Building Regulations. Before the development is occupied the renewable energy equipment shall have been installed and the Local Planning Authority shall be satisfied that their day to day operation will provide energy for the development for as long as the development remains in existence.

REASON: To limit the energy requirements of the development in accordance with the Regional Spatial Strategy; PPS1 – Delivering Sustainable Development; PPS22 – Renewable Energy and emerging government guidance on climate control.

10. Prior to the commencement of the development, a Dust Action Plan shall be submitted to and approved by the Local Planning Authority. The development shall not be carried out otherwise than in complete accordance with the approved details.

REASON: In the interests of residential amenity.

11. Details of the piling method including justification for its choice, means of monitoring vibration and groundwater risk assessment if necessary in accordance with recognised guidance shall be submitted and approved in writing by the Local Planning Authority prior to the commencement of development and the development shall not be carried out otherwise than in accordance with the approved details.

REASON: To safeguard the amenities of adjoining and neighbouring residents

12. The development hereby approved shall not be commenced until sectional details showing existing and approved ground levels for the proposed buildings and the neighbouring gardens and dwellings have been submitted to and agreed in writing with the Local Planning Authority.

REASON: In order to ensure a satisfactory form of development.

13. No development shall proceed until details of a surface water drainage system including the means by which run-off will be attenuated to 50l/s have been agreed in writing with the Local Planning Authority. The system shall be installed and operational prior to the construction of any impermeable surfaces draining to that system. The system shall be maintained for the lifetime of the development.

REASON: To reduce the risk of flooding elsewhere

## **SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION**

The application site lies within development limits identified in the development plan. The design and layout of the development accords with the relevant policy in the development plan. The development respects the amenity and general character of the area. It would not adversely affect the amenities of neighbouring occupiers and the application satisfactorily addresses issues of contamination and flooding and is not considered to raise any issues in relation to car parking provision, highway safety or crime prevention. Therefore the proposed development is considered to comply with the policies in the development plan and Government planning policy set out below: -

### **The North East of England Plan Regional Spatial Strategy (RSS) to 2021**

- Policy 2 - Sustainable Development
- Policy 4 - Sequential Approach to Development
- Policy 7 - Connectivity and Accessibility
- Policy 24 – Delivering Sustainable Communities
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**Borough of Darlington Local Plan 1997**

E2 – Development Limits  
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**Government Planning Policies**

PPS3 - Housing  
PPS23 - Planning and Pollution Control  
PPS25 - Development and Flood Risk

**INFORMATIVE TO BE INCLUDED SHOULD PLANNING PERMISSION BE GRANTED**

The applicant is advised that works are required within the public highway and contact must be made with the Highways Manager (contact Mr A Ward 01325 388743) to discuss this matter.

The applicant is advised that the site must be a 20mph zone and contact must be made with the Highways Manager (contact Ms. B. Bowles 01325 388774) to discuss this matter.

The applicant is advised that contact must be made with the Highways Manager (contact Mrs P Goodwill 01325 388760) to discuss naming and numbering the development.

The site lies in an area where geological assessment should be carried out to establish whether the site is affected by Radon Gas. You are therefore recommended to contact British Geological Survey to obtain a Radon Protection Measures Site Report before proceeding (tel. no 0115 9363143). The Council's Building Control Section and Public Protection Section can also provide general advice on this matter.