

**ADVANCE SUPPLEMENTARY REPORT**  
**TO THE PLANNING COMMITTEE**

**26<sup>th</sup> April 2016**

**Agenda item 4**

**Application ref. 15/01106/REM**

**Land at end of Gateway Avenue, Baldwin's Gate**

Since the preparation of the agenda report, a letter has been submitted jointly by **Baldwin's Gate Action Group (BGAG) and Whitmore Parish Council**. A summary of the comments on the Applicant's Technical Note and revised plans is as follows:

- Although the Applicants offer some small improvements to address the issues raised, it falls well short of that required to both justify and explain the reasons for the current design and layout, nor does it answer the majority of concerns of Members who participated in the debate.
- The Masterplan referred to by BGAG in their previous comments on density is the same as that published by the applicant in their Design and Access Statement and displayed at the public consultation event. That the applicant and their agent could have published the wrong plan so many times and in so many different places reinforces the lack of confidence in them.
- More information is required on planting easements around the storm water storage tanks before a decision is made as it could require changes to be made to the planting plans
- There should be wider gaps between the trees opposite the street ends so as to afford wider views into the open countryside
- The greater focus of tree planting should be in the streets and public open spaces rather than gardens with more street trees on the southern side of the site and on the mews street
- Part of the Public Open space at the north-eastern end of the site should be planted as a community orchard
- A suitable replacement oak tree should be planted in place of the dead oak tree on the south-western boundary
- There should be no more than 6 dwellings in the block adjacent to Gateway Avenue and Hillview Crescent with the removal of plots 4-7. This will allow appropriate separation distances and avoid negative impact on residential amenity and the streetscene.
- There should be greater separation distances from The Croft, Green Nook (on Sandyfields) and 14, Gateway Avenue
- The 2-storey terrace (plots 5, 6 & 7) should be removed from what should be a single storey area in the north-east of the site identified in the outline application
- The 2-storey house in what should be a single storey area in the south-west of the site should be replaced with a bungalow
- Policy on affordable housing is set by the Council, not by Registered Social Landlords. The affordable housing units should be more widely dispersed rather than as in the case of plots 29-33 currently isolated from the rest of the development
- The Village Design Statement is planning policy and its guidance regarding design should be respected. The applicant should steer away from the unsuitable suburban architecture of the submitted designs and adopt a mix of designs, materials and finishes that is more in keeping with its location adjoining the Sandyfields and Gateway estates and with the majority of the village.
- The Lakeside and Fairgreen Road developments should not be taken as a pattern to justify the current style and appearance of the proposal
- The applicant has demonstrated a complete failure to understand the difference between an urban/suburban development and the informality of a rural village environment

- The applicant has provided insufficient information in response to the Planning Committee's concerns regarding the health and safety aspect of the swales. A planning condition should be attached requiring the developer to produce a risk assessment relating to the safety of the proposed swales, bearing in mind the close proximity of them to the children's play area
- The LED street lighting proposed will be especially inappropriate on the north-western perimeter of the site and full consultation is essential, including with local residents and residents of Madeley Park Wood and Whitmore Heath
- A full street lighting scheme, with plans and technical information should be submitted as part of the present application, together with details of locations where similar lighting has been installed
- It is essential to reinstate the footpath through the public open space. The absence of a footpath presents a significant safety issue for pedestrians. It is also essential to provide access and promote the recreational use of this space and this should include footpaths between the swales to the north west boundary.
- The Highway Authority has accepted the proposed plans but neither the issue of safety to persons nor that of road safety in general is referred to
- For both personal safety and public access reasons no trip rail or other kind of fence should be erected between the highway and the public open space
- The upgrading of the Public Right of Way (PRoW) alongside the railway is absolutely essential to the sustainability of the development. It is a highway safety issue as well (enabling people to avoid having to walk along the A53 and therefore is a material planning consideration.
- The Parish Council and the local community were excluded from consultation on the Section 106 at the public inquiry and had they been permitted to participate, improvements to the PRoW would have been first on the list. This omission and injustice to the local community should be rectified now.
- In view of the fact that the applicant and their agents have resisted contact with and refused all approaches by the Parish Council and residents, it is absolutely essential that a planning condition be imposed requiring the formation of a liaison committee.

**Whitmore Parish Council** has submitted further comments. They state that in addition to their joint representation with Baldwin's Gate Action Group (BGAG) they wish to add further emphasis on two of the issues which it has particular concern about. These are as follows:

- Representatives of both BGAG and the Parish Council have made requests to meet with the developer to discuss and hopefully resolve some of the issues of concern but there has been no response at all. This confirms that a formal liaison committee is absolutely essential and it is suggested that the Committee should be required to meet monthly and should involve representatives of BGAG/the Parish Council and the developer with a senior planning officer to chair.
- Although in their Technical Note the developer refers to a local pond in Baldwin's Gate which is protected by a knee rail and is felt safe for residents, on this site the swale would be in close proximity to a children's playground which is not the case with the local pond referred to. There is a risk that adventurous toddlers may see it as a 'paddling pool'.

**Baldwin's Gate Action Group** (BGAG) has sent a letter to all members of the Planning Committee listing the harms that it is believed would be caused and the reasons why it is believed that the application should be refused. The harms are already listed in the representations section of the agenda report but the suggested reasons for refusal are as follows:

1. Non-compliance with condition 4 of the Inspector's appeal decision
  - 2-storey buildings located in areas designated for single-storey buildings
  - Isolation of some of the affordable homes and no attempt to create a mixed and integrated community by seamlessly integrating and distributing the affordable housing throughout the community, contrary to the Affordable housing SPD

- Changes to the public open space obstructing access to and use of the area and rendering the purpose and intended use of the space unclear
2. Layout and density of building design, visual appearance and finishing materials
    - Overlooking and loss of privacy at certain locations
    - Inadequate separation spaces between existing and proposed dwellings at certain locations
    - Urban design incompatible with the adjoining estates and the rural village environment of Baldwin's Gate
    - Materials and finishes incompatible with the distinctive and highly varied local architectural vernacular of the adjoining estates
  3. Safety matters
    - Danger to pedestrians from vehicle accesses onto the informal shared surface on the north-western side of the site
    - Absence of proposals to upgrade the existing Public Right of Way
    - Absence of safety measures around the swales in the public open space

The **Applicant's Agent** has submitted the following response to the most recent comments of Baldwin's Gate Action Group and Whitmore Parish Council.

#### Outline Masterplan

They have reviewed the Masterplans shown in the Design and Access Statement (and used in the exhibition boards) and unfortunately they are the Masterplans showing a scheme of 117 dwellings. That is a drafting error on their part and they apologise for any uncertainty this has caused. However the text in the Statement clearly refers to an outline scheme of 113 dwellings and the entire reserved matters submission is predicated on a maximum number of 113 dwellings. This is the basis on which Officers have considered the application. The reserved matters details presented clearly accord with the correct Masterplan. Consequently, the density assessment undertaken in the Technical Note provided by Kier on 8<sup>th</sup> April is accurate as that is based on the correct Masterplan.

#### Tree Planting

The planting easement referred to on the drainage drawings is not based on any statutory requirement or minimum distance. It is simply a general maintenance requirement to keep planting away from the storage tanks to prevent root ingress into the crates. Root barriers can be used as an additional safeguard but generally, the following principles are followed:

- There is no statutory requirement for an easement; this is simply a general guidance note
- It is acceptable to plant shrubs directly above the tanks, provided there is a 1m cover
- Trees may be planted within 2m of the tanks with a suitable root barrier

The positioning of trees shown on the detailed landscape proposals has been fully co-ordinated with the site's proposed drainage layout. The trunk locations of all trees avoid all underground drainage storage tanks and pipes. Where trees are positioned within 2m of the storage tank, the tank will be lined with a root protection barrier to match the same depth as the drainage feature. This will remove the risk of potential root damage to the drainage feature.

The request for a Community Orchard is a new request but nevertheless, Kier are agreeable subject to the Council's Landscape Officer raising no objections. A condition requiring further details on the substitution and species detail of trees would seem to address this. To be clear, any fruit trees on that part of the site would be in lieu of those shown on the submitted drawings and not in addition. Furthermore, Kier would not be prepared to accept any ongoing maintenance liability for the orchard fruit trees and any provision would need to be managed informally by the Parish Council.

Kier are agreeable to a replacement oak tree within the garden of Plot 95 and are happy to accept a condition to this effect.

#### Improvements to the Public Right of Way

Kier have concerns regarding a possible condition requiring the improvement of the Public Right of Way (PRoW) between the easternmost point of the site and the A53. Firstly, it was not deemed necessary at the outline stage and furthermore, PPG advises that the only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters, in this case, layout, appearance, scale and landscaping. Any off-site works or improvements are clearly outside the scope of this reserved matters application. There is also concern as to whether any such condition requiring works to a footpath which is not within the control of the applicant would be reasonable or enforceable. If not, they would not meet the statutory tests for the imposition of conditions. The land in question is outside the application site boundary and not within the control of Kier. For these reasons, they content that it is inappropriate for the Council to revisit matters which should have been addressed at the outline stage (and appropriate off-site contributions sought if necessary) at that time and would resist the imposition of such a condition at this late stage.

One further **representation** has been received from the occupier of No. 14, Gateway Avenue, and a summary of the objections raised is as follows:

- There has been an unwillingness of the developers or their agents to really engage with existing occupants. "Public consultation" days did little to achieve a satisfactory result.
- There has been a change in density in the block adjacent to Gateway and Hillview Crescent which will have a severe detrimental impact on properties adjoining the development including that of the writer.
- Although the indicative layout in the outline application provided adequate separation to adjacent houses, in the new proposal the gable end of a two-storey house is adjacent to a lounge window resulting in an oppressive outlook and deprivation of light from the main lounge.
- Although the largest lounge window is undoubtedly to the front, the blind on that window remains down and fairly closed to offer privacy. The focal window of the room, the one with the outlook and the one most used, in other words, the first in order of importance, the main, or the principal window is the one on the side.
- Members, officers and representatives of the developer are invited to visit the house to assess the impact.
- The writer accepts that he is unable to insist on no house next to the window but believes that it is the Council's role to ensure that new developments do not cause undue harm to neighbouring residents.
- In respect of No. 14, Gateway Avenue, Members are asked to refuse this application because the developers have been made aware of these concerns on many occasions and there is no doubt that it is their intention to totally ignore the conditions stated in the appeal decision. The Inspector was very particular to put in place conditions which would protect the community and adjacent properties and he insisted on the new plans complying with the principles in the original Design and Access Statement, one of which was "Carefully position new housing blocks so that generous building separation distances are achieved to respect adjacent houses".
- The owners of The Nook and The Croft in Sandyfields and to some extent No 11, Hillview Crescent must also be in the same position.

#### Your Officer's comments

Many of the issues raised above are considered fully in the agenda report and it is not thought necessary to consider them again now. These are namely layout and design, materials, affordable housing, health and safety of the swales, street lighting and the establishment of a liaison committee.

Regarding the planting easement around the storm water storage tanks, your officer is satisfied that the landscaping can be accommodated in this location and that no reduction in the planting will be required. Members will note the detailed response provided by the applicant on this point

Although BGAG and the Parish Council state that they would like to see wider gaps between trees opposite the street ends, the landscaping does have quite substantial gaps at these points which would allow views into the wider countryside.

The Council's Landscape Development Section has advised that there would be space for some limited additional tree planting within the streets and it is considered that this could be required by condition. Similarly, Kier have confirmed that they are agreeable to a replacement oak tree on the south-western boundary of the site and this could also be required by condition.

Kier are agreeable to the request for a Community Orchard, subject to the Council's Landscape Officer raising no objections. They have advised that they would be happy with a condition requiring further details on the substitution and species detail of trees. The Landscape Development Section has stated that an orchard may be acceptable subject to details but has pointed out that such orchards are usually maintained by residents. Kier have confirmed that they would not be prepared to accept any ongoing additional maintenance liability for the orchard fruit trees and any provision would need to be managed informally by the Parish Council. The details of the provision of the orchard and its management could be required by a condition, but if the applicant is unable to secure cooperation from the Parish Council they should not be required by planning condition to provide this feature. Hopefully a way forward will be able to be agreed between the parties for what is intrinsically a good idea.

Whilst the occupier of No. 14, Gateway Avenue, suggests that his principal lounge window is in the side of his dwelling, the Council's Space Around Dwellings Supplementary Planning Guidance states that "Principal windows are defined here as the largest windows of a lounge, dining room, dining kitchen or 2 largest bedrooms." The window to the front of the dwelling is the larger window serving that room. Whilst there would inevitably be some impact on the occupiers of this dwelling, given that the window in the side elevation is a smaller secondary window to the larger principal window in the front elevation, it is not considered that the impact on light and outlook would be so significant to justify a refusal.

In relation to the upgrading of the Public Right of Way (PRoW) alongside the railway, the agenda report did indicate that given that the Inspector did not consider it necessary to impose a condition requiring the upgrading of the public footpath, it is not considered that such a requirement could be imposed at this stage. Your Officer has reflected further upon this matter and has asked Kier to give consideration to such a condition taking into account the fact that the Council interpreted the previous application as being for outline planning permission where only vehicular access from the highway network to the site was for consideration with all other matters (appearance, landscaping, layout, scale and other access details) and such a proposal was put before the Inspector.

As outlined above, Kier have responded to state that they are concerned that such a condition would be outside the scope of this reserved matters application and also that given that such a condition would require works to a footpath which is not within the control of the applicant, it would not be reasonable or enforceable and would not meet the statutory tests for the imposition of conditions. The former point is not accepted because the only matter of access which was considered at the previous stage was the vehicular access into the site, but approval is still required, and being sought, for the other matters of access including that by pedestrians. In respect of the ability of the developer to do such works it has been established that the Highway Authority have the right, regardless of who owns the land, to provide an appropriate surface and they can consent to others – i.e. the developer – to undertake such works. A condition requiring works of improvement to the surface of the path would accordingly be reasonable. Whilst it is not considered that there is a highway safety case for

such works, such upgrading should be secured on the grounds of achieving a sustainable form of development. .

**The RECOMMENDATION remains as per the main agenda report with the landscaping conditions to include a requirement for additional street tree planting, a replacement oak tree on the south-western boundary of the site, details of the provision and management of a community orchard, and upgrading of the surface of the right of way referred to.**