

APPLICATION REFERENCE: PL/2022/01898/PPFL**Site Address:** 60 Lowbrook Lane Tidbury Green Solihull B90 1QS

Proposal:	Erect 9 No. dwellings.
Web link to Plans:	Full details of the proposal and statutory consultee responses can be found by using the above planning application reference number at: https://publicaccess.solihull.gov.uk/online-applications/

Reason for Referral to Planning Committee:	The proposal has given rise to substantial weight of public concern and in the opinion of the Head of Development Management should be referred to Planning Committee.
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Recommendation:	APPROVAL SUBJECT TO CONDITIONS AND THE APPLICANT ENTERING INTO A S106 AGREEMENT.
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EXECUTIVE SUMMARY

The application seeks permission for the erection of nine new detached dwellings with associated, landscaping, parking, and access road on land to the rear of 60 Lowbrook Lane, Tidbury Green. Access is proposed from Beech Fields Place, a cul-de-sac off Pastures Drive. The site forms a small parcel of land abutting a recently built housing site, allowed at appeal, as well as older established housing fronting Lowbrook Lane.

The site has a complex planning history relating to its position within designated Green Belt. The site currently sits within the Green Belt as defined by the Solihull Local Plan 2013 and the applicant has put forward an argument to demonstrate that there are very special circumstances (VSC's) that outweigh any harm to the Green Belt by way of inappropriateness.

This report will outline the issues involved and the applicant's VSC case. Based on careful consideration of the VSC's, unique to this site, it is the opinion of your Officers that the proposal is policy compliant and therefore acceptable.

MAIN ISSUES

The main issues in this application are the effects of the development:

- Whether the proposed development would constitute inappropriate development in the Green Belt having regard to the National Planning Policy Framework and relevant development plan policies;
- The effect of the proposal development by reason of its scale, massing, layout, design and landscaping on the character and appearance of the area;
- The effect of the proposal on the amenities of the occupiers of the neighbouring properties; and
- The effect of the proposal on highways safety and the free flow of the road network.

Other material considerations

- Landscape;
 - Drainage;
 - Ecology;
 - Contaminated Land;
 - Climate Change;
 - CIL contributions;
 - Heads of Terms – S106 Agreement;
 - Public sector equality duty; and
 - Human rights.
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances (VSC's), necessary to justify the development.

CONSULTATION RESPONSES

Statutory Consultees - The following Statutory Consultee responses have been received:

Lead Local Flood Authority & Drainage – No objection subject to conditions

Tidbury Green Parish Council - Objection

Non Statutory Consultees - The following Non-Statutory Consultee responses have been received:

SMBC Policy - No objection

SMBC Highways – No objection subject to condition

SMBC Ecology - No objection subject to condition

SMBC Landscape - No objection subject to condition

SMBC Public Protection - No objection subject to condition

SMBC Urban Design - Objection

Warwickshire Archaeology - No objection subject to condition

PUBLICITY

The application was advertised in accordance with the provisions set down in the Town and Country Planning (General Development Procedure) Order 2015.

19 objection responses were received. All correspondence has been reviewed and the main issues raised are summarised below (Planning Committee Members have access to all third-party correspondence received):

- Lack of publication;
- Removal of trees/hedgerows;
- Impact on TPO'd trees;
- Ecological impacts;
- Poor access;
- Over development;
- Site in Green Belt;
- Site too small for proposed development;
- Overlooking/lack of privacy;
- Impacts on amenity of neighbours/loss of light;
- Construction noise;
- Drainage/flooding;
- Burning of rubbish on site/contaminated land;
- Poor design/layout;
- Parking issues;
- Increase in traffic/congestion/road safety;
- Impact on school places; and
- Detrimental impact on the building of the adjacent site.

'Other non-material planning considerations'.

- Loss of view.

PLANNING ASSESSMENT

Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires that: -

'Where in making any determination under the planning acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise'.

The National Planning Policy Framework at paragraph 2 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning

policies and decisions must also reflect relevant international obligations and statutory requirements.

On the 13th May 2021 the Local Plan Review was submitted (via the Planning Inspectorate) to the Secretary of State for independent examination.

This marks the next stage in the preparation and adoption of the plan. The advice in the NPPF at paragraph 48 states “Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.

Greater weight, but not full weight, can therefore be given to the submitted plan, but this may still be dependent on the circumstances of each case and the potential relevance of individual policies. In many cases there are policies in the new plan which are similar to policies in the adopted plan which seek the same objectives, although they may be expressed slightly differently.

It is considered that relevant policies pertinent to this application have limited weight in the planning balance, and as a result do not alter the recommendation of approval reached in this report.

This report also considers the proposal against the Development Plan (Solihull Local Plan), the relevant policies of the National Planning Policy Framework (“NPPF”) 2021, the National Planning Practice Guidance

Main Issues

Whether the proposed development would constitute inappropriate development in the Green Belt having regard to the National Planning Policy Framework and relevant development plan policies.

As mentioned previously, the site and adjacent land has a complex planning history, particularly in relation to the application site’s position within designated Green Belt. The application site is located in the Green Belt, as defined by the Solihull Local Plan 2013 (SLP).

The National Planning Policy Framework (NPPF) confirms that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

It advises that once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for

opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.

Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Policy P17 - Countryside and Green Belt, of the Local Plan re-affirms guidance set out in the NPPF. Policy P17 advises: The Council will not permit inappropriate development in the Green Belt, except in very special circumstances.

- Effect on the openness of the Green Belt

"Openness" is not defined either in the NPPF or in any development plan policies but is widely taken to mean an absence of building or development. It is also widely accepted that the extent to which a building or development may be seen from the public realm is not a decisive matter.

Paragraph 133 of the NPPF states that the Government attaches great importance to Green Belts; the fundamental aim of Green Belt policy is to prevent urban sprawl but keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

The site is currently undeveloped field located between the frontage development of Lowbrook Lane and the new estate with an open appearance. In spatial terms, the proposal would include a number of new dwellings that would cumulatively erode the undeveloped nature of the existing site. Therefore taking both visual and spatial impacts of the proposal together, the proposal would result in a limited impact upon the openness of the Green Belt.

- Whether the proposal causes harm to the purposes of including land within the Green belt.

Paragraph 138 of the NPPF defines the five key purposes of the Green Belt, safeguarding the countryside from encroachment being one of them. In terms of encroachment, the proposed scheme would erect a number of new dwellings on the site, within a fenced compound. This would result in development and subsequent encroachment, in contradiction to 1 of the 5 purposes of including land within the Green Belt.

- Green Belt Summary

In summary, the proposed proposal represents inappropriate development which is by definition harmful to Green Belt. The proposal causes harm to the openness of the Green Belt since it would involve significant new development into an area which is currently open. Further, given the physical extent of the land take required for the

development, it would also cause significant encroachment upon the countryside harming 1 of the 5 purposes of including land within the Green Belt. The harm identified attracts substantial negative weight in the planning balance.

The proposal therefore does not accord with the Development Plan in respect of Policy P17 of the Local Plan nor does it accord with those categories of development deemed appropriate within Green Belts by the Framework. The fundamental question then becomes whether there are very special circumstances. These do not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

The effect of the proposal development by reason of its scale, massing, layout, design and landscaping on the character and appearance of the area

The NPPF is underpinned by a presumption in favour of sustainable development. Although it aims to boost significantly the supply of housing, great importance is attached to the design of the built environment. It advises that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

Policy P5 of the Solihull Local Plan (SLP) supports new housing on unidentified sites in accessible locations where they contribute towards meeting identified housing needs and towards enhancing local character and distinctiveness. The proposal seeks to erect 9 new homes thus enhancing local character and distinctiveness. Issues of character and design are considered in greater depth later on in this report.

- (a) Accessibility

Policy P7 of the SLP gives accessibility criteria in relation to local circumstances and helps to test requirements of Policy P5 which requires windfall development to be sited in accessible locations. These policies are consistent with the NPPF and thus carry significant weight. As part of the evidence base and Local Plan adoption the site and the wider housing site were considered to be in an accessible location. Whilst the service frequencies are below recommended levels, the site is considered to be in an accessible location.

- (b) Contribute to meeting borough wide housing needs

Paragraph 11 of the NPPF indicates that there is a presumption in favour of sustainable development. The correct test to apply is based upon whether an authority can demonstrate a 5-year land supply (5YHLS) or not. If it can't then for decision making the presumption means granting permission unless (i) the application of policies in the NPPF that protect areas or assets of particular importance (that are listed in foot note 6 of the NPPF) provides a clear reason for refusal or (ii) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole. This is often referred to as the 'tilted balance'. The latest figures the Council has published in relation to the 5YLS indicates that the Council can demonstrate a supply of 3.60 years (as of 1st April 2021) and therefore

the tilted balance is engaged. This shortfall is considered to be substantial on a scale of marginal-limited-modest-substantial-severe. As the shortfall is considered to be substantial this should be given significant weight.

- (c) Enhancing local character and distinctiveness

Finally, considering the third test, Policy P15 of the SLP provides guidance on Securing Design Quality. Policy P15 of the SLP requires all development to achieve good quality, inclusive and sustainable design, which conserves and enhances local character, distinctiveness and streetscape quality and ensures the scale, massing, density, layout, materials and landscape of the development respects the surrounding natural, built and historic environment.

The principle of the development of this site for residential purposes within the C3 Class of the Use Classes Order (1987) (as amended) would contribute to meeting borough wide housing needs and therefore meets the housing test in Policy P5, which gains significant weight in the planning balance.

Policy P15 of the Local Plan requires all development to achieve good quality, inclusive and sustainable design, which conserves and enhances the local character, distinctiveness and streetscape quality and ensures that the scale, massing, density, layout, materials and landscape of the development respect the surrounding natural, built and historic environment. Further, developments will be expected to contribute to or create a sense of place.

The Council's New Housing in Context SPD notes that each street has particular characteristics and rather than one single generic character, there are a number of key characteristics which have been identified as being the most essential elements contributing to the character or local distinctiveness of a street or residential area. These may include, plot width, plot format, plot access, building format

The proposal consists of 9 dwellings comprising a mix of detached two- and three-bedroom bungalows and dormer bungalows with associated garaging and parking, served by a new access directly off Beech Fields Place.

The layout of the proposed site makes efficient use of land with plot sizes and distances to boundaries that echo the grain of development found on in the surrounding area and wider housing development. The design of the dwellings uses traditional architecture found locally with features that include pitched roofs, dormer windows, bay windows, and gable ends. Materials include a mix of red brick and cream render with grey tiled roofs and therefore has regard to the local distinctiveness of the area.

It should be noted that Council Urban Design have raised an objection on non-compliance with the Council's Backland SPD. This objection is based on the issue of non-subservience, not poor quality of design or detrimental impact on the character and appearance of the surrounding area. Given the elevated position of the site in relation to much of the housing referenced above, the design of the housing has utilised a single storey design. In doing so, the design has limited its impact in terms of over-dominance. The Council's Urban Design officer has raised an objection

based on non-compliance with the Backland SPD. The SPD requires housing on backland sites, such as the application site, to be subservient to the existing housing that surrounds the site. It should be noted that only two of the nine houses fail to be subservient to the surrounding housing. Those two houses are non-subservient by a nominal amount (approx. 20cm). The two non-subserviate plots (nos. 8 and 9) are only non-subservient to some of the housing on Pastures Drive and Beech Fields Place. Over 50m in distance separates them. These two plots are also technically non-subservient to some of the housing on Lowbrook Lane, by approx. 2cm, where roughly 100m separates them. Only glimpses between existing dwellings would be afforded to the site and the dwellings. These plots would not appear overbearing of dominant within the wider residential context that the SPD seeks to resist.

Given the above, it is considered that the overall scale, character and appearance of the new buildings would be acceptable. The site layout and plot format would make efficient use of the land and produce a design response which would respect the surroundings, responding to the built character of the locality and local distinctiveness of the area, and thus fully complies with guidance in Policy P15 of the SLP. Neutral weight should therefore be attached to this material consideration.

The effect of the proposal on the amenities of the occupiers of the neighbouring properties

Policy P14 of the SLP seeks to protect the amenity of existing and potential occupiers of houses when considering new developments. Careful consideration must be made to amenity of both existing neighbours, as well as future occupiers of the proposed houses. The policy is consistent with the NPPF and thus carries significant weight.

In terms of impact on neighbouring amenity (loss of light/loss of privacy/over-dominance), the housing that has the potential to be impacted by the proposal are those houses that immediately surround the site: housing on Beech Fields Place, Pastures Drive, Farmers Lane, and Lowbrook Lane.

The Council uses a standard of 21m separation distance between the rear elevations of new housing to the rear elevations of the existing housing in the surrounding area. This distance ensures that that no detrimental impacts occur in terms of lack of privacy, and in this instance loss of light and over-dominance. The proposed housing would have a separation distance of approximately 30m to the rear elevations of housing on Beech Fields Place and Pastures Drive, and approximately 25m to the rear elevations of housing on Farmers Lane. Distances from the front and side elevations of the proposed housing to the rear elevations of housing on Lowbrook Lane vary between 50m and 100m. These distances all clearly exceed the 21m standard.

Given the distances involved and the single storey design coupled with the separation distances involved is considered to mitigate any detrimental Impact by way of over-dominance, loss of privacy or loss of light. Where any side elevations overlook surrounding gardens or private amenity space, a condition can be used to ensure that obscured, non-opening glazing is used.

With respect to the living conditions of future occupiers, the drawings submitted demonstrate that a sizable area of private amenity space would be located to the rear of the buildings for use by occupants of the housing. As a consequence, the proposal would have an acceptable effect on the living conditions of future occupiers of the development in terms of external space provision.

It is therefore considered the dwellings are appropriately proportioned and sited so as not to cause any undue visual intrusion, overbearing effect or loss of privacy, or a significant loss of daylight or sunlight to the occupants of neighbouring properties. In light of the above, it is considered that the proposal would have an acceptable impact upon the amenity of neighbouring properties and complies with Policy P14 of the SLP.

The effect of the proposal on highways safety and the free flow of the road network

Policy P7 of the SLP, inter alia, seeks to ensure that new development is focused in the most accessible locations and promotes ease of access. When looking at housing development, this Policy sets out criteria of walking distances that new development should seek to achieve and comments on distances from primary schools; doctor's surgeries and food shops as well as distances from bus stops and railway stations. The intention is that development should be easily accessible and linked to existing amenity facilities that are capable of being arrived at on foot.

The nearest bus stop is approximately 320m (3-minute walk) from the site on Lowbrook Lane and the nearest Railway Station is Wythall Railway Station, which is 650m (8 minute walk, 3-minute cycle) from the site. The bus stop and Railway Station are within the recommended walking distance, and whilst the service frequencies are below recommended levels, the site is considered to be in an accessible location.

Policy P8.b. notes the use of sustainable modes of transport, i.e., walking, cycling and public transport, shall be promoted and encouraged in all developments by ensuring the routes to the site from nearby services and local public transport stops are good quality, direct and attractive to use for all users. The routes from the site to the Railway Station and bus stops are accessible as they are well lit, and footways are provided.

Whilst the proposed development will increase vehicle trip generation at the site, it is considered that the additional trips in the AM and PM peak are unlikely to have a severe impact on public highway safety or on the operation of the local highway network. There are also genuine choices for transport other than the private car at the site.

Two parking spaces per dwelling are proposed which is sufficient as Solihull's Vehicle Parking Standards- Supplementary Planning Document states that 2 vehicle parking spaces per dwelling are required. The submitted plan (drawing no. 30885 Rev C) demonstrates that there is sufficient space within the curtilage of the site for vehicles to manoeuvre and exit the site as there is over 6m aisle space for the perpendicular parking spaces.

Solihull Local Plan Policy P.8b also encourages the use of sustainable modes of transport such as cycling. As there are garages proposed for most dwellings these would be adequate to store a minimum of one bicycle. For the dwelling on plot 4 without a garage, secure covered cycle storage would be required.

The applicant has satisfactorily provided the details regarding refuse collection and swept path plan demonstrating that a refuse vehicle is able to turn within the curtilage of the site and exit in a forward gear. A swept path plan of a fire service vehicle has been submitted demonstrating that fire vehicles are able to turn within the curtilage of the site and exit in a forward gear. The applicant has also provided details of cycle storage for plot 4.

As set out above, the Council's Highway Engineer has undertaken a thorough and robust assessment of the development proposals. Based on this assessment, the Council's Highway Engineer has no objections to the proposed development subject to the imposition of conditions. Therefore, the development is considered to be in accordance with Policy P7 and Policy P8 of the SLP (2013) neutral weight should be attributed to this in the decision-making process.

- Other material considerations

Landscape

Policy P10 of the SLP recognises the importance of a healthy natural environment in its own right. Policy P14 of the SLP requires new development to safeguard important trees, hedgerows and woodlands. The policy is consistent with the NPPF and thus carries significant weight.

In respect of trees and hedgerows on and around the development site, including those subject to Tree Preservation Orders, the Council's Landscape Architect have considered the submitted details which have set out the landscaping proposals in relation to the development proposed under this scheme and have concluded that proposal can be undertaken without compromising the health or longevity of important trees on and around the site and that, subject to condition, a suitable landscaping scheme on the site can be secured to retain and enhance the landscape character of the area.

The proposal is therefore compliant with Policies P10 and P14 of the SLP and neutral weight should therefore be attached to this material consideration

Ecology

Policy P10 of the SLP seeks to protect habitats and to conserve, enhance and restore biodiversity. The policy is consistent with the NPPF and thus carries significant weight.

The Council's Ecologist has been consulted on the proposals and following the submission of a Biodiversity Matrix. The calculation indicates that the development will result in a loss of 0.31 habitat units and a gain of 2.5 hedgerow units.

To meet the requirements of the National Planning Policy Framework and Solihull Local Plan Policy P10, the development needs to result in a biodiversity net gain. As there is little space on the site to include further meaningful habitat creation to achieve a net gain, an offsetting scheme for the creation and management of off-site habitats is acceptable in this instance. The loss of 0.31 habitat units equates to a financial contribution of £20,021 (using the Warwickshire, Coventry and Solihull financial estimation tool). The offsetting scheme can be secured via a S106 Agreement.

Given the above, the Ecologist raises no objection subject to condition. The proposal is therefore compliant with Policy P10 of the SLP and neutral weight should therefore be attached to this material consideration.

Drainage

Policy P11 of the SLP advises that new development will not normally be permitted within areas at risk of flooding. The policy is consistent with the NPPF and thus carries significant weight.

The Council's Drainage Engineers have considered the proposals and subject to the submission of a scheme to manage the surface water runoff from the development with the resultant scheme being implemented, maintained and managed in accordance with the submitted details, they have raised no objection.

The proposal is therefore compliant with Policy P11 of the SLP and neutral weight should therefore be attached to this material consideration.

Contaminated Land

The Council's Public Protection Officer has been consulted on the proposed scheme and raises no objection subject to the imposition of a condition in relation to contaminated land. Please see condition section of this report.

Climate Change

In October 2019 the Council made a climate emergency declaration and a statement of intent to protect the environment. This was unanimously approved by the Council and has led to the development of the Council's Net Zero Action Plan and supported the evidence base to deliver new policies within the Solihull Local Plan Review (SLPR). As explained earlier in this report, the SLPR is currently going through the examination process and hearings have taken place with the Planning Inspectors. Once adopted, the plan will replace the Solihull Local Plan 2013 and will have full weight. Until that time, policies within the SLPR hold limited weight, but not full weight in the decision-making process. Whilst adopted policy P9 sets out measures to help tackle climate change through new development, it does not set clear requirements relating to new technologies and initiatives. As such, the updated policy P9 will provide the Council with greater leverage in requiring new development to meet up to date Climate Change and sustainable policies – responding to the aims and objectives of the Climate Change deceleration.

Nevertheless, existing planning applications such as this, are already required to perform well against wider climate change and sustainable policies. To this end, officers have sought to achieve the best solutions as part of this application within the remits of adopted policy. Matters of sustainable urban drainage can be secured, a net gain in biodiversity can be achieved and landscaping limits tree loss and providing mitigation where appropriate. Officers also note that new dwellings will be constructed to modern Building Regulation standards and will therefore have a far greater thermal efficiency than older dwellings. Whilst not yet reaching net zero, such standards will, by their very nature, help reduce energy demand for heating, lighting and cooling and minimise carbon dioxide emissions.

Furthermore, it is important to note that amended Building Regulations came into effect from 15th June 2022 and are applicable to new builds. This relates to Part L (conservation of fuel and power), Part F (ventilation) and a new Part O (overheating) of the Building Regulations. Part S (Infrastructure for the charging of electric vehicles) are also bolstered and become a building regulation requirement. Whilst new measures will not apply to schemes which are already subject to a building notice; full plans application to Building Control; or initial notice to Building control and which commence work for each building before 15 June 2023, it is our understanding that anything subject to such Building Control applications after the 15th June 2022 will need to meet these new regulations as standard. An informative is added to the recommended decision to alert the applicant to this.

CIL contributions

The development is subject to CIL if planning permission is granted. This would amount to £208,279.40 based on 1060 square meters of residential institution rural areas at £196.49 per sq.m.

Heads of Terms – S106 Agreement

Regulation 122 of the Community Infrastructure Levy Regulations 2010, as amended, sets out the tests for the use of planning obligations. Obligations should only be sought when they meet the following tests and the obligations are:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

Paragraph 57 of the Framework reconfirms the tests that planning obligations within Regulation 122.

Policy P21 – Developer Contributions and Infrastructure Provision of the Local Plan accord with and re-affirm the test set out in the NPPF.

The proposed s106 obligation would have one elements, namely:

- A biodiversity offsetting scheme for the creation and management of off-site habitats equal to the loss of 0.31 habitat units, which equates to a financial contribution of £20,021.

The proposed obligation set out above are necessary to make the proposed development acceptable in planning terms, are directly related to the development and fairly related in scale and kind to the proposed scheme.

The proposed obligation therefore, accords with the policy set out in paragraph 57 of the Framework and the test in regulation 122 of the Community Infrastructure Levy Regulations 2010 and with Policy P21 of the Solihull Local Plan.

Public sector equality duty

In determining this application, Members must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions).

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149 is only one factor that needs to be considered, and may be balanced against other relevant factors. It is not considered that the recommendation to grant permission in this case will have a disproportionately adverse impact on a protected characteristic

Human rights

In determining this application, Members should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority to act in a manner that is incompatible with the European Convention on Human Rights.

Members are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered a proportionate response to the submitted application based on the considerations set out in this report.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances (VSC's), necessary to justify the development.

Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

In order to understand the very special circumstances put forward by the applicant it is necessary to look at the planning history of the site and surrounding area. The site and surrounding land at Lowbrook farm and Tidbury Green Farm were formerly 'safeguarded land' (excluded from green belt) in the 1997 and 2006 development plans. The 2013 Solihull Local Plan proposed that the application site and large parts of the adjacent land (Lowbrook Farm and Tidbury Green Farm) should be returned the Green Belt because other land in the Borough had been allocated for housing. The 2013 SLP was adopted on this basis.

The 2013 SLP was challenged by a private developer on a number of issues. One being that SMBC had acted unlawfully in returning the safeguarded land back to the Green Belt. The Court of Appeal agreed with the developer and the Court Schedule removed the Green Belt notation from both areas of land (Lowbrook Farm/Tidbury Green Farm, and the application site). Due to what appears to be a clerical error, the site plan that was attached to the Court Schedule did not include the application site in the removal of the Green Belt designation. As the issue before the Court of Appeal was in relation to the lawfulness of returning the safeguarded land (application site included) back to the Green Belt, it would seem most unlikely that it was not the intention of the Court to remove all the safeguarded land from the Green Belt.

In addition to the above, the Local Plan Review has deleted the Green Belt designation of the application site. The Review is at an advanced stage, but the report of the Inspectors is yet to be received and therefore it is of limited weight. However, the site's deletion of the Green Belt designation shows an acceptance that the site no longer serves a Green Belt function i.e. given that the land is now located between a large new housing estate and the rear of the long established ribbon of development along Lowbrook Lane (albeit washed over Green Belt) it is reasonable to take the view that the application site does not contribute to openness or the purposes of including land in the Green Belt (NPPF 138). This is supported by the evidence of the Green Belt Assessment (2016) that identifies the land to be within a lower performing parcel (RP74) where its main contribution to Green Belt is to preventing neighbouring settlements merging, in this case Tidbury Green and Grimes Hill to the west. Because of the adjoining, built, housing development, this Green Belt purpose no longer applies to the proposal site

Furthermore, it is fair to suggest that this inconsistent Green Belt designation approach to Green Belt boundaries goes against the principle that Green Belt boundaries should endure and not be prone to alteration when plans reach their end period (NPPF 143). Appropriate Green Belt boundaries will have been considered by the LPA in allocating the former safeguarded land and through the local plan Review.

Very Special Circumstances should only be treated as such if they are unique to the site and proposal in question. It is the opinion of your Officers that the circumstances outline above are indeed unique as they could not be replicated elsewhere. On this basis, your Officers consider that the clerical error on the site plan attached to the Court Schedule in conjunction with the deletion of Green Belt designation in the Local Plan Review constitutes very special circumstances that clearly outweighs the substantial harm caused to the Green Belt by way of inappropriateness. The proposal therefore complies with Policy P17 and guidance in the NPPF. Substantial weigh in favour of the proposal is accorded to the VSC's in this instance.

CONCLUSION

The principle of developing the site for residential purposes is acceptable. The clerical error on the site plan attached to the Court Schedule that removed the safeguarded land from the Green Belt in conjunction with the deletion of Green Belt designation in the Local Plan Review constitutes very special circumstances that clearly outweighs the substantial harm caused to the Green Belt by way of inappropriateness. The proposal therefore complies with Policy P17 of the SLP and guidance in the NPPF.

The overall scale, character and appearance of the new buildings would be acceptable. The site layout and plot format would make efficient use of the land and produce a design response which would respect the surroundings, responding to the built character of the locality and local distinctiveness of the area, and thus fully complies with guidance in Policy P15 of the SLP.

The dwellings are appropriately proportioned and sited so as not to cause any undue visual intrusion, overbearing effect or loss of privacy, or a significant loss of daylight or sunlight to the occupants of neighbouring properties. It is therefore considered that the proposal would have an acceptable impact upon the amenity of neighbouring properties and complies with Policy P14 of the SLP.

It has been demonstrated that the site is in an accessible location and that the proposals would not result in any detrimental impact on the free flow of the highway network or on highway safety. Therefore, the development is considered to be in accordance with Policy P7 and Policy P8 of the SLP.

In terms of 'other material considerations' pertinent to the determination of this application, subject to conditions, your officers have concluded that the proposed development is acceptable in all other aspects.

The proposal is therefore in accordance with the adopted development plan and guidance in the National Planning Policy Framework (the Framework). The development therefore benefits from the presumption in favour of sustainable development and the planning balance is firmly in favour for this proposal.

Therefore, for the reasons given above, and taking account of all other considerations, the application should be approved.

RECOMMENDATION

Approval is recommended subject to the Applicant entering into a s106 Agreement and the following précis of conditions a full list of standard conditions is available using the following link:

<http://www.solihull.gov.uk/Resident/Planning/searchplanningapplications:>

1. CS00 – compliance with plans

2. CS05 – commencement with 3 years
3. CS06 – materials to be submitted
4. CD11 – no additional side facing windows
5. CD15 – windows to side elevations to be obscurely glazed
6. CL06 – Implementation of landscaping scheme
7. No above-ground work shall commence until such a time as a scheme to manage the surface water runoff from the development has been submitted to and approved in writing by the Lead Local Flood Authority in conjunction with the Local Planning Authority, with no occupation until the scheme is operational. The submitted details shall include, as a minimum:

- Drawings showing overall site concept design principles
- Site layout plan, incorporating SuDS drainage design, site ground levels, finished floor levels, any integration with landscaping, earthworks or other features.
- Surface Water Drainage Design including:
 - Confirmation of the lifetime of the development
 - Design storm period and intensity (1 in 1, 1 in 30 & 1 in 100 year + allowance for climate change see EA advice [Flood risk assessments: climate change allowances](#)),
 - Confirmation of discharge rates and volumes (both pre and post development)
 - Confirmation of proposed discharge location.
 - Innovative and Multi-Functional SuDS Design that makes good use of the site space, supported by robust calculations and demonstrating full compliance with SMPC Policy P11 and DEFRA's Non-statutory technical standards for sustainable drainage systems to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus climate change critical event storm.
 - Engineering details for all surface water drainage features
 - Details of water quality controls, where applicable. For example, demonstration that the final design provides appropriate treatment for water leaving the site
- Surface Water Drainage adoption and maintenance strategy
- On and off site extreme flood flow routing and proposed resilience measures that ensure the buildings and infrastructure are safe from flooding
- Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);

The scheme shall be implemented, maintained and managed in accordance with the approved details.

8. The development shall not be commenced until an Arboricultural method statement as set out in BS5837 Section 6.1, and to include a fully dimensioned tree protection plan has been submitted to and approved in writing by the Local Planning Authority. Submitted details shall be implemented, maintained and managed in accordance with the approved details.

9. Detailed planting plan. The development hereby approved shall not be occupied until full details of all proposed planting and the proposed times of planting have

been approved in writing by the Local Planning Authority and all planting shall be carried out in accordance with those details and at those times.

10. Hard landscape scheme / External works – to include details of the permeable surface for the driveway for dwellings 7 – 9. The development hereby approved shall not be occupied until full details of hard landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, lighting etc.); retained historic landscape features and proposals for restoration; implementation programme.

11. CL05 – Soft Landscaping Plan. The development hereby approved shall not be occupied until full details of all proposed tree planting and the proposed times of planting have been approved in writing by the Local Planning Authority and all tree planting shall be carried out in accordance with those details and at those times.

12. The development hereby permitted, including site clearance work, shall not commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. In discharging this condition, the LPA expects to see details concerning appropriate working practices and safeguards for bats, badgers, hedgehogs, great crested newts and nesting birds that are to be employed whilst works are taking place on site. The CEMP should also include working practices relating to invasive species. The agreed Construction and Environmental Management Plan shall thereafter be implemented in full.

13. No works to commence on site, including site clearance, until a Combined Ecological and Landscaping Scheme has been submitted and agreed between the applicant and the Local Planning Authority. The scheme must include all aspects of landscaping including details of habitat enhancement and creation measures and management, such as native species planting. The agreed scheme to be fully implemented before/during development of the site as appropriate.

14. The development shall not be occupied until a Green Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of the measures that will be put in place to encourage visitors/residents to travel to/from the application site by sustainable modes of transport. The Plan shall be adhered to thereafter.

15. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority and Local Highway Authority. The Construction Management Plan shall be strictly adhered to and shall provide for:

- the anticipated movements of vehicles;
- the parking and loading/unloading of staff, visitor, and construction vehicles;
- the loading and unloading of plant and materials;

- hours of operation and deliveries;
- the storage of plant and materials used in constructing the development;
- a turning area within the site for construction vehicles;
- and, wheel washing facilities and other measures to prevent mud/debris being passed onto the public highway.

16. The development shall not be occupied until the road to the site off Lowbrook Road has been provided in general accordance with the approved drawings and constructed to the standard specification of the Local Highway Authority.

17. The development shall not be occupied until the access to the site off Beech Fields Place has been provided in general accordance with Drawing Number 30885 Rev. G Site Plan) and constructed to the standard specification of the Local Highway Authority.

18. No dwelling shall be occupied until the estate road (including footways) serving it have been laid out and substantially constructed to the satisfaction of the Local Highway Authority in accordance with details approved in writing by the Local Planning Authority.

19. CN20 (modified)

1. Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts (1) to (4) below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until part (4) has been complied with in relation to that contamination.

(1) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- i (i) a survey of the extent, scale and nature of contamination;
- ii (ii) an assessment of the potential risks to: (a) human health, (b) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, (c) adjoining land, (d) groundwaters and surface waters, (e) ecological systems
- iii (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with the Environment Agency's Land Contamination Risk Management (LCRM) Guidance.

(2) Submission of Remediation Scheme

Where necessary following (1) above, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(3) Implementation of Approved Remediation Scheme

Any approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

(4) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3.

Assessment and works to be conducted in accordance with the Environment Agency's Land Contamination Risk Management (LCRM) Guidance.

20. Demolition and construction work shall not begin until a Demolition and Construction Environmental Management Plan has been submitted in writing for approval by the local planning authority. The plan shall detail control measures to minimise noise, vibration and dust emissions, carry over of dirt and mud off site and other issues associated with the escape of material beyond the development site boundary. Specific safeguards relating to the burning of waste, and other items on site, shall also be sought and all agreed works which form part of the scheme shall be adopted and maintained throughout the demolition and construction phases of the development.

Informatives

- Electric Charging Points.

- Condition Numbers 16-18 require works to be carried out within the limits of the public highway. Before commencing such works the applicant / developer must enter into a Highway Works Agreement under the provisions of Section 278 of the Highways Act 1980. Applications to enter into such an agreement should be made to the Highway Infrastructure Team who can be contacted at duljit.madhar@solihull.gov.uk or 0121 704 6487.
- Prior to commencement of development, the applicant is required to enter into an agreement with the Highway Authority under Section 59 of the Highways Act 1980. Prior to works taking place on site and following completion of the development, a joint survey shall be undertaken with a member of the Council's Highway Infrastructure Team to agree the condition of the public highway. Should the public highway be damaged or affected as a consequence of the works being undertaken during the development of the site, the developer will be required to undertake work to remediate this damage as agreed with the Officer.