



Leeds
CITY COUNCIL

Originator: Chris Marlow
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Report of the Chief Planning Officer

PLANS PANEL NORTH & EAST

Date: 3RD October, 2013

Subject: Application 13/02290/OT – laying out of access road and erection of a dwelling on land to the rear of 35 Lower Mickletown, Methley, Leeds LS26 9JH

APPLICANT

Mr A Thourgood

DATE VALID

17th May, 2013

TARGET DATE

12th July, 2013

Electoral Wards Affected:

Kippax and Methley

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

GRANT PERMISSION subject to the following planning conditions:

1. Submission of reserved matters
2. Time limits for outline permission
3. Development to be sited in Flood Zone 1
4. Samples of walling and roofing materials to be agreed
5. Boundary treatment
6. Provision of footway
7. Laying out of vehicle areas
8. Landscaping / Landscape maintenance
9. Replacement planting period
10. Removal of PD Rights
11. Unexpected contamination
12. Importing of soils

13. Construction management plan

1.0 INTRODUCTION:

- 1.1 This application is presented to Plans Panel (East) at the request of Councillors Keith Wakefield and James Lewis in support of local residents concerns relating to the principle of residential development.
- 1.2 Members are advised that the site has an extant outline planning permission for a single dwelling expiring 21st February, 2014. In effect, approval of the current application will extend the period for the applicant within which to submit the reserved matters application.

2.0 PROPOSAL:

- 2.1 The application seeks outline planning permission for a dwelling with all matters reserved in relation to layout, access (parking), scale, design and landscaping.
- 2.2 Members are advised that the application was originally submitted as a full application with the necessary details for a detached 2 storey dwelling together with a compensatory flood storage area, and off street parking. Following negotiations with Officers the applicant withdrew the detailed elements of the proposal and requested that the application is considered in "outline only".
- 2.3 Whilst unable to support the original detailed proposal, Officers consider there is scope for the site to accommodate a single dwelling wholly within Flood Zone 1, albeit on a reduced scale.

3.0 SITE AND SURROUNDINGS:

- 3.1 The site is situated to the north side of Lower Mickletown at the junction with Cutler Lane and comprises the former rear garden area to No.35 Lower Mickletown. The site is bounded by tall conifer trees to the east side. The western boundary of the site is open, abutting outbuildings and fencing to adjacent dwellings situated at Waide Buildings and Lower Mickletown. There is a low level mesh fence to the southern boundary with the remaining garden area to 35 Lower Mickletown. The site slopes downwards in a northerly direction. No.35 Lower Mickletown has vehicle access from Cutler Lane. Cutler Lane is not hard-surfaced and leads to open fields (green belt) to the north and a Site of Special Scientific Interest (SSSI). The area is semi-rural in character.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 Application Ref: 11/01673/RM – one detached house with access off Cutler Lane.

An Officer's report was prepared with a recommendation of approval for consideration by the Plans Panel dated 1 December 2011. However, on the day of the meeting the application was withdrawn from the agenda as a result of a late

representation from the Environment Agency regarding a recent change to the flood zones. The change resulted in the proposal being sited partly within Flood Zone 3. Following the outcome at the Plans Panel meeting Officer's allowed the applicant time to consider his position. The applicant responded by submitting an appeal against the Council's failure to determine the application.

The Inspector considering the appeal identified the main issue of the appeal as the effect on flood risk. The re-classification resulted in part of the dwelling being located in Flood Zone 1, but with a substantial part in Flood Zone 3. As such it failed to meet the requirement of the National Planning Policy Framework and Technical Guidance, that 'more vulnerable' development, including dwelling houses, should not be permitted in Flood Zone 3. Additionally, the Inspector identified that the requirements of saved policies N38A and N38B in the Leeds Unitary Development Plan Review (UDP), which reflect national policy and also require a Flood Risk Assessment, would not be met. Although a Flood Risk Assessment was submitted with the application, it was prepared in March 2010 and did not relate to the current Flood Zones.

In the applicants favour the Inspector noted that the finished floor level of the dwelling would be 14.70m, located at a ground level of 14.161m thereby meeting the requirement of Condition No. 8 of the outline permission (09/05258/EXT). However, the requirements of Condition No.7 meant that the appeal, de facto, could not succeed.

On the main issue therefore, the Inspector concluded that there was no evidence that the proposed location for the dwelling would not result in an increased risk of flooding and dismissed the appeal against non-determination in a letter dated 2nd May 2012.

- 4.2 Application Reference: P/09/05258/EXT – extension of permission for outline application (06/05802/OT) to erect a detached a dwelling with access off Cutler Lane. The application was refused under Officer delegated powers on 24th August, 2010 on grounds of the proximity to the green belt thereby being harmful to the semi-rural character of the area; and being contrary to the Council's objective in seeking to see brownfield sites developed in preference to greenfield sites. The applicant appealed the decision which was upheld by the appointed Inspector for the Secretary of State and awarded costs against the Council's second reason for refusal. The appeal was allowed in a letter dated 21st February, 2011 and the Inspector imposed a condition that stated "the dwelling hereby permitted shall be constructed entirely within that part of the site in flood zone 1".
- 4.3 Application Reference: P/09/04674/RM – reserved matters application for the erection of a 5 bedroom detached house with integral garage. The application was withdrawn dated 13th January 2010 given that officers were minded to refuse the application on grounds of over development, and harm to visual and residential amenity.
- 4.4 Application Reference: P/08/00940/RM – 4 bedroom detached house with double garage. Refused 30th June 2008, on grounds of over development and harm to visual and residential amenity.

- 4.5 Application Reference: P/07/06565/FU/E – 4 bedroom detached house with integral double garage. Refused 17th December 2007 on grounds of over development, harm to visual and residential amenity.
- 4.6 Application Reference: P/06/5802/OT/E – outline application for laying out of vehicular access and erection of a detached dwelling. Permission Granted 24th January 2007.
- 4.7 Application Reference: P/06/00546/OT/E – outline application to erect 2 detached dwellings. Refused 11th July 2006 on grounds of highway safety / amenity of neighbouring residents / failure to demonstrate site can accommodate two dwellings and accord with the relevant guidance.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 Following the Inspector's decision to dismiss the appeal against non-determination the applicant submitted the current application. In its original (detailed) form Officers were unable to support the proposed dwelling on grounds of siting and design and subsequent adverse impact on the interests of visual and residential amenity. The applicant then requested that the application be changed to an outline with the only issue under consideration being the principle of development for a dwelling within the red line boundary.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 The original submission was advertised by a site notice posted adjacent to the site dated 31st May, 2013. In addition, neighbour notification letters were forwarded to 14 addresses adjacent to the site dated 22nd May, 2013. The application was subsequently re-advertised as an outline application by a site notice posted adjacent to the site dated 19th July, 2013 and neighbour notification letters forwarded on 16th July, 2013.
- 6.2 Councillors Wakefield and Lewis expressed support for the local resident's concerns.
- 6.3 In response to the original public notification process 4 letters of objection were received from local residents on the following grounds:-
- Visual amenity / out of character
 - Loss of view
 - Design, layout and appearance
 - Amenity – overlooking, overshadowing, overbearing development
 - Sub-standard garden space
 - Overdevelopment
 - Loss of trees and habitats
 - Highway safety: access road / turning area / visibility
 - Potential for subsidence
 - Biased/selective presentation in relation to the Inspectors comments
 - Flooding / Compensatory storage
 - Ground stability

- 6.4 In response to the additional notification a further 4 letters of objection have been received on the following grounds:
- Frustration over number of planning applications over 7 years with potential for a further 3 years of uncertainty.
 - All detailed proposals overly ambitious in scale and practicality

7.0 CONSULTATIONS RESPONSES:

Statutory:

- 7.1 Environment Agency – no objection subject to conditions relating to the implementation of the compensatory storage measures and finished floor levels no lower than 15m OAD.

Non-statutory:

- 7.2 Public Rights of Way - In May 2011 the applicant was advised that a claimed byway runs down Cutler Lane crosses the site which is subject to a Definitive Map Modification Order Application based on user and historical evidence. If the application is successful the byway will need to remain open and available for public use at all times.
- 7.3 Highways Development Services - No objection subject to conditions applied to previous approvals.
- 7.4 Land Drainage - No objection subject to acceptance by the Environment Agency and the submission of details to deal with surface water drainage works prior to the commencement of development.
- 7.5 Contaminated Land - No objection subject to conditions relating to the discovery unexpected contamination during the construction process, and importing of soil.

8.0 PLANNING POLICIES:

- 8.1 The Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 The Development Plan for the area consists of the adopted Unitary Development Review (UDPR), along with relevant supplementary planning guidance and documents.
- 8.3 The Core Strategy sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district. On 26th April 2013 the Council submitted the Publication Draft Core Strategy to the Secretary of State for examination and an Inspector has been appointed. It is expected that the examination will commence in September 2013. As the Council has submitted the Publication Draft Core Strategy for independent examination some weight can now

be attached to the document and its contents recognising that the weight to be attached may be limited by outstanding representations which have been made which will be considered at the future examination.

8.4 The application site is not specifically allocated within the City Council's Unitary Development Plan Review (2006). The following policies are considered to be of relevance:

- Policy GP5 requires development proposals to resolve detailed planning considerations including access, to avoid loss of amenity and maximise highway safety.
- Policy BD5 requires a development to pay regard to its surroundings in terms of amenity, outlook and daylight.
- Policy H4 relates to housing on unallocated sites
- Policy LD1 requires development to include complimentary landscaping.
- Policy N12 urban design
- Policy N13 building design
- Policy N23 complimentary setting of development
- Policy N24 buffer planting to designated areas of green belt
- Policy N25 boundary treatments to reflect character of the area
- Policy T2 refers to development that should be adequately served by existing or proposed highways, capable of being served by public transport and have provision for safe and secure cycle use and parking.
- Policy T24 refers to car parking provision guidelines.

Supplementary Planning Guidance/Documents

8.3 SPG13 – Neighbourhoods for Living: A Guide for Residential Design in Leeds.
The Street Design Guide SPD

National Policy

8.4 National Planning Policy Framework (NPPF)
Including appendix relating to Technical Guidance.

9.0 MAIN ISSUES

1. Principle of development
2. Highway safety
3. Others

10.0 APPRAISAL

Principle of development:

- 10.1 The principle of development of the site for a single dwelling is established with the presence of a current outline planning permission resulting from the appeal process relating to a previous application (09/05258/EXT). Whilst this decision was made prior to the changes to the flood zones in November 2011 the permission can still be implemented subject to a satisfactory submission of the outstanding reserved matters prior to the expiration of the outline approval on 21st February, 2014. In accord with the outline approval the resultant dwelling would have to be sited wholly within Flood Zone 1.
- 10.2 Officers are mindful that the Inspector's decision accepted that the site was capable of being developed without resulting in harm to the character of the area. It is not possible however, to know to what extent the Inspector's assessment on character at the time was influenced knowing that the majority of the site at that time was in Flood Zone 1. Nevertheless, officers were subsequently able to support the siting of a new dwelling within the northern part of the plot (in respect of application 11/01673/RM) in 2011 before the flood zones were re-modelled. Whilst the successful siting of a dwelling in the southern part of the plot is more challenging, it is considered that it could also accommodate a single dwelling albeit on a reduced scale.
- ### Highway safety
- 10.3 Since the first grant of outline planning permission for the site Highway Officers (and subsequent Planning Inspector's) have supported the proposed access to the site subject to conditions relating to the implementation of a footway for that length on Cutler Lane that would serve the development, together with appropriate surfacing to all vehicle areas. As such, the principle of taking access from Cutler Lane has already been accepted. Therefore in terms of the current application no technical highway objections are raised subject to the inclusion of the conditions attached to previous grants of planning permission. It is considered therefore that that the development would not prejudice the interests of highway safety for pedestrians and other road users alike.
- ### Others
- 10.4 In response to other issues raised by local residents the loss of view and a right to light are not material planning considerations. In addition, the stability of the land and the potential damage to adjoining property can be material consideration but ultimately it is a civil matter between the respective land owners.
- 10.5 The resident's concerns in respect of how the applicant's original supporting statement interpreted the Inspectors comments in a positive manner are noted but the Inspector's comments have been given due consideration in this report.
- 10.6 It is noted that two on-site trees that were intended to be retained as part of an earlier scheme have been felled. The trees however were not protected by a Tree Preservation Order. This was considered previously however the Council's

Landscape Architect did not consider the condition of the trees to be worthy of such protection.

- 10.7 In response to the original submission residents highlighted issues relating to the potential for overlooking, overshadowing and over bearing development and lack of appropriate private amenity space. In some respects the concerns reflected Officers concerns, however given the application is now in outline form these issues no longer a direct consideration of the proposal. Similarly, the inclusion of a compensatory flood storage area is not considered as part, although Officers note that its consultees on this matter accepted the principle of the works.
- 10.8 Officers share resident's concerns over the protracted planning process, however it is considered that it is not just the applicant's overly ambitious aspirations for the site as recent unforeseen circumstances beyond the control of the applicant have played a contributory factor in lengthening the potential development of the site.

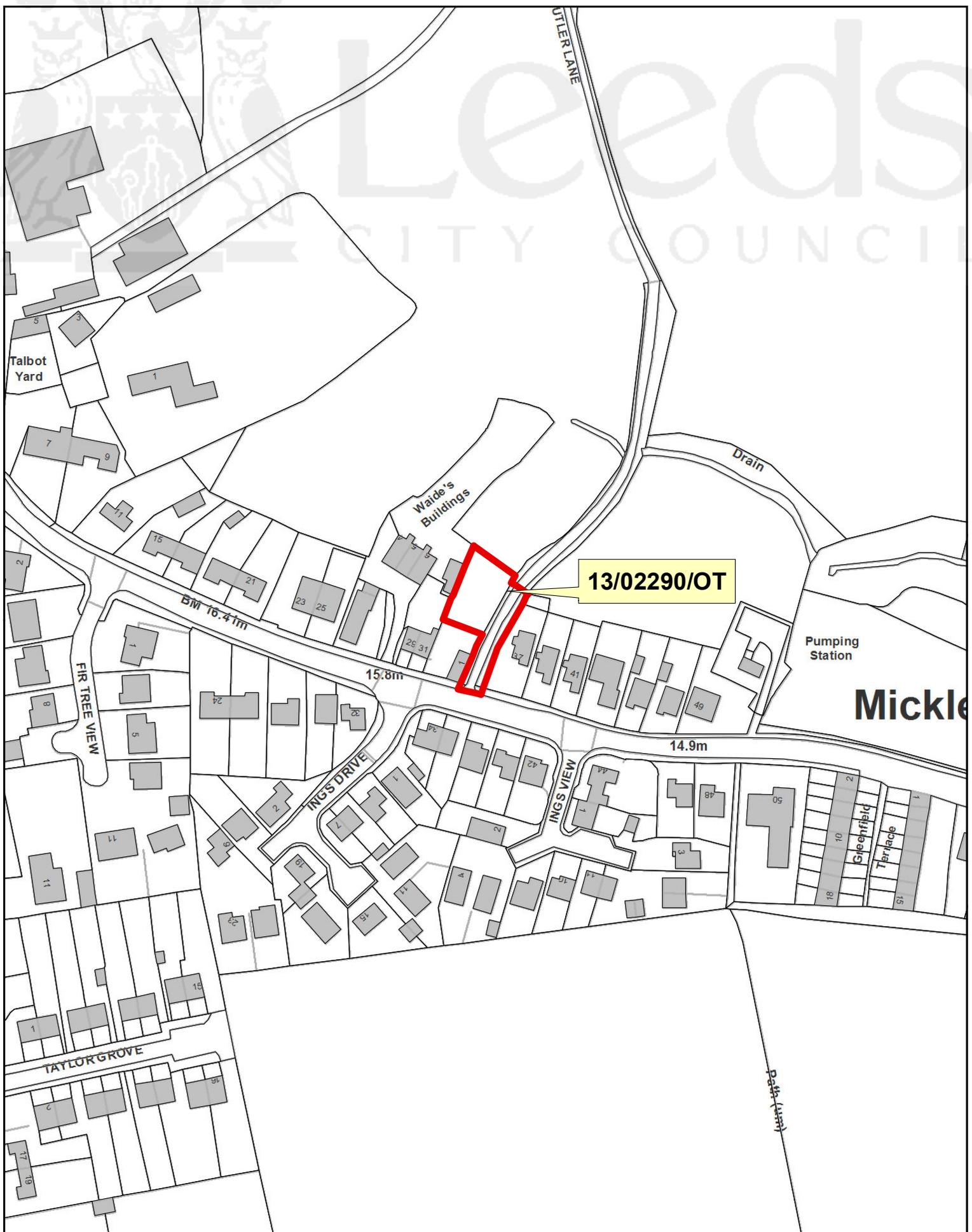
11.0 CONCLUSION

- 11.1 The proposal in outline form is acceptable in terms of the principle, and the means of access as these have been established through previous approvals. As a consequence, the application is recommended for approval subject to the conditions stated.

Background Papers:

Application file: 13/02290/OT.

Certificate of Ownership A completed.



NORTH AND EAST PLANS PANEL

