



Report of the Chief Planning Officer

PLANS PANEL SOUTH AND WEST

Date: 25th April 2013

Subject: Application Number 09/05553/OT Outline planning application for residential development at Land off Royds Lane, Lower Wortley, Leeds.

APPLICANT
Wortley Green

DATE VALID
23 December 2009

TARGET DATE
24 March 2010

Electoral Wards Affected:

Farnley and Wortley

No

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION

DEFER and DELEGATE approval to the Chief Planning Officer subject to the conditions specified (and any others which he might consider appropriate) and the completion of a legal agreement to cover the securing of a sum of £618,000 to be apportioned to the following as appropriate following discussion with ward members:-

- Greenspace provision
- Education provision
- Highway works
- Green travel Plan
- Financial viability
- Long term management of the open space and habitat corridor
- clause that development shall commence within 2 years.
- Local jobs and training

1. Time limit for outline application
2. Development shall be in line with approved plans
3. Full details of layout, scale, appearance and landscaping to be submitted
4. Samples of walling and roofing materials to be submitted
5. Sample panel of proposed brickwork

6. Details of fencing and boundary treatment to be submitted
 7. Scheme for external bin storage to be submitted
 8. Landscaping scheme to be submitted
 9. Landscaping scheme to be implemented
 10. Landscaping maintenance scheme to be submitted
 11. All existing trees, shrubs and other natural features shown on approved plans to be retained
 12. Preservation of existing trees and vegetation during construction
 13. Tree protection during excavations
 14. Replacement of landscaping if dies or seriously damaged in first 5 years
 15. Existing and proposed levels to be submitted
 16. Bat protection/mitigation
 17. Submission of details for contamination and remediation
 18. Amendment of remediation statement
 19. Submission of verification reports
 20. Reporting unexpected contamination
 21. Importing soil
 22. Areas to be used by vehicles to be laid out.
 23. Road improvements to be carried out before development occupied
 24. Full details of the access to and egress from the site to be submitted
 25. Details of cycles and motorcycles parking areas to be submitted
 26. Green travel plan to be submitted
 27. Vehicle cleansing facilities to be provided during construction works
 28. Means of preventing mud on highway during construction
 29. Before development commences the flood defenses shall be provided
 30. Full details of proposed ground floor levels to be submitted
 31. Scheme for provision of surface water and ground water drainage works to be submitted
 32. Noise protection from railway
 33. No building within 3 metres either side of water mains
 34. Details of surface and foul water to be submitted
 35. No piped discharge of surface water until satisfactory outfall approved and implemented
 36. No piped discharge of surface water until approved surface water drainage works submitted
 37. Surface water from vehicle areas to pass through an oil interceptor
 38. Habitat protection and enhancement
 39. Lintels shall be one single piece.
 40. Remediation works in relation to coal works shall be carried out in line with 13.2 and 13.3 of the submitted Ground Investigation Works.
- Direction : development in line with approved plans, above conditions and a section 106 agreement.

In reaching this recommendation the case officer dealing with the application has worked with the applicant/agent in a positive way by maintaining regular dialogue to produce an acceptable scheme in accordance with paragraphs 186 and 187 of the National Planning Policy framework. In granting permission for this development the City Council has taken into account all material planning considerations including those arising from the comments of any statutory and other consultees, public representations about the application and Government Guidance and Policy as detailed in the National Planning Policy Framework and (as specified below) the content and policies within The Development Plan consisting of the Leeds Unitary Development Plan Review 2006 (UDPR) and the emerging Publication Draft Core Strategy Nov 2012 (DCS)

UDPR Policies: GP5; E4; E7; H3; H4; N4; N12; N13; H11; N24; T2

BD5; LD1.

On balance, the City Council considers the development would not give rise to any unacceptable consequences for the environment, community or other public interests of acknowledged importance

1.0 INTRODUCTION:

- 1.1 This application for residential development at Royds Lane was reported to West Plans Panel in March 2011 where Members resolved to defer and delegate the approval subject to a Section 106 Agreement. Since that time the development costs for this scheme have increased and the number of proposed dwellings has decreased. This application was therefore referred back to Panel in February this year in order to reassess the viability of the site and the S106 agreement contributions.
- 1.2 At the February Panel, Members were also advised that the application needed to be deferred for a cycle to enable a comprehensive report to be prepared addressing the implications for the application following the adoption of the Natural Resources and Waste DPD (NRWDPD). These matters are now dealt with within this report. Members also requested additional information in relation to the education requirement for the development which is also discussed in this report. The February report is also attached for information. Members of Panel will also recall that there have been subsequent discussions regarding the viability of developing this 'Brownfield' site.

2.0 PROPOSAL:

- 2.1 The application is an outline application for residential development. The application is for the principle of residential development on the site, means of access and layout. There will be one vehicular access to the site and this will be off an existing track off Royds Lane close to the junction of Royds Lane and the service road for Makro.
- 2.2 The proposed Section 106 Agreement which was approved by Panel in March 2011 had the following contributions
- Off site highway works.
 - Education contribution for both primary and secondary schools.
 - Greenspace on site 0.004 hectares per dwelling.
 - Bus stops upgrades to 2 bus stops.
 - Improvements to the footpaths to the bus stops on Gelderd Road.
 - Affordable housing and metrocards not payable but subject to financial viability submissions
- The Panel also waived the payment towards Public Transport contribution which amounted to £193,767.
- 2.3 There were a number of highway improvements that were to be provided as part of the scheme which were as follows:
- Improvement of the existing track to the site to adoptable standards with a footway on each side
 - New junction with Royds Lane and the service access with Makro. A stop line on the service access from vehicles leaving the service road for Makro.
 - A footway on one side of Royds Lane (there is an existing footway on the other side) with dropped kerbs and tactile paving on all the crossing along both sides of Royds Lane

- New pedestrian crossing on the Ring Road, this is located after a left turn from Royds Lane.
- Changes to the Ring Road Roundabout at Ringways to include signalling.

2.4 The owner of the land now has a house builder interested in developing the site for housing and officers are discussing layout plans related to a future reserved matter application with this house builder. However, there are a number of changes since the Panel decision in 2011 which has meant that the viability of the development had to be reassessed. The changes in circumstances are the following:

Firstly, the outline consent was for approximately 192 dwellings which comprised of 36 apartments and 156 houses. The number of dwellings has reduced to 152 which will be 36 apartments and 116 houses. The income generated from this reduction in numbers has been reduced.

Secondly, further work has been undertaken into the amount of contamination on the site which will require more remediation than originally thought with a higher cost which along with other abnormalities amounts to a total construction cost of over £5 million which is more than previously expected.



Thirdly, the economic climate has seen a further decline so the income generated from the scheme has been reduced. The amount of revenue on the site has decreased by £1.2million.

2.5 All these circumstances have led to the amount of money available for all the requirements of the S106 agreements being reduced to a pot of £740,000 (including the section 38 works which would account for approximately £122,000). The previous section 106 agreement didn't refer to prices but included specifically the works that had to be carried out which concerned the applicant as the cost of these could spiral. The applicant has asked that there is a fixed pot of finance so they can be confident that they are able to meet the requirements. Any more than this pot of £740,000 will result in the scheme being unviable and very unlikely to go ahead. This pot of money would not cover the amount required for all of the previously approved section 106 requirements. Information has also been obtained in relation to the total costs for the previous requirements. These are all estimates but gives an idea on how much the current obligations would have been.

Highway works – upwards of £1 million
 Education – £500,000
 Bus stop upgrades - £20,000
 Greenspace on site provision – 0.004ha per dwelling
 Improve footway to bus stops on the Gelderd Road –

2.6 The applicant has revisited the transport assessment based on the reduction of 30 dwellings. They have also submitted estimates on the highway measures that they consider are required. The information shows that all the previous highway works listed above can be implemented using the pot of £740,000 except for the signalisation of the Ringways Roundabout. The information submitted also put the case forward that with the reduction in numbers the signalisation of the Ringways Roundabout is no longer required. The estimate for the proposed highway works is approximately £440,000. However, part of these highway works is to upgrade the existing track from the junction with the Makro service access into the site itself. These works will form part of any section 38 agreement and should not form part of the section 106 agreement. The applicant has stated that if these works are not part of the section 106 agreement then the sum of money required for these works will

have to come out of the above pot so the total pot of money available for works in the section 106 agreement will be reduced to £618,000. It is still anticipated that the other highways works required would amount to £318,000 although this is an approximate figure and could be higher or lower.

- 2.7 Consequently this leaves approximately £300,000 to be spent on other contributions required from the development. This could be used by highways to do other highway works required in the area or towards education who have requested £500,000. Since last Panel more detail in relation to the contribution to education has been obtained from the Education Department. The proposed number of houses requires a contribution to primary education of £454,765 and a secondary contribution of £274,098. It is likely that due to the location of this site that the schools in Armley/Wortley will be used. There has been an increase in the birth rate in recent years and there is pressure for school places in these areas. Births in this area are projected to exceed the number of reception places at schools in this area every year upto 2016 therefore extra children generated by the new housing would add to this pressure. It is therefore essential that the full contribution for primary provision is obtained. Provision of secondary places is less critical. As parents will travel further to access secondary education and there is capacity in Secondary schools in West Leeds until 2018 the secondary education is less essential.
- 2.8 Another matter relates to the mechanism for obtaining contributions to affordable housing if the economic climate improves and there is more revenue generated from the scheme than what is currently expected. The previous mechanism approved by Panel in March 2011 requested that a financial viability was submitted for consideration 2 years after development commenced and then yearly until the development was complete. If the market had improved and there was profit within the site then a financial contribution to affordable housing would then be paid. The applicant now wants to change this mechanism. Instead of submitting a financial appraisal the applicant and Council agree a trigger sum which once reached would ensure that contributions to affordable housing are paid. This trigger sum is achieved by using a formula which takes account of revenue generated from the scheme along with cost. **If Members wish the section 106 agreement could be worded that if the trigger sum is reached the financial contribution could be used for education contributions rather than affordable housing.**
- 2.9 As mentioned in the supplementary report to Panel in February part of the site is safeguarded as an existing waste management site (site 142) in the Natural Resources and Waste DPD (NR&WDPD) which was adopted on the 16th January 2013 by the Council and is now part of The Development  n.  s has the benefit of a temporary planning permission (ref. 07/07482/FU) for recycling of inert, or non hazardous construction and evacuation wastes to produce aggregate and soils on the former overflow car parks to Makro. This planning permission was granted on 3rd March 2009 for a limited period of 5 years which expires in March 2014. The applicant, Cave Plant Ltd, was not the landowner and had no interest in the land. The permission has not been implemented and the site remains vacant.
- 2.10 The development therefore needs to be assessed against policy waste 2 of the National Resources and Waste below which states

Waste 2 Safeguarding waste management sites

Existing waste management sites are safeguarded for continued use during the plan period. Applications for change of use must demonstrate that there is no longer a need to retain the site for waste management purposes or there is an

overriding case for the proposed development that outweighs the need to retain the site for waste management purposes.

- 2.11 The applicant has submitted a statement in relation to the application of this policy. They are stating that it was never the intention of the landowner to lease the site to Cave Plant Ltd, borne out by the fact that the site remains a vacant brownfield site despite having a planning consent for the recycling of inert and non hazardous construction and evacuations wastes to produce aggregates and soils since March 2009. The application was submitted by Cave Plant without any agreement with the owners of the site. In all respects the site is not available for aggregate crushing or recycling, is not viable for aggregate crushing or recycling and is therefore not deliverable for aggregate crushing and recycling. Notwithstanding the extant planning permission this is not an existing waste management site and has no continued use for waste management purposes. The last stem of Policy Waste 2 allows for alternative types of development where that development would outweigh the need to retain the site for waste management purposes.
- 2.12 The applicant goes on to say that the Royds Lane site has already benefitted from a planning permission for residential redevelopment and the granting of planning permission for housing will assist the Council in achieving its target of residential development on brownfield sites.
- 2.13 The residential redevelopment will not only deliver a project of regeneration significance through the development of a brownfield site which has a number of constraints to delivering a residential scheme but it will significantly improve the area visually. The site will also allow for improvements to the local highway infrastructure through the provision of pedestrian crossing and links to the local bus network, a highly sustainable mode of transport. The site generates a financial contribution pot of nearly three quarters of a million pounds to be spent in the local area. On this basis, the overriding regeneration initiatives to be accurred through the redevelopment of this site for residential far outweigh the need to retain this site for waste management purposes which have never taken place and will not be enacted under the extant consent which lapses in 12 months.
- 2.14 The applicant concludes that the objectives of Policy Waste 2 are not compromised given it is not an existing waste management site and is not in continued use and there is no prospect of it coming forward for that purpose.
- 2.15 Of relevance as well is the following policy

MINERALS 3 : Minerals Safeguarding Areas – Surface Coal Development sites

Within the surface coal mineral safeguarding area shown on the Policies Map applications for non-householder development must demonstrate that the opportunity to recover any coal present at the site has been considered. Coal present should be removed prior to or during development unless:

1. it can be shown it is not economically viable to do so, or
2. it is not environmentally acceptable to do so, or
3. the need for the development outweighs the need to extract the coal, or
4. the coal will not be sterilised by the development.

- 2.16 A report has been submitted by the agent which highlights the fact the site is not economically viable to extract coal and therefore it is the applicants opinion that the scheme meets criteria 1 of the policy. It would also not be environmentally

acceptable to extract coal given the location of the site adjacent to a large residential area, retail outlet and offices. This report was forwarded to the Coal Authority for their comments and a response has been received and is discussed below.

3.0 CONSULTATIONS

3.1 Councillor John Hardy has commented stating that he is happy with the proposed way forward detailed in this report.

3.2 Councillors David and Ann Blackburn have stated:

- The developer should pay the full amount in relation to education
- As bus users they consider that a footpath to Gelderd Road for the bus stops on Gelderd Road should still be provided. Though there are buses on Whitehall Road there is a much better frequency of buses on Gelderd Road.
- Should provide the above as we are allowing development without the improvements to Ringways Roundabout, bus stop upgrades and affordable housing.

3.3 Coal authority – The coal authority is satisfied with the remedial measures proposed by the applicant following initial intrusive investigation works, as set out in section 13.2 and 13.3 of the submitted Ground Investigation Report and that a condition is attached to require these remedial measures undertaken prior to the commencement of development. They go on to state that they would recommend that the applicant affords further consideration to the prior extraction of any remnants shallow coal as a potential alternative to the mitigation strategy outlined in the Ground Investigation Report in line with National Planning Policy in the NPPF.

4.0 MAIN ISSUES

4.1 The new matters before Panel to be assessed as part of the determination of this application are the implications of the NRWDPD and in particular Policy Waste 2 which safeguards existing waste management sites, Policy Minerals 3 and the potential for the extraction of coal from the site and the proposed commuted sum. When last reported to Panel, Members discussed and assessed the merits of the section 106 agreement requirements and the development of this brown field site. Members raised no objections to the principle of development of this site or the amendments proposed to the s106, however, these still remain to be considered by members before a decision is made.

5.0 APPRAISAL

5.1 As explained above part of the site is safeguarded as an existing waste management site (site 142) in the Natural Resources and Waste DPD9NR&WDPD) which was adopted on the 16th January 2013 by the Council and is now part of The Development Plan. There is also a temporary 5 year planning permission which expires in March 2014 to use the site for recycling of inert or non hazardous construction and evacuation wastes to produce aggregate and soils on the former overflow car parks to Makro. The permission has not implemented and the site remains vacant.

5.2 Policy Waste 2 safeguards existing waste management sites and states

Waste 2 Safeguarding waste management sites

Existing waste management sites are safeguarded for continued use during the plan period. Applications for change of use must demonstrate that there is no longer a need to retain the site for waste management purposes or there is an overriding case for the proposed development that outweighs the need to retain the site for waste management purposes.

- 5.3 The applicant has submitted information which is detailed in paragraphs 2.9 to 2.14 of this report to demonstrate that there is no longer a need to retain the site for waste management purposes and that there is an overriding case for the proposed development that outweighs the need to retain the site for waste management purposes.
- 5.4 Officers accept the applicants case although a small part of the site is safeguarded as an existing waste management site, it has not in fact been used for this purpose and remains vacant. This is despite the fact that, a small part of the proposed residential site has had planning permission for waste management purposes for the last 4 years which has not been implemented. Given the temporary permission expires in less than a year, there is no indication that this will now be taken up. The applicant has put a case forward that allocation is for only a small part of the site and the whole of the site is available for development for residential. It is agreed that the site is a Brownfield site which if developed for residential will improve the area visually and will provide some needed houses in the area. There is also a sum of money available which will be ploughed into the local area plus the development of the site will provide area plus the development of the site will provide jobs for the local people during the construction of the development.
- 5.5 Overall it is considered that given the particular circumstances of this site, including the fact that the use as a waste management site has not been implemented and the gains from the development of the land for residential purposes outweighs the need to retain the site for waste management purposes especially seeing as it is only part of the site and the site is unlikely to ever be available for waste management uses. It is therefore considered that the application is compliant with Policy Waste 2.
- 5.6 Another issue relates to Policy Minerals 3 of the adopted NR&WDPD which states;

MINERALS 3 : Minerals Safeguarding Areas – Surface Coal Development sites

Within the surface coal mineral safeguarding area shown on the Policies Map applications for non-householder development must demonstrate that the opportunity to recover any coal present at the site has been considered. Coal present should be removed prior to or during development unless:

1. it can be shown it is not economically viable to do so, or
2. it is not environmentally acceptable to do so, or
3. the need for the development outweighs the need to extract the coal, or
4. the coal will not be sterilised by the development.

- 5.7 The applicants have submitted a report in relation to the potential for extraction of coal at the site. This has been sent to the Coal Authority who have now responded. The report states that there has previously been extraction of coal from the site and there is some coal still left on the site but the report concludes that based upon the current viability of the operation any expenditure for the extraction of what coal that

is available on the site would not be justified. It also states remediation works that will be carried out to stabilise the previous coal workings that are present on the site.

5.8 The Coal Authority have replied confirming that they agree with the remediation works that are required and suggest a condition is attached to ensure these works are carried out. The Coal Authority have expressed some concern about whether it is viable to extract any remnant shallow coal resources. They state the report didn't consider whether the prior extraction of any remnant shallow coal resources could provide a more cost effective and sustainable option for addressing the stability issues that affect the application site rather than undertaking the remedial works recommended in the Ground Investigation Report. The applicant has been requested to provide some additional information, however, as there have been previous extractions of coal on the site the amount of coal that could be extracted is low and the level of costs involved would be large. For these reasons it is considered that the applicant has justified that it would not be economically viable to extract the coal from the site and policy mineral 3 has been complied with.

5.9 In March 2011 Panel approved this application for residential development in principle and deferred and delegated the decision to the Chief Officer subject to a section 106 agreement for the following contributions.

1. Highways works including the following:

(i) Off site highways works including improvements of the existing track to the site to adoptable standards with a footway on each side.

(ii) New junction with Royds Lane and the service access with Makro. A stop line on the service access from vehicles leaving the service road for Makro

(iii) A footway on one side of Royds Lane)There is an existing footway on the other side) with dropped kerbs and tactile paving on all the crossing along both side of Royds Lane.

(iv) New pedestrian crossing on the Ring Road, this is located after a left turn from Royds Lane.

(v) Changes to the Ring Road Roundabout at Ringways to include signalisation.

2. Bus stop upgrades to 2 bus stops on Whitehall Road.

3. Footpath improvements to bus stops on Gelderd Road

4. Education contribution for both primary and secondary schools.

5. Greenspace on site at a rate of 0.004 hectares per dwelling

6. Affordable housing deferred but subject to financial viability assessments.

Item number 1(i) which is the highway works including improvements of the existing track to the site to adoptable standards would form part of a section 38 agreement and would not be works included in a section 106 agreement.

5.10 The applicant has now stated that there is only a pot of £618,000 available to contribute to the above. The proposed sum will not provide all of the above. Each of the contributions needs to be assessed in turn to judge the impact off the development if these contributions where not paid.

5.11 As background the NPPF encourages Local Planning Authorities to take account of viability and deliverability in decision making. To ensure viability, the costs of any

requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. In this instance there is now a housebuilder on board who is committed to developing the site as they are in pre application discussions with us.

5.12 To assess whether the reduction of contributions are acceptable it needs to be considered what are the consequences of either reduced payments or none towards some of the section 106 requirements. These are considered in turn:-

5.13 Highways

The proposal is to pay for the following highway works:

- (i) New junction with Royds Lane and service access with Makro. A stop line on the service access from vehicles leaving the service road for Makro.
- (ii) A footway on one side of Royds Lane (there is an existing footway on the other side) with dropped kerbs and tactile paving on all the crossing along both sides of Royds Lane.
- (iii) New pedestrian crossing on the Ring Road, located after a left turn from Royds Lane.
- (iv) Pedestrian refuse on the Whitehall Road to allow access to the Leeds Bound Buses.

The following works will not be paid for.

- (i) The improvements to the Ringways Roundabout. The signalisation of this roundabout was a requirement for the scheme approved by Panel in 2011. The applicant has submitted additional information in relation to this matter especially as the number of dwellings has now been reduced by 30. Their information shows that with this reduction of dwellings the works required to Ringways Roundabout are excessive for the number of dwellings involved. **This has been re examined by highways officers and it is considered that the works to the Ringways roundabout cannot be supported by this level of development.**
- (ii) Bus stops on Whitehall Road. The scheme required for the upgrade of two new bus stops on the Whitehall Road. These bus stops would be the nearest bus stops that residents would use to access Leeds City Centre via public transport. As there is only a limited pot of money available for highway improvements it is considered by highways **that the loss of the upgrades to two bus stops is not as important as other highway works proposed such as the pedestrian crossing over the Ring Road that is required to link the site to these two bus stops.** Also in the current climate the benefits of developing the site at the current time which has a willing developer and is a brown field site outweighs the needs for upgrades of two existing bus stops.
- (iii) There was a requirement to improve the footpath from the site to existing bus stops on the Gelderd Road. **This should remain as an aspiration but until further discussions have been held with ward members and there is certainty where the Section 106 monies will be spent there is no guarantee that this can be achieved.** Councillors David and Ann Blackburn consider that this should be retained as the bus frequency is greater than on the Whitehall Road. Officers have established that there is in fact a greater frequency of buses on the Whitehall Road than Gelderd Road plus the pedestrian improvements will provide a safer route to the bus service on the

Whitehall Road. It should be noted that the applicant no longer owns the link to the South through the tunnel and the surfacing and lighting of such a long path would be likely to be cost prohibitive bearing in mind the other viability issues.

It is expected that the above works would amount to a cost of approximately £318,000. It may be when the scheme has been fully worked up and priced that the cost of these works would be higher or lower than the estimated £318,000. This would usually arise because of the discovery of unknown underground apparatus operated by Statutory Undertakers needing to be removed or re routed. This situation is not unusual and costs are not usually fixed until a tender process has been undertaken for the works. However, this of course could have an impact on the amount of money that will be left for the education contribution discussed below.

5.14 Education contribution

The scheme has been reassessed by Education in terms of the reduction in numbers of residential properties. The figure required by Education for this level of development is approximately £728,863 to be used in local primary and secondary schools for the additional pupils this development will attract. Education have indicated that provision for secondary school places at the moment is less critical but contributions to primary education are essential. The contribution required for primary school education is £474,765. The applicant cannot finance the whole of this requirement for reasons discussed in para 2.4. When the money is taken from the pot for highway works there is £300,000 left to be spent on other section 106 requirements. As explained above Members need to be aware that this figure is not fixed and could be at risk of increasing or of more concern decreasing depending on the costs for the highway works above. Assuming that the figure is approximately £300,000 this could be given to education to help the local schools but falls short of the requirement for primary schools. Whilst this £300,000 is not the full amount it is a good proportion of the requirement and will help provide accommodation in the schools for children generated from this development. There is a mixed view from Ward Members in relation to this with one supporting the proposal and the other two requesting that the full amount for education is provided. Officers consider on balance that if the development of this site is to be encouraged and the economic benefits of the development to be enjoyed this sum should be accepted. **Members could also look at some flexibility within the section 106 agreement in relation to improvements in the economic climate and the financial requirements for affordable housing. The section 106 agreement could be worded to allow the Council to choose whether any additional finance is ploughed into affordable housing and/or education. Members views on this are requested.**

5.15 Greenspace. This will be provided in line with the previous requirement of 0.004hectare per dwelling so is considered acceptable.

5.16 Affordable housing

It was agreed that the affordable housing payment could be deferred and reassessed during the construction period and if the market improved over this period then there may be some opportunity to obtain a payment for affordable housing. The applicant now wishes for this matter to be dealt with as 'overage' which means that a trigger sum would be approved by the Council and applicant and if this trigger sum was reached then contributions for affordable housing would then be paid. As mentioned above this clause in the section 106 agreement could

be more flexible and allow for the Council to choose whether to use this additional finance for affordable housing and education.

6.0 CONCLUSION

- 6.1 To conclude the following would be paid for through a section 106 agreement.
- (i) A footway on one side of Royds Lane (there is an existing footway on the other side) with dropped kerbs and tactile paving on all the crossing along both sides of Royds Lane.
 - (ii) New pedestrian crossing on the Ring Road, located after a left turn from Royds Lane.
 - (iii) Pedestrian refuge on Whitehall Road
 - (iv) Contribution to education of £300,000
 - (v) Greenspace on site
 - (vi) Affordable housing/additional education contribution deferred unless the market improves and profits exceed an agreed margin.

- 6.2 The developer would not be contributing to the following:

- (i) The upgrade of two bus stops on the Whitehall Road.
- (ii) The improvement of a footpath to Gelderd Road
- (iii) Metrocards
- (iv) The signalisation of the Ringways Roundabout
- (v) Public transport infrastructure

- 5.3 On balance therefore it is considered that substantial weight should be placed on bringing forward a vacant brownfield site within the main urban area with infrastructure improvements and a willing developer where approval in outline has previously been given for residential (albeit with some other uses also included) and approval is recommended. There will also be a clause that development should commence within two years from the date of decision to qualify for these reduced or none payments.

Background Papers:

Application file: 09/05553/OT



Leeds
CITY COUNCIL

Originator: Carol
Cunningham
Tel: 0113 247 8017

Report of the Chief Planning Officer

PLANS PANEL WEST

Date: 28 February 2013

Subject: Application Number 09/05553/OT Outline planning application for residential development at Land off Royds Lane, Lower Wortley, Leeds.

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DEFER and DELEGATE approval to the Chief Planning Officer subject to the conditions specified (and any others which he might consider appropriate) and the completion of a legal agreement to cover the securing of a sum of £750,000 to be apportioned to the following as appropriate following discussion with ward members:-

- **Greenspace provision**
- **Education provision**
- **Highway works**
- **Green travel Plan**
- **Financial viability**
- **Long term management of the open space and habitat corridor**
- **clause that development shall commence within 2 years.**

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33. Details of surface and foul water to be submitted
34. No piped discharge of surface water until satisfactory outfall approved and implemented
35. No piped discharge of surface water until approved surface water drainage works submitted
36. Surface water from vehicle areas to pass through an oil interceptor
37. Habitat protection and enhancement
38. Lintels shall be one single piece.

Direction : development in line with approved plans, above conditions and a section 106 agreement.

In reaching this recommendation the case officer dealing with the application has worked with the applicant/agent in a positive way by maintaining regular dialogue to produce an acceptable scheme in accordance with paragraphs 186 and 187 of the National Planning Policy framework. In granting permission for this development the City Council has taken into account all material planning considerations including those arising from the comments of any statutory and other consultees, public representations about the application and Government Guidance and Policy as detailed in the National Planning Policy Framework and (as specified below) the content and policies within The Development Plan consisting of the Leeds Unitary Development Plan Review 2006 (UDPR) and the emerging Publication Draft Core Strategy Nov 2012 (DCS)

UDPR Policies: GP5; E4; E7; H3; H4; N4; N12; N13; H11; N24; T2
BD5; LD1.

On balance, the City Council considers the development would not give rise to any unacceptable consequences for the environment, community or other public interests of acknowledged importance

1.0 INTRODUCTION:

- 1.1 This application for residential development at Royds Lane was reported to West Plans Panel in March 2011 where Members resolved to defer and delegate the approval subject to a Section 106 Agreement. The development costs for this scheme have since increased and the number of proposed dwellings have decreased and this report is to reassess the viability of the site and the S106 agreement contributions. The original report is attached for information. Members of Panel will also recall that there have been subsequent discussions regarding the viability of developing this brownfield site.

2.0 PROPOSAL:

- 2.1 The application is an outline application for residential development. The application was for the principle of residential development on the site, means of access and layout. There will be one vehicular access to the site and this will be off an existing track off Royds Lane close to the junction of Royds Lane and the service road for Makro.

2.2 The proposed Section 106 Agreement which was approved by Panel in March 2011 had the following contributions

- Off site highway works.
- Education contribution for both primary and secondary schools.
- Greenspace on site 0.004 hectares per dwelling.
- Bus stops upgrades to 2 bus stops.
- Improvements to the footpaths to the bus stops on Gelderd Road.
- Affordable housing and metrocards not payable but subject to financial viability submissions

The Panel also waived the payment towards Public Transport contribution which amounted to £193,767.

2.3 There were a number of highway improvements that were to be provided as part of the scheme which are as follows:

- Improvement of the existing track to the site to adoptable standards with a footway on each side
- New junction with Royds Lane and the service access with Makro. A stop line on the service access from vehicles leaving the service road for Makro.
- A footway on one side of Royds Lane (there is an existing footway on the other side) with dropped kerbs and tactile paving on all the crossing along both sides of Royds Lane
- New pedestrian crossing on the Ring Road, this is located after a left turn from Royds Lane.
- Changes to the Ring Road Roundabout at Ringways to include signalling.

2.4 The owner of the land now has a house builder interested in developing the site for housing and officers are discussing layout plans related to a future reserved matter application with this house builder. However, there are a number of changes since the Panel decision in 2011 which has meant that the viability of the development had to be reassessed. The changes in circumstances are the following:

Firstly, the outline consent was for approximately 192 dwellings which was 36 apartments and 156 houses. The number of dwellings has reduced to 152 which will be 36 apartments and 116 houses. The income generated from this reduction in numbers has been reduced.

Secondly, further work has been undertaken into the amount of contamination on the site which will require more remediation than originally thought with a higher cost which along with other abnormalities amounts to a total construction cost of over £5 million which is more than previously expected.

Thirdly, the economic climate has seen a further decline so the income generated from the scheme has been reduced. The amount of revenue on the site has decreased by £1.2million.

2.5 All these circumstances have led to the amount of money available for all the requirements of the S106 agreements being reduced to a pot of £740,000 (including the section 38 works which would account for approximately £122,000). The previous section 106 agreement didn't refer to prices but includes specifically the works that had to be carried out which concerned the applicant as the cost of these could spiral. The applicant has asked that there is a fixed pot of finance so they can be confident that they are able to meet the requirements. Any more than this pot of £740,000 will result in the scheme being unviable and very unlikely to go ahead. This pot of money would not cover the amount required for all of the previously approved section 106 requirements. Information has also been obtained in relation

to the total costs for the previous requirements. These are all estimates but gives an idea on how much the current obligations would have been.

Highway works – upwards of £1 million
Education – £500,000
Bus stop upgrades - £20,000
Greenspace on site provision – 0.004ha per dwelling
Improve footway to bus stops on the Gelderd Road –

- 2.6 The applicant has revisited the transport assessment based on the reduction of 30 dwellings. They have also submitted estimates on the highway measures that they consider are required. The information shows that all the previous highway works listed above can be implemented using the pot of £740,000 except for the signalisation of the Ringways Roundabout. The information submitted also put the case forward that with the reduction in numbers the signalisation of the Ringways Roundabout is no longer required. The estimate for the proposed highway works is approximately £440,000. However, part of these highway works is to upgrade the existing track from the junction with Makro service access into the site itself. These works will form part of any section 38 agreement and should not form part of the section 106 agreement. The applicant has stated that if these works are not part of the section 106 agreement then the sum of money required for these works will have to come out of the above pot so the total pot of money available for works in the section 106 agreement will be reduced to £618,000. It is still accepted that the other highways works required would amount to £318,000.
- 2.7 This leaves £300,000 to be spent on other contributions required from the development. This could be used by highways to do other highway works required in the area or towards education who have requested £500,000.
- 2.8 Another matter relates to the mechanism for obtaining contributions to affordable housing if the economic climate improves and there is more revenue generated from the scheme than what is currently expected. The previous mechanism approved by Panel in March 2011 requested that a financial viability was submitted after 2 years since development commenced and then yearly until the development was complete. If the market had improved and there was profit within the site then a financial contribution to affordable housing would then be paid. The applicant now wants to change this mechanism. Instead of submitting a financial appraisal the applicant and Council agree a trigger sum which once reached would ensure that contributions to affordable housing are paid. This trigger sum is achieved by using a formula which takes account of revenue generated from the scheme along with cost.

3.0 MAIN ISSUES

- 3.1 The main issue is to discuss and assess the merits of the section 106 agreement requirements and the development of this brown field site.

4.0 APPRAISAL

- 4.1 Panel approved this application for residential development in principle and deferred and delegated the decision to the Chief Officer subject to a section 106 agreement for the following contributions.

1. Highways works including the following:

(i) Off site highways works including improvements of the existing track to the site to adoptable standards with a footway on each side.

(ii) New junction with Royds Lane and the service access with Makro. A stop line on the service access from vehicles leaving the service road for Makro

(iii) A footway on one side of Royds Lane (There is an existing footway on the other side) with dropped kerbs and tactile paving on all the crossing along both side of Royds Lane.

(iv) New pedestrian crossing on the Ring Road, this is located after a left turn from Royds Lane.

(v) Changes to the Ring Road Roundabout at Ringways to include signalisation.

2. Bus stop upgrades to 2 bus stops on Whitehall Road.

3. Footpath improvements to bus stops on Gelderd Road

4. Education contribution for both primary and secondary schools.

5. Greenspace on site at a rate of 0.004 hectares per dwelling

6. Affordable housing deferred but subject to financial viability assessments.

Item number 1(i) which is the highway works including improvements of the existing track to the site to adoptable standards would form part of a section 38 agreement and would not be works included in a section 106 agreement.

4.2 The applicant has now stated that there is only a pot of £618,000 available to contribute to the above contribute to the above. The proposed sum will not provide all of the above. Each of the contributions needs to be assessed in turn to judge the impact off the development if these contributions where not paid.

4.3 As background the NPPF encourages Local Planning Authorities to take account of viability and deliverability in decision making. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. In this instance there is now a housebuilder on board who is committed to developing the site as they are in pre application discussions with us.

4.4 To assess whether this reduction of contributions are acceptable it needs to be assessed what are the consequences of either reduced payments or none towards some of the section 106 requirements. These are considered in turn.

4.5 Highways

The proposal is to pay for the following highway works:

(v) New junction with Royds Lane and service access with Makro. A stop line on the service access from vehicles leaving the service road for Makro.

(vi) A footway on one side of Royds Lane (there is an existing footway on the other side) with dropped kerbs and tactile paving on all the crossing along both sides of Royds Lane.

(vii) New pedestrian crossing on the Ring Road, located after a left turn from Royds Lane.

- (viii) Pedestrian refuse on the Whitehall Road to allow access to the Leeds Bound Buses.

The following works will not be paid for.

- (iv) The improvements to the Ringways Roundabout. The signalisation of this roundabout was a requirement for the scheme approved by Panel in 2011. The applicant has submitted additional information in relation to this matter especially as the number of dwellings has now been reduced by 30. Their information shows that with this reduction of dwellings the works required to Ringways Roundabout are excessive for the number of dwellings involved. **This has been re examined by highways officers and it is considered that the works to the Ringways roundabout cannot be supported by this level of development.**
- (v) Bus stops on Whitehall Road. The scheme required for the upgrade of two new bus stops on the Whitehall Road. These bus stops would be the nearest bus stops that residents would use to access Leeds City Centre via public transport. As there is only a limited pot of money available for highway improvements it is considered by highways **that the loss of the upgrades to two bus stops is not as important as other highway works proposed such as the pedestrian crossing over the Ring Road that is required to link the site to these two bus stops.** Also in the current climate the benefits of developing the site at the current time which has a willing developer and is a brown field site outweighs the needs for upgrades of two existing bus stops.
- (vi) There was a requirement to improve the footpath from the site to existing bus stops on the Gelderd Road. **This should remain as an aspiration but until further discussions have been held with ward members and there is certainty where the Section 106 monies will be spent there is no guarantee that this can be achieved.** It should be noted that the applicant no longer owns the link to the South through the tunnel and the surfacing and lighting of such a long path would be likely to be cost prohibitive bearing in mind the other viability issues.

4.6 Education contribution

The scheme has been reassessed by Education in terms of the reduction in numbers of residential properties. The figure required by Education for this level of development is approximately £500,000 to be used in local primary and secondary schools for the additional pupils this development will attract. The applicant cannot finance the whole of this requirement for reasons discussed in para 2.4. When the money is taken from the pot for highway works there is £300,000 left to be spent on other section 106 requirements. This £300,000 could be given to education to help the local schools. It is appreciated that schools are currently at capacity in Leeds including this ward and whilst this £300,000 is not the full amount it is a good proportion of the requirement and will help with the accommodation in the schools for children generated from this development. Therefore officers consider on balance that if the development of this site is to be encouraged and the economic benefits of the development to be enjoyed this sum should be accepted.

4.7 Greenspace. This will be provided in line with the previous requirement of 0.004hectare per dwelling so is considered acceptable.

4.8 Affordable housing

It was agreed that the affordable housing payment could be deferred and reassessed during the construction period and if the market improved over this period then there may be some opportunity to obtain a payment for affordable housing. The applicant now wishes for this matter to be dealt with under 'overage' which means that a trigger sum would be approved by the Council and applicant and if this trigger sum was reached then contributions for affordable housing would then be paid. Officers have sought legal advice regarding this way forward and these views will be presented to Panel when considering this application.

5.0 CONCLUSION

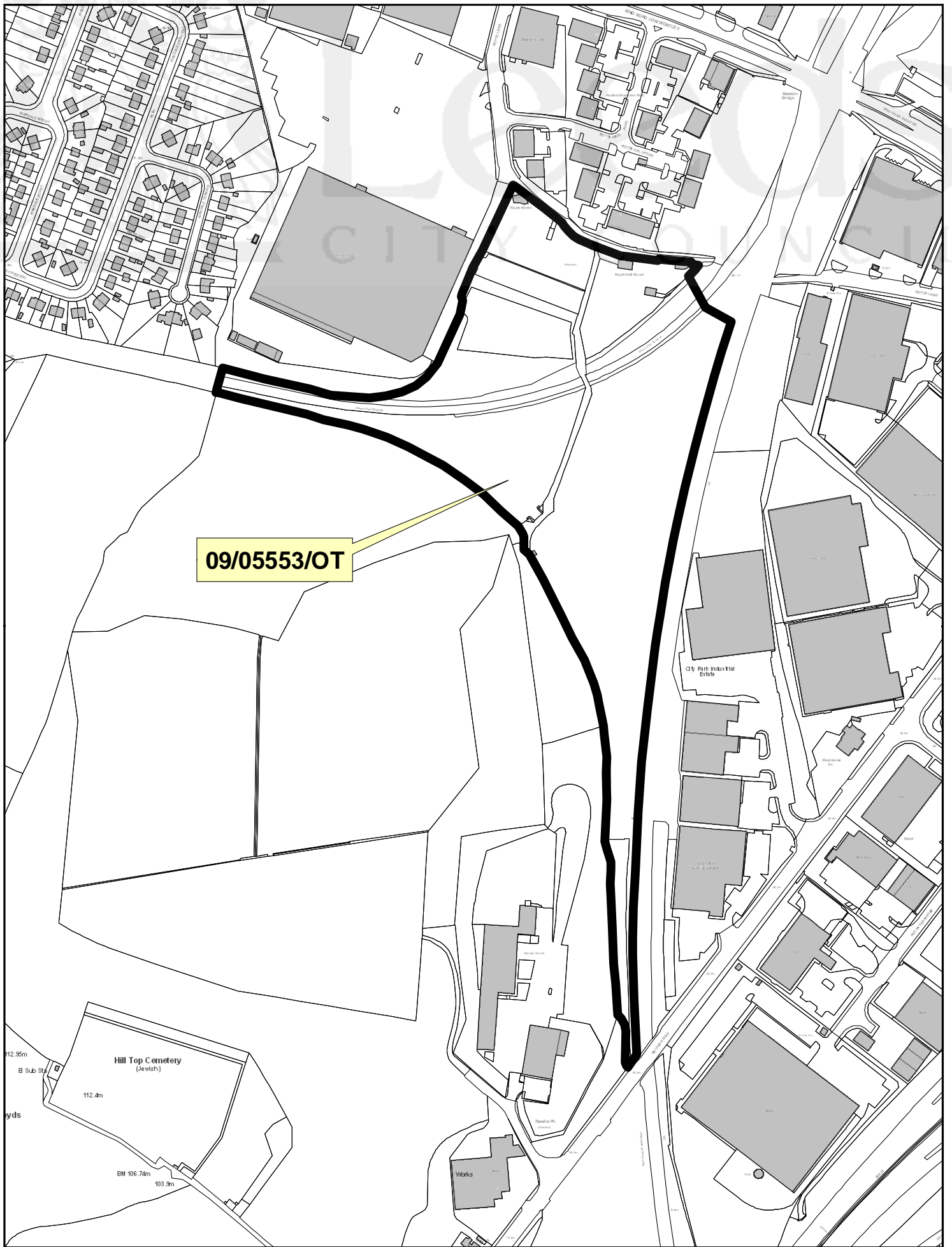
5.1 To conclude the following would be paid for through a section 106 agreement.

- (vii) A footway on one side of Royds Lane (there is an existing footway on the other side) with dropped kerbs and tactile paving on all the crossing along both sides of Royds Lane.
- (viii) New pedestrian crossing on the Ring Road, located after a left turn from Royds Lane.
- (ix) Pedestrian refuse on Whitehall Road
- (x) Contribution to education of £300,000
- (xi) Greenspace on site
- (xii) Affordable housing deferred unless the market improves and profits exceed an agreed margin.

5.2 The developer would not be contributing to the following:

- (vi) The upgrade of two bus stops on the Whitehall Road.
- (vii) The improvement of a footpath to Gelderd Road
- (viii) Metrocards
- (ix) The signalisation of the Ringways Roundabout
- (x) Public transport infrastructure

5.3.1 On balance therefore it is considered that substantial weight should be placed on bringing forward a vacant brownfield site within the main urban area with infrastructure improvements and a willing developer where approval in outline has previously been given for residential (albeit with some other uses also included) and approval is recommended. There will also be a clause that development should commence within two years from the date of decision to qualify for these reduced or none payments.



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SOUTH AND WEST PLANS PANEL