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**2019/1273**

**Applicant:** KMRE Group Ltd

**Description:** Removal of conditions 14 and 19 of application 2011/1341 – Demolition of existing bungalow and outbuildings, erection of 40 no. dwellings and formation of an area of openspace (Extension of Time Limit of application 2008/0764)

**Site Address:** Former Lilac Garage, Lilac Farm, Church Street, Brierley

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The application is before Members as it will require a variation to a Section 106 agreement.

### **Site Location and Description**

The application site previously consisted of various buildings that made up Lilac Garage and its grounds which included a bungalow, metal sheeted workshop, storage building, shed, and overgrown grassland. Since the granting of planning permission for 40 dwellings under application reference 2011/1341 works have started on the site with 16 dwellings having been built and occupied and the access road to this first cluster of buildings having been put in. The site has since stalled with no further works taking place over the last few years.

The site is surrounded by residential development on all sides being juts to the south-east of the centre of the village of Brierley

### **Proposed Development**

The applicant has put forward a viability case stating that the scheme would be unviable to be built out if the remaining S106 contributions required under the original permission were required. As such they the planning application seeks permission to remove the requirements stipulated under conditions 14 and 19 of planning permission 2011/1341.

Condition 14 required the applicant to provide for provision or enhancement of off-site public space and stated the following:

“The development hereby permitted shall not begin until a scheme has been submitted to and approved in writing by the Local Planning Authority for the provision of or enhancement to offsite public open space in accordance with Barnsley LDF Core Strategy Policy CSP 35, Green Space and SPG20. The provision or enhancement of the off-site public open space shall be provided prior to completion of the development in accordance with the approved scheme.”

This was agreed through the signing of a Section 106 in 2013 where a total sum of £73,426 was agreed which consisted of £54,844 as an open space commuted sum and £18,582 for maintenance of open space. The Section 106 also agreed that the payments could be staged as follows:

For the open space commuted sum:

- i) 25% upon commencement of development
- ii) 25% on practical completion of 9 of the dwellings
- iii) The remaining 50% on occupation of 20 of the dwellings.

Payments for the first two points have been received as the development has already passed these stages. However, the trigger for the remaining 50% has not yet been reached.

In addition, the sum for the maintenance of the open space was required upon the practical completion of the 20<sup>th</sup> dwelling which has also not been reached. In terms of the public open space requirements it is these remaining payments that the applicant is stating cannot be paid if the scheme is to be viable to be built out.

Condition 15 required the applicant to provide a scheme to meet affordable housing requirements and stated the following:

“The development shall not begin until a scheme for the provision of 15% of affordable housing, in accordance with the requirements of PAN 34 and Barnsley LDF Core Strategy Policy CSP 15, Affordable Housing, as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and phased to the satisfaction of the Local Planning Authority. The scheme shall include:-

1. The numbers, type and location of the affordable housing provision to be made.
2. The timing of the construction of the affordable housing.
3. The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing.
4. The occupancy criteria to be used for the determining of the identity of prospective and successive occupiers of the affordable housing and the means by which such occupancy will be enforced.”

This was agreed through the signing of the Section 106 in 2013 through a combination of providing 4 properties on site and also paying a commuted sum of £81,000 to meet the remaining requirements. The first trigger for these requirements was not until the practical completion of the 19<sup>th</sup> dwelling. As this trigger has not yet been reached, the developer is not yet required to provide any affordable housing provision. However, in this current application that has been submitted the applicant is seeking to remove the requirement to provide any affordable housing provision on grounds of viability

## **Planning History**

Previous applications of relevance to this proposal are:

2008/0764 – Demolition of existing bungalow and outbuildings and erection of 40 no. dwellings and area of openspace (Resubmission) approved 22.10.2008

2011/1341 - Demolition of existing bungalow and outbuildings, erection of 40 no. dwellings and formation of an area of openspace (Extension of Time Limit of application 2008/0764) approved 19.12.11

Since the granting of planning permission in 2011 the application has been the subject of non-material amendment applications which have reduced the total number of dwellings on the site to 38. The applicant has confirmed that they are looking to build out the scheme for 38 dwellings and not the original scheme for 40 dwellings

## **Policy Context**

Planning decision should be made in accordance with the development plan unless material considerations indicate otherwise and the NPPF does not change the statutory status of the development plan as the starting point for decision making. The new Local Plan was adopted at the full Council meeting held 3rd January 2019 after it was found to be sound by the appointed Planning Inspector following the examination process. This means that it now takes on full weight for decision making process in planning law terms as the development plan for the Borough, superseding the remaining saved policies from the Unitary Development Plan (adopted in the year 2000) and the Core Strategy (adopted in 2011).

## Local Plan Policies

The site is allocated as part Urban Fabric and part Green Space

Taking into account that the scheme proposes no changes to the approved built form and layout and is only related to the S106 contributions the following policies are considered of relevance:

SD1 Presumption in Favour of Sustainable Development  
GD1 General Development  
GS1 Green Space  
H7 Affordable Housing

## SPD

Planning Obligations SPD

## NPPF

The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. At the heart is a presumption in favour of sustainable development. Development proposals that accord with the development plan should be approved unless material considerations indicate otherwise. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or where specific policies in the Framework indicate development should be restricted or unless material considerations indicate otherwise.

With regards to planning obligations Paragraph 57 of the NPPF states the following:

"It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force"

In addition to the above, national advice is contained with the July 2018 Planning Practice Guidance on Viability (updated in September 2019)

## **Consultations**

Legal – Have stated that if approved the scheme would require a variation to the existing S106

Affordable Housing – No comments at time of preparing report

Ward Councillors – No comments at time of preparing report

## **Representations**

The application has been advertised by way of site notices. Three letters of comment have been received raising the following issues:

- Concerns over the use of Church Gate for construction traffic
- Concerns over asbestos in the buildings remaining that are proposed to be demolished

## **Assessment**

### Principle of Development

The principal issue of the application relates to viability. The applicants have a scheme for residential development approved and the only change they are proposing under this application is the removal of the requirements to provide affordable housing and to pay the remaining public open space contributions.

To support the application the applicant has submitted their own viability assessment. Their appraisal concludes that to build out the remaining 22 dwellings, without any of the S106 contributions remaining, would generate a small residual loss of £3,901. Using their assumptions, the scheme is therefore, at best, only marginally viable before any planning policy contributions are factored in. The applicant's appraisal therefore states that the inclusion of any planning policy contributions would only serve to reduce the viability of the scheme even further and therefore lower the likelihood that the scheme would be completed.

In order to assess the applicant's viability case, an independent valuer has been appointed to examine the case put forward and provide their own viability assessment. The Independent Assessor has taken into account a number of factors including build costs, the likely sales prices (utilising the sales prices for the 16 units already sold on the site and factoring in a suitable uplift given the last sale was in 2017), professional and financial costs, existing use value, and a reasonable developer profit of 17.5%. The Planning Practice Guidance on viability refers to a developer profit in the range of 15 to 20% and, given this site has been stalled for several years, the assessor considered 17.5% as reasonable for the purposes of viability testing.

The independent assessor's appraisal based on their adopted assumptions indicates that, without the S106 contributions, the scheme is viable but would only provide a surplus of £2,610 to meet any policy requirements. The advice from the assessor is therefore as follows:

"...our testing shows that if 22 units are brought forward...then at best, the scheme can be regarded as being marginally viable. Given the close proximity of the appraisal to the viability 'limit' we recommend that, under this scenario, the Council should remove all the planning policy requirements in order to give the scheme the best chance of being brought forward and completed"

Whilst the removal of the S106 contributions is not considered to be desirable, the Independent Assessors' comments have to be given a lot of weight. It is also acknowledged that the site has stalled for a number of years and it is not desirable to have a half finished building site so close to neighbouring properties and the impact that has on their amenities and the visual appearance of the area. In these circumstances it is therefore recommended to members that the application be approved and the relevant S106 amended.

### Residential Amenity

The proposal would not have any impact on residential amenity compared to the scheme approved. Neighbours have raised concerns which are directly related to the construction period, rather than the application before Members, as they relate to construction traffic and potential for asbestos being on site. Conditions were imposed on the original permission

relating to a Construction Method Statement and control of construction hours. These would still apply to any approval of this scheme. The issue of whether any asbestos is in the existing buildings would be a health and safety executive matter, dealt with under their legislation, rather than a planning issue

### Highway Safety

The proposal would not have any impact on highway safety compared to the originally approved scheme

### Conclusion

Given the applicant's viability assessment, which has been independently assessed, it is acknowledged that it is unviable to complete the scheme and pay the remaining S106 contributions. On this basis, sufficient evidence has been put forward to allow the removal of the remaining S106 contributions to be granted to allow the development to be completed. The scheme is therefore recommended to Members for approval.

### **Recommendation**

**Grant** subject to conditions and the varying of the S106

- 1 The development hereby approved shall be carried out strictly in accordance with the plans as approved under planning permission 2011/1341 apart from the site layout plan which shall be in accordance with Drawing titled Proposed Site Plan No. 100 Rev K (showing 38 dwellings on the site) and specifications as approved unless required by any other conditions in this permission.  
**Reason: In the interests of the visual amenities of the locality and in accordance with Local Plan Policy D1 High Quality Design and Place Making.**
- 2 The development shall be carried out in accordance with the external materials outlined in the letter dated 12th April 2012, and accompanying External Materials Schedule, as approved through the discharge of conditions submission for application 2011/1341  
**Reason: In the interests of the visual amenities of the locality and in accordance with Local Plan Policy D1 High Quality Design and Place Making.**
- 3 The parking/manoeuvring facilities, indicated on the submitted plan, shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.  
**Reason: To ensure that satisfactory off-street parking/manoeuvring areas are provided, in the interests of highway safety and the free flow of traffic and in accordance with Local Plan Policy T4 New Development and Transport Safety.**
- 4 Pedestrian intervisibility splays having the dimensions of 2 m by 2 m shall be safeguarded at the drive entrance/exit such that there is no obstruction to vision at a height exceeding 1m above the nearside channel level of the adjacent highway.  
**Reason: In the interest of road safety in accordance with Local Plan Policy T4 New Development and Transport Safety.**
- 5 Parking bays shall have the dimensions 2.5m x 5m  
**Reason: In the interests of highway safety in accordance with Local Plan Policy**

#### **T4.**

- 6 The development shall proceed in accordance with the Construction Method Statement that accompanied the letter dated 12th April 2012 and approved through the discharge of conditions submission for application 2011/1341. The approved scheme shall be adhered to throughout the construction period.  
**Reason: In the interests of highway safety, residential amenity and visual amenity and in accordance with Local Plan Policy T4 New Development and Transport Safety and Local Plan Policy D1 High Quality Design and Place Making.**
- 7 Within 28 days of works re-commencing on-site, a condition survey (including structural integrity) of the highways to be used by construction traffic shall be carried out in association with the Local Planning Authority. The methodology of the survey shall be approved in writing by the Local Planning Authority and shall assess the existing state of the highway. Within 28 days of completion of the development a second condition survey shall be carried out and shall be submitted for the written approval of the Local Planning Authority, which shall identify defects attributable to the traffic ensuing from the development. Any necessary remedial works shall be completed at the developer's expense in accordance with a scheme to be agreed in writing by the Local Planning Authority.  
**Reason: In the interest of highway safety in accordance with Local Plan Policy T4.**
- 8 The development shall proceed in accordance with the drainage scheme outlined in the letter dated 12th April 2012, and shown on plan no Lil01 p06.dc6, as approved under the discharge of conditions submission for application 2011/1341. The drainage system shall be fully implemented prior to the occupation of any of the remaining dwellings. The scheme shall be retained throughout the life of the development.  
**Reason: In the interests of ensuring adequate drainage to the scheme in accordance with Local Plan Policy CC3.**
- 9 The development shall proceed in accordance with the hard landscaping details outlined within the letter dated 12th April 2012, and accompanying drawing no. Lil01p06.dc6, as approved through the discharge of conditions submission for application 2011/1341. The hard landscaping shall be implemented prior to the occupation of the buildings.  
**Reason: In the interests of the visual amenities of the locality and in accordance with Local Plan Policy BIO1 Biodiversity.**
- 10 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the remaining dwellings or the completion of the development, whichever is the sooner; and any trees or plants which die within a period of 5 years from the completion of the development, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with other of similar size and species.  
**Reason: In the interests of the visual amenities of the locality, in accordance with Local Plan policies GD1 'General Development' and D1 'High Quality Design and Place Making'.**
- 11 Upon re-commencement of works on the site a scheme for the management and

maintenance of the on-site public open space shall be submitted to and agreed in writing with the Local Planning Authority. The management/maintenance of the openspace shall then be carried out in accordance with the approved details.

**Reason: In the interests of visual amenity and in accordance with Barnsley Local Plan Policy GS1.**

- 12 The development shall proceed in accordance with the tree protection measures outlined in the letter dated 12th April 2012, and accompanying plan Lil01p05A, as approved through the discharge of conditions submission for application 2011/1341.

**Reason: To ensure the continued well-being of the trees in accordance with Local Plan Policy GD1.**

- 13 Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no time on Sundays or Bank Holidays.

**Reason: In the interests of the amenities of local residents and in accordance with Local Plan Policies GD1 General Development Policy and POLL1 Pollution Control and Protection.**

- 14 The development shall proceed in accordance with the boundary treatment details outlined in the letter dated 12th April 2012, and accompanying plan Lil01p06, as approved through the discharge of conditions submission for application 2011/1341.

**Reason: In the interests of visual amenities in accordance with Local Plan Policy GD1.**

- 15 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no enlargement, improvement or other alteration of the dwellings which would otherwise be permitted by Part 1 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority, and no garages or other outbuildings shall be erected.

**Reason: In the interests of residential amenity in accordance with Local Plan Policy GD1.**

- 16 The development shall proceed in accordance with the low carbon energy renewal plan outlined in the letter dated 12th April 2012, and, as approved through the discharge of conditions submission for application 2011/1341. The measures shall be retained through the lifetime of the development.

**Reason: In the interests of climate change and in accordance with Local Plan Policy RE1.**

- 17 The development shall proceed in accordance with the Archaeology Desk Based Assessment and Building Appraisal dated April 2012, as approved through the discharge of conditions submission for application 2011/1341.

**Reason: In the interests of the historic environment in accordance with Local Plan Policy HE6.**

- 18 The development shall proceed in accordance with the finished floor level details outlined in the letter dated 12th April 2012, and accompanying plan Lil01 p04.dc6A, as approved through the discharge of conditions submission for application 2011/1341.

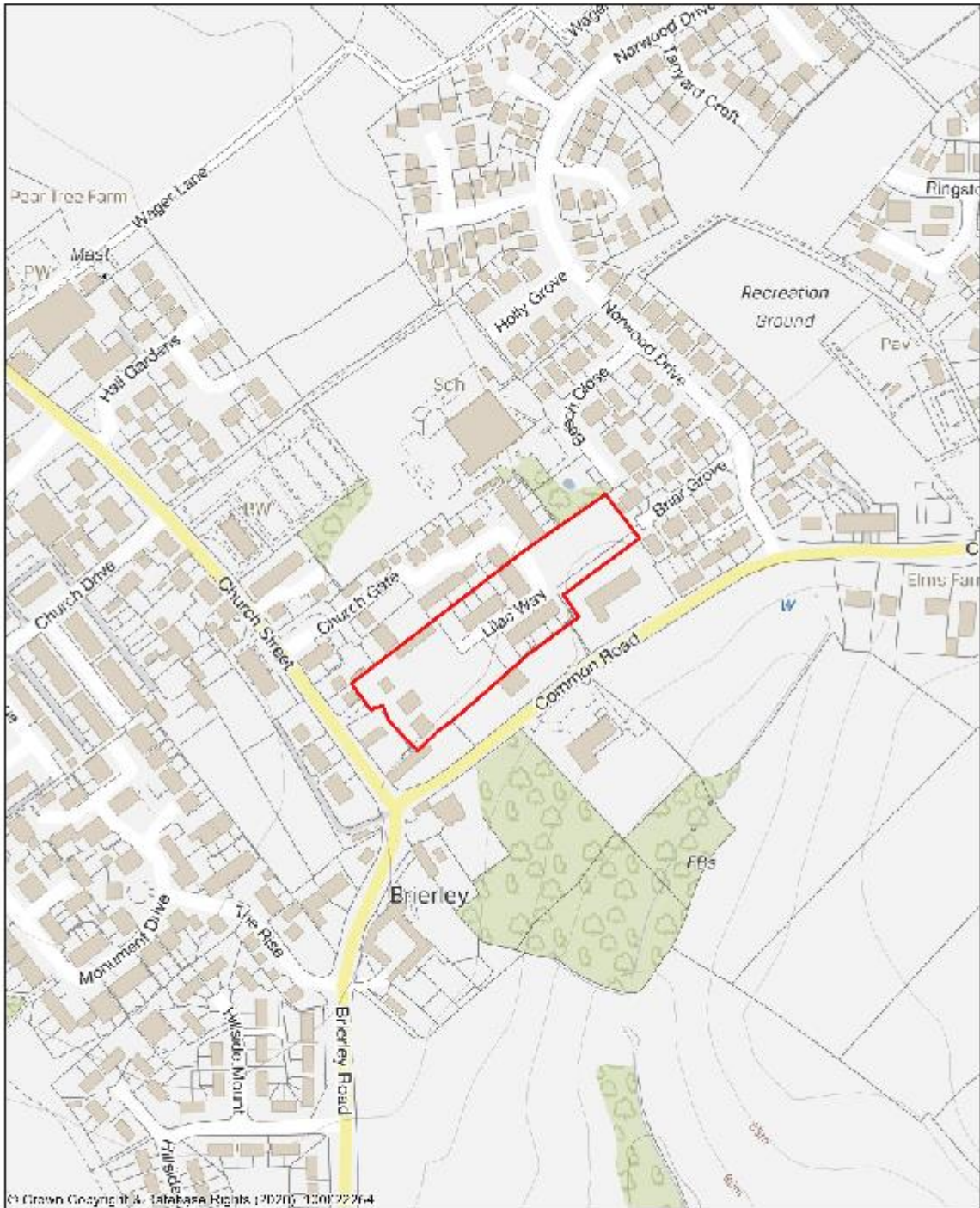
**Reason: In the interests of visual amenities in accordance with Local Plan Policy GD1.**





PA Reference:-

2019/1273



**BARNSELY MBC - Regeneration & Property**



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