

Application Number:	22/00818/FUL
Proposal:	New residential development of 32 no units consisting of 18no 3 bedroom houses and 14no 4 bedroom houses with associated car parking and landscaping.
Site:	Land at the end of Fern Lodge Drive, Ashton-under-Lyne
Applicant:	Wiggett Construction
Recommendation:	Grant planning permission, subject to conditions and completion of a section 111 Local Government Act 1972 agreement to require the completion of a planning obligation under s106 of the Town and Country Planning Act 1900 (as amended).
Reason for Report:	A Speakers Panel decision is required because the application is major development.
Background Papers:	The planning application documents are background papers to the report. They are open to inspection in accordance with Section 100D of the Local Government Act 1972.

1. BACKGROUND

- 1.1 The planning application described above was reported to the Members of the Speakers Panel on 19 April 2023. The report and plans are appended to this report. Members resolved to support the officer recommendation to grant planning permission subjection to a Unilateral Undertaking (UU) securing a financial contribution to local green space and biodiversity net gain, and conditions as listed in the report.
- 1.2 The normal practice would then be that the UU is completed, the planning permission is issued. The UU itself is a simplified but legally enforceable version of a planning agreement, it is entered into by the landowner and any other party with a legal interest in the development site. The UU will consist solely of the payment of financial contributions, as described in the report, these monies are to paid prior to commencement of development.
- 1.3 The applicant is in the process of purchasing the site from the Council. Contracts have been exchanged, but completion is subject to planning approval having been issued. As the current landowner the Council, it cannot enter into an agreement with itself. The purpose of this report is to seek authorisation to amend the previous recommendation to enable an alternative process to be followed under Section 111 Local Government Act 1972. It is not the purpose of this report to revisit the planning merits of the application as previously reported.
- 1.4 The Section 111 agreement is a legally binding covenant that will require the applicant to complete a UU once it has acquired a legal interest in the land; i.e. once a decision notice has been issued and the land sale has been completed.
- 1.5 In addition since the application was reported the applicant has also sought to review conditions relevant to site contamination and mining legacy and landscaping.

2. ASSESSMENT

- 2.1 The applicant is not currently in a position to enter into a planning obligation with the Council as local planning authority because they do not yet have sufficient interest in the relevant

land, and as the landowner, the Council cannot covenant with itself to comply with the planning obligations, nor can they be enforced against themselves.

- 2.2 Section 111 of the Local Government Act 1972 is entitled “Subsidiary powers of local authorities”. It is a generalised catch-all provision to enable local authorities to “do anything.... which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions” (Section 111(1)).
- 2.3 The use of the power under Section 111 is by its very nature applied to a very wide range of local authority functions, and its use must be subsidiary to the discharge of some particular function, in this instance the granting of planning permission.
- 2.4 Legal advisors have confirmed that an agreement made under section 111 would be the most appropriate means of securing the financial payments required to mitigate the development whilst allowing the land sale to complete.
- 2.5 It is proposed that the Council utilise powers under Section 111 to enter into an agreement with the applicant, which will secure the completion of a UU once the land sale has completed. The process would be as follows:
 1. Agreement under section 111 Local Government Act 1972 between the Council and the applicant which will include a legally binding covenant on the part of the applicant to enter into a unilateral undertaking once they have acquired a legal interest in the land (a draft of the UU would be annexed to the agreement);
 2. Planning permission is issued on that basis;
 3. Sale Transfer and UU then complete simultaneously in accordance with the sale contract and section 111 agreement.
- 2.6 To reaffirm, the process does not seek to alter, or amend, the applicant’s requirements to pay a £50,000 contribution towards local green space improvements. The section 111 agreement merely provides the correct legal framework for the monies to be appropriately secured.
- 2.7 Finally, with regard to planning conditions previously reported, subsequent discussion with the Coal Authority has confirmed that conditions 6 and 7 as originally recommended can now be removed. It is also proposed to adjust the wording slightly of condition no. 4 (site remediation) and include a reference to a revised landscaping plan in condition no. 23.

RECOMMENDATION

That subject to the completion of a Section 111 Local Government Act 1972 agreement, binding the applicant into the unconditional completion of the Unilateral Undertaking on transfer of the land to Wiggett Construction, members resolve to grant planning permission, subject to the conditions recommended in the report with the following amendments:

Condition no. 4 reworded as follows:

No development, other than site clearance and site compound set up, shall commence until a remediation strategy, detailing the works and measures required to address any unacceptable risks posed by contamination at the site to human health, buildings and the environment has been submitted to, and approved in writing by, the Local Planning Authority (LPA). The scheme shall be implemented and verified as approved and shall include all of the following components unless the LPA dispenses with any such requirement specifically in writing:

1. A Preliminary Risk Assessment which has identified: - All previous and current uses of the site and surrounding area. - All potential contaminants associated with those uses. - A

conceptual site model identifying all potential sources, pathways, receptors and pollutant linkages.

2. A site investigation strategy, based on the Preliminary Risk Assessment in (1) detailing all investigations including sampling, analysis and monitoring that will be undertaken at the site in order to enable the nature and extent of any contamination to be determined and a detailed assessment of the risks posed to be carried out. The strategy shall be approved in writing by the LPA prior to any investigation works commencing at the site.

3. The findings of the site investigation and detailed risk assessments referred to in point (2) including all relevant soil / water analysis and ground gas / groundwater monitoring data.

4. Based on the site investigation and detailed risk assessment referred to in point (3) an options appraisal, remediation strategy and verification plan setting out full details of the remediation works and measures required to address any unacceptable risks posed by contamination and how they are to be implemented. This will need to include any requirements for long term monitoring and maintenance.

Reason: To ensure any unacceptable risks posed by contamination are appropriately addressed and the site is suitable for its proposed use in accordance with paragraph 183 of the National Planning Policy Framework.

Condition no. 6 to be removed.

Condition no.7 to be removed.

Condition no.23 reworded as follows:

In addition to the soft landscaping planting detailed on drawing 6849.03 rev A (landscaping plan), a scheme for the Biodiversity Enhancement and Mitigation Measures comprising of bird and bat boxes shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to first occupation of the development (or in accordance with a phasing plan which shall first be agreed in writing with the local planning authority) the approved measures shall be retained thereafter

Reason: In the interests of biodiversity to ensure sufficient protection is afforded to wildlife in accordance with policy N7: Protected Species.