**Item** 

**Report to** Planning applications committee

10 May 2018

**Report of** Head of planning services

Subject Application no 12/01598/VC - Civil Service Sports

Ground, Wentworth Green, Norwich

Reason

for referral

To gain clarity on former committee resolutions

4(g)

Ward:	Eaton
Case officer	Mark Brown - markbrown@norwich.gov.uk

### **Development proposal**

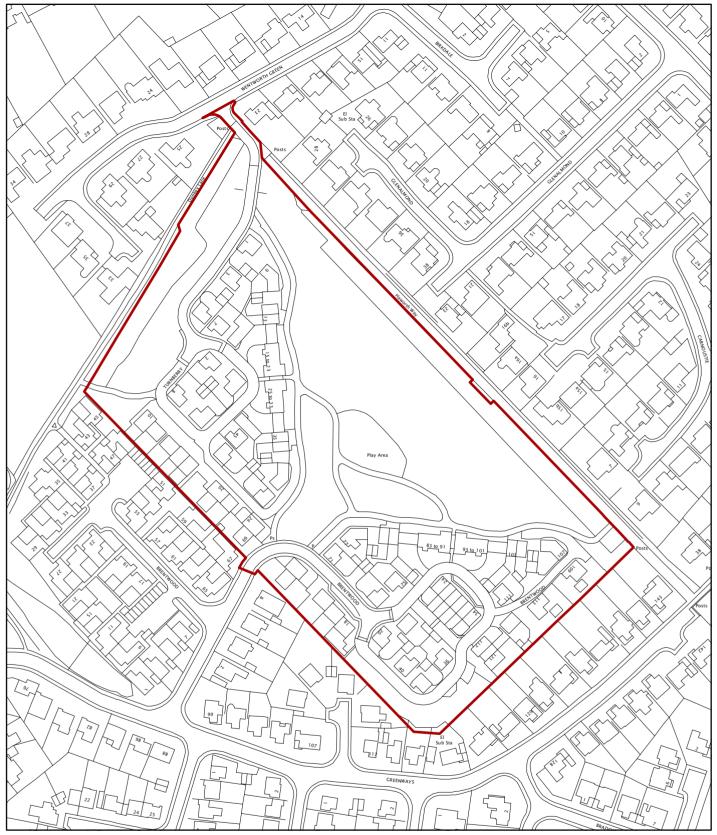
Variation of conditions 2 and 7 - changes to approved plans and details and schedule of trees to be retained; and condition 8 - changes to required drainage system designs, of planning permission 07/01018/F 'Erection of 78 dwellings, associated vehicle and pedestrian/cycle accesses, ground works and open space'.

Variations concern tree felling strategy, tree works and landscaping and maintenance thereof, and drainage systems construction and ongoing management thereof.

### Representations

Please refer to appended committee reports of Feb 2013 and Feb 2014 for details of representations.

Main issues	Key considerations		
1 – Tree works and associated	The tree replacement programme and		
planning obligations	planning obligations for		
	payment/expenditure of maintenance		
	sums.		
2 – Drainage strategy and	The drainage strategy on site and planning		
associated planning obligations	obligations for the payment/expenditure of		
	drainage maintenance sums.		
3 – Other Planning Obligations	Variations to other obligations including		
	affordable housing and highways works to		
	reflect the actual situation on site.		
4 – Enforcement Action	The expediency of taking enforcement		
	action against a fence at the corner of		
	Turnberry and Wentworth Green		
Expiry date	3 November 2012		
Recommendation	Approve subject to conditions and a		
	satisfactory deed of variation to S106		
	agreement.		



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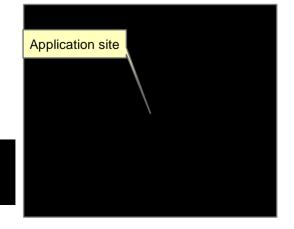
Planning Application No 12/01598/VC

Site Address Civil Service Sports Ground

Wentworth Green

Scale 1:2,000





## Introduction

- 1. This report follows the consideration of the application at Planning Applications Committee on 14 February 2013, 06 February 2014 and 04 December 2014. The application remains un-determined partly due to the complex history of the case, due to lack of clarity over former committee resolutions and also due to significant turnover of former staff dealing with the case.
- 2. The former committee report and minutes are appended to this report and provide further context to the case and also summarise former representations and consultation responses.
- 3. The sections below provide a summary of the site, the proposals and the case history.

# The site and surroundings

- 4. The former Civil Service Sports Ground has been developed for 78 houses and flats. The dwellings on the site have now been complete and occupied for a number of years.
- 5. The site includes a large open space to the northeast of the development which includes a childrens play area at its centre. The site perimeter is characterised by tree belts, and in particular has two significant mature and established Tree Protection Order (TPO) protected lengths of beech trees, forming woodland belts along the length of the perimeter along Donkey Lane (northwest boundary), and the former access drive connecting Wentworth Green and Greenways now called Haworth Way (northeast boundary). There are also lines of TPO Scots Pines and other species behind properties along Greenways in the southern corner of the site, and groups of non-TPO / 'unprotected' groups of poplar trees along the southeast boundary and a group of Oaks and hedging along the Haworth Way path in the eastern corner near Greenways. Most trees on site are protected by Tree Preservation Orders.

# The proposal

- 6. The application seeks to vary conditions on the original planning consent (07/01018/F) in order to:
  - a) Revise the surface water solution for the site so that all drainage would now run into a new communal surface water drainage chamber in the open space (rather than individual properties having their own soakaways).
  - b) Change the process of tree removal and replacement along the northeast boundary (Haworth Way) and northwest boundary (Donkey Lane) of the site from a five year removal and replacement programme to a 16 year removal and replacement plan, along with some changes to trees to be retained along the southern boundaries.
- 7. In addition to the above there are changes now proposed to planning obligations relating to highways works, affordable housing and public open space. Further detail

on the original consent and the changes are summarised in the planning/case history below.

# Relevant planning, case and site history

### Original consent Ref. 07/01018/F - Decision issued 11 Nov 2009

- 8. Permission 07/01018/F granted consent for the "Erection of 78 dwellings, associated vehicle and pedestrian/cycle accesses, ground works and open space." The original application was taken through committee in August 2008, S106 negotiations were prolonged and the consent eventually issued in Nov 2009. The scheme was drawn up on the assumption that areas of open space (including the tree belt, play space and open space) would be adopted and highways drainage would be adopted.
- 9. The original consent granted various works to trees on the site as summarised at paragraph 16 of the appended 2013 committee report. Specifically and in relation to the two groups of beech woodland belts along Haworth Way (northeast boundary) and Donkey Lane (northwest boundary) it provided for the gradual removal and replacement of the woodland over a five year period.
- 10. Drainage from individual properties on site was proposed to go to individual soakaways in each properties curtilage with the exception of plots 22-34 which had communal drainage. Anglia Water was to adopt the communal drainage for plots 22-34. Maintenance of soakaways would fall to each individual owner of for the other 65 properties on site. Highway drainage was to be directed to a drainage chamber under the open space with a view to it being adopted as part of the highway.
- 11. The original S106 agreement secured:
  - a) Affordable housing 23 dwellings (29%) with 75:25 social rent:shared ownership tenure mix;
  - b) On site children's play space;
  - c) Children's play space maintenance contribution £90,968;
  - d) Drain contribution £5,000 for 15 years maintenance of an "underground highways drainage cell facility";
  - e) Library contribution £4,680;
  - f) Public open space provision;
  - g) Public open space maintenance contribution £27,612;
  - h) TRO administration charge £1,495;
  - i) Transport contribution £22,007.70;
  - j) Tree belt maintenance contribution £87,187.86 for 15 years maintenance costs of trees on the property.
- 12. In November 2010 planning committee agreed to vary the S106 agreement to allow the 25% shared ownership to be any form of intermediate tenure (at that time to include affordable rent). No deed of variation to the S106 agreement was progressed in practice.

 In August 2012 planning committee agreed for the 25% intermediate tenure to be shared equity. No deed of variation to the S106 agreement was progressed in practice.

## Variation application Ref. 12/01598/VC – Still Pending and the subject of this report

- 14. As outlined at paragraph 6 above the application seeks to vary the approach to tree work replacement and provision of surface water drainage on site.
- 15. A detailed outline of the changes to tree works on site is outlined at paragraphs 17-19 of the 2013 committee report. In summary the main change is to revise the approach relating to the replacement and replanting of the woodlands along Haworth Way (northeast boundary) and Donkey Lane (northwest boundary). This revises the tree felling and replacement programme from a 5 year programme to a four phase programme of tree felling and replacement taking place over years 1-16 and ongoing management continuing until year 25. There are also some other changes to proposals for trees along the southern boundaries of the site with a number of trees previously identified for removal under the original approval now to be retained.
- 16. The drainage strategy is revised so that all drainage from the site runs to four drainage chambers under the public open space within the site.

### **February 2013 Committee**

- 17. The variation application was first reported to planning applications committee in February 2013. The resolution was to approve the application in line with the officer recommendation and subject to conditions and a deed of variation to the section 106 agreement to implement the following changes:
  - a) Implement the changes to affordable housing clauses as per former resolutions (see paragraphs 12 and 13 above);
  - b) Revisions to public open space obligations to remove reference to public adoption but to confirm timings of provision, completion and ongoing maintenance:
  - c) Removal of the tree belt maintenance contribution and reference to public adoption:
  - d) Increase in drainage contribution from £5,000 to £20,000 in case of possible future adoption:
  - e) Other obligations to be carried forward as necessary.
- 18. Other key points from the committee report are summarised below:

### Drainage

a) The committee report acknowledged problems with adoption if the highways and roof drainage went to the same system. It also acknowledged that scope for a public body to adopt the system was unclear (this was around the time that central government was promoting a proposal for Lead Local Flood Authorities to adopt all SUDS systems). The report however went onto say that

- the residents management group had submitted proposals to manage the facility using monthly subscriptions from residents.
- b) The report noted that a £5,000 maintenance contribution for highway drainage was secured under the original consent but that this would need to be increased to £20,000 as the cells were now four times the size and taking drainage from the whole development (as such maintenance liability was argued to be higher compared to the former arrangement with individual soakaways in each rear garden).

### Trees & Landscaping

- c) The report outlines the extensive tree replacement works and advises that the trees will be managed by the residents management company and will be maintained and managed in accordance with the phased tree management plan document. This involved phased implementation starting in 2013.
- d) The report noted changes to landscaping on the site and amalgamation of two play areas into one.

Public Open Space and Play Space

e) The report acknowledges that the open space will now not be adopted but will be taken on by the management company.

### **February 2014 Committee**

- 19. The variation application was reported back to planning committee in February 2014. The decision of the committee in February 2013 was still outstanding due to the S106 agreement not being concluded. The report proposed the following changes to the Feb 2014 resolution:
  - a) Removal of the drainage maintenance sum;
  - b) Removal of obligations on the developer to provide a range of highway works within Wentworth Green and Newmarket Road.

Some highway works and commuted sums have been completed/paid. However other highway works originally envisaged are now not required or would now be undesirable to complete.

- 20. The report considered that as the drainage was not to be adopted by the Council the maintenance sum was not required/necessary and highways considered the highway works which had not carried out were also unnecessary.
- 21. The committee resolved to approve the application subject to the conditions outlined in the report of Feb 2013 and an additional condition dealing with pedestrian and cycle signage. A further report was requested on the impact on removing the drainage maintenance sum from the S106 agreement and the highways works amendments. The committee also authorised enforcement action against a fence at the entrance to the site. The full resolution is copied below:

**RESOLVED**, unanimously, to approve application no 12/01598/VC: Wentworth Gardens, site of former Civil Service Sports Ground, Wentworth

Green, Norwich, and its subsequent changes to the anticipated Section 106 Agreement, and grant planning permission, subject to:

- (1) the conditions outlined in the committee approval of 14 February 2013 and an additional condition as follows:
  - "There shall be no occupation of the final dwelling to be occupied within the development until appropriate signage has been installed to the cross-site pedestrian and cycle route in accordance with details of signage location and design, to be first submitted to and agreed in writing by the Local Planning Authority, and shall be retained as such thereafter."
- (2) request the head of planning services to report on the impact of the completion of a satisfactory S106 agreement to vary the terms of the original planning permission 07/01018/F as required for variation of conditions application 12/01598/VC including the obligations set out in the committee approval of 14 February 2013, with amendments to highways works and drainage maintenance sums as set out in the report of 6 February 2014, for the reasons given in the planning applications committee approval of 14 February 2013, and subject to further consideration at a future committee meeting;
- (3) authorise officers to proceed with issuing a planning enforcement notice if (a) alterations are not made to bring the fences erected to the west and east of the Turnberry Junction into permitted development, or (b) planning permission is refused if an application(s) is made for the fences to be retained in its existing position and form.

### **December 2014 Committee Report**

- 22. The case was reported back to committee in December 2014. The report considered a request from the developer to change the last 2 affordable units to market dwellings and pay a commuted sum in lieu.
- 23. All 17 social rented and 4 of the 6 intermediate tenure dwellings had been transferred to a Registered Provider (RP). The two remaining intermediate tenure dwellings were 2x2 bed bungalows which had been marketed to RP's as shared ownership for 18 months and the report recommended a £132,198.04 commuted sum if the units continue to not be taken up by an RP.
- 24. The report also provided updates on trees, drainage, landscaping and highways matters although the resolution is unclear if this is the update sought via the February 2014 resolution and if the removal of the drainage commuted sum is approved.
- 25. Committee resolved to approve in line with the officer recommendation to agree the changes to the affordable housing obligations.

#### The current situation

- 26. Subsequent S106 drafts and discussions have been ongoing for a significant length of time between the council and the applicant and the decision remains outstanding.
- 27. On site the development has now been completed for over 3 years. Drainage has been implemented in accordance with the details provided within this application (i.e. four drainage chambers under the open space). The first phase of the tree replacement works to the trees along Donkey Lane and Haworth Way have been complete and the next phase of removal and replacement works is due in 2019 under the current arrangements submitted as part of this application.
- 28. Responsibility for the maintenance of the 'public' elements of the site lies with the Wentworth Gardens Management Company Limited (WGMC) together with the Management Agents RMG, its current directors being four of Persimmons Management Team.
- 29. There are currently no local residents on the WGMC Board but all residents contribute via the Management Company to the upkeep of the area. The ownership of the open space lies with Beazer Homes a subsidiary of Persimmon. It is understood from Persimmon that this is likely to remain the case with the Management Company being transferred to residents with the appointment of new directors, replacing the Persimmon Directors.
- 30. An affordable housing commuted sum has been paid in line with the December 2014 resolution and the two units in question originally identified as intermediate tenure dwellings have been sold privately.

# **Assessment of planning considerations**

### Relevant development plan policies

- 31. Joint Core Strategy for Broadland, Norwich and South Norfolk adopted March 2011 amendments adopted Jan. 2014 (JCS)
  - JCS1 Addressing climate change and protecting environmental assets
  - JCS4 Housing delivery
  - JCS6 Access and transportation
  - JCS20 Implementation
- 32. Norwich Development Management Policies Local Plan adopted Dec. 2014 (DM Plan)
  - DM1 Achieving and delivering sustainable development
  - DM5 Planning effectively for flood resilience
  - DM6 Protecting and enhancing the natural environment
  - DM7 Trees and development
  - DM8 Planning effectively for open space and recreation
  - DM12 Ensuring well-planned housing development
  - DM28 Encouraging sustainable travel
  - DM30 Access and highway safety
  - DM31 Car parking and servicing
  - DM33 Planning obligations and development viability

### Other material considerations

- 33. Relevant sections of the National Planning Policy Framework March 2012 (NPPF):
  - NPPF0 Achieving sustainable development
  - NPPF4 Promoting sustainable transport
  - NPPF6 Delivering a wide choice of high quality homes
  - NPPF10 Meeting the challenge of climate change, flooding and coastal change
  - NPPF11 Conserving and enhancing the natural environment

## 34. Supplementary Planning Documents (SPD)

- Affordable housing SPD adopted March 2015
- Landscape and Trees SPD adopted June 2016
- Open space & play space SPD adopted October 2015

#### **Case Assessment**

- 35. The February 2014 committee report recommended removal of all commuted sums relating to drainage, open space/play space and trees as well as alterations to the highway work requirements. The committee resolution was to receive a further report on the impact of varying the obligations set out in the report (see paragraph 21). It is not clear if the December 2014 report was intended to serve this purpose and the drafting of the deed which followed did not reflect the recommendations in the February 2014 report. This report therefore seeks to gain clarity on the resolution and the obligations which are to be amended in the S106 agreement.
- 36. The original S106 agreement was drafted with the expectation that the open spaces would be adopted on site and that the highway drainage chambers would be adopted as part of the highway. As is the case now with most new developments this transpired to not be the case and instead, the open spaces on site are to be maintained by a resident's management company. Typically where this is the case commuted sums for maintenance of open space and un-adopted drainage would not be required and instead conditions would be imposed requiring maintenance in accordance with an agreed maintenance and management programme.
- 37. Residents of the new development have previously raised concern that removal of the commuted sums altogether would have the effect of increasing their liability for management of the site. It is understood that all plot transfers included details of the managed areas on the site which would be funded and maintained by the management company. The operation of the management company and the costs of service charges are outside of the council's control and any increase in costs is a matter between the management company and residents.

### Main issue 1: Tree Maintenance

- 38. Key policies and NPPF paragraphs DM7, DM8, NPPF paragraphs 109 and 118.
- 39. No changes are proposed to the tree maintenance proposals on site, the 16 year felling programme is still considered to be fit for purposes and given that (despite this consent not being issued) the phase 1 works have been completed it is still on track as per the proposals agreed in 2012/2013. It is important that the consent is now issued to avoid any delay in the phase 2 works scheduled for 2019.

- 40. The reason for the need to fell and replant the two woodlands is explained at paragraphs 37 and 38 of the February 2013 committee report.
- 41. The original S106 agreement included a tree belt maintenance contribution of £87,187.86 for 15 years maintenance costs of trees on the property. As the tree belts would no longer be adopted, the February 2014 report recommended removal of the contribution. However it is understood that given concerns of residents outlined at paragraph 37 above this was revised to require the owner to expend this amount on the maintenance of the tree belts (rather than provide the sum to the Council). This was explained in the December 2014 report. Whilst such a solution is not considered to be water tight in terms of ensuring costs are not transferred to new residents of the development, it should provide a basis for residents of the development to hold the management company responsible in terms of any sums paid by residents.

### Main issue 2: Drainage

- 42. Key policies and NPPF paragraphs JCS1, DM5, NPPF paragraph 103.
- 43. Surface water drainage has been implemented on site in line with the proposals in this application to provide four drainage chambers beneath the open space. The original S106 agreement included a £5,000 drainage contribution for maintenance of the highways drainage system. However, the site now has a combined surface water drainage system for highways and residential drainage and as such cannot be adopted by the highways authority.
- 44. The February 2013 report recommended increasing the sum from £5,000 to £20,000. The February 2014 report revised this to recommended removal of the sum altogether and the December 2014 report referred to the drainage being maintained by the management company using a budget specified in the S106 agreement. As the surface water drainage system is not being adopted it would not be appropriate for a commuted sum to be made to the Council. The current drafting of the deed of variation suggest a sum is expended by the owner on drainage maintenance. As per the tree maintenance sum this could assist in avoiding increases in service charges on the development. It is recommended that this sum is £5,000 which is the level of contribution which residents may have expected to have been available when acquiring a property on the development. It is not considered that an increase to £20,000 is justified as, whilst the drainage solution has changed on site, residents would previously had a maintenance liability in maintaining private soakaways on site.

### Main issue 3: Other obligations

45. The former committee reports consider changes to a number of other obligations. A summary of the main changes is outlined below:

Affordable housing

46. The original S106 agreement required 23 affordable houses on site. 17 Social rented units have been transferred to Saffron Housing Trust and 4 shared equity units have been transferred to Norwich City Council. In relation to the two which have not been transferred, a commuted sum has been paid of £132,916.79 and they have subsequently been sold privately. This is in line with the resolution of the

December 2014 committee report. It is recommended that revisions to the S106 agreement are made to reflect the current situation on site.

Highways works

- 47. Paragraph 8 of the February 2014 committee report outlines a number of changes to the highway works arrangements on the site as well as off-site works which were no longer considered necessary. The committee at the time agreed to the changes with the exception of the need for signage to the cycle routes. It is recommended that these changes be implemented within the revised S106 agreement with the exception that obligations for signage to the east-west cycle route will remain.
- 48. The roads on the site are expected to be adopted by the Highways Authority within the next month, whilst normally the highways would not be adopted without standalone drainage, an exception is being made in this case.
  - Children's Playspace and Open Space
- 49. Obligations for childrens playspace and open space commuted sums were only to be payable if they were to be adopted by the Council. As they are not being adopted the references to the obligations can be removed from the agreements.
  - **Library Contribution**
- 50. A Library contribution has been paid and the deed of variation can confirm that this is the case.

#### Main issue 4: Enforcement action

51. The February 2014 committee resolution also authorised enforcement action against a fence which had been erected at the entrance to the site. No formal enforcement action has been taken. In reviewing the case history and preparing this report, officers have reconsidered the expediency of taking action against the fence in question. The principal reason for taking action was due to concerns over highway safety, however having reviewed the location of the fence in relation to visibility at the access to the development it does not hinder visibility. Required visibility is 2.4m x 70m and actual visibility to the west is approximately 2.4m x 88m, the limiting factor is not the fence but the curve of Wentworth Green itself. As such removal of the fence is not considered to be expedient.

## **Equality and diversity issues**

52. There are no significant equality or diversity issues.

## Conclusion

53. For the reasons outlined above it is recommended to approve the application subject to the conditions outlined in the recommendation below and variations to the S106 agreement as outlined in detail in the above report. It is recommended that no enforcement action is progressed in relation to the unauthorised fence at the corner of Turnberry and Wentworth Green.

## Recommendation

To:

- (1) approve application no. 12/01598/VC Civil Service Sports Ground Wentworth Green Norwich and grant planning permission, subject to the completion of a deed of variation to the original S106 agreement to make changes to planning obligations as described in this report and relating to affordable housing, management of protected trees, provision and management of public open space and children's play facilities, drainage management, transport contributions, highways works and library contributions, and subject to the following conditions:
  - (1) development in accordance with approved plans and materials in accordance with 11/01619/D;
  - (2) landscaping in full accordance with details approved by application 12/01034/D;
  - (3) implementation of the tree felling, replacement and maintenance programme;
  - (4) development shall be constructed maintained in accordance with the approved drainage strategy;
  - (5) garages to be used only for parking of domestic vehicles and not to be converted to provide further living accommodation;
  - (6) the areas of open space on the site shall remain as open space only, accessible to the public for unhindered access and use, in perpetuity;
  - (7) there shall be no works to trees on site, other than those contained in the approved documents and Tree Protection Plan within this permission;
  - (8) glazing to the first floor bathroom at dwelling no.65 shall be only obscure glazed;
  - (9) retention of car parking shelters, refuse stores and bike stores;
  - (10) ongoing landscaping maintenance requirements for 5 years.
- (b) Not to take enforcement action against the fence located at the junction of Wentworth Green and Turnberry.

