Item: **15**

Reference: **11/00222/CONDIT**

Applicant: **Adept Care Ltd**

Location: **Moat House New Road Burbage**

Proposal: **VARIATION OF CONDITION NO. 3, 15 AND 16 OF PLANNING PERMISSION 09/00922/FUL TO CARRY OUT THE DEVELOPMENT IN ACCORDANCE WITH ALTERNATIVE PLANS AND DETAILS**

Target Date: **23 June 2011**

Introduction:-

This application is to be considered at Planning Committee in accordance with the Scheme of Delegation, as it is a major development.

Application Proposal

Members may recall that planning permission (09/00922/FUL) was approved in April 2010 for the demolition of the existing residential care home and the erection of a new care home and eight residential units with associated parking. This application seeks a variation to conditions 3, 15 and 16 of the permission which relates to the development being carried out in accordance with specific plans submitted with the application, including the implementation of the method of tree protection and landscaping. This application seeks to substitute some of the approved plans to allow alterations to the landscaping and trees:-

a) reduced planting to the northern elevation of the proposed residential care home
b) details of the method and extent of protecting existing trees.

The Site and Surrounding Area

The site is located within the Burbage Conservation Area, to the north-west of Pughes Close and south of Grove Road occupying an area of 1.255 Hectares. The northern and western boundary of the site contain a number of mature trees and shrubs which form a dense screen to this side of the proposal and separate the site from Pughes Paddock. The area is predominantly residential in character; there are two detached dwellings, 25 Grove Road and The Rectory, located adjacent to part of the northern boundary, with residential properties located to the east and south of the site. The properties to the east are two storey terraced properties set back from the highway. To the south the properties are modern brick bungalows sited within Pughes Close. The land is generally flat with the exception of a hollow which runs east to west close to the northern boundary of the site.

Technical Documents submitted with application

No documents were submitted with this application.

History:-

09/00922/FUL	Demolition of existing care home and erection of new care home and eight residential units	Approved	16.04.10
08/00536/FUL	Erection of residential care home (resubmission of 07/0166/FUL)	Approved	22.08.08
07/01066/FUL	Erection of residential care home	Refused	16.01.08
07/00333/FUL	Retention of training room	Approved	08.05.07

Various works to trees within the grounds.



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Consultations:-

Site notice and Press notice were displayed and neighbours notified.

At the time of writing the report comments have not been received from:-

Burbage Parish Council
The Borough Council's Arboricultural Consultant.

Any responses received will be reported as a late item.

Policy:-

Central Government Guidance

Planning Policy Statement 5: Planning for the Historic Environment lays out guidance on the identification and protection of listed buildings, conservation areas and the historic environment.

Circular 06/2005: Biodiversity and Geological Conservation provides guidance on the application of the law relating to planning and nature conservation as it applies in England. The circular complements the expression of National Planning Policy found in PPS9.

Planning Policy Statement 9: Biodiversity and geological conservation sets out how the planning system will help deliver the Government's aim that construction, development and regeneration should have minimal impact on biodiversity and where possible enhance it.

Regional Policy

The decision of the Secretary of State for Communities and Local Government ("SoS") on 6 July 2010 to revoke Regional Strategies using powers in section 79 of The Local Democracy, Economic Development and Construction Act 2009 was successfully challenged in the High Court and was quashed in a judgment handed down on 10 November 2010. Following the decision, the SoS has written to local planning authorities stating that the government will introduce the Localism Bill in November containing proposals to abolish Regional Strategies. The government's Chief Planning Officer has also written advising that local planning authorities should still have regard to the SoS`s letter of 27 May 2010 and that it should still be regarded as a material consideration. Judgement was recently given in a second challenge by Cala Homes when the Court held that the SoS`s intention to reform the planning system by removing regional strategic planning from it is to be taken into account as a material consideration. In relation to the weight to be given to that intention as a material consideration the Court held that `the weight to be given to relevant provisions of Regional Strategies pending the legislative process will be for decision-makers to gauge. Until the end of that process is reached Regional Strategies will remain in place as part of the development plan.

Regional Spatial Strategy for the East Midlands provides a broad development strategy for the East Midlands. Policy 27: Regional Priorities for the Historic Environment states that the historic environment should be understood, conserved and enhanced, in recognition of its own intrinsic value.

Local Policy

Local Development Framework: adopted Core Strategy 2009

Policy 4 requires development to respect the character and appearance of the Burbage Conservation Area by incorporating locally distinctive features of the Conservation Area into the development.

Hinckley and Bosworth Local Plan 2001

The site falls within the settlement boundary of Burbage and Burbage Conservation Area as defined in the Local Plan, the site is also protected by a group Tree Preservation Order. The following policies are therefore considered relevant.

Policy IMP1 requires contributions towards the provision of infrastructure and facilities on and off site required to serve the development.

Policy BE1 considers the design and siting of development and seeks that development enhances the character of the surrounding area, avoids loss of open spaces and protects the amenity of neighbouring residents.

Development in Conservation Areas is considered under Policy BE7 which seeks to preserve or enhance the special character of the conservation area having regard to the buildings, views into and out of the area, vegetation and spaces.

Policy REC3 seeks the provision and maintenance of informal play and open space.

Polices BE13, BE14, BE15 and BE16 considers the effect of development on possible archaeological remains and requires relevant studies and investigation works to be submitted.

Policy NE12 states that proposals for development should take into account the existing landscape features of the site and should make provision for further landscaping where appropriate. Applications should be accompanied by a plan for the protection of trees and other nature conservation features on site.

Other Policy Guidance

Burbage Village Design Statement (adopted June 2006) sets out the principles, design features and quality standards that should be adopted by those wishing to build in Burbage. Within the document the application site is considered to be within Zone 1: Conservation Area which forms the centre of the old village. Its character is defined as comprising two or three storey properties in short terraces with chimneys a key feature of the roofscape. The document also defines mature areas within Burbage as ‘high quality residential areas, in terms of design, layout and landscaping that ensure a more attractive and sustainable residential environment’. New developments are expected to contribute in terms of design and landscaping to the enhancement of the village’s environment and the Statement identifies vegetation as having a fundamental impact on the character of an area.

Play and Open Space Supplementary Planning Document (SPD) adopted September 2008 provides background information and justification for the provision and maintenance of informal and formal play and open space provision across the Borough.

Appraisal:-

Principle

The redevelopment of the site for a residential care home and eight dwellings and associated parking has been established in principle with the determination of the previous planning application (09/00922/FUL). Therefore the main considerations with regards to this application are whether the amended landscaping scheme is acceptable and whether the extent of tree removal and protection is acceptable.

Landscaping

The amended landscaping scheme (plan 01902F) submitted with this application shows the removal of a further tree (tree 105 Sycamore) from the northern boundary and it being replaced by less mature trees. The landscaping plan also shows the removal of an existing cluster of trees (trees 108-110 Cotoneaster) from the northern elevation of the proposed residential care home to be replaced by a grassed area and low level planting. These trees were previously shown to be retained as part of the landscaping scheme. There are other minor changes proposed to the landscaping scheme including the siting of additional garden features including a water feature and gazebo in the main garden area in the centre of the proposed care home, inclusion of additional garden seating and re-alignment of the communal grassed areas. With the exception of the removal of the cluster of trees to the north of the proposed residential care home, which will be discussed in the subsequent section of this report, the amended landscaping scheme is considered to be acceptable.

Tree removal and protection

Two further plans have been submitted with this application which show the method and extent of tree protection and the trees which are to be removed and retained. It is considered that the extent of tree protection is acceptable as it covers all of the trees that will be retained as part of the landscaping scheme whilst affording sufficient space within the site for the replacement residential care home and 8 dwellings to be physically constructed.

The main issue to consider is the removal of trees 108-110 which are Cotoneaster trees. It is considered that the removal of these trees will open up the site and result in the proposed residential care home being visible from Grove Road to the north. Whilst it is conceded that the removal of these trees is necessary due to their proximity to the proposed care home, there is a requirement for a replacement tree to be planted within the void left by their removal. A request was made to the applicant's agent on 30 March 2011 for an amended landscaping and tree plan showing the inclusion of a replacement tree in the area of land to the northern elevation of the proposed care home.

An amended landscaping plan was received on 12 April 2011 showing the planting of a heavy standard Copper Beech Tree in the void left by the removal of trees 108-110. Whilst this tree will screen the northern elevation of the replacement care home it is considered that additional medium to low level planting will be required to the north of the proposed Copper Beech tree to screen the development immediately after construction is completed to allow the Copper Beech Tree to establish itself. A request for an amended plan will be made to the applicant's agent to show this additional planting. Once this plan is received it will be reported as a late item.

Contributions

Permission reference 09/00922/FUL (the First Permission) was accompanied by an agreement entered into pursuant to section 106 of the TCPA and dated 15 April 2010. These obligations sought mitigation in relation to the development proposed under the First Permission and without which the said development would not have been acceptable in planning terms.

The application the subject of this report is made pursuant to section 73 of the TCPA and approval of this application would result in a separate planning approval. In those circumstances the developer would have two extant planning permissions, either of which (but not both) would be capable of implementation.

The First Permission is subject to obligations, the obligations are tied in specifically to the First Permission. The obligations and the conditions attached to the First Permission remain appropriate in relation to the Second Application and it will be necessary to enter into a deed of variation to formally apply those obligations to the Second Application.

Conclusion

Overall, the amended proposals are considered to effectively screen and landscape the site. Furthermore the inclusion of an additional tree to the northern elevation of the proposed residential care home will screen it when viewed from Grove Road. It is considered that the method and extent of tree protection is sufficient to mitigate against the potential impact of development upon the trees to be retained at the site, and which have protected status.

RECOMMENDATION: - That subject to the execution of an Agreement under Section 106 of the Town and Country Planning Act 1990 and Section III of the Local Government Act 1972 towards, the provision and maintenance of public play and open space facilities, health, highways and library requirements; by 23 June 2011, the Director of Community and Planning Services be granted powers to issue full planning permission subject to the conditions below. Failure to do so by 23 June 2011 may result in the application being refused.

Summary of Reasons for Recommendation and Relevant Development Plan Policies :

Having regard to the pattern of existing development in the area, representations received and relevant provisions of the development plan, as summarised below, it is considered that subject to compliance with the conditions attached to this permission the proposed development would be in accordance with the development plan and would not be detrimental to the occupiers of neighbouring properties or to the character and appearance of the Burbage conservation area. Therefore the development is considered acceptable.

Hinckley & Bosworth Borough Council Local Development Framework: Core Strategy (2009):- Policy 4.

Hinckley & Bosworth Borough Council Local Plan (2001):- Policies BE1, BE7, BE13, BE14, BE15, BE16, REC3, IMP1 and NE12.

1 This permission relates to the variation of Conditions 3, 15 and 16 of planning permission reference 09/00922/FUL [the previous application] dated 16 April

2010, a copy of which is appended hereto and the conditions imposed by the decision notice in relation to the previous application shall be deemed to apply to the grant of permission in respect of application 11/00100/CONDIT [the current application] save in so far as they are amended by virtue of the decision notice in relation to the current application or where variations subsequent to the previous application have been approved in writing by the local planning authority.

2 The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted details as follows:- 09102G received 12 April 2011.

3 The development hereby permitted shall be carried out in strict accordance with the method and extent of tree protection measures shown on submitted plan AP09026/1001 C received 24 March 2011 and these tree protection measures shall be retained for the duration of the works. Within the areas so fenced off, the existing ground level shall be neither raised or lowered, (except as may be approved by the Local Planning Authority as part of the development) and no materials, equipment, machinery or temporary buildings or surplus soil shall be placed or stored thereon. If any trenches for services are required in the fenced-off areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left unsevered.

4 The approved hard and soft landscaping scheme, including the details submitted on drawing 01092 F received 21 March2011, shall be carried out in accordance with the approved details. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

Reasons:-

1 To define the permission and to ensure that all other conditions attached to the original consent still apply.

2 For the avoidance of doubt and in the interests of proper planning.

3 The trees on this site are subject to a Tree Preservation Order and this condition is necessary to ensure that proper steps are taken to safeguard the trees during the course of development in accordance with Policy BE1of the adopted Hinckley and Bosworth Local Plan.

4 To ensure that the work is carried out within a reasonable period and thereafter maintained to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.

Notes to Applicant:-

1 Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.

2 This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

3 As from 6 April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site www.planningportal.gov.uk.

4. All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Southern Area Manager (0116 3052202).

Contact Officer:- Scott Jackson Ext 5929