

PLANNING COMMITTEE

12th March 2025

Amendment/Correction List after publication of Agenda

Additional Information for Councillors

Agenda Item 4 (Applications for Consideration)

Item 1 - Application Reference R24/0111

1. Introduction

- 1.1. The applicant has made various submissions in relation to the published committee report of which the material planning considerations are addressed within the relevant section below. The sections that this addendum relates to are identified in brackets and should be read in conjunction with the specified section in the committee report.

2. Assessment of strategic planning policies (section 9)

- 2.1. The applicant contends that the Council cannot demonstrate a 5 year housing land supply and that the figure should be reduced to around 3 years. There is no basis for this reduction, the Council have undertaken the calculation and have a 4.6 year supply of housing.
- 2.2. The applicant submits that paragraph 125(c) of the Framework (NPPF) and the associated Planning Practice Guidance (PPG) should be applied. The PPG makes it clear that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused. When determining such proposals, decision makers will need to take account of this policy alongside other policies within the Framework taken as a whole.
- 2.3. The first assessment which needs to be undertaken when assessing whether paragraph 125 is relevant is whether the site is brownfield. As paragraph 9.7 of the committee report states only part of the site is previously developed land (PDL). The sporting facilities on the site are not PDL. It is however concluded that paragraph 125 of the NPPF applies (although in part) to the application. Paragraph 125 of the NPPF seeks to give 'substantial weight to the value of using suitable brownfield land...' the key word within the policy is 'suitable'. Taking into account the overall assessment made against the NPPF policies within the committee report and this addendum it is considered that the site is not suitable for the development proposed. Therefore, paragraph 125c of the NPPF does not apply. Notwithstanding this there is substantial overall harm identified as expressed within the reasons for refusal.

3. Loss of Sports Provision (section 10)

- 3.1. The applicant has commented that whilst Sport England has objected to the proposals the land has not been in use for sport for at least 5 years, therefore Sport England are a non-statutory consultee. This is made clear at paragraph 10.11 of the committee report.
- 3.2. The applicant states that the weight attributed to the harm identified within section 10 of the report is overstated in the report and should only be given limited weight.

- 3.3. It is considered that the officer report sets out a reasoned justification for the significant weight attributed to this harm based on the mitigation proposed therefore no change is required to the conclusion within this section of the committee report.

4. Layout and design (Section 12)

- 4.1. The applicant has submitted that the scheme would make an extremely positive contribution to the area and would deliver much needed high-quality housing in a highly sustainable location. They state that the weight attributed to the new public open space and providing east-west pedestrian/cycle connections through the development is understated.
- 4.2. The above does not alter the assessment made within section 12 of the committee report.

5. Trees and Green Infrastructure (Section 13)

- 5.1. The applicant has submitted that the scheme proposes significant replanting of some 159 standard replacement trees, which equates to total mitigation on a 2:1 basis, as well as the retention of 62 of the 76 protected trees on the site. The applicant feels the benefit of bringing the retained trees into publicly available space and making the more accessible alongside the number of new trees is not adequately reflected as a benefit within the committee report.
- 5.2. The committee report assesses the above and balances against the harms identified in relation to loss of trees and green infrastructure. Therefore, no amendment is required to section 13 of the committee report.

6. Ecology (Section 16)

- 6.1. The applicant has commented that they would accept a condition for biodiversity to address the net loss (-40% habit loss) through biodiversity units/credits. On this basis the scheme therefore would deliver a net gain in biodiversity based on the credits/units being secured via condition/section 106.
- 6.2. The application therefore accords with Policy NE1 of the Local Plan and the paragraph 187 of the NPPF. This will be weighed within the planning balance.

7. Flood Risk and Drainage (Section 18)

- 7.1. The applicant has commented that the submitted Flood Risk Assessment (FRA) does address the sequential test, providing a site-specific assessment of the flood risk impacting the site. They have also stated that the Lead Local Flood Authority (LLFA) has not requested that a sequential test be undertaken, nor do they raise an objection to the scheme being approved.
- 7.2. Whilst the above is correct, the LLFA assess the technical details in relation to flood risk. It is for the Local Planning Authority to determine if the sequential test has been passed. These are therefore different assessments. This is made clear in the conclusion of section 18 where it is only the failure of the sequential test which does not comply with policy.
- 7.3. The applicant also refers to the imminent update to be expected to the Flood Map for Planning, this update has not occurred and therefore the application can only be determined based on the available published information.
- 7.4. As determined within the committee report the sequential test for flood risk has not been passed. Paragraph 174 of the NPPF (2024) sets out that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. In relation to this point Policy SDC5 of the

Local Plan (2019) and paragraph 174 of the NPPF is not complied with. This will therefore be weighed in the planning balance.

8. Highways (Section 20)

- 8.1. The applicant considers that the only outstanding matters relate to a review of further junction modelling information and considers these matters could be satisfactorily addressed if an extension of time were granted. They also consider that the request for the Road Safety Audit (RSA) could be satisfactorily addressed through an extension of time or post-determination through a pre-commencement condition.
- 8.2. The LPA would not seek to attach a pre-commencement condition in relation to the RSA. The application has been determined based on the information available at the point of determination.
- 8.3. The applicant considers that the off-site active travel improvements and off-site highway works including implementation of a one-way system should be reflected amongst the benefits of the scheme. The final highways assessment by WCC has not accepted the one-way system proposal and final highways mitigation has also not been agreed. The conclusions in relation to highways are therefore as written within the committee report.

9. Planning Balance and Conclusion (Section 24)

- 9.1. This section replaces the entirety of the planning balance and conclusion section in the committee report and therefore does not need to be read in conjunction with section 24 of the committee report.
- 9.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 9.3. The Council cannot demonstrate a 5 year housing land supply. Therefore, the 'tilted' balance in paragraph 11(d) of the Framework applies. There are relevant development plan policies in the case of this application however the most important for determining the application are out-of-date. Therefore, planning permission should be granted (subject to section 38(6) of the 2004 Act) unless either limb (i) or limb (ii) is satisfied. The application of each limb is essentially a matter of planning judgment for the decision-maker.
- 9.4. In this instance it is necessary to consider limb (i) of paragraph 11d. The sequential test for flood risk has not been applied properly and therefore has not been satisfied. Paragraph 174 of the NPPF (2024) sets out that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. In relation to this point Policy SDC5 of the Local Plan (2019) and paragraph 174 of the NPPF is not complied with. The NPPF does not state that applications which fail the flood risk sequential test must be refused, footnote 7 states there must be a strong reason for refusal for limb (i) to be satisfied. The sequential test is inadequate to determine if there are any other reasonably available sites in areas of lower risk of flooding. Therefore, in accordance with paragraph 174 there is a strong reason for refusal. This holds significant weight in the balance.
- 9.5. The Court of Appeal (Monkhill Ltd v Secretary of State for Housing, Communities and Local Government & Anor (Rev 1) [2021] EWCA Civ 74 (28 January 2021) has reiterated Holgate J.'s eight-point 'practical summary' in relation to the meaning and effect of paragraph 11 of the NPPF. Paragraph 37 of the Monkhill court of appeal judgement endorses Holgate J's

approach which sets out that in cases where limb (i) is applied by taking into account only those factors which fall within the ambit of the relevant footnote 7 policy development plan policies and other policies of the NPPF are not taken into account. Where the application of the policy in this instance provides a clear reason for refusal, it is still necessary for the decision-maker to have regard to all other relevant considerations before determining the application. This exercise however must be carried out without applying the tilted balance in limb (ii), because the presumption in favour of granting permission has already been disapplied by the outcome of applying limb (i). Therefore, a normal planning balance is required to be undertaken.

- 9.6. The proposed development is within the urban area of Rugby which is the most sustainable location in the borough. Within the site there is a disused tennis court and lapsed football pitch. The principle of housing on this site within a sustainable location is considered to comply with the Local Plan and NPPF subject to the detailed assessment of the loss of the sporting facilities being satisfactorily addressed and all other matters being satisfactorily addressed within this report.

Harms

- 9.7. The mitigation proposed in relation to the football pitch, pavilion and associated car park is not considered to be detailed or the required level of mitigation needed in order to replace the lost provision *'by equivalent or better provision in terms of quantity and quality in a suitable location'* under 104b. It is therefore considered that this proposal does not comply with Policy HS4C of the Local Plan or paragraph 104 of the NPPF. Moderate weight is attributed to this harm.
- 9.8. Paragraph 139 of the NPPF states that development that is not well designed should be refused. Especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. It is considered that the proposed scheme does not provide a high-quality well-designed place and would have a detrimental adverse impact on the character of the area as outlined within this report. There would also be a detrimental impact based on the significant loss of existing green infrastructure. The design does not relate to the existing wider context of the area and there are key design issues. The application is therefore contrary to Policies SDC1 and NE2 of the Local Plan, Paragraph 129, 130 and 135 of the National Planning Policy Framework and the National Design Guide. Significant weight is attributed to this harm.
- 9.9. It is considered that the loss of T149-164 (high quality London Plane) would be detrimental to the character of the area as significant group and a prominent feature within the street scene. It is considered that the proposed 2:1 ratio of planting to mitigate this group and other category A and B trees lost through the proposed development does not adequately address the value of these trees. The proposal is therefore considered to be contrary to Policy SDC2 of the Local Plan and paragraph 136 of the NPPF. The overall loss of existing green infrastructure also conflicts with Policy NE2 of the Local Plan. Significant weight is attributed to this harm.
- 9.10. The applicant has not demonstrated that there that there will be a safe and suitable access for all users would be provided to the development nor that any significant impacts from the development upon the transport network (in terms of capacity and congestion) can be satisfactorily mitigated. The proposals are therefore contrary to paragraph 115 and 116 of the National Planning Policy Framework (2024) and Policy D1 of the Local Plan (2019). This holds significant weigh within the planning balance.

- 9.11. An independently verified viability assessment has confirmed that the proposed development would not be viable even if no affordable housing is provided and no planning obligations are required. The impact on highway safety would be mitigated however, due to the non-viability of the scheme, it would not be able to provide any affordable housing. There would also still be significant and detrimental impacts on education provision, play and open space, libraries, road safety funding, sport provision mitigation, public rights of way, health, RBC monitoring and administration funding and the WCC monitoring and administration funding. These costs would therefore have to be met by WCC, RBC or the CIL receipt used. Education cannot be funded from the CIL receipt therefore would be a cost to WCC and it cannot be confirmed at this stage that the CIL receipt will be directed to mitigated any of these costs as it is for a further council decision. The lack of contributions would place further pressure on existing infrastructure within the area. This is therefore given significant weight in the balance.
- 9.12. No other conflict with the development plan has been identified therefore all other policies referenced from the Local Plan and the NPPF within this report are considered to be complied with.

Benefits

- 9.13. Weighed against these conflicts is the Government's commitment to significantly boosting the supply of housing through the Framework. The proposal would result in the delivery of 115 houses. These additional houses have significant weight in the planning balance as they would assist in addressing the current shortfall of housing in the borough.
- 9.14. It is important to identify any further benefits. Using the three strands of sustainability as defined in the NPPF, the benefits are broken down into economic, social and environmental.
- 9.15. The proposal would result in economic benefits through the construction of the scheme through creation of jobs and constructions spend, albeit for a temporary period. Additionally, the residents of the proposed development would provide ongoing support to local services through new household spending in the Borough and additional council tax revenue. New Homes Bonus generated by the development (approximately £145,360) would also contribute significantly to the Borough. Such matters would have a positive impact upon the local economy and prosperity of the Borough which weighs in favour of the application and attracts significant weight in the planning balance.
- 9.16. From a social objective the revised scheme of 115 dwellings would consequently contribute towards meeting a housing need as set out above. The revised proposals include open space which is to be accessible to members of the public and holds significant weight due to the location of the provision in a ward with deficiencies of all types of open space. In addition to the open space, the provision of new public footpaths across the site, and enhanced pedestrian and cycle links into and out of the site also provide a notable social benefit. These social benefits hold moderate weight within the balance.
- 9.17. From an environmental objective the proposal will bring about environmental enhancements through the additional tree planting and landscaped areas. Due to there already being green space on the site (not publicly accessible) there will not be a notable change in the level of green infrastructure across the site. A biodiversity net gain would be secured. The scheme will deliver sustainable drainage systems (SuDS). These benefits hold moderate weight within the balance.

Conclusion

- 9.18. In conclusion the proposal will result in a conflict with policies, as outlined within the harms section above, in relation to loss of sports provision, design, TPO trees, failure to comply with

the flood risk sequential test, highways and pressure on existing infrastructure. The weight to be given to these individual elements is outlined within this balance and the majority hold significant weight.

- 9.19. Weighed against the identified harm is the economic, social and environmental benefits identified which hold significant and moderate weight.
- 9.20. The presumption in favour of sustainable development as set out within paragraph 11d is not engaged. It is considered that when the overall harm is weighed against the benefits that on balance the identified substantial harm outweighs the benefits. Therefore, the application would result in a form of unsustainable development and is recommended for refusal subject to the reasons for refusal as set out within the draft decision notice.

REASONS FOR REFUSAL

Due to the content of this report reason for refusal 3 (Ecology) has been removed therefore a revised draft decision notice has been appended to this report.

RECOMMENDATION

1. Planning application R24/0111 be refused subject to the reasons for refusal set out within the draft decision notice appended to this report.
2. The Chief Officer for Growth and Investment be given delegated authority to make minor amendments to the reasons for refusal outlined in the draft decision notice.