

Forest Heath District Council

**DEVELOPMENT
CONTROL
COMMITTEE**

6 JULY 2016

DEV/FH/16/016

Report of the Head of Planning and Growth

**PLANNING APPLICATION DC/15/2120/FUL - KININVIE, FORDHAM ROAD,
NEWMARKET**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT OFFICER

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Committee Report and Risk Assessment

Date: 6th November **Expiry Date:** 5th February 2016

Registered: 2015

Case Officer: Gareth Durrant **Recommendation:** Grant Planning Permission

Parish: Newmarket **Ward:** Severals

Proposal: Planning Application DC/15/2120/FUL - Erection of retirement living housing for the elderly (29 No. units), part one-and-a-half / part two-and-a-half / part single storeys, including communal facilities, landscaping and car parking (demolition of existing buildings), as amended.

Site: Kininvie, Fordham Road, Newmarket

Applicant: McCarthy & Stone Retirement Lifestyles Ltd and Frontier Estates.

Section A – Background and Summary:

A1. This application was deferred from consideration at the Development Control Committee meeting on 1 June 2016. Members resolved they were 'minded to refuse' planning permission contrary to the officer recommendation of approval. Members were concerned that the proposal would result in; i) unsatisfactory parking provision for the proposed development and, ii) Excessive scale of the buildings being harmful to the character of the area (Fordham Road streetscene).

A.2 The previous Officer report for the June 2016 meeting of the Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper in relation to site description, details of development, details of consultation responses received etc.

A3. This report sets out updates from the written papers presented to the meeting of Development Committee on 1st June and includes a risk assessment of the two potential reasons for refusal.

A4. The officer recommendation, which is set out at the end of this report remains that planning permission should be granted.

A5. Since the Committee Meeting on 6th June, the applicants have provided two further documents, specifically to assist Members consideration of the planning application in light of the risk assessment. The first is a paper on the need for the proposed development (Working Paper 5). The second is a further paper with respect to parking requirements (Working Paper 6).

Section B – General Information:

Proposal:

B1. Please refer to Working Paper 1, Paragraphs 1 to 4 for a description of the application proposals, including amendments made in advance of the June meeting. There have been no further amendments since the June meeting.

Application Supporting Material

B2. Please refer to Working Paper 1, Paragraph 5 for details of the drawings and technical information submitted with the planning application and to Working Papers 5 and 6 for additional information submitted by the applicants following the June meeting of the Development Control Committee.

Site Details:

B3. Please refer to Working Paper 1, paragraphs 6 and 7 for a description of the application site.

Planning History:

B4. Please refer to Working Paper 1, paragraph 8 for details of relevant planning history.

Consultations:

B5. Please refer to Working Paper 1, paragraphs 9 to 24 for details of consultation responses received.

B6. In relation to the discussion set out at paragraph 75 of Working Paper 1, the Archaeological Unit at Suffolk County Council has confirmed they have no archaeological concerns about the development proposals and there is no requirement for archaeological related conditions to be imposed.

B7. Members will recall that confirmation received from the Floods Planning Team at Suffolk County Council that they were content with the surface water drainage system was reported verbally to the June meeting. The Flood Planning Team recommended the imposition of a single condition requiring submission of further technical detail of the surface water drainage proposals for approval.

B8. Any further consultation responses received will be reported verbally to the meeting.

Representations:

B9. Please refer to Working Paper 1, paragraphs 25 to 32 for details of representations received. Members should also refer to the additional representations received after the committee report to the 6th August meeting was prepared. Members will recall that one further letter was received objecting

WORKING PAPER 2

to the planning application and was reported verbally to the Committee and thus is not included within Working Paper 1. This made the following points:

- The plans would be extremely detrimental to the area. The cramming of buildings on the land next door would bring noise pollution, adverse effects to the environment, drainage problems, road safety issues, not to mention take privacy away to the surrounding buildings.

B10. One further letter from a local resident has been received since the Committee meeting on 1st June. It is understood Members of the Committee were sent copies of the representations. A copy of the representations is included as Working Paper 2.

B11. Any further representations received will be reported verbally to the meeting.

Policies:

B12. Please refer to Working Paper 1, paragraph 33 for details of relevant planning policies.

Officer Comment:

B13. Please refer to Working Paper 1, paragraphs 40 to 124 for a comprehensive officer assessment of the application proposals. The officer assessment remains unchanged following the Development Control meeting on 1st June 2016.

Section C - Risk Assessment

C1. The main purpose of this report is to inform Members of the risks associated with the 'of mind' resolution to refuse planning permission for these development proposals, given that a refusal of planning permission would be contrary to officer recommendation.

C2. As set out in the Background section of this report, Members deferred their consideration of this planning application from the 1st June 2016 meeting of Development Committee. Members were 'of mind' to refuse planning permission on grounds of i) Unsatisfactory parking provision for the proposed development and, ii) Excessive scale of the buildings being harmful to the character of the area (Fordham Road streetscene).

C3. The remainder of this report discusses the potential reasons for refusal cited by Members before discussing the potential implications of a refusal of planning permission on these grounds.

Section D - Potential Reason for Refusal 1; Car Parking:

D1. Members should also refer to attached Working Paper 1, paragraphs 53 to 60. Also attached as Working Paper 2 and Working Paper 3 are two technical notes prepared by the applicants' highway consultants in response to the initial objections received from the Highway Authority (paragraphs 11-13 of Working

Paper 1). These documents were carefully considered by the Local Highway Authority prior to their change of recommendation (paragraph 14 of Working Paper 1).

D2. What does the evidence say? –

- The planning application was accompanied by a Transport Statement. At the time, the planning application proposed 31 units in the overall scheme. This has since been reduced by two to 29 units. The Transport Statement considered the impacts and parking requirements for 31 units and set out the following commentary in relation to car parking:

- *3.9 Suffolk County Council's (SCC) Local Transport Plan (2010) gives maximum parking standards for 'Residential Care Homes' and 'Retirement Developments' accommodation and these are shown in Table 2.*

	Maximum Standards	Maximum number of spaces for 31 units	Number of spaces proposed
Residential Care Homes	1 space pre full time staff + 1 visitor space per 3 beds	10 spaces	26
Retirement Developments	1 space per dwelling	31 spaces	

Table 2: Parking Requirements and Provision

- *3.10 McCarthy & Stone developments differ from typical retirement/sheltered accommodation as they intend to facilitate residents living a relatively independent lifestyle with only a single full time staff member (a house manager) at any one time. This helps reduce parking demand on site as fewer spaces are required to accommodate staff.*
- *3.11 As McCarthy & Stone developments differ from typical retirement/sheltered housing, they have undertaken parking surveys at comparable McCarthy & Stone sites over a number of years to help understand the specific needs of their residents and inform future developments. The studies show an average car ownership across such developments of 0.33 cars per 1 bed units and 0.37 cars per 2 bed units, with 39% of residents giving up their car within the first year of occupancy. Based on the proposed accommodation schedule of 16 one bed apartments and 15 two bed apartments, the McCarthy & Stone surveys suggest an average of 11 cars would be owned by site residents overall.*
- *3.12 Parking demand per apartment has also been assessed which generates an average of 0.36 per 'Retirement Living' apartment, and a worst case of 0.44 per apartment when including visitor and*

staff demand. This would generate a demand of 13 spaces for 31 units as a worst case scenario. An extract from the McCarthy & Stone car ownership and parking requirement research is included as Appendix E

[note Appendix E to the Transport Statement is not included as part of this report, but it is available for viewing on the website].

- *3.13 The level of car parking proposed falls within SCC's maximum standards for 'residential care homes' and 'retirement developments'. Furthermore, the site is in an accessible location within 900m of Newmarket Town Centre and within easy reach of public transport opportunities. The provision of 26 spaces for 31 units (0.83 spaces per unit) would ensure all parking demand can be kept within the site, accommodating resident demand as well as staff and visitor demand.*
- *3.14 All parking spaces would be provided at standard geometries of 2.4m x 4.8m, with at least a 6m aisle width to allow sufficient room for manoeuvring. This is demonstrated in a vehicle tracking exercise of the car parking spaces, included as Appendix F.*
- *3.15 McCarthy & Stone research suggests that cycle parking facilities should be provided for 1 in every 62 residences given the low demand for cycling in retirement living accommodation. However the proposed development incorporates a mobility buggy charging and cycle storage room located next to the main entrance of the building, which would meet any resident/ visitor demand. McCarthy & Stone continually monitor cycle and mobility buggy demand to ensure that the appropriate form of storage is provided.*
- Following receipt of objections from the Local Highway Authority on parking grounds, the applicant prepared two further technical notes to support the level of car parking proposed by the scheme and requested the Local Highway Authority re-consider its position with respect to the proposals in the light of the evidence provided in the technical notes. The technical notes are attached to this report as Working Paper 3 and Working Paper 4.
- Upon careful consideration of the all the evidence available to it, the Highway Authority changed its stance on the planning application and no longer raises concerns about parking (or other highway related matters), subject to the imposition of a number of conditions (reference paragraphs 14 and 15 of Working Paper 1).

D3. Have there been any further developments or changes in circumstances which Members need to consider? –

- The applicants have provided a further paper with respect to the parking requirements of the proposed development, specifically to assist Members with their consideration of this point, in response to the 'of-mind' resolution of the June 2016 meeting to refuse planning permission on this ground. The paper is attached as Working Paper 6.

D4. Officers consider a refusal of planning permission on grounds of insufficient car parking provision to serve the proposed development could not be sustained at appeal and the Council would not be able to produce evidence to substantiate a reason for refusal.

Section E - Potential Reason for Refusal 2 - Scale of development harmful to the character of the area:

E1. Members should also refer to attached Working Paper 1, paragraphs 83 to 90.

E2. What does the evidence say? –

- There is no evidence per-se given matters of design and impact upon character are, to a degree, subjective and are to be considered in relation to the specific circumstances of the site and its wider context.

E3. Have there been any further developments or changes in circumstances which Members need to consider? –

- There have been no changes in circumstances or further developments since the Development Committee meeting on 1st June.

E4. What is the officer view? –

- This essentially remains the same as stated at paragraphs 83-90 of the Committee report to the June meeting (Working Paper 1), insofar as officers consider the form, scale, bulk and detailed design of the scheme (and the materials proposed in its construction) to be acceptable and in accordance with relevant policies.
- Members are not duty bound to accept officer advice, particularly with respect to matters of design and impact upon character which are, to an extent, subjective. Furthermore, it is unlikely that a design to refuse planning permission on grounds of poor design or adverse impact upon character would be vulnerable to an award of costs if that concern is genuine and the harm arising from that 'poor design' or 'adverse impact upon character' is properly demonstrated at any subsequent appeal.

- It is noted that not all of the Committee Members were able to visit the application site as part of the organised visit in advance of the June meeting of the Development Control Committee. The site visit which did take place was made particularly challenging by inclement weather such that it was difficult for those Members whom did attend to properly and fully the site particularly with respect to its relationship to the surrounding area. The Committee was shown a number of photographs as part of the officer presentation at the June Committee meeting, but photographs do not always give justice to the full context and visual presence of the site.
- Given that a majority of the June Committee were concerned about the scale (height) of the proposals and its impact upon the character of the surrounding area, a further site visit is to be arranged in advance of the forthcoming meeting where this planning application will be determined. Members will have opportunity to access the site, but also view the plans from the Fordham Road.

Section F - Implications of a refusal of planning permission:

F1. It is likely that should Members subsequently resolve to refuse planning permission the applicants will appeal that decision.

F2. Officers consider that it would be difficult to defend a refusal of planning permission on grounds of car parking provision given the strength of the evidence provided by the applicants (Working Papers 2 and 3) demonstrating the development proposals would not be harmful in this respect.

F3. On the other hand, a case could be made at appeal to defend the second potential reason for refusal on design grounds (scale of the proposed building), but officers consider the case to defend would be weak and probably result in a lost appeal.

F4. A refusal of planning permission for any development on indefensible and/or unsubstantiated grounds is likely to lead to planning permission being granted at appeal. This outcome could have administrative and financial implications for the Council.

F5. Firstly, the Council's reputation would be adversely affected by its inability to properly defend all its reasons for refusal at appeal.

F6. Secondly, if a Local Planning Authority experiences more than 20% of its major development appeals allowed in any two-year period, it is deemed a failing authority and would face Government sanction. This would include introduction of a right for applicants proposing major development to submit planning applications directly to the Planning Inspectorate, effectively taking the decision making power out of the hands of the Local Planning Authority. A lost appeal in this case would contribute to that possibility.

F7. Finally, the applicants would have the right to recover their appeal costs (in full or in part, depending upon the circumstances) from the Council should the Inspector appointed to consider the appeal conclude it has acted unreasonably. Advice about what can constitute unreasonable behaviour by a Local Authority at appeal is set out in the National Planning Practice Guidance (paragraph 49). Three of the numerous examples cited in the advice are as follows:

What type of behaviour may give rise to a substantive award against a local planning authority? Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- *failure to produce evidence to substantiate each reason for refusal on appeal.*
- *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*

F8. In the absence of evidence to substantiate its reasons for refusal on parking and given the absence of a Suffolk County Council Highways objection to the planning application, officers consider it would be difficult to defend a potential claim for the partial award of costs at appeal. An award of costs (including partial costs) against the Council could have financial implications for the Council and particularly so if the appeal is determined by public inquiry.

Section G – Conclusions:

G1. Members should also have regard to paragraphs 119 to 124 of the attached Working Paper 1 where officer conclusions and assessment of the 'planning balance' of competing issues are set out.

G2. Officers are concerned the earlier Committee resolution that Members are 'of mind' to refuse planning permission for this development on grounds of parking provision and excessive scale of development are ill-founded and, on the case of parking provision, not grounded in evidence.

G3. Officers consider that, should planning permission be refused on one or both of the grounds resolved at the last Development Control Committee meeting, the Council would find it difficult to defend its decision at a subsequent appeal and, with respect to the parking capacity reason for refusal, is likely to face a claim for award of cost against it (on top of having to fund its own defence).

G4. In considering the merits of this planning application, Members are reminded of the requirements set out in the National Planning Policy Framework for the decision maker to balance the benefits of the proposed development against its dis-benefits and only where those dis-benefits would significantly and demonstrably out-weigh the benefits should planning permission be refused (reference paragraph 14 of the National Planning Policy Framework).

G5. In this case, officers consider the weight of evidence is clear that limited dis-benefits are outweighed by the benefits of development proceeding and clearly points to the grant of planning permission in this case.

Section H – Recommendation:

H1. That, **FULL PLANNING PERMISSION BE GRANTED** subject to:

(1) The prior satisfactory completion of a S106 agreement to secure:

- Off-site affordable housing, precise amount to be agreed following conclusions of viability assessment (minimum contribution of £265,620).

and,

(2) conditions, including:

- Time limit
- Samples of materials
- Details of finishes (colours to be applied to detailing)
- As recommended by SCC Floods Team
- As recommended by the Local Highway Authority
- Implementation of recommendations of the ecology and bat reports
- Landscaping
- Protection of retained trees and shrubs during construction
- Construction Management Plan
- Timing of the provision of obscure glazing (prior to first occupation and retention thereafter) as illustrated on the plans.
- Lighting strategy and scheme.
- Water use efficiency.
- Waste minimisation and re-cycling strategy (including demolition of Kininvie).
- Further details of the proposed electricity sub-station.
- Occupancy restriction (over 55's only + any dependents)

H.2 That, in the event of failure to agree a precise level of affordable housing contribution for inclusion within a S106 Agreement (on viability, or other grounds) the planning application be returned to the Development Control Committee for further consideration.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NWBPP6PDKXN00>

Working Papers:

1. Officer report to the 1 June 2016 Development Committee (Report No DEV/FH/16/011)
2. Objection letter received from local resident
3. Technical note named "Parking Technical Note"
4. Technical note named "Review of Parking Standards Guidance"
5. Document entitled "Meeting a Critical Housing Need" prepared on behalf of the applicants.
6. Document entitled "Car Parking Provision" prepared on behalf of the applicants.

Alternatively, hard copies are also available to view at Planning, Planning and Regulatory Services, West Suffolk House, Western Way, Bury St Edmunds, Suffolk IP33 3YU