

F/YR11/0775/F

29 September 2011

Applicant : Mr R Gregory

Agent : David Broker Design Services

Land South of 180-192 Coates Road, Coates, Whittlesey

Erection of 6 No 4-bed 2 storey dwellings with attached and detached double garages

This proposal is before the Planning Committee as the recommendation is contrary to the recommendation for approval by Whittlesey Town Council.

This application is a minor.

1. **SITE DESCRIPTION**

The site is located outside the Development Area Boundary for Coates and on land to the south of 180 -192 Coates Road. The area of land between the site and Coates Road obtained planning permission for 7 houses following an appeal, but it has not been completed and there are no dwellings on site. The site comprises an open yard with a large steel-framed asbestos clad store building. The surrounding land uses comprise open countryside, residential property and surface yard storage. The site is generally rectangular in shape, 68m deep from north to south and 62 m wide from east to west - at the extremities.

2. **HISTORY**

Of relevance to this proposal is:

- | | |
|-----------------|--|
| F/YR05/07952/O | - Erection of 7 houses with garages (involving demolition of 184 Coates Road) and alteration of access to existing coal/builders yard. Allowed on appeal on 25 September 2006 – an extant consent. |
| F/YR06/1432/RM | - Erection of 6 detached houses – Approved 13 April 2007 |
| F/YR09/3025/CON | - Reserved Matter Condition 7 – Approved 08 May 2009 |
| F/YR10/3108/CON | - Reserved Matter Condition 6 – Approved 12 August 2010. |
| F/0718/82/F | - Erection of steel-framed asbestos clad store – Approved 12 September 1982 |

3. **CONSULTATIONS**

Whittlesey Town Council:

Recommend approval.

Scientific Officer (Contaminated Land)	A former coal yard is considered to be potentially contaminated and potential housing would be vulnerable to contamination. If granted, please attach contaminated land conditions.
Cambridge Fire and Rescue Service	Adequate provision should be made for fire hydrants should planning permission be granted.
Cambridgeshire County Council	Strongly recommend that your Authority consider the implications surrounding future maintenance of the carriageway/footway, drainage and lighting of a development serving a total of 13 dwellings, if granted.
Middle Level IDB:	Awaiting response
Local residents/interested parties:	1 letter received stating that the area is outwith the DAB, the consented dwellings have not been built, other unbuilt dwellings have been granted in the vicinity, granting development outside the DAB would lead to a precedent and there are inaccuracies in the Design and Access statement.

4. **POLICY FRAMEWORK**

FDWLP Policy

- | | |
|-----|--|
| H3 | - To resist housing development outside DAB's. To permit housing development inside DAB's provided it does not conflict with other policies of the Plan. |
| E8 | - Proposals for new development should:
-allow for protection of site features;
-be of a design compatible with their surroundings;
-have regard to the amenities of adjoining properties;
-provide adequate access, parking, manoeuvring and amenity space. |
| E20 | - To resist residential development in locations where there is a known source of environmental pollution that would be seriously detrimental to residential amenity. |

East of England Plan	SS1	- Achieving Sustainable Development	Sustainable
	ENV7	Quality in the Built Environment	
Planning Policy Statements	PPS1	- Delivering Sustainable Development	Sustainable
	PPS3	- Housing	
	PPS7	- Sustainable Development in Rural Areas	

5. ASSESSMENT

Nature of Application

This application seeks full planning permission for the erection of 6 No 4-bed 2 storey dwellings with attached and detached double garages at land south of 180-192 Coates Road, Coates, Whittlesey. The current application partly includes the proposed road access which is part of the earlier consent. It is intended, under that consent and as an integral part of this application, to construct the road to adoptable standards. The proposed six dwellings forming part of the current application take access via a private common road which is intended to be constructed with pea shingle over a compacted type 2 road material – as are the six individual access drives to each of the two storey properties. Thereafter the access links with the proposed adoptable road forming part of the appeal site and then link with the main highway.

The application is considered to raise the following key issues;

- Site history
- Principle and policy implications in relation to character and accessibility.

Site history

As stated above, planning permission for 7 dwellings was granted on appeal (F/YR05/07952/O) for the site immediately to the north of the application site. Whilst the applicant correctly points out that the Inspector recognised the nature of the surrounding area to the south, the Inspector also commented that the appeal was considered and determined on its own merits in relation to Policies H3 and E8 of the Local Plan and the existence of the Development Area Boundary. The appeal site was within the Development Area Boundary whereas the current proposal is outwith the Development Area Boundary. The land is, however, 'previously developed land' as defined in PPS3, but it is located outwith the Development Area Boundary and, therefore, a wider policy framework applies.

Principle and policy implications in relation to character and accessibility

The proposal is located outside the Development Area Boundary of Coates. The applicant has stated that the first 20 m of the 68 m site depth is within the Development Area Boundary (DAB). This is inaccurate. When measured at a scale of 1:500, the northernmost part of the site is 4.5 m within the DAB and when compared with the Coates Inset No 4 boundary this distance does not register as it equals the thickness of the DAB boundary line as shown on the plan at that scale. Accordingly, the proposal is contrary to Policy H3 of the

Local Plan which states that housing development will not normally be permitted outside the DAB of the village in order that existing settlements may be consolidated within defined boundaries. It is accepted that the development is on 'previously developed land', but the following policies should also be read in that context.

Policy E8 states that proposal for new development should have regard to the amenities of adjoining properties (and the locality in general) and provide adequate access, manoeuvring and amenity space. It is recognised by the Council in established decisions on applications that the acceptable maximum number of dwellings accessing an unadopted road is 5. This application proposes 6 dwellings onto an unadopted access, which is intended to be constructed with pea shingle over a compacted type 2 road material with no lighting or formal surface drainage. CCC Highways, in consultation, strongly recommend that the Council consider the implications surrounding future maintenance of the carriageway/footway, drainage and lighting of a development serving a total of 13 dwellings - if granted. This substandard means of access and construction conflicts with Policy E8 of the Local Plan as it will downgrade amenity within the locality in a backland setting and create a precedent for further development in the vicinity – in particular an area of similar 'previously developed land' to the rear and south of the application site. The application plan clearly identifies this possibility with the proposed common access road being taken to the southern boundary of the site at a point currently intended as an "access to field". Whereas the development granted on appeal was within the DAB and served by an adopted road, this proposal is outwith the DAB and would create conditions leading to an unplanned substandard backland development which would adversely affect amenity within the locality.

Policy E20 is designed to resist residential development in locations where there is a known source of environmental pollution that would be seriously detrimental to residential amenity. This site is a former coal yard and as such residential development may be vulnerable to contamination. However, should planning permission be granted a contaminated land condition can be attached.

In certain circumstances, exceptions may be made in cases where development is proposed outside DAB's and where material circumstances indicate development may prove acceptable. However, the proposal is not of a high design standard given the access deficiencies outlined above and would, therefore, adversely affect amenity within the locality. Furthermore, the proposal is of a form and scale that is not in keeping with the linear settlement pattern of the area and will, if granted, encourage the development of similar unplanned backland sites. In addition, the proposal does not have features that will help it to blend with the surrounding countryside and reinforce the natural limit to development, nor will it provide adequate infrastructure in particular roads, lighting and surface drainage or be consistent with the principles of sustainable development.

Given the deficiencies of the proposal when considered against the details of the Local Plan, it follows that the proposal is also contrary to Policy SS1 and ENV7 of the East of England Plan and PPS1, 3, and 7 of Government Policy statements.

Conclusion

The proposal is located outside the Development Area Boundary of Coates and as such is contrary to Policy H3 of the Local Plan. It is also contrary to Policy E8 as it will create a substandard means of access, will downgrade amenity within the locality in a backland setting and create a precedent for further development in the vicinity. Given these circumstances it is recommended that the application be refused.

6. **RECOMMENDATION**

REFUSE

1. **The proposed residential development would be located outside the Development Area Boundary of Coates, would create a substandard means of access, downgrade amenity within the locality in a backland setting and create a precedent for further development in the vicinity. This is contrary to Policies H3 and E8 of the Fenland District Wide Local Plan 1993, Policies SS1 and ENV7 of the East of England Plan 2008 and to the advice contained within Planning Policy Statement (PPS) 1: Delivering Sustainable Development, PPS 3: Housing and PPS7: Sustainable Development in Rural Areas.**

7 **UPDATE FROM 14 December 2011**

This application was last considered by Committee on 14 December 2011 at which time it was agreed to continue the application pending the submission of a revised planning application form. This was received together with an updated layout plan and the application was progressed.

The revised plan illustrates an upgraded road layout in width and surfacing and proposes that the road be made up to a standard for adoption by CCC Highways who were consulted on the revision.

CCC Highways have advised as follows:

“CCC would not consider adoption of either phase on the basis of the plan submitted with the latest application. The entire layout simply does not meet an adoptable standard. There are problems with the geometry of the junction with Coates Road in that it does not comprise any radii. Similarly, the internal layout of phase 1 and phase 2 (which is a copy of phase 1) particularly in respect of the turning head(s) is not to an adoptable standard. Whilst I am happy to work with the applicant / agent in an attempt to achieve an acceptable arrangement, I can give you no comfort in suggesting that an acceptable arrangement is indeed even possible.”

A consultation was also received from Middle Level Commissioners (which was not available at the time of the December Committee) who commented as follows:

“It will be a requirement, in accordance with PPS25 – Development and

Flood Risk, that the applicant provides an appropriate flood risk assessment for this development. In view of the limited available site area and in the absence of any supporting documentation within the planning submission, it is considered that the applicant has not yet provided adequate evidence to prove that a viable scheme for appropriate water level/flood risk management that meets current design standards exists. It is considered that:

- Aspects of the proposed submission are inappropriate and require revision
- The applicant has not yet provided adequate evidence to meet the requirement of your policy PU1
- Further information (required) including engineering plans, calculations etc.

Therefore there is no option but to oppose this planning application on the Boards behalf.”

Policy PU1 of the Local Plan states that the District Council will expect new developments to make satisfactory arrangements for water supply, sewerage and sewage disposal, land drainage and flood protection matters. In light of this additional information a further reason for refusal is considered appropriate as follows:

A flood risk assessment has not been submitted in order to comply with the requirements set out in Annex E, paragraph E3, of Planning Policy Statement 25 (PPS25). An assessment cannot be made in order to assess the flood risks arising from the proposed development in which case the proposal is contrary to policy PU1 of the Fenland District –Wide Local Plan 1993.

A further letter of objection has also been received from an adjoining resident stating that development should not be allowed outside the DAB, that it would create a precedent for further development and that there is public risk in removing asbestos from the existing building on site.

The first objection reason cited above acknowledges the principle of development outside the DAB and is, therefore, covered in Reason 1. Issues of public health concerning asbestos removal would be subject to alternative legislation.

CONCLUSION

In light of the above considerations the recommendation remains one of refusal for the following reasons:

- 1 The proposed residential development would be located outside the Development Area Boundary of Coates, would create a substandard means of access, downgrade amenity within the locality in a backland setting and create a precedent for further development in the vicinity. This is contrary to Policies H3 and E8 of the Fenland District Wide Local Plan 1993, Policies SS1 and**

ENV7 of the East of England Plan 2008 and to the advice contained within Planning Policy Statement (PPS) 1: Delivering Sustainable Development, PPS 3: Housing and PPS7: Sustainable Development in Rural Areas.

- 2 A flood risk assessment has not been submitted in order to comply with the requirements set out in Annex E, paragraph E3, of Planning Policy Statement 25 (PPS25). An assessment cannot be made in order to assess the flood risks arising from the proposed development in which case the proposal is contrary to Policy PU1 of the Fenland District –Wide Local Plan 1993.**

UPDATE CONSIDERED BY COMMITTEE ON 8 February

UPDATES

1. Since the last update a further revised plan has been received. This proposes a CCC Highways adoptable road to serve both phases of the development. CCC Highways were consulted and a response has been received as follows:

CCC Highways –

“I assume this layout plan has been formally submitted in support of the current application. This plan now identifies the provision of an adoptable arrangement for both phases of the development. I cannot of course confirm future adoption of the road(s) as this is entirely dependent upon the developer offering the roads for adoption and constructing same to an adoptable standard”.

As both phases of the development are now capable of adoption this part of the refusal reason is no longer applicable.

2. Since the last update the applicant has responded to the consultation received from the Middle Level Commissioners. It is noted that the site area of the current application is 0.468ha and the total site area including the approved application is 0.630ha. In addition, the application site is within a zone 1 flood risk area. Under PPS25 (Development and Flood Risk), this places the application within a low probability flood zone and within an area where development is “appropriate” in terms of “flood risk vulnerability and flood zone compatibility”. The site is also under 1ha. As such, it is considered that the drainage issues raised by the Middle Level Commissioners can be accommodated by way of a planning condition and this part of the refusal reason is no longer applicable.

3. A further letter of objection was received on 7 February 2012 from 2 adjoining proprietors expressing concern at the revised plan showing a land locked site, that the DAB should not be breached, some of the land is not ‘previously developed’, amenity issues and because there is no need for the dwellings as there is already planning permission for houses in the area.

4. As the development remains outwith the Development Plan Boundary the recommendation to refuse remains for the following reason:

The proposed residential development would be located outside the Development

Area Boundary of Coates and would create a precedent for further development in the vicinity. This is contrary to Policy H3 of the Fenland District Wide Local Plan 1993.

UPDATE TO 16 JANUARY 2013

The above application was considered by Planning Committee on 8th February 2012 when Members resolved to grant planning permission as they did not support Officers recommendation of refusal of planning permission as they felt that the proposal was a brownfield site and would provide quality homes in accordance with the Interim Planning Policy Leadership Statement. This resolution was subject to the prior completion of a Section 106 Agreement in relation to pre-school education contributions and suitable conditions.

Members further requested that the Principal Solicitor checks whether this proposal constitutes a piecemeal development for Section 106 Agreement contributions and if a contribution was required above the pre-school education requirements that the application be referred back to committee with the proposed details of the Section 106 for determination.

Of particular need to resolve was whether the current scheme was deemed 'piecemeal' and should be aggregated with the earlier development when considering other obligation requirements, e.g. affordable housing.

Independent legal advice was sought as to this matter and that advice is reproduced below (*Officer comments are presented in italics*):

A planning application for 7 housing plots on Site A was submitted by the owners, Mssrs Bedford and Butcher, 29 June 2005. This declared Site A and Site B (currently the subject of this application) to be in the same ownership. From the application plan there appears to be further land (Site C) beyond Site B. Sites B and C were annotated "Commercial Yard to be closed". Planning permission was granted on appeal on 4 September 2006. In a brief decision letter, there was no mention of affordable housing nor any other planning obligation, save that the need for an undertaking to close the commercial yard was dismissed by the Inspector because "the appeal proposal could be designed at reserved matters stage to close off access to the yard."

It has subsequently been clarified that:

Site A: is owned by Rose Homes and was purchased on 31 March 2008. A lawful commencement was made involving the demolition of the dwelling that occupied the frontage of the site and the foundations to one plot excavated.

Site B: is owned by Messrs Bedford and Butcher and there is an option by Rose Homes on Site B.

Messrs Bedford and Butcher also own the remainder of the land to the field drain (Site C) but this land is not part of any proposal.

On 15 December 2011 a planning application for 6 houses on Site B was submitted by Robert Gregory of Rose Homes (EA) Ltd. There is no obvious connection between Robert Gregory, who is a director of both Rose Homes EA Ltd and Grangecroft Ltd (which owns Rose), and Mssrs Bedford and Butcher, but Mssrs Bedford and Butcher are declared as owners of Site B. This application does not declare that Site A and Site C are in the same ownership.

The "shared drive" approved on Site A has become a "Previously approved adoptable road" in the Site B application and this road continues through Site B.

The question is whether the Council would be entitled to aggregate the sites and require the owners of the two sites to provide affordable housing as part of their schemes.

Policy Considerations:

- i) The adopted Local Plan dates from 1993 and hence precedes modern concepts of affordable housing. Policy H13 of the Local Plan seeks affordable housing on sites greater than 1 hectare. The adopted Local Plan, therefore, does not support a demand for affordable housing on this site in parts or as a whole.
- ii) PPS3 suggested a rule of thumb threshold for requiring affordable housing at 15 dwellings or 0.5 hectare. PPS3 specifically states that it is a material consideration in relation to determining planning applications from 1 April 2006. Given the age of the FDC local plan PPS3 should have been given much greater weight than the adopted Local Plan. However, PPS3 itself was revoked and the NPPF deals with affordable housing at Paragraphs 50 and 159. As befits the "Localism" agenda the NPPF is silent on thresholds.
- iii) Fenland DC consulted on a local development framework in July 2011. Policy CS3 sought a financial contribution equivalent to 20% affordable housing for sites up to 9 dwellings 30% affordable housing units on developments of 10 to 99 dwellings. In May 2012, *some 3 months after the consideration of this application by Committee*, a further consultation was launched with a revised CS3 with a requirement for 1 affordable dwelling on sites of 5 to 9 dwellings plus a financial contribution to bring it up to 20%. On sites of 10 or more there should be 30% affordable dwellings rounded to the nearest whole number. The May 2012 policy also contains a provision for aggregating a linked second application up to five years after completion of the first, with both schemes counting for affordable housing.

The LDF has not yet been subject to its examination in public, and has of course not been adopted; *it can, therefore, only be accorded limited weight*. However, planning does not stand still waiting for policies and in the absence of a policy the NPPF should prevail with its presumption in favour of sustainable development which includes "providing the supply of housing required to meet the needs of present and future generations" of which affordable housing is clearly a part. In the absence of an adopted policy the robustness of the evidence base supporting the draft policies would also be relevant.

I do not think a Council strictly needs an aggregation policy as it is common sense that if an owner decides to split a field into four lots, those lots should not be treated as separate planning units. If they were then every developer would be doing it.

Site B clearly carries the development beyond the established boundary of the settlement and Paragraph 54 of the NPPF could be said to have some relevance.

We do not know why the site has been split in three, particularly since the availability of all three parts was clear in 2005 as annotated on the plan. The obvious possibilities are (i) that it was disaggregated to avoid affordable housing triggers, (ii) that the owner did

not think that policies in 2005 would support building beyond the back garden walls of adjoining properties; or (iii) for capital release tax planning. However, such motivation is not a material consideration for planning and in practical terms there is clearly one single site, apparently in single ownership awaiting development for 13 houses.

In terms of (i) it should be noted that there were no benefits to disaggregate the site in 2005 as the total development fell under the requirements for affordable housing at that time.

The Council has four possible approaches:-

- (1) Treat Site B as a single site, and treat the 1993 plan as being applicable, in which case no affordable housing would be required.
- (2) Treat Site B as a single site and apply the emerging CS3 policy in which case 1 affordable dwelling would be required plus a 0.2 AH contribution
- (3) Treat Sites A and B as an aggregate site (13) but that AH should only be demanded on the new site which suggests that two of the dwellings should be affordable.
- (4) Treat Sites A and B as an aggregate site for AH accounting and require four affordable dwellings.

The legal advice given concludes that there is 'no particular reason why the Council should not seek any affordable housing. The need for affordable housing and the principle that it should be provided where viable is well established. Unless the developer can convince the Council that the site (individually or aggregated) is not viable at any level of affordable housing, Option 1 would appear to be contrary to national and emerging local plan policies. Option 2 is clearly supportable (subject to viability). Option 3 is supportable if the Council took the view that the permission for Site A is "in the bank" and, therefore, whilst the site should be treated as a whole only Site B should be charged at 30% to AH. Option 4 is more problematic. Given that Site A is "in the bank" and could be built out without providing any affordable housing then this option would require four of the extra six houses being affordable. I suspect this might give rise to severe viability issues, particularly as the plans suggest that the Site B houses are larger and likely to be much more expensive, although this latter point could be addressed if the affordable houses were accepted on Site A.

Some further guidance is offered in the Legal advice given in the form of appeal case histories, however, the examples given are offered both in support of the aggregation stance and in general terms to demonstrate that it would not be 'unreasonable' for FDC to adopt any of the four options highlighted.

Officers are mindful of the advice given and would dismiss Option 4 as this would appear unreasonable. Furthermore, Option 1 would appear inappropriate given that Policy H13 was not saved and in light of the revocation of PPS3. This leaves options 2 and 3 for consideration.

Agent's rebuttal: The current application involves what can only be described as a windfall site, whereas piecemeal development would normally be associated with a housing allocation applied for in phases. It is also some time since the approval was granted on the land to the north and the two planning applications are only connected by the use of a common access. We do not, therefore, accept the conclusion that the scheme is piecemeal development that would support a request for affordable housing particularly taking into account the length of time between the two planning applications and the fact the first permission is implemented and an existing commitment. We also

understand that the request for an affordable housing provision is to be based on 30% of the total number of dwellings. This is not only an unreasonable and onerous requirement, as it amounts to two thirds of the development proposed, but does not take into account what the affordable housing requirements were at the time of the earlier planning permission which must be relevant to the matter.

Officer Evaluation

Officers have considered the arguments put forward by both in the form of Legal advice and the rebuttal of the Applicant's representatives. They are also mindful of the delays in bringing this matter to a conclusion and the history of the site.

It is clear that when the original consent was granted it related to land wholly within the DAB and as such supported by Planning Policy. The commercial yard to the rear was outside the DAB, however, if it had been included and a planning permission forthcoming (on the basis of the two combined proposals) there would not have been a requirement for affordable housing as it would have fallen under the thresholds.

Furthermore, it is clear that when this current scheme was considered by Committee back in February 2012 the Core Strategy itself had limited weight and given representations received Officers and Members were affording weight only to the 10 dwellings or more trigger for affordable housing. Whilst subsequent iterations of the Core Strategy have seen more weight being given to the trigger points below 10 units it would appear unduly onerous and contrary to the growth message promoted by the Core Strategy to retrospectively apply the policies if they place additional burdens on applicants/developers. Indeed in certain instances when obligations have become less onerous other schemes have been re-presented to committee to ensure that developers are not unduly burdened.

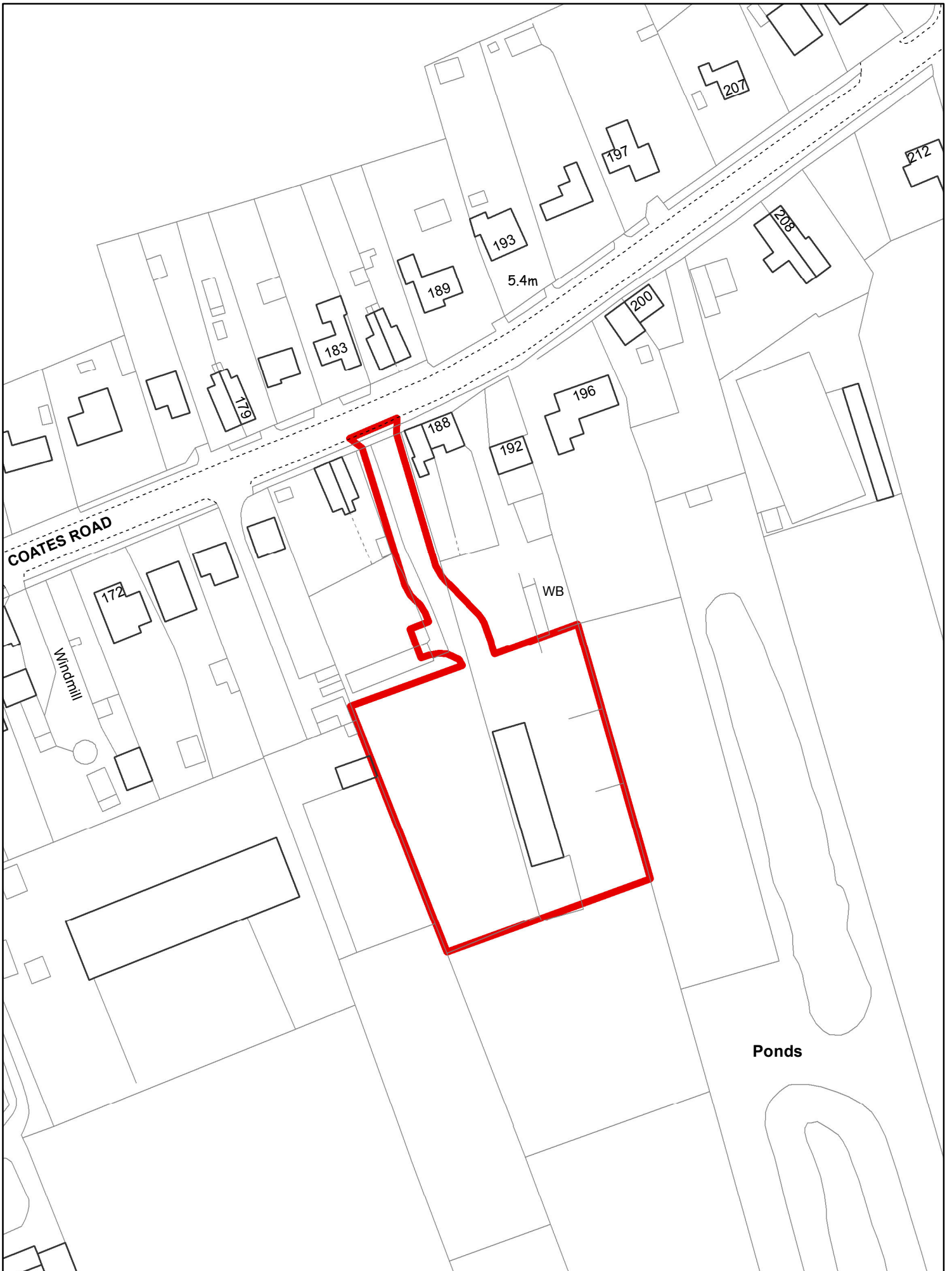
As such Officers feel the most appropriate stance would be to adopt Option 2, i.e. consider Site B as a single site and apply the level of affordable housing which was considered appropriate at the time this scheme was considered by committee thereby placing a 'Nil' requirement for affordable housing. This follows the stance that would have been in place at the February Committee when Officers/Members initially considered the scheme in that at that time the prevailing policy stance was to require Affordable Housing provision on schemes of 10 or more units in light of unresolved objections.

Whilst this is at variance to the guidance given by Legal it is clear from that advice that it would not be unreasonable to adopt any of the options specified, and Officers conclude it is a pragmatic and enabling approach. Should Members, however, wish to adopt any of the other options specified it would appear appropriate to give opportunity to the applicants and their representatives to explore viability with regard to the recommendation of the Committee.

RECOMMENDATION

Grant subject to:

- i) Prior completion of S106 Agreement for education contributions, and**
- ii) Suitable conditions.**



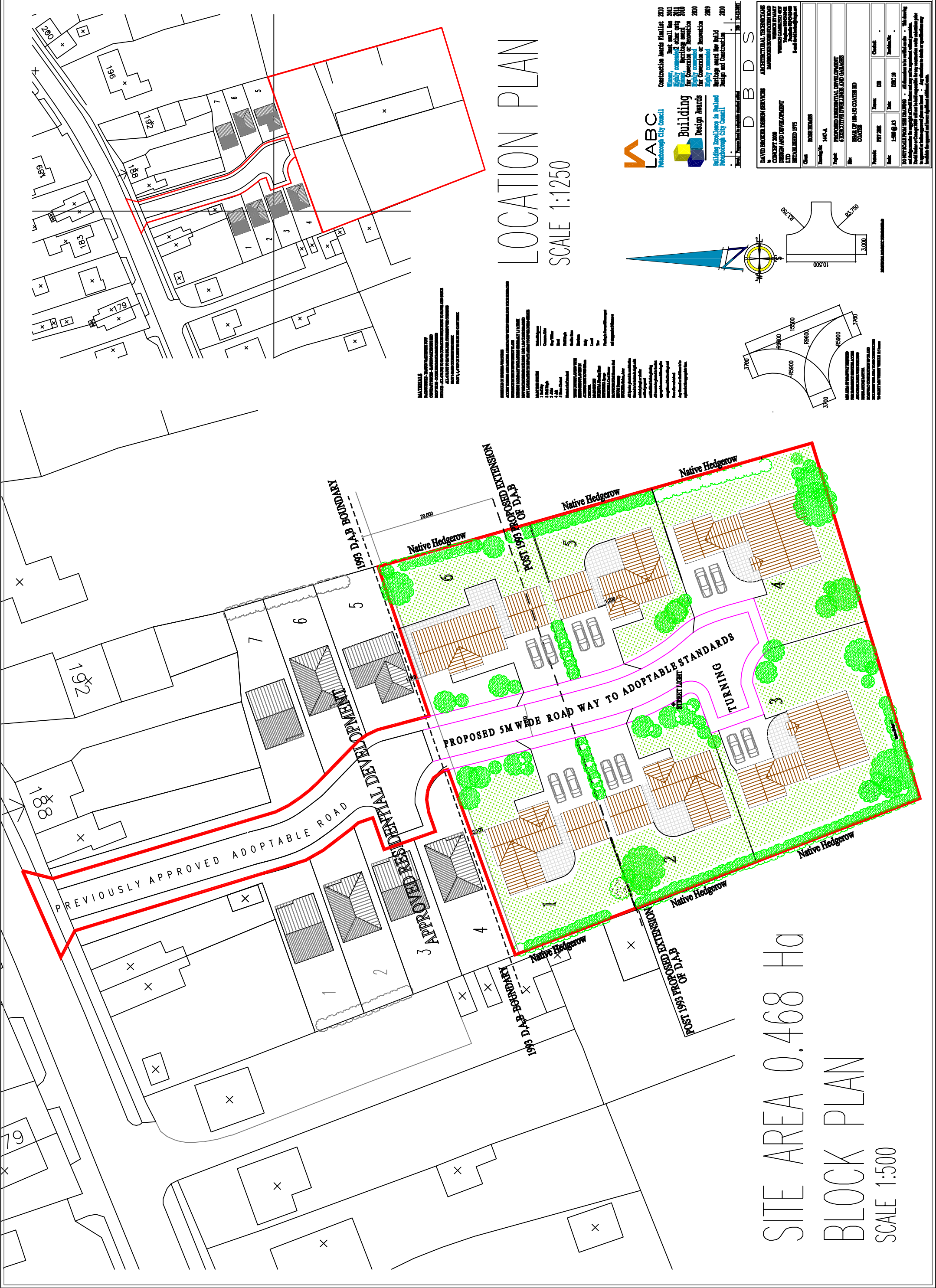
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F/YR11/0775/F

Scale = 1:1,250





SITE AREA 0.468 Ha
 BLOCK PLAN
 SCALE 1:500

LOCATION PLAN
 SCALE 1:1250

- MATERIALS:
 - Roofing: Clay Tiles
 - Walls: Brick
 - Floors: Concrete
 - Windows: UPVC
 - Doors: UPVC
 - External Walls: Render
 - Internal Walls: Plaster
 - Ground: Grass
 - Driveways: Concrete
 - Paved Areas: Asphalt
 - Footpaths: Concrete
 - Fencing: Timber
 - Boundary Walls: Brick
 - Planting: Native Hedgerow
- NOTES:
 - 1. All buildings to be constructed to a minimum standard of 2 star energy efficiency.
 - 2. All buildings to be constructed to a minimum standard of 2 star energy efficiency.
 - 3. All buildings to be constructed to a minimum standard of 2 star energy efficiency.
 - 4. All buildings to be constructed to a minimum standard of 2 star energy efficiency.
 - 5. All buildings to be constructed to a minimum standard of 2 star energy efficiency.
 - 6. All buildings to be constructed to a minimum standard of 2 star energy efficiency.
 - 7. All buildings to be constructed to a minimum standard of 2 star energy efficiency.



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Client: MARR TELMAR	Site No: 1441-A	Project: PROPOSED RESIDENTIAL DEVELOPMENT OF SEVEN DWELLINGS AND GARAGES	Site: MEAN OF 168-166 COATES RD COATES
Drawn By: J. D. B.	Checked: J. D. B.	Scale: 1:500 @ A3	Date: 15/12/2011

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