

APPLICATION REPORT - PA/341132/17

Planning Committee, 13 February, 2019

Registration Date: 01/12/2017
Ward: Werneth

Application Reference: PA/341132/17
Type of Application: Outline Planning Permission

Proposal: Outline planning application for a residential development of 3 no. detached dwellings. Access and layout to be considered. All other matters reserved.

Location: 26 Selkirk Avenue, Oldham, OL8 4DQ

Case Officer: Richard Byrne

Applicant: Ms Wilkinson

Agent : Cordingleys

THE SITE

This application relates to an associated garden to a large detached dwelling located at 26 Selkirk Avenue, Werneth, Oldham.

The surrounding area is predominantly residential in nature and contains a number of trees. Five trees in the southern corner of the site are covered by a Tree Preservation Order (TPO/00126/83). The application site is currently accessed off Selkirk Avenue through the existing property; however, the rear boundary of the garden area forms the boundary with Wellington Road.

THE PROPOSAL

Outline planning permission is sought to establish the principle of residential development on this site with the means of access and layout of the site to be considered.

Access to the site would be attained from Wellington Road with a shared drive serving three detached dwellings.

Plot 1 would face into the site and onto the shared driveway. The rear of the property and the garden space would face Wellington Road.

Plots 2 and 3 are located at the rear of the site and face the shared driveway.

The detached dwellings measure 8.5 metres by 8.5 metres with an integral side garage. The dwellings are shown with private garden space and driveways leading onto the shared access road.

RELEVANT HISTORY OF THE SITE

PA/049753/05 - Outline application for residential development. All matters to be reserved. Refused on 25 August 2005 as the proposal residential development would have a seriously detrimental impact on the character and appearance of the immediate area.

RELEVANT PLANNING POLICIES AND GUIDANCE

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, to the extent that development plan policies are material, planning decisions must be taken in

accordance with the development plan unless material considerations indicate otherwise. This requirement is reiterated in Paragraph 2 of the National Planning Policy Framework (NPPF).

In this case the 'Development Plan' is the Joint Development Plan Document (DPD) which forms part of the Local Development Framework for Oldham. The application site is unallocated by the Proposals Map associated with this document.

The following DPD Policies are considered to be relevant:

Policy 1 - Climate Change and Sustainable Development;
Policy 3 - An Address of Choice;
Policy 5 - Promoting Accessibility and Sustainable Transport Choices
Policy 9 - Local Environment;
Policy 11 - Housing;
Policy 20 - Design; and
Policy 23 - Open Spaces and Sports.

CONSULTATIONS

OMBC Highway Engineer - No objection in principle subject to a condition securing the layout in accordance with the approved plan.

Coal Authority - No objection subject to the imposition of a condition requiring intrusive site investigations to be undertaken prior to work commencing.

OMBC Arboriculture Officer - No objection in principle. The trees intended to be removed from site to facilitate development are all class B, C or U and there is no objection to their individual loss which includes the one remaining protected tree from the Hartford Grange TPO. To accord with UDP Policy D1.5 and taking into account the quality and density of the existing trees on the site a total of 40 new trees are required. As eighteen trees are proposed to be planted within the site the remainder are required to be secured by a commuted sum through a Legal Agreement with the applicant. In this instance the sum would be £6,600, and the most suitable site for the off-site replacement planting would be Werneth Park.

Greater Manchester Ecology Unit - No objection in principle.

- Agrees with the ecological appraisal that the site does not have evidence to suggest the site is used by bats and the trees on the site did not support the potential of roost features;
- Suggests that the number of trees for the replacement scheme is low;
- Recommends conditions for a tree protection scheme and restriction of vegetation clearance to be outside of main bird breeding season.

Natural England - Not assessed the application and has provided its standing advice and advised to consult local ecology bodies

REPRESENTATIONS

The application has been advertised by notification letters and a site notice. As a result of the publicity two representations have been received and are summarised as follows:

- Wellington Road is unadopted and the condition of the surface is poor, the proposed development would compound the problem with an increase in traffic;
- Planning permission should be refused on the basis of the Coal Mining Report as there is a serious safeguarding risk to the surrounding properties;
- Loss of privacy and impact on standard of living; in particular development would be contrary to the Human Rights Act Protocol 1 Article 1;
- Destruction of wildlife given the land is a woodland and is a wildlife haven.

PLANNING CONSIDERATIONS

The main issues for consideration comprise the following:

- Principle of land use;
- Layout design;
- Effect on residential amenity;
- Impact on highway safety;
- Trees and ecology;
- Ground conditions;
- Drainage; and,
- Other matters.

Principle of land use

Paragraph 17 of the NPPF states that planning should “Encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value”.

This is reiterated in DPD policies 1 and 11 which indicate that, when determining planning applications, the Council will ensure the effective and efficient use of land and buildings by promoting the reuse and conversion of existing buildings and development on previously developed land prior to the use of greenfield sites.

The site is currently part of the garden for 26 Selkirk Avenue. The definition of “previously developed land” in Annex 2 of the NPPF makes clear that this excludes “land in built-up areas such as private residential gardens”.

The site is unallocated on the DPD Proposals Map. However, DPD Policy 3 allows a proportion of new housing development to be delivered on land which is not previously developed, including a general exception for “small developments” (‘minor’ developments of under 10 dwellings). Therefore, there is no moratorium on the development of greenfield sites.

The proposal would constitute a small scale development and the development would assist in boosting the supply of housing land.

DPD Policy 11 states that housing development will not be permitted within an existing residential curtilage unless it is acceptable in terms of design, scale, massing and density which is sensitive and compatible with local character.

Layout design

Paragraph 130 of the NPPF advocates that where a development is a poor design that fails to take the opportunities available to improve the character and quality of an area and the way it functions planning permission should be refused.

The scale and design of the dwellings have been reserved for a later submission. Nevertheless it is considered the proposed layout provides a degree of spaciousness which is a characteristic feature of the dwellings in the surrounding area. The dwellings are set within generous plots providing ample garden and amenity space, sufficient vehicle manoeuvring and parking to the front of the dwellings without appearing cramped within the confines of the site.

Effect on residential amenity

DPD Policy 9 seeks to ensure that the Council will protect and improve local environmental quality and amenity by ensuring development does not cause significant harm to the amenity of the occupants and future occupants of the development or to existing and future neighbouring occupants or users through impacts on privacy, safety, security, noise, pollution, access to daylight and other nuisances.

The siting of the three dwellings are sufficiently positioned within the site to respect the relationship between the existing properties that surround the site. Notwithstanding that scale has been reserved, it is noted there is an approximate 30 metre offset distance to the rear of 24 Selkirk Avenue and 32 metres to the rear of 26 Selkirk Avenue. The two intervening distances would normally be above an acceptable tolerance between the rear of properties to maintain a degree of privacy and to mitigate against a significant loss of amenity. However, a detailed assessment will be undertaken when the scale of the dwellings are known and their design with respect to any windows looking towards neighbouring properties.

In respect of Wellington Lodge, it is noted that a number of windows face the boundary with the application site and their garden is immediately adjacent to the boundary. It is also noted the application site is lower than Wellington Lodge and the Plot 2 dwelling is positioned with its gable wall 4 metres from the boundary edge. Whilst the height of Plot 2 is unknown, it is considered Wellington Lodge would still afford a wide degree of outlook from the side facing windows.

Similarly, the degree of separation and difference in topography does mitigate any effect on the garden space of Wellington Lodge; however, the full effect would have to be considered when the scale, height and design of Plot 2 is known.

The layout has been revised to take into account the presence of windows in the adjacent care home (Hartford Grange). Again the full extent of its impact cannot be assessed at this stage, however, Plots 1 and 3 have been orientated to provide a degree of separation from the care home facing windows. The closet part of the dwellings are shown to be garages which normally limits the overall height.

Impact on highway safety

The site is considered to be in an accessible and sustainable location in close proximity to public transport and key services.

The access onto Wellington Road is considered to be acceptable and the layout provides sufficient space for the manoeuvring and parking of vehicles.

The condition of Wellington Road falls outside of the remit of this application. Nevertheless it is considered the introduction of three dwellings using Wellington Road would not be sustainable for refusal on the grounds of having an adverse impact on highway safety, and the Council's Highways Engineer has raised no objections on these grounds.

Trees and ecology

An arboricultural report has been submitted with the application, which states that there would be loss of 71 trees comprising 8 individual trees and 6 groups to facilitate the development. These include a combination of Category B trees of moderate quality, Category C trees of low quality and two Category U trees which are unsuitable for retention regardless of the proposals.

It is considered that many of the trees are not great quality due to a variety of reasons and the removal of the trees would ensure the existing trees retained have opportunity for future growth. The existing retained trees within the application site can be protected by planning condition.

It is proposed to introduce 18 new trees which can be incorporated into the layout. Although landscaping would come forward at a later stage, a planning condition can be attached to ensure the proposed trees are incorporated into the future development.

It is considered expedient that replacement tree planting will be required to mitigate the overall loss of the trees. Given all the trees cannot be accommodated within the site an off-site replacement scheme will be required.

As such the applicant will be required to enter into a Legal Agreement for a commuted sum which would secure the off-site tree planting in the locality. This will mitigate the overall tree loss and ensure the development complies with Policy D1.5 of the saved UDP.

Therefore given the quality of treescape within the locality, the proposed replacement trees on the site and the proposed off-site replacement scheme the loss of trees is acceptable.

The Greater Manchester Ecology Unit raises no objection to this application in respect of protected species. The site is not designated for its nature conservation value and is not adjacent to any designated sites. It comprises a small area of overgrown garden and the trees on the site do not have high potential to support bat roosting. It is therefore considered that the effect on protected species has been taken into account and there is no objection to the scheme in this respect.

Ground conditions

Paragraph 178 of the NPPF indicates that planning policies and decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.

Criterion (vi) to DPD Policy 9(a) states that the development will be permitted where it is not located in areas where an identified source of potential hazard exists and development is likely to introduce a source of potential hazard or increase the existing level of potential hazard.

Coal mining legacy

A Coal Mining Risk Assessment has been submitted. The applicant's report identifies the application site as being subject to past coal mining activity, where shallow underground coal mine workings could be present beneath the site. The report appropriately recommends carrying out of intrusive ground investigations to ascertain the ground condition, to establish the presence of mine workings, and to inform any remedial measures. It is therefore considered expedient to attach a condition to secure any necessary remediation and ensure the safe development of the site.

Landfill gas and ground contamination

The Council's Environmental Health team has recommended that a ground contamination investigation is undertaken prior to any development commencing on the site to establish the measures necessary to mitigate any ground risk. It is considered this approach is appropriate and as such it is expedient to secure the investigations by planning condition.

Drainage

DPD Policy 19 aims to ensure that development does not result in unacceptable flood risk. The site is located within flood zone 1 and there is evidence the site is subject to surface water flooding, albeit at a low risk.

In respect of the surface water, taking into account the scale of the proposed development, the area of external space which can be appropriately landscaped and the low risk to flooding it is considered the proposal would not warrant further investigation of the drainage of the site.

Other matters

In respect of the Human Rights Act, it is an inherent part of the decision making process for the Local Planning Authority to assess the effects that a proposal will have on individuals and weigh these against the wider public interest in determining planning applications. In carrying out this balancing exercise the Local Planning Authority has to act proportionately and the assessment of weight is a matter for planning judgement.

The occupiers of the neighbouring property, 24 Selkirk Avenue, believe that by virtue of the siting of the proposed houses, this would interfere with the standard of living as they would overlook the house and garden resulting in the loss of privacy and their human rights would be contravened.

However, in recommending approval of the application, the impact on neighbouring properties has been carefully considered. The resultant relationship will ensure a satisfactory level of amenity is retained and in this regard, the Council will have performed its duty under the Act.

In respect of the noise from the future occupiers of the site it is considered the relationship between properties and garden space is similar to the relationship which exists between 22 and 24 Selkirk Avenue and would not result in an untoward relationship.

Whilst there inevitably would be noise and disturbance from the construction stage this would be short lived. In any event should a disturbance be significant, this would be investigated under environmental protection legislation.

Conclusion

It is considered the principle of the residential development is acceptable and comprises a layout and design which assimilates with the character and appearance of the surrounding area.

The effect on the amenity of the surrounding properties has been considered acceptable insofar as the layout of the dwellings and its relationship with surrounding properties.

Similarly the effect on highway safety has been considered and it is found to be acceptable providing sufficient space for the manoeuvring and parking of vehicles.

Therefore subject to the applicant entering into a s.106 Agreement to secure a sum to contribute towards an off-site tree planting scheme to mitigate the loss of trees on the site the application is recommended for approval.

RECOMMENDATION

Approve, subject to the applicant entering into a s.106 Agreement to secure a sum to contribute towards an off-site tree planting scheme and the following conditions:

1. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or two years from the date of approval of the last of the reserved matters.

Reason - To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Approval of Scale, Appearance and Landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced and shall be carried out as approved.

Reason - To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.

3. The development hereby permitted shall be fully implemented in accordance with the following approved / amended plans and specifications:

Drawing Number: 3297/01 - received 1 December 2017;

Drawing Number: 3297/03D - received 22 October 2018.

Reason - For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and specifications.

4. Notwithstanding the Coal Mining Risk Assessment dated 14 March 2018, no development shall commence unless and until a site investigation and risk assessment into coal mining activity has been submitted to and approved in writing by the Local Planning Authority. The Coal Mining Risk Assessment shall contain:
- The undertaking of a scheme of intrusive site investigations which is adequate to properly assess the ground conditions and the potential risks posed to the development by past shallow coal mining activity;
 - The submission of a report of findings arising from the intrusive site investigations, the results of any gas monitoring and a scheme of proposed remedial works for approval; and
 - The implementation of those remedial works.

Written approval from the Local Planning Authority will then be required on receipt of a satisfactory completion report, to discharge the condition.

Reason - In order to protect public safety, because the site is located in a coal mining referral area and has been subject to coal mining activity.

5. No development shall commence unless and until a site investigation and assessment into contamination of the site has been carried out and the consultant's written report and recommendation has been submitted to and approved in writing by the Local Planning Authority.

Written approval from the Local Planning Authority will then be required for any necessary programmed remedial measures and, on receipt of a satisfactory completion report, to discharge the condition.

Reason - In order to protect public safety and the environment.

6. No development shall take place until a scheme for tree protection measures (both above and below ground) to be implemented during the construction period has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- (i) Details of a construction exclusion zone (including protective fencing of a height and design which accords with the requirements BS 5837: 2012) to be formed around the root protection areas of those trees to be retained;
- (ii) Details of any excavation to take place within the root protection areas of those trees to be retained;
- (iii) Details of the foundations of any building, hardstandings and/or boundary treatments to be constructed within the root protection areas of those trees to be retained.

The development shall thereafter be carried out in strict accordance with the protection measures contained within the duly approved scheme throughout the entirety of the construction period.

Reason - To ensure that adequate measures are put in place to protect existing trees which are to be retained as part of the development before any construction works commence.

7. No clearance of trees and shrubs in preparation for (or during the course of)

development shall take place during the bird nesting season (March - August inclusive) unless an ecological survey has been submitted to and approved in writing by the Local Planning Authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no development shall take place during the period specified above unless a mitigation strategy has first been submitted to and approved in writing by the Local Planning Authority which provides for the protection of nesting birds during the period of works on site.

Reason - In order to prevent any habitat disturbance to nesting birds.

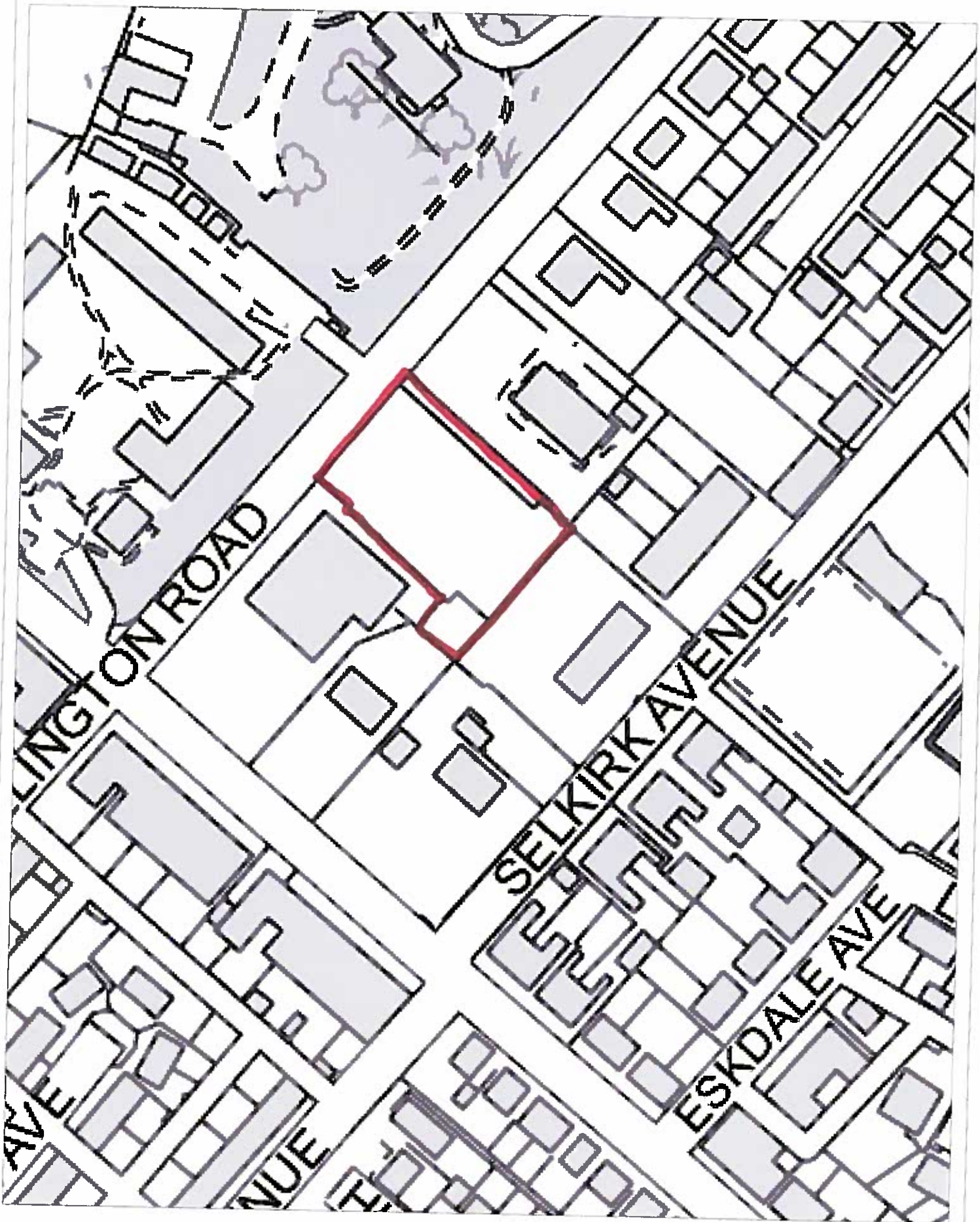
8. The development hereby approved shall not be brought into use unless and until the access and car parking spaces for the dwelling to which it relates has been provided in accordance with the approved plan received on 22 October 2018 (Ref: Dwg No. 3297/03D) and thereafter the parking spaces shall not be used for any purpose other than the parking and manoeuvring of vehicles.

Reason - To ensure that adequate off-street parking facilities are provided for the development so that parking does not take place on the highway to the detriment of highway safety.

9. Any application for the approval of reserved matters in respect of landscaping shall incorporate a scheme for planting of 18 on-site trees. The scheme shall include details of the size, species and location of the new trees. Each new tree shall be planted during the first planting season after the development hereby approved is first brought into use.

If any of the trees are removed, die, become severely damaged or seriously diseased within 5 years of planting, they shall be replaced by trees of a similar size and species.

Reason - To ensure there is appropriate compensatory planting following the loss of trees on the site.



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