
Appeal Decision

Hearing held on 25 November 2014

Site visit made on 25 November 2014

by P W Clark MA MRTPI MCMI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 December 2014

Appeal Ref: APP/Y2430/A/14/2223122

Land adjoining Belvoir Road, Bottesford, Leicestershire NG13 0BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of an outline planning permission.
 - The appeal is made by Barratt Homes North Midlands against the decision of Melton Borough Council.
 - The application Ref 13/00722/REM, dated 1 October 2013, sought approval of details pursuant to conditions Nos 1, 2, 4, 5, 6, 7, 9, 11 and 12 of a planning permission Ref 12/00123/OUT, granted on 10 September 2013.
 - The application was refused by notice dated 30 May 2014.
 - The development proposed is a residential development up to 56 dwellings, including 22 affordable 2 and 3 bedroom dwellings, together with site access and entrance road, service utilities infrastructure including pumping stations and associated open space.
 - The details for which approval is sought are: development of 56N^o dwellings with details of associated public open space and landscaping, materials and boundary treatments.
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Decision

1. The appeal is allowed and the details submitted pursuant to conditions Nos 1, 2, 4, 5, 6, 7, 9, 11 and 12 attached to planning permission Ref 12/00123/OUT granted on 10 September 2013 in accordance with the application Ref 13/00722/REM dated 1 October 2013 and the plans submitted with it are approved subject to the following additional conditions.
 - 1) Except as noted in paragraph 6 of this decision, or as required by other conditions of this decision, the development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule appended to this decision.
 - 2) Development shall not commence until details of the design of and materials to be used in the construction of the retaining wall and other land retaining measures along the western boundary of the site, shown on drawing NTH/2160/HD/100 revision P6 have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) Other than the boundary walls shown on drawing number H6041/201 revision J, no walls, planting or fences shall be erected or allowed to grow on the highway boundary exceeding 0.6metres in height above the level of the adjacent carriageway.

- 4) If any vehicular access gates, barriers, bollards, chains or other such obstructions are to be erected across any driveway or shared private access road, they shall be set back a minimum distance of 10 metres behind the highway (or proposed highway) boundary and shall be hung so as to open inwards only.
- 5) No dwelling shall be occupied until access to it has been completed and surfaced and its designated parking space has been laid out, surfaced and made available for cars to be parked. The space so laid out shall thereafter be kept available for its intended purpose.
- 6) The optional window shall not be inserted into the side elevation of the Knightsbridge house type on plot 21.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no extensions or outbuildings shall be erected in the rear gardens of plots 8 to 21 inclusive other than those expressly authorised by this permission.

Application for costs

2. Before the Hearing an application for costs was made by Barratt Homes North Midlands against Melton Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. In addition to the standard conditions (1 and 2) imposed on an outline permission, requiring details to be submitted for approval of layout, scale, landscaping and appearance and setting a time limit for submission of details and for commencement of development, condition 4 required details of protective fencing, condition 6 repeated the requirement for details of landscaping and specified their nature, condition 7 required details of tree protection to be submitted, condition 9 required the submission of details of a surface water drainage plan, condition 11 required the submission of a surface water drainage limitation scheme and condition 12 required the submission of a scheme to ensure no raising of ground levels within the flood plain. The present appeal concerns a submission of details in respect of all these matters.
4. The description of the current application includes a reference to materials. Condition number 5 of the outline permission requires submission of samples of the materials to be used in the construction of the external surfaces of the buildings permitted. The present appeal provides details of materials and a plan of their application throughout the scheme but does not provide samples. It is understood that a further application will be made in pursuit of that requirement. A further condition, 18, requires the submission of details of the routing of construction traffic. The present appeal does not seek approval of these details.
5. In the drawings considered by the Council, there was an inconsistency between the Layout Plan, drawing H6041/201 revision J and the Engineering Layout drawing NTH2160/HD/100 revision P5. With the appeal, I am being asked to consider the substitution of revision P6 for P5. This also includes amendments to comply with a condition of the outline consent. It had been published on the Council's website and time was allowed during a break in the Hearing for the

appellant to explain the amendments to third parties present, so I am satisfied that nobody would be prejudiced if I were to base my decision on this revised drawing, which is what I have done.

6. However, there remains a discrepancy between the gradient shown for the garden of plot 17 on this Engineering Layout drawing and the section through the site, drawing H6041/650 revision C. It was explained that the Engineering Layout Drawing correctly shows the appellant's intentions. I have taken my decision on that basis. However, no detailed drawings are submitted of the retaining wall proposed at that point and so a further condition would be necessary to require them.
7. As submitted, elevational drawings of the garage for plot 54 shown on the layout plan and to be used as the temporary sales office for the development were lacking. The Council did not take issue with this omission and had evaluated the proposals on the basis that the details of the design would be similar to those of a larger set of garages and temporary sales office for which elevations had been submitted, only varying in the dimensions of the footprint, which are shown on the layout plan. Nevertheless, for completeness, it was agreed, with no dissension, that the correct elevational drawings of this garage would be submitted and received after the close of the Hearing.
8. Condition 3 does not require the submission of details for approval but specifies limitations on the nature of details which are to be submitted for approval under condition 2. One of these is that the type and size of dwellings proposed will meet the area's local market housing need. The Council's third reason for refusing the current proposal is that the proposed type of houses does not address the imbalance of stock type and size of dwellings required to reflect the housing needs of the area and fails to contribute adequately to a sustainable and balanced housing market.
9. In effect the third reason for refusal alleges a non-compliance with part of condition 3. At the Hearing, the appellant's representative asserted the view that the proposal accords with condition 3. Nevertheless, both parties accepted that I might find substance in the Council's third reason for refusal yet, on balance, still allow the appeal. The Council accepted that that would be determinative of any implied appeal against condition 3.

Main Issues

10. There are two. They are the effects of the proposal on;

- The character and appearance of the area in terms of the proposed ground levels and layout and
- The supply of housing.

Reasons

Ground levels

11. The development of this site would extend the built envelope of Bottesford into presently open countryside. It would be surrounded by open land on three sides from which it would be clearly visible. It is therefore undeniable that this is a prominent site and that its development would obstruct views of the village and its church from the open land south of the site and would obstruct views

from within the village across the site towards Belvoir Castle. But this prominence and its consequences are a function of the extent and location of the site, regardless of the height of the development proposed on it. These matters of extent and location were settled by the second bullet point of condition 3 of the outline permission which has been given and are not in contention in this appeal.

12. As submitted at outline stage, there was no indication of ground raising and the approved description of development includes pumping stations, which implies an acceptance of existing topography for drainage purposes. But, as permitted, the first bullet point of condition 10 requires finished floor levels to be set no lower than 32.58m above Ordnance Datum (AOD). Even though the Council claims that this is an error for an intended figure of 31.98, the latter necessarily implies that the dwellings would have to be elevated by about 1m in comparison with existing ground levels.
13. Furthermore, the second bullet point of condition 10 requires external levels to be arranged to direct any overland flows away from dwellings whereas, as the topographical survey demonstrates, the current land levels fall gently towards the existing houses in Belvoir Road. Condition 12 also expects land raising to occur on the parts of the site not within the flood plain (i.e. zone 3). It is therefore clear that, whatever the original intentions of the developers and whatever public understanding was derived from those original intentions, the requirements of the outline permission include a degree of land raising.
14. Although a couple of plots are proposed to have finished floor levels of 32.90m AOD, the highest proposed ground level appears to be 32.85m AOD in front of plots 28/33. Generally, the ground raising proposed appears to be in the order of 1.3-1.4m, little more than required by the first bullet of the condition and is no more than required to achieve gravity drainage. In several places along Belvoir Road and Keel Drive I noted that the road was elevated above the adjoining land by 0.5m or so, suggesting that level changes of that order of magnitude are not out of character.
15. Although each of the dwellings proposed would have low eaves, immediately over the lintels of upper floor windows, reflecting a characteristic of village design, their greater footprint, when combined with the steeply pitched roofs, also typical of local village design, and the elevated ground level would result in the ridge lines of the tallest buildings being about 2.2m more above AOD than existing dwellings on the east side of Belvoir Road. But, the scheme is not uniform. Besides the variety introduced by bungalows, the two-storey dwellings demonstrate roof heights ranging between 40.37 and 42.06m AOD. Although these would be a little more elevated than the range between 37.86 and 39.24m AOD displayed by the houses on the east side of Belvoir Road, there are much taller buildings on the west side of Belvoir Road in the vicinity of the site, such as numbers 20/22.
16. It follows that the elevation of the ridge lines above AOD would not be outside the range already displayed in Bottesford. I therefore conclude that the elevated ground levels proposed would not add to any harm to the character and appearance of the village implicit in the already accepted principle of developing this site. They would not cause the development to conflict with policies OS1 and BE1 of the Melton Local Plan adopted in June 1999 which, amongst other matters, require harmonisation in terms of height, form, mass,

siting, materials and detail and no adverse effects on the form, character or appearance of the area.

Layout

17. Figures given by the appellant and not contradicted suggest that overall, 34% of the site would be covered by buildings and hard surfaces and 66% by soft landscaping. But the latter figure includes the public open space at the entrance to the scheme. Within the part of the site where houses would be built, the percentages reverse; 65% would be hard surfacing and only 35% soft. Since most of the latter would be at the rear of the dwellings, it is undeniable that the layout of the scheme would produce a predominance of hard surfaces in the street scene at its centre.
18. In a way, this progression from a public face of generous space towards a more intense interior is not untypical of Bottesford; the award winning Keel Drive fronted by a gracious segment of open space leads to the much more austere streets beyond. There are also isolated enclaves of more intense development off the spacious Belvoir Road such as The Paddocks, where many front gardens are paved to use as car parking, or Belvoir Avenue which has a tight, urban, mews-like layout. That said however, the degree of hardness contained within the space bounded by plots 9?19 and 38?45 would set it apart. The spaces bounded by plots 27?38 and by plots 46?53 would be scarcely less dominated by hard surfaces.
19. However, it would be wrong to describe the heart of the scheme as representing a regimented "wall of housing". Eleven different house types are used in a layout of 56 dwellings. It is correct to say that they would be arranged in straight lines; as are the existing dwellings 35?49 Belvoir Road which originally consisted of a row of four identical pairs. Geometrical layouts are also in evidence elsewhere in Bottesford. Although tightly spaced, no terrace would be longer than four houses; there would be progression and recession in the building line and variation in the height of the eaves line since two of the terraces on the west side are of bungalows.
20. Moreover, the three external public faces of the scheme are much more spaciouly presented. The elevations facing the cricket ground to the north and the public open space to the south would be of detached houses with a modicum of front planting, separated by parking spaces to their side, an arrangement not untypical of much of Bottesford. The wire fencing to protect the new housing against stray cricket balls would be a somewhat higher version of that already in place on the west side of the cricket ground and would not be an innovative intrusion into Bottesford as some have alleged. The elevation to the open countryside to the east, although intended to be partially hidden by screen planting, would be of a much more open arrangement of the flanks of detached houses separated by their rear gardens.
21. To the west, the rear of the more intensively laid out heart of the development, on its elevated land, would be seen from Belvoir Road through the gaps between the existing houses but at a distance of about 65m. The effects of foreshortening and of perspective would reduce the impact of its otherwise contrasting effect.
22. Overall, this development, like many others in Bottesford, would be very much of its time; by providing a substantial area of open space consolidated into a

single location safely off-street and by making generous provision for car parking, its public streets would be quite harsh, even with the planting proposed. But, as the appellant's urban design evidence pointed out without contradiction, Bottesford is very much a village composed of a number of developments, each reflecting its time. The streets at the heart of this development would be dominated by hard surfaces. But its external face has been designed in such a way that it would cause no harm to the character or appearance of Bottesford. It would therefore comply with policies OS1 and BE1 of the Melton Local Plan adopted in June 1999 which, amongst other matters require harmonisation in terms of height, form, mass, siting, materials and detail and no adverse effects on the form, character or appearance of the area.

Housing

23. In terms of market housing, the scheme would provide 5 x 2bed (15%), 8 x 3bed (24%), 17 x 4 bed (50%) and 4 x 5bed (12%), whereas the Council aspires to 13 x 2bed (38%), 17 x 3bed (50%) and 4 x 4 bed (12%), indicating the wide gulf separating the parties.
24. The Council bases its aspiration on the evidence of the Melton Borough Housing Stock Analysis 2006 Final Report and the Leicester & Leicestershire Strategic Housing Market Assessments 2007/8 and 2014 (the SHMAs). However, there are several points contained within these evidence bases which indicate that too much reliance should not be placed upon them.
25. The first of these records a deficit of 2-bedroom units and surpluses of 3 bedroom and larger units for the private sector market in the rural north of the Melton authority area (which includes Bottesford). But it warns that, despite the scale of future demand, it is not sustainable or deliverable in market terms to build all new stock in one or two sectors of the market. This implies that a wider housing mix than that suggested by analysed need is not inappropriate.
26. It also abstains from making any specific recommendations for dwelling mix in new developments in the rural north, simply making a general recommendation that the existing surrounding or local stock mix should be taken into account so that the local area should become more balanced and sustainable after the site is completed. Despite the availability of 2011 census data, there is no information before me which makes such a specific assessment for Bottesford. Without that, it is hard to come to a conclusion that the specific mix proposed in this appeal is wrong.
27. The 2008 SHMA contains a table indicating a "Whole housing market estimated optimised shape 2021" but warns that "this should be reassessed and reapplied as and when required for areas which have real meaning for home-seeking households in terms of choice as they see them, for example for smaller settlements or submarkets. The optimum shape should not be applied as one size fits all across large areas such as an entire local authority or housing market area – which are irrelevant to most home seekers – or it may tend to exacerbate area polarisation and market dysfunctionality." Yet, that is just what the Council seeks to do in applying to this site the recommendations of the 2014 SHMA for a mix of 30-35% 2 bed dwellings, 45-50% 3 bed dwellings and 10-15% 4 bed or larger, which are for the Melton authority as a whole.
28. Not only that but paragraph 2.36 of the Council's own Local Plan points out that in the northern part of the plan area, for which Bottesford is the main rural

centre, commuters look towards Nottingham and Grantham which contributes to pressure for residential development at Bottesford. Paragraphs 2.10 and 2.12 of the 2014 SHMA both confirm that on several definitions the areas around Harby and Bottesford in Melton fall within the Nottingham Housing Market Area. It is not therefore appropriate to apply to this area recommendations made for the Leicester and Leicestershire Housing Market Area. No information is provided of Housing Market demand relevant to the Nottingham Housing Market Area.

29. So, without disputing the generality of the Council's point, which is consistent with national trends, that there is greater need for new market housing at the smaller end of the spectrum than at the larger and that this scheme would supply a mix predominantly at the larger end of the spectrum rather than at the smaller, it is not possible to endorse the need for the specific mix to which the Council aspires in the specific circumstances of Bottesford.
30. The appellant has recognised the generality of the council's point in making adjustments to the proposed dwelling mix during the consideration of the scheme but considers that, on grounds of viability, it is not possible to move further in a scheme where 34 private sector units have to subsidise 22 affordable units. Although the Council suggests that viability could be improved by reducing the price paid for the land, I note that the District Valuer's residual valuation results in a sum of money for land purchase about half of that reported to have been originally agreed. Land values cannot be realistically reduced below a level at which the landowner would sell. The components of the District Valuer's valuation have been benchmarked and so I consider the report robust and therefore also that the dwelling mix proposed is robust in the sense of its market viability.
31. In contrast to the affordable housing sector where provision must be tailored closely to occupants' needs, oversupply in the private sector is likely to lead to market adjustments either allowing people to afford aspirations greater than their needs or releasing obsolescent property for refurbishment and/or subdivision. So, it is not clear what harm, if any, would result from the private sector housing mix proposed. The Council observes that there are limited opportunities for development in Bottesford within existing defined settlement boundaries and so the current proposal may prevent other development more suited to its aspirations.
32. Settlement boundaries are a policy device controlling the supply of housing. In a situation where, as the Council acknowledges, it does not have an identified five-year housing land supply, the National Planning Policy Framework advises that relevant policies for the supply of housing should not be considered up to date and so, settlement boundaries may no longer constrain development. For decision making, this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
33. In this case, the Council's desire to control the market sector housing mix is not even based on a policy but on selected extracts from evidence-based documents which do not apply to the area where the site is located and are used in a way specifically contrary to the advice of the evidence-based documents themselves. Without setting it aside entirely, the Council's point

becomes one element to take into account in a balance which must also take into account benefits. It is to these that I now turn.

34. All parties are agreed that the affordable housing component of the development would meet local needs. There is no dispute that the affordable housing is urgently needed. The Council seeks to deliver 40% of all new development as affordable units. The appellant's uncontested figures for affordable housing completions show that delivery has been at low levels for the past five years.
35. In summary; the proposal would deliver much-needed affordable housing which would meet local needs. It would make a limited contribution to the supply of small private sector dwellings and would add to what is seen as a surplus of larger private sector dwellings. In the light of advice in the National Planning Practice Guidance that an increase in the total housing figures included in a local plan should be considered where it could help to deliver the required number of affordable homes, adding to a surplus of larger private sector dwellings in this particular case in order to deliver an appropriate and needed affordable housing component is clearly acceptable.
36. I therefore conclude that the effects of the proposal on housing supply would be beneficial. In coming to this conclusion I have taken into account the various appeal decisions to which I was referred but, in common with those decisions, I have formed my conclusions in the light of the particular circumstances of this case and the evidence before me.

Other matters

37. Residents of adjoining houses in Belvoir Road were concerned about overlooking from the elevated gardens of the development proposed and also from the dwellings themselves. Although these would have relatively short rear gardens, any overlooking from upper floor windows to garden areas would be no more than is normal in developed locations. The back to back distances between facing windows would be considerably greater than that normally regarded as sufficient for privacy but a condition restricting permitted development rights in these small rear gardens is necessary to ensure that this would remain so in any further construction permitted. The concern about overlooking from the elevated gardens appears to derive from a misunderstanding about the nature of the boundary proposed which I understand to be a 1.8m fence on top of a retaining wall.
38. Third parties also expressed doubts about the efficacy of the surface water drainage system to prevent additional flooding but were unable to adduce any evidence to substantiate their concerns. It may be that there is a misunderstanding or false expectation of what is proposed; the development cannot be expected to prevent flooding which would occur in any event; it can only be expected to make it no worse. There is no evidence to demonstrate that it would not be successful in this objective.
39. The appeal is accompanied by a signed obligation making provision for the layout and management of the open space and for the provision of the 22 affordable housing units. It also provides for each dwelling to be provided with two adult bus passes and makes financial contributions to bus stop improvements, education provision and policing services. The obligation is not in contention in this appeal and it has not been suggested to me that it would

provide any benefits over and above the affordable housing and the necessary mitigation of the impacts of the development to which it is proportionately and directly related. I am satisfied therefore that it passes the test of the CIL regulations.

Conclusions

40. There is no doubt but that this development would intrude into what is presently open countryside but that is a function of the outline permission previously granted. Ground raising is also required by conditions attached to the earlier permission with which this proposal complies. The resultant height of the development's ridgelines would not be inconsistent with others found in Bottesford and so would be acceptable.
41. The layout provides a considerable quantity of open space consolidated into one area open to the public and so the part of the site which is to be built up would be intensively developed. Parts would appear dominated by predominantly hard surfaces. But there is considerable variety of house type and height and progression and recession in the street scene and its external faces have been carefully contrived to harmonise with the character of Bottesford.
42. The housing provided would make a limited contribution to the supply of smaller properties in the market sector and would contribute more to existing surpluses of larger properties. But little or no identified harm would result. On the other hand, the proposal would make a noticeable contribution to the supply of affordable housing which all parties agree is much needed. Overall therefore the adverse impacts of this development would not significantly and demonstrably outweigh its benefits and so, in accordance with advice in the Framework, I allow the appeal.

Conditions

43. Conditions attached at this stage are additional to those already attached to the outline consent and may only relate to the detailed matters submitted for approval. At the Hearing the Council suggested eleven subjects for additional conditions. I have considered these in the light of advice contained in national Guidance, preferring where appropriate the wording of the model conditions contained in the Annex to the now otherwise cancelled Circular 11/95, *the Use of Conditions in Planning Permissions*.
44. Several of the suggested conditions can be seen to be satisfied by the drawings submitted and so, with a condition to require compliance with the approved drawings, these are unnecessary. The site layout has been designed to secure safe visibility sightlines; a condition is necessary to ensure that these are not compromised by future constructions of additional walls or fences adjacent to the carriageway. Likewise a condition is necessary to ensure that the future erection of gates or closures does not cause vehicles to stop on the highway to open them.

P. W. Clark

Inspector

SCHEDULE OF PLANS

Location Plan H6041/02

Planning Layout H6041/201 revision J

Street Scenes H6041/05 revision A

Materials Layout H6041/06 revision E

Topographical Survey sheets 1 and 2 S877/01 and 02

450mm Timber Knee Rail 2010/DET/216

1800mm Close Boarded Fence 2010/DET/217

1200mm Close Boarded fence 2010/DET/218

1200mm Post and Rail Fence 2010/DET/220

1200mm Post and Rail Fence 2010/DET/220G (two versions; one with single gate, one with double gate)

1200mm Post and Rail fence with triple gate 2010/DET/220TG

1800mm Screen Wall 2010/DET/221

Tildenet Ball Stop Fence – 10m

2010 Range ? The Alnwick 2010/ALN/A/01 revision A

2010 Range ? The Cambridge 2010/CAM/A/01 revision C

2010 Range ? The Cheadle 2010/CHE/A/01 revision C

2010 Range – Halstead 2010/HAL/A/01

2010 Range – The Kendal 2010/KND/A/01

Knightsbridge (two unnumbered drawings)

2010 Range – The Laurel 2010/LAU/A/00

2010 Range – The Ludlow 2010/LUD/A/01 revision C

2010 Range – The Maple 2010/MAP/A/00

2010 Range – The Maple Hipped 2010/MAP/A/00 revision NM02

2010 Range – The Morpeth (Det) 2010/MOR/A/01

2010 Range – The Stratford Planning Drawings 1 and 2 2010/STR/A/01 revision D and 2010/STR/A/02 revision B

2010 Range – The Hazel (Det) 2010/HZL/NM01 revision NM01 – DT

Single detached Garage – A&C 2010/DET/A/135 revision A

Double Detached Garage – A&C 2010/DET/A/136 revision A

Single Detached garage (6x3m int) ? A&C 2010/DET/A/143

Double Detached Garage (6x3m int) – A&C 2010/DET/A/144

2010 Range – Garage MSSD ?2L sheets 1, 2 and 3

Soft Landscape Proposals sheets 1 and 2 GL0104_02F and GL0104_03F

Tree and Hedgerow Protection Method Statement GL0104_04C

Culvert details NTH/2160/HD/160 revision P1

Drainage construction details (four sheets) NTH/2160/HD/140 revision P1,
NTH/2160/HD/141 revision P1, NTH/2160/HD/142 revision P1 and
NTH/2160/HD/143 revision P1

Engineering Layout (three sheets) NTH/2160/HD/100 revision P6,
NTH/2160/HD/101 revision P6 and NTH/2160/HD/102 revision P3

Kerb and Pavement Construction Details NTH/2160/HD/130 revision P1

S38 Typical Carriageway Cross Sections NTH/2160/HD/131 revision P1

Sections Through Site H6041/650 revision C

Richborough Estates

APPEARANCES

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Lyndsey Young
Colin Love
Susan Love
Anne Ablewhite
Beryl Fentern
John Goodson
Corbyn George

Ward Councillor
Local resident
Local resident
Local resident
Local resident
Parish councillor and Local resident
Local resident
Local resident
Local resident

DOCUMENTS

- 1 Appeal and Costs decisions APP/J1860/A/12/2187934 and APP/J1860/A/13/2193129
- 2 Appeal and Costs decisions APP/N4205/Q/14/2216240
- 3 Appeal and Costs decisions APP/V5570/A/14/2214889
- 4 Drawing NTH/2160/HD/105 revision P2 External Levels Arrangement
- 5 Illustrations of relationship between plots 9?19 and dwellings in Belvoir Road