

Regulatory Committee – 04 October 2022

Proposed creation of a 3m wide segregated pedestrian and cyclist pathway through Abbey Green Gardens, Corporation Street, Nuneaton.

NBB/22CC001

Application No.: NBB/22CC001

Advertised date: 23 March 2022

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Registered by: The Strategic Director for Communities on 16 March 2022

Proposal: Upgrading and relocation of the Corporation Street pedestrian and cycling facilities by creation of a 3m wide segregated pedestrian and cyclist pathway through Abbey Green, alongside soft landscaping and street lighting.

Site & location: Abbey Green Gardens, Corporation Street, Nuneaton.
[Grid ref: 435947.292171].

See plan in Appendix A

Recommendation

That the Regulatory Committee authorises the grant of planning permission for the upgrading and relocation of the Corporation Street pedestrian and cycling facilities, with soft landscaping and street lighting subject to the conditions and for the reasons contained within Appendix B of the report of the Strategic Director for Communities.

1. Application details

- 1.1 The application seeks consent for the installation of a shared cycle way/footpath to run through Abbey Green Gardens. The cycleway would replace the existing pedestrian and cycling facilities on Corporation Street.
- 1.2 Abbey Green Gardens is an area of some 0.8 ha laid to grass, with mature and semi-mature trees planted along the boundaries with adjacent streets; Corporation Street to the west, Graham Street to the east and Central Avenue to the north. The grass area is divided by footpaths running across the gardens.
- 1.3 The proposed works would consist of the creation of a 3m wide segregated pedestrian (1.5 m wide) and cyclist pathway (1.5m wide). The pathway would run roughly parallel to Corporation Street and would link to Central Avenue at the northern end and at the southern end to Corporation Street close to the roundabout junction with the A444.
- 1.4 The path/cycleway would comprise an asphalt surface raised by some 300mm above the existing ground level. The proposed installation would be a non-dig construction, with a porous sub-base stabilised with a 'honeycomb' cellular geotextile. The surface would be of a permeable or porous material where it is installed over tree roots.
- 1.5 No mature trees would be removed as a result of the proposed works, however two newly planted trees within the application area would need to be moved or replaced. The route of the pathway would run through the Root Protection Area (RPA) of 10 trees on the western side of the gardens, as a result the installation would be no-dig construction of the porous surface over the root area.
- 1.6 An informal planting area is proposed to be created along the entire eastern side of the proposed pathway and for additional informal soft landscape areas to be planted between the western side of the path and the existing line of trees growing to the rear of the pavement along Corporation Street. A total of 7 new trees are proposed to be planted in addition to the informal planting areas.
- 1.7 The installation of a lighting scheme is proposed, comprising six black painted LED luminaires mounted on 6 m high galvanised steel lighting columns.
- 1.8 Fencing and bollards would be installed at each end of the cycleway to deter use of the route by motorcycles or other off-road vehicles.

2. Consultation

- 2.1 **Nuneaton and Bedworth Borough Council – Planning: No objection.**

- 2.2 **Nuneaton and Bedworth Borough Council - Environmental Health:** No objection.
- 2.3 **Councillor Caroline Phillips:** No comments received.
- 2.4 **WCC Senior Transport Planner:** The proposed shared footway/cycleway is a welcome segregated-from-traffic route that will introduce new walking and cycling improvements to the Abbey Green area. It is hoped that future funding opportunities will be secured to continue this provision along Central Avenue and then onto Midland Road. The proposed scheme is likely to tie into the future Transforming Nuneaton Project, which has some important walking and cycling improvements that will benefit from this small, but functional link.
- 2.5 **WCC HR Advisory Team Council:** No comments received.
- 2.6 **WCC Flood Risk and Water Management:** No objection subject to a planning pre-commencement condition for the approval in writing of a detailed surface water drainage scheme.
- 2.7 **WCC Principal Highway Control Engineer:** No objection.

The initial Highway response raised an objection on the grounds that it had not been shown that the pedestrian crossing fronting 54 Central Avenue is both safe and suitable for the purpose. On consideration of amended plans the response was changed to no objection, stating:

The layout has been altered to improve pedestrian connectivity and safety fronting Central Avenue. Bollards are shown surrounding the northern side of the bellmouth junction with Corporation Street. This is to ensure drivers do not use the combined cycleway / pedestrian crossing point for vehicular access. As part of detailed design, the bollards will need to be positioned to allow people to walk side by side whilst still preventing motor vehicle use, rather than the indicative positioning shown.

A Stage 1 / 2 Road Safety Audit has been carried out on the amended layout. The Safety Team accept the Designer's Response for the issues raised. As such, the concerns previously raised appear to have been overcome. Because the application is from Warwickshire County Council, no highway conditions regarding agreements can be recommended. The County Council cannot enter into a highways agreement with the County Council. And as this team will not be involved in technical approval or construction, there are no conditions to recommend. Therefore, the Highway Authority's response to your consultation is one of no objection.

- 2.8 **WCC Archaeology:** No comments to make on this application.
- 2.9 **WCC Ecology Services:** No objection subject to conditions for the inclusion of a Construction and Environmental Management Plan and a Landscape and Ecological Management Plan.

- 2.10 **WCC Planning Policy Team:** No comments received.
- 2.11 Four site notices were displayed on lampposts at four locations surrounding the gardens on 23 March 2022. A press notice was posted in the local newspaper on 23 March 2022.
- 2.12 Neighbour consultation letters were posted to the 84 nearest residential properties on Corporation Street, Central Avenue and Graham Street.

3. Representations

- 3.1 In response to the consultation, one representation was received from a local resident who objected to the proposal on the following grounds.
- 1) Cyclists use the road even though the footpath at present is shared from Corporation Street down to Asda. This proposed cycleway will never be used.
 - 2) Widening the existing footpath would negate the reason to go ahead with this proposal. The benefits being –
 - a) No need for lighting as existing is more than adequate.
 - b) Extending the tarmac to the kerbside would negate the cost of maintaining the grass verge between the existing footpath and road.
 - 3) If the cycleway goes ahead, I fear that this is the tip of the iceberg regarding redevelopment of Corporation Street to provide an extra lane of traffic at the expense of the mature trees we have. I see the landscape drawing proposal which states the positioning of the new trees, but no mention of the existing trees. Why are they not mentioned?
 - 4) I am led to believe that there is a covenant on the Green whereas the Green cannot be touched and must remain 'as is' as it was given to the people of Abbey Green.

4. Previous Planning History

- 4.1 There is no previous planning history relating to the application site.

5. Assessment and Observations

Location

- 5.1 The application site is located approximately 0.3 km to the north-west of Nuneaton Town Centre. Abbey Green Gardens is a triangular area of open space, predominantly laid to grass, and divided by tarmac paths crossing the park which is bordered along the three sides by mature trees. The gardens are bounded by Central Avenue to the

north; Graham Street to the east and Corporation Street to the south-west. Corporation Street roundabout lies to the south, connecting to the A444 and Powell Way.

- 5.2 Abbey Green Gardens are surrounded by residential development with terraced housing on the western side of Corporation Street; terraced houses on the eastern side of Graham Street and detached and semi-detached houses on the northern side of Central Avenue, all facing towards the gardens.
- 5.3 The pavement running parallel to Corporation Street is positioned between the line of trees on the western edge of the park and the grass highway verge. A bus layby is positioned on the eastern side of Corporation Street to the north of a signalised pedestrian crossing located towards the southern end of Corporation Street. Two large highway direction signs are installed at height above the pavement, spanning the width of the pavement to direct traffic travelling into the town.

Planning Policy

- 5.4 Paragraph 11 of the National Planning Policy Framework (NPPF) July 2021 explains that there is a presumption in favour of sustainable development and what that means. What the presumption means in relation to a planning application is that:
 - (a) proposals which accord with an up-to-date development plan should be approved without delay; and
 - (b) where there are no relevant development plan policies or the policies most important for determining the application are out-of-date, then permission should be granted unless:
 - the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Where the presumption in (b) applies, it is often referred to as the “tilted balance” in favour of the application.

Paragraph 12 goes on to explain that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date

development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

- 5.5 Paragraph 48 explains that authorities may give weight to relevant policies in emerging development plans according to: a) the stage of preparation of the emerging plan; b) the extent to which there are unresolved objections to relevant policies; and c) the degree of consistency of the relevant policies in the emerging plan to this Framework.
- 5.6 In this case, the development plan is the Nuneaton and Bedworth Borough Council Borough Plan (2011 – 2031) adopted in June 2019, which has relevant policies that are up to date so far as they relate to this proposal. The application should therefore be determined (as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004) in accordance with those policies unless material considerations indicate otherwise.

The National Planning Policy Framework

- 5.7 The National Planning Policy Framework (NPPF) (July 2021) has at its heart a presumption in favour of sustainable development to be achieved by three interdependent objectives; economic, social and environmental, to build a strong competitive economy, vibrant healthy communities while enhancing the natural, built and historic environment.
- 5.8 **Paragraph 92** states that planning decisions should aim to achieve healthy, inclusive and safe places which:
- c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.
- 5.9 **Paragraph 98** states that access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities and can deliver wider benefits for nature and support efforts to address climate change.
- 5.10 **Paragraph 99** states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
- 5.11 **Paragraph 104** states that opportunities to promote walking, cycling and public transport use are identified and pursued

- 5.12 **Paragraph 105** states that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions and improve air quality and public health.
- 5.13 **Paragraph 112** states that applications for development should give priority first to pedestrian and cycle movements, and create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards.

The Development Plan

Nuneaton and Bedworth Borough Council Borough Plan 2011-2031

- 5.14 **Policy DS1 – Presumption in favour of sustainable development:** states that a positive approach will be taken towards proposals that reflects the presumption in favour of sustainable development contained in the NPPF. It will always work proactively with applicants to jointly find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.
- 5.15 **Policy DS2 – Settlement of hierarchy:** Most development will be directed to Nuneaton as the primary town. Patterns of growth should be focused on locations which are or can be made sustainable, and which make full use of public transport, walking and cycling.
- 5.16 **Policy DS3 – Development principles:** requires that all new development is sustainable and of a high quality, fully supported by infrastructure provision, as well as environmental mitigation and enhancement. New development within the settlement boundaries will be acceptable subject to there being a positive impact on amenity, the surrounding environment and local infrastructure.
- 5.17 **Policy TC2 – Nature of town centre growth:** development will be expected to create a more accessible, well-connected and well-designed centre, with particular emphasis on linkages by walking, cycling and public transport.
- 5.18 **Policy HS2 – Strategic accessibility and sustainable transport:** states that planning applications are required to address issues including how the development delivers sustainable transport options in a safe way that link to the wider transport network. Proposals should include provisions which promote more sustainable transport options.
- 5.19 **Policy HS6 – Sport and exercise:** states that proposals which assist in creating a healthy environment across the borough through the use of sports, leisure and recreation facilities and/or opportunities to exercise will be approved.

- 5.20 **Policy NE1 – Green infrastructure:** states that the Borough’s green infrastructure assets will be created, protected, managed and enhanced. New development proposals will create new, and enhance existing, green infrastructure assets, by means including creating a linked network of signed strategic and local greenway routes for walking and cycling, connecting the green network of key green spaces, townscape and landscape by delivering the strategic cycle network plans.
- 5.21 **Policy NE2 – Open space:** states that new development will create an improved green network of publicly accessible and linked open spaces to support growth by creating a network of strategic and local walking and cycling routes in order to increase the connectivity of open spaces.
- 5.22 **Policy NE3 – Biodiversity and geodiversity:** seeks to conserve, enhance, restore and where appropriate create ecological value in sites as well as supporting biodiversity offsetting in order to achieve no net loss of biodiversity.
- 5.23 **Policy BE3 – Sustainable design and construction:** requires that development proposals are designed to a high standard and contribute to local distinctiveness and character by reflecting the positive attributes of the neighbouring area.

Policy Considerations

- 5.24 The proposed development which seeks to provide a safe route for cyclists routed through Abbey Green Gardens; to provide a sustainable form of transport and to help reduce pollution is supported by policies in the NPPF and the development plan. The development plan also includes policy constraints which seek to ensure a satisfactory form of development in order to protect the natural and built environment and the amenity of neighbouring occupiers from any adverse impacts resulting from the development. Subject to such effects and impacts being appropriately managed, the proposed development would accord with the policies of the NPPF and the development plan. The potential issues are considered below.

Amenity and Environmental Issues

Residential Amenity

- 5.25 The construction period of the proposed development has the potential to impact residential amenity as a result of delivery and storage of materials and noise and disturbance during the installation. The impact would however be for a limited period of time and would not be a reason to refuse the application.
- 5.26 The routing of the cycleway/footpath through the open space and its use by cyclists and pedestrians is not considered to have a greater

impact or significantly different impact on residential amenity than the existing use.

Ecology

- 5.27 The Ecological Impact Assessment submitted to support the application details that a Preliminary Ecological Appraisal was carried out in June 2020 and a Phase 1 habitat survey in June 2021.
- 5.28 The application site has no specific nature conservation designation and there are no protected species recorded within the site. The site is largely amenity grassland with mature trees to the boundaries.
- 5.29 The nearest non-statutory ecological sites are Abbey Field, Local Wildlife Site (LWS) 320m southwest, River Anker, potential Local Wildlife Site (pLWS) 220m northeast, Railway Embankments Local Wildlife Site (LWS) 580 northwest, Midland Quarry, Local Geological Site (LGS) 760m west and Judkins Quarry, Local Wildlife Site (LWS) 880m northwest. The proposed development is not considered to have an impact on these ecological sites.
- 5.30 One tree within the application area was identified as having potential for roosting bats. Bat surveys were undertaken with no recordings of bats. The applicant subsequently confirmed that the tree in question (T92) would not be impacted by the proposed works. Further surveys are to be undertaken to ensure more information is available should there be a requirement for future maintenance works on the tree, but that survey is not required as a condition of any approval granted.
- 5.31 The Biodiversity Impact Assessment submitted to support the application indicated a small gain of 0.01 biodiversity units. The County Ecologist raised no objection and commented that the proposed planting appears to offer sufficient additional habitat to result in an overall gain in biodiversity in line with the NPPF. Planning conditions are recommended for a Construction and Environmental Management Plan (CEMP) and a Landscape and Ecological Management Plan (LEMP) to ensure a net biodiversity gain.
- 5.32 An objection from a local resident questioned the impact of the proposed development on the existing trees within the park and raised concern that Corporation Street could in the future be widened to provide an additional lane at the expense of the trees on the edge of the park. In their response, the applicant confirmed that the mature trees within the application site are to be retained by the current development and a number of additional trees are proposed to be planted as part of the landscape scheme. The applicant further clarified that the submitted plans only highlight the changes or additions in the Abbey Green area and confirmed that the proposed plans and the wider Transforming Nuneaton proposals would not impact on the existing trees within Abbey Green Garden.

Lighting

- 5.33 The proposed scheme would introduce lighting along the cycleway where there is currently none installed in the Abbey Green Gardens. However, the surrounding roads have existing street lighting, therefore the introduction of lighting to the open space would not significantly increase the levels of lighting and not to a degree that is considered to have a detrimental impact on residential amenity.
- 5.34 The provision of lighting for the cycle way is necessary as the existing street lighting on Corporation Street is shadowed by the trees on the highway verge and would not therefore provide adequate lighting for the proposed route within the open space.
- 5.35 The submitted Lighting Scheme details that the proposed lighting specified for the cycleway would be black painted, 6 m tall lighting columns set back from the back edge of the cycleway by a minimum of 1 m. The columns would be base-hinged in design to allow columns to be lowered to provide access to luminaires during maintenance. Each column would have 150 mm yellow contrasting bands to aid the partially sighted.
- 5.36 The proposed columns are indicated to be positioned away from trees and, away from the Norway Maple tree which has potential for a bat roost. The lighting design uses Aspect shielded optics to minimise lightspill towards the trees where there is the potential for bat activity. The County Ecologist raised no objection to the proposed lighting. A condition is recommended for the lighting to be in accordance with the submitted lighting details (condition 6)

Landscaping

- 5.37 A landscaping layout submitted with the planning application, indicates the planting of seven hornbeam trees along the north-eastern side of the cycleway and the planting of 'woodland edge' and 'pollinator lawn' seed mixtures in areas on both sides of the cycleway. Final details of landscape planting would be a requirement of the Landscape and Ecological Management Plan (LEMP) as recommended by the County Ecologist to ensure a net gain in biodiversity is secured. A condition is recommended for the approved landscaping to be planted during the first planting season following completion of any works approved.

Heritage

- 5.38 The application site is located approximately 200m from Nuneaton Town Centre Conservation Area and 300m from Abbey Conservation Area. The grade II Ritz Cinema is the nearest listed building, some 90m to the southwest of the application site. Although these heritage assets are in relatively close proximity to the application site, the proposed cycleway development would not be seen in the same

context as either the listed building or the conservation areas and therefore considered to result in no harm to the heritage assets.

Highway Issues

- 5.39 The junctions between the proposed cycleway and the existing highway beyond the red line area at the northern and southern end of the site would require alterations to the highway. Those alterations are works within the highway and would constitute permitted development, not requiring planning permission and have for that reason, not been included within the red line area of the planning application. However, details of the necessary highway alterations were included in the Road Safety Audit for the cycleway to enable assessment of the whole highway scheme as part of the wider project. Alterations to the design of the junction of the cycleway with Central Avenue to the north of Abbey Green Gardens and an amendment to the bellmouth junction to provide a connection for the cycleway onto Corporation Street were required in response to initial comments from the Highway Authority. Amended plans of the junction were provided for consultation and following a Stage 1 / 2 Road Safety Audit the Highway Authority responded with no objection.
- 5.40 A local resident raised an objection to the proposed cycleway, stating that as an alternative to the proposed scheme, the grass verge along Corporation Street could be hard surfaced to increase the width of the pavement to have enough room for a cycle path. It was further suggested that this alternative would have the benefits of removing the need to provide additional lighting and removal of the cost of maintaining the grass verge. In response, the applicant explained that widening the existing footpath to provide a 3 m wide two-way cycle/foot path would either result in the widened facility impacting on the tree root protection area, potentially resulting in the removal of the existing trees in Abbey Green, or require the removal of the existing bus layby, which would impact the operational performance and journey time reliability of Corporation Street.
- 5.41 Highway alterations in the vicinity of the application site are proposed as part of the Transforming Nuneaton Highway Improvements Programme. These include increasing the width of Corporation Street on the southern section of the southbound carriageway between the bus layby and the roundabout on the junction with A444 Newtown Road, to create a left-turn lane in order to improve traffic flow. These road layout alterations are located beyond the planning application site and do not form part of the current planning application. The works would require the removal of the vegetation adjacent to the eastern side of Corporation Street, including two hornbeam trees, which have been identified in the Arboricultural Assessment submitted with the current application as being removed.

Flooding and Drainage Issues

- 5.42 Abbey Green Gardens is located within Flood Zone 1 where there is a low risk of fluvial flooding, however the EA Surface Water Flood Map shows that a small area of the site is at low and medium risk of surface water flooding associated with a surface water flow path crossing the proposed cycle route. This flow path runs on an existing footpath in Abbey Green which connects Corporation Street and Graham Street. The depth of the water within the flow path is expected to be shallow. The proposed levels of the cycleway would remain as existing at the location where it is crossed by the existing surface water flow path. As a result, the proposed cycleway is designed not to block the existing flow path to ensure there would be no adverse change in surface water flood risk within or beyond the site.
- 5.43 The proposed cycleway would have a crossfall of 1 in 40 minimum to ensure surface water would be directed away into the surrounding grass area, mitigating the risk of surface water flooding within the site or surrounding area. Permeable asphalt is proposed for the cycleway surface to allow water to filter through the surface and infiltrate into the ground.
- 5.44 The County Council Flood Risk and Water Management Team as Lead Local Flood Authority raised no objection to the proposed development subject to a planning pre-commencement condition for the approval in writing of a detailed surface water drainage scheme (condition 5).

Restrictive Covenants

- 5.45 In their objection to the proposed cycle path, a local resident raised the issue of a covenant on the land at Abbey Green Garden which was considered to be relevant to the proposed development.
- 5.46 The applicant advised that in liaison with NBBC, the land title has been examined. It was concluded that the development of the pathway would not contravene the terms of the covenant as the cycle way would fall within the use of land for pleasure ground (i.e. recreational purposes).
- 5.47 In addition, the restrictions on the Title are for construction which it defines as 'construction of buildings and erections'. The cycleway construction is neither a building or an erection and is considered to be the same as the construction of a footpath across the park.

6. Conclusions

- 6.1 The improved cycling infrastructure provided by the construction of the proposed 3 m wide cycleway/footpath routed through Abbey Green Garden would accord with the NPPF and policies NE1, NE2 and HS6 of the Local Plan.

- 6.2 The design of the cycleway/footway, including the choice of permeable materials; the design and location of lighting and the proposed landscape planting are considered to be to a high standard and to provide environmental mitigation and enhancement in accordance with the requirements of policies DS3 and BE3 of the Local Plan.
- 6.3 A biodiversity net gain is indicated in the submitted BIA in accordance with the requirements of the NPPF and Policy NE3 of the Local Plan.
- 6.4 The development is considered to be in accordance with the requirements of the NPPF and local plan policies and is recommended for approval subject to the recommended planning conditions.

7. Supporting Documents

- 7.1 Submitted Planning Application – Planning reference NBB/22CC001
- 7.2 Appendix A – Map of site and location.
- 7.3 Appendix B – Planning Conditions.

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