

To: The Deputy Leader and Members of the Planning and Development Board

(Councillors Simpson, Bates, Bell, Chapman, Dirveiks, Fowler, Gosling, Hayfield, Hobley, Humphreys, Jarvis, Parsons, H Phillips, Reilly, Ridley and Ririe)

For the information of other Members of the Council

For general enquiries please contact the Democratic Services Team on 01827 719237 via e-mail – democraticservices@northwarks.gov.uk

For enquiries about specific reports please contact the officer named in the reports.

The agenda and reports are available in large print and electronic accessible formats if requested.

PLANNING AND DEVELOPMENT BOARD AGENDA

5 AUGUST 2024

The Planning and Development Board will meet on Monday, 5 August 2024 at 6.30pm in the Council Chamber at The Council House, South Street, Atherstone, Warwickshire.

The meeting can also be viewed on the Council's YouTube channel at [NorthWarks - YouTube](#).

AGENDA

- 1 Evacuation Procedure.**
- 2 Apologies for Absence / Members away on official Council business.**
- 3 Disclosable Pecuniary and Non-Pecuniary Interests**

REGISTERING TO SPEAK AT THE MEETING

Anyone wishing to speak at the meeting, in respect of a Planning Application, must register their intention to do so by 1pm on the day of the meeting, either by email to democraticservices@northwarks.gov.uk or by telephoning 01827 719226 / 719221 / 719237.

Once registered to speak, the person asking the question has the option to either:

- (a) attend the meeting in person at the Council Chamber; or
- (b) attend remotely via Teams.

If attending in person, precautions will be in place in the Council Chamber to protect those who are present however this will limit the number of people who can be accommodated so it may be more convenient to attend remotely.

If attending remotely an invitation will be sent to join the Teams video conferencing for this meeting. Those registered to speak should join the meeting via Teams or dial the telephone number (provided on their invitation) when joining the meeting and whilst waiting they will be able to hear what is being said at the meeting. They will also be able to view the meeting using the YouTube link provided (if so, they may need to mute the sound on YouTube when they speak on the phone to prevent feedback). The Chairman of the Board will invite a registered speaker to begin once the application they are registered for is being considered.

- 4 **Minutes of the meeting of the Board held on 8 July 2024** – copy herewith, to be approved and signed by the Chairman.

ITEMS FOR DISCUSSION AND DECISION (WHITE PAPERS)

- 5 **Planning Applications** - Report of the Head of Development Control

Summary

Town and Country Planning Act 1990 – applications presented for determination.

- 5a **Application No: PAP/2024/0236 - 6, Marie Close, Mancetter, Atherstone, CV9 1NF**

Change of use of a domestic property from Class C3 to mixed use comprising C3 (dwelling) and Class E (commercial)

5b Application No: PAP/2024/0189 - Sunnyview, Dingle Lane, Nether Whitacre, Coleshill, B46 2EG

Demolition of existing garage block and the erection of a single self/custom build dwelling (Resubmission PAP/2023/0208)

5c Application No: PAP/2021/0372 - Flexdart, Marsh Lane, Water Orton, B46 1NS

Development of 5 industrial units and extension to unit D for Class E (g) (i) (ii) and (iii) (offices, research and development and industrial processes. Class B2 (general industrial) and class B8 uses (storage or distribution). Application for replacement metals reclamation and recycling processing works dealt with by WCC (reference NWB/23CM002)

5d Application No: PAP/2023/0188 - Land at, Tamworth Road, Dosthill

Outline planning application with full details of access (with matters reserved for landscape, scale, layout and appearance) for development comprising up to 22,000sqm (GEA) for flexible Use Class E(g)(ii), Eg(iii), B2 and/or B8 with associated car parking and works (Cross boundary application Tamworth BC reference 0163/2023)

The Contact Officer for this report is Jeff Brown (719310).

6 Tree Preservation Order – Hall Farm, Farthing Lane, Curdworth – Report of the Head of Development Control

Summary

The report outlines the background to the making of an Emergency Tree Preservation Order in respect of a Willow tree at Hall Farm in Curdworth.

The Contact Officer for this report is Jeff Brown (719310).

7 Appeal Update - Report of the Head of Development Control

Summary

The report updates Members on recent appeal decisions.

The Contact Officer for this report is Jeff Brown (719310).

STEVE MAXEY
Chief Executive

NORTH WARWICKSHIRE BOROUGH COUNCIL

MINUTES OF THE PLANNING AND DEVELOPMENT BOARD

8 July 2024

Present: Councillor Simpson in the Chair

Councillors Barnett, Bates, Bell, Chapman, Davey, Fowler, Gosling, Hayfield, Hobley, Humphreys, Jarvis, Parsons, O Phillips, Ridley, Ririe and Whapples

Apologies for absence were received from Councillor Reilly (Substitute Councillor Davey), H Phillips (Substitute Councillor O Phillips), Dirveiks (Substitute Councillor Whapples) and Councillor Gosling (Substitute Councillor Barnett)

14 **Disclosable Pecuniary and Non-Pecuniary Interests**

Councillor Simpson declared a non-pecuniary interest in Minute 16c – Application No PAP/2023/0071 (Land 800 Metres South of Park House Farm, Meriden Road, Fillongley) by reason of wishing to speak on this agenda item. Councillor Simpson vacated the chair and Councillor Bell took the chair for this item.

15 **Minutes**

The minutes of the meeting of the Planning and Development Board held on 10 June 2024, copies having previously been circulated, were approved as a correct record, and signed by the Chairman.

16 **Planning Applications**

The Head of Development Control submitted a report for the consideration of the Board.

Resolved:

- a **That Application No PAP/2023/0324 (White Hart Inn, Ridge Lane, Nuneaton, CV10 0RB) be deferred so that Members could visit the site and for officers to arrange that an Independent traffic assessment is undertaken and reported back to the Board.**

{Speakers: William Brearley, John Tither and Councillor Clews}

- b That Application No PAP/2023/0514 (1 Poplars Yard, New Road, Shuttington, B79 0EJ) be granted subject to the conditions set out in the report of the Head of Development Control;

{Speakers: Steve Harlow and Jilly Mattley}

Councillor Bell took the chair.

- c That Application No PAP/2023/0071 (Land 800 Metres South of Park House Farm, Meriden Road, Fillongley) is refused for the following reason:

“The proposed development is inappropriate development in the Green Belt. It is not considered that it would preserve the openness of the Green Belt as required by Policy LP3 of the North Warwickshire Local Plan 2021 and the National Planning Policy Framework (NPPF) 2023. It would additionally cause landscape and visual harm such that it does not accord with Policies LP1, LP14 and LP30 of the North Warwickshire Local Plan 2021, or Policies FNP01 and FNP02 of the Fillongley Neighbourhood Plan 2019. The Local and Neighbourhood Plan policies require new development to conserve and enhance the landscape; to integrate appropriately into the natural environment, harmonise with its immediate and wider settings, as well as to protect the rural landscape of the Parish, the scenic aspects of the village and the setting of the Church. The cumulative harms caused are considered to be substantial because of the development’s proposed size, its siting on higher land, there being no surrounding higher land and its public visibility over a wide area. It is not considered that this substantial harm is clearly outweighed by any benefits that the proposal might give rise to”.

In making this decision, the Board took into account the written Officer Report and the content of the statements made by the speakers at the meeting. In its assessment of the final planning balance, it gave greater weight to the harms that would arise, notwithstanding the amendments made. In its judgement those harms did not clearly outweigh the planning considerations and benefits outlined by the applicant - particularly in respect of Green Belt and Landscape planning policies.

{Speakers Robert Pargetter, Catherine France and Mark Harding}

Councillor Simpson took the chair.

17 **Appeal Update**

The Head of Development Control brought Members up to date with recent appeal decisions.

Resolved:

That the report be noted.

M Simpson
Chairman

**Report of the
Head of Development Control**

1 Subject

- 1.1 Town and Country Planning Act 1990 – applications presented for determination.

2 Purpose of Report

- 2.1 This report presents for the Board decision, a number of planning, listed building, advertisement, proposals, together with proposals for the works to, or the felling of trees covered by a Preservation Order and other miscellaneous items.
- 2.2 Minerals and Waste applications are determined by the County Council. Developments by Government Bodies and Statutory Undertakers are also determined by others. The recommendations in these cases are consultation responses to those bodies.
- 2.3 The proposals presented for decision are set out in the index at the front of the attached report.
- 2.4 Significant Applications are presented first, followed in succession by General Development Applications; the Council's own development proposals; and finally Minerals and Waste Disposal Applications.

3 Implications

- 3.1 Should there be any implications in respect of:

Finance; Crime and Disorder; Sustainability; Human Rights Act; or other relevant legislation, associated with a particular application then that issue will be covered either in the body of the report, or if raised at the meeting, in discussion.

4 Site Visits

- 4.1 Members are encouraged to view sites in advance of the Board Meeting. Most can be seen from public land. They should however not enter private land. If they would like to see the plans whilst on site, then they should always contact the Case Officer who will accompany them. Formal site visits can only be agreed by the Board and reasons for the request for such a visit need to be given.
- 4.2 Members are reminded of the "Planning Protocol for Members and Officers dealing with Planning Matters", in respect of Site Visits, whether they see a site alone, or as part of a Board visit.

5 **Availability**

- 5.1 The report is made available to press and public at least five working days before the meeting is held in accordance with statutory requirements. It is also possible to view the papers on the Council's web site: www.northwarks.gov.uk.
- 5.2 The next meeting at which planning applications will be considered following this meeting, is due to be held on Monday, 2 September 2024 at 6.30pm in the Council Chamber

6 **Public Speaking**

- 6.1 Information relating to public speaking at Planning and Development Board meetings can be found at:
https://www.northwarks.gov.uk/info/20117/meetings_and_minutes/1275/speaking_and_questions_at_meetings/3.

Planning Applications – Index

Item No	Application No	Page No	Description	General / Significant
5/a	PAP/2024/0236	1	<p>6, Marie Close, Mancetter, Atherstone, CV9 1NF</p> <p>Change of use of a domestic property from Class C3 to mixed use comprising C3 (dwelling) and Class E (commercial)</p>	General
5/b	PAP/2024/0189	9	<p>Sunnyview, Dingle Lane, Nether Whitacre, Coleshill, B46 2EG</p> <p>Demolition of existing garage block and the erection of a single self/custom build dwelling (Resubmission PAP/2023/0208)</p>	General
5/c	PAP/2021/0372	31	<p>Flexdart, Marsh Lane, Water Orton, B46 1NS</p> <p>Development of 5 industrial units and extension to unit D for Class E (g) (i) (ii) and (iii) (offices, research and development and industrial processes. Class B2 (general industrial) and class B8 uses (storage or distribution). Application for replacement metals reclamation and recycling processing works dealt with by WCC (reference NWB/23CM002)</p>	
5/d	PAP/2023/0188	56	<p>Land at, Tamworth Road, Dosthill,</p> <p>Outline planning application with full details of access (with matters reserved for landscape, scale, layout and appearance) for development comprising up to 22,000sqm (GEA) for flexible Use Class E(g)(ii), Eg(iii), B2 and/or B8 with associated car parking and works (Cross boundary application Tamworth BC reference 0163/2023)</p>	

General Development Applications

(5/a) Application No: PAP/2024/0236

6, Marie Close, Mancetter, Atherstone, CV9 1NF

Change of use of a domestic property from Class C3 to mixed use comprising C3 (dwelling) and Class E (commercial) for

Mr and Mrs Lynam

Introduction

This application is brought to the Board in light of local Members concerned about potential adverse highway impacts.

The Site

The site is located at 6 Marie Close in Mancetter and is within the Mancetter Development Boundary. The area is predominantly residential and is south of the dual carriageway of the A5. The property is a two-storey detached dwelling. The summerhouse that is proposed for the use of a waxing and beauty salon is located at the rear of the property.

The location is illustrated at Appendix A.

The Proposal

It is proposed to change the use of a domestic property from Class C3 to a mixed use comprising C3 (dwelling) and Class E (commercial).

The applicant is looking to run a Beauty and Waxing Salon, located in the summerhouse at the rear of their property. The position of the building is shown at Appendix B.

The proposed working hours have changed from the initial submission. The applicant is now proposing that the business be run from Monday to Friday - 9am to 6pm. The applicant will have a maximum of 10 customers per day and will keep a register of all clients for the day so that it can be reviewed by the Local Planning Authority if necessary. The applicant has one allocated parking space for the client to use whilst at the appointment and will allow for a 15 minute gap in between clients.

Appendix B illustrates this arrangement.

Development Plan

North Warwickshire Local Plan 2021 - LP2 (Settlement Hierarchy); LP21(Services and Facilities), LP29 (Development Considerations), LP30(Built Form) and LP34(Parking)

Mancetter Neighbourhood Plan - Policy DP1 (Sustainable Development Principles) and Policy T & A1 (Development Related Traffic Requirements)

Other Relevant Material Considerations

National Planning Policy Framework 2023 – (“NPPF”).

National Planning Practice Guidance – (“NPPG”)

Consultations

Environmental Health Officer - No objection

Representations

Mancetter Parish Council – “The Parish Council is supportive of local residents and encourages local business. As off-road customer parking is being made available, and the business proposed does not create noise or pollution, then the Council has no objection to the application”.

Three letters of objection have been received raising the following points:

- Amount of other similar businesses in the area.
- Concern for additional traffic caused from the comings and goings to the business.
- Concern for parking on the road - more off street parking caused by the application and would cause difficulty accessing other properties.
- The working hours and amount of working days

Observations

a) Principle of Development

The proposal is located within Mancetter which is a Category 1 Settlement with Local Plan policy LP2 meaning that development within the development boundary will be supported in principle. Moreover, the proposal would accord with Local Plan policy LP21 which supports services and facilities within settlements.

As such the proposal is supported in principle. The Board will thus have to assess whether the proposal gives rise to significant and demonstrable harm if planning permission is to be refused. There are a number of relevant policies to consider.

b) Character of the area

Local Plan policy LP30 deals with the character of the area. The first element here is that the house will continue to be used as a dwelling. The primary residential use will not be altered. There will neither be any no external changes to the house. Only the use of the shed situated within the garden area will be changed.

To ensure that the use is retains the residential character of the area, planning conditions can be attached to ensure that the use is restricted to the occupiers and that it remains ancillary to the primary use. This would ensure that the impact on residential

amenity is reduced. Similarly, a restriction on hours of operation would help retain that character.

Objectors indicate that there are lots of these uses in the area, but these are not concentrated along this street. Overall, it is considered that with conditions, the proposal accords with Local Plan Policy LP30.

c) Impact on Neighbouring Amenities

Local Plan policy LP29 looks to address concerns that any new proposal or change on site would not lead to any harm of the neighbouring amenities. Mancetter Neighbourhood Plan also has Policy DP1 which also states that “all proposals should not adversely affect the amenity of the nearby residents”.

The proposal would see a possible increase in both noise and light impacts as there would be more frequent use of the Summerhouse than currently. However, it is considered that given the setting, the nature of the use and through the use of planning conditions that any harms would be minimal. The NPPG for noise provides the following table for impact of noise:

Response	Examples of outcomes	Increasing effect level	Action
No Observed Effect Level			
Not present	No Effect	No Observed Effect	No specific measures required
No Observed Adverse Effect Level			
Present and not intrusive	Noise can be heard, but does not cause any change in behaviour, attitude or other physiological response. Can slightly affect the acoustic character of the area but not such that there is a change in the quality of life.	No Observed Adverse Effect	No specific measures required
Lowest Observed Adverse Effect Level			
Present and intrusive	Noise can be heard and causes small changes in behaviour, attitude or other physiological response, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life.	Observed Adverse Effect	Mitigate and reduce to a minimum
Significant Observed Adverse Effect Level			
Present and disruptive	The noise causes a material change in behaviour, attitude or other physiological response, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.	Significant Observed Adverse Effect	Avoid
Present and very disruptive	Extensive and regular changes in behaviour, attitude or other physiological response and/or an inability to mitigate effect of noise leading to psychological stress, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory.	Unacceptable Adverse Effect	Prevent

From this table, this proposal would fall under present and not intrusive, the noise from the proposal may be heard from the neighbouring properties, for example low level

conversations and doors opening and shutting. However, this would not lead to any change in behaviour or change in the quality of life for the neighbouring properties as the noise levels wouldn't be significant enough to cause harm.

The applicant has submitted information detailing how the proposed business would be operated. It states that they have limited customers a day; it will be one person at a time for around 1 hour, then allowing an extra 15 minutes minimum for times between any appointments. As a maximum there would be up to 10 clients a day.

On average a residential property has 7-10 car movements a day. The proposal would not lead to significantly more movements. The applicant states that they have four spaces on the drive and one of those space would be reserved for a visitors' space (shown on Appendix B). It will be a one in and one out service as it is only the applicant who will be working for the business. This will be conditioned upon approval, to limit the potential for increased impact upon residential amenity. The proposed hours of operation are outlined as follows: Monday-Friday 09.00 - 18.00, with no weekend working.

In regard to light pollution, the NPPG states "Will a new development, or a proposed change to an existing site, be likely to materially alter light levels in the environment around the site and/or have the potential to adversely affect the use or enjoyment of nearby buildings or open spaces?" The proposal in this application may lead to additional light due to the more frequent use, however it will not materially alter the light levels of the setting and would not adversely affect the use or enjoyment of the neighbouring buildings. The area is not within open countryside and any lighting will not fundamentally change the character of the area.

Although the location of the summerhouse is located closer to the boundary of one of the neighbours, there is landscaping and a boundary fence that can reduce any impacts. Overall, this proposal as may be conditioned, would meet the requirements of policies LP29 and DP1 Sustainable Development.

d) Highway Safety

The Council's parking standards requires 2 car parking spaces per house as stated in Policy LP34. The property has four available car parking spaces with the applicant providing one of these spaces for customer parking during the business hours. There is still sufficient amount of parking spaces for the residential use of the property.

Mancetter Neighbourhood Plan Policy T & A1 states "Development should not result in any worsening of the current highway safety and traffic related problems". The site has the sufficient parking that can meet the need of both the residential use and business use. The applicant has limited the number of customers per day to 10 customers and will have a 15-minute gap between each appointment. By doing so there should be no cross over between the customers that would cause traffic to be heavy near the site and there should be no need for on street parking. Limiting the number of customers to 10 per day will reduce any harm on the surrounding highway, as the comings and goings from the site per day would not be excessive.

e) Economic Considerations:

The NPPF paragraph 89 states “Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”.

As this proposal is looking to allow a business to be run, this would be supporting economic growth and weight should be given to this fact as granting this permission would be allowing for wider opportunities for the economy to grow. It is also important to note that the parish council have shown support for the application as it encourages local business.

f) Conclusion

The proposal satisfies the basic criteria, in that it does not propose to include employees and that the house will continue to be used as a dwelling primarily. The main considerations are the effect upon highway safety and residential amenity. The level of available parking at the site ensures that the proposal does not prejudice highway safety. It is considered that the use proposed would not be likely to result in unreasonable disturbance to neighbouring properties. Therefore, it is judged that the development will not have a significant adverse impact upon the residential amenity of neighbouring dwellings. Consequently, the application is considered to comply with the requirements of North Warwickshire Local Plan and Mancetter Neighbourhood Plan. Therefore, it is recommended that the proposal be approved subject to conditions.

Recommendation

That planning permission be granted subject to the following conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.

REASON

To comply with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and to prevent an accumulation of unimplemented planning permissions.

2. The development hereby approved shall not be carried out otherwise than in accordance with the approved plans:

- 1353-01A survey drawing 6 Marie Close Mancetter Atherstone CV9 1NF

received by the Local Planning Authority on 28/06/2024.

and the approved plan:

- Planning Statement _6 Marie Close May 2024

REASON

To ensure that the development is carried out strictly in accordance with the approved plans.

3. The visitor parking space as shown on the plan labelled "1353-01A survey drawing 6 Marie Close Mancetter Atherstone CV9 1NF" as received 28/06/2024 must be available for the customers use at all times during business hours. These business hours being Monday to Friday 9am to 6pm.

REASON

To ensure the impact on the highways and the on-street parking in the area is not adversely impacted due to the proposal.

4. The use of the shed hereby approved to Class E (Use Classes Order) for a hair and beauty salon use shall take place between the hours of 09.00 and 18:00 on Monday to Friday and at no other time.

REASON

To protect the character and amenities of neighbouring areas by ensuring that measures are implemented to avoid any noise nuisance or disturbance. To comply with Policy LP29 of the North Warwickshire Local Plan 2021.

5. The use hereby approved shall be limited to not more than 10 appointments per day, Monday to Friday. The applicant shall maintain a register of customer visits, and the register shall be made available for inspection by the Local Planning Authority at all reasonable times. Appointment scheduling shall ensure that there is a clear 15 minutes between the anticipated appointment end time and the start time of the appointment for the next client.

REASON

To ensure minimal harm to the neighbouring amenities and to control the number of trips to and from on highway traffic and parking on the site.

6. The summer house premises hereby approved shall be used for a mixed use of Class C3 Dwelling House and Class E hair and beauty, for no other purpose (including any other purpose in Class [E] of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

REASON

To satisfactorily protect the character of the area and the residential amenities of nearby occupiers. To comply with Policy LP29 of the North Warwickshire Local Plan 2021.

7. The Class E Hair and beauty use on the summerhouse is solely for the use of the 6 Marie Close and should not be let out or sold. If the owners were to sell the property, the use would return to the original use of being Class C3 Residential.

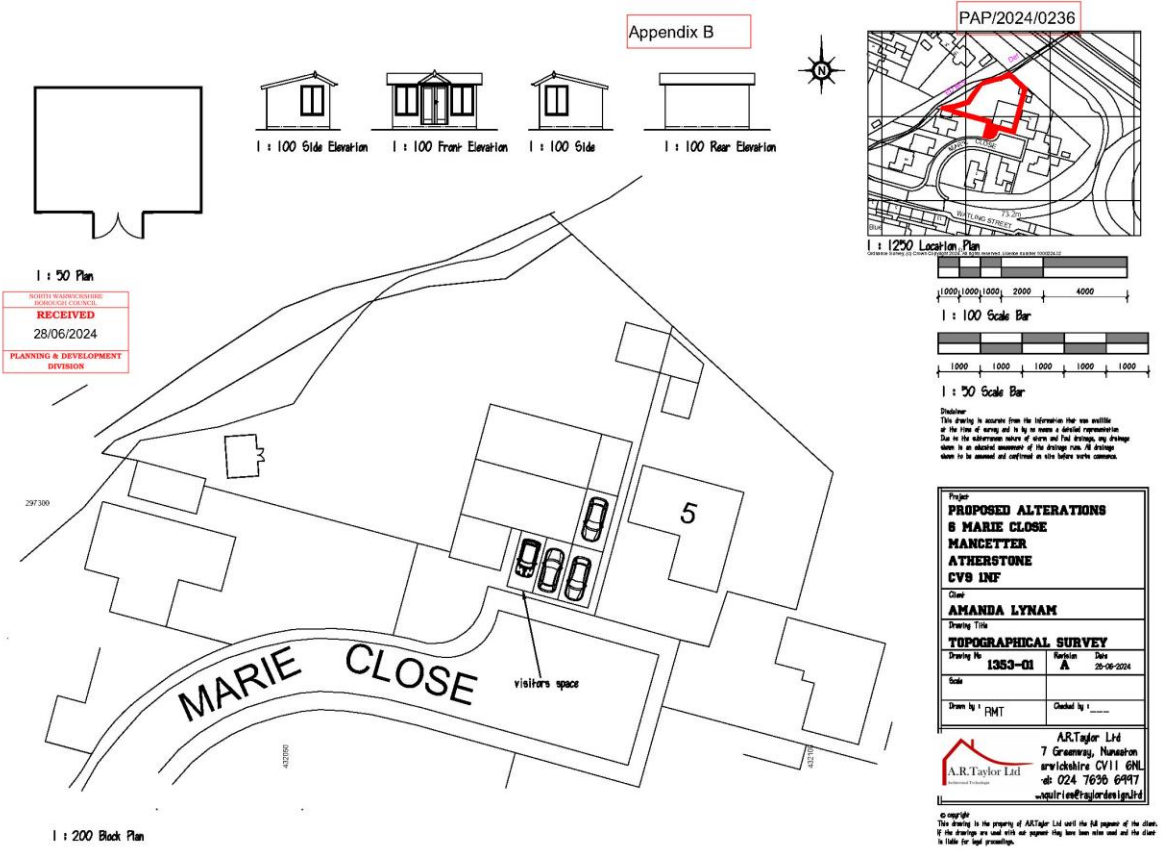
REASON

To ensure no unauthorised access of the use on the summerhouse.

Notes

1. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner. As such it is considered that the Council has implemented the requirement set out in paragraph 38 of the National Planning Policy Framework.

Appendix A



General Development Applications

(5/b) Application No: PAP/2024/0189

Sunnyview, Dingle Lane, Nether Whitacre, Coleshill, B46 2EG

Demolition of existing garage block and the erection of a single self/custom build dwelling (Resubmission PAP/2023/0208), for

Mr & Mrs Bignall

Introduction

The application is reported to the Planning and Development Board as it is accompanied by a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act.

The Site

The application site comprises 0.035ha of land along the eastern side of Dingle Lane within the hamlet of Hogrills End. The site consists of ruderal vegetation, areas of hardstanding and two derelict single storey, timber garages, and an attached lean-to. A vehicular access is present within the north-western corner of the site. An established, mature hedgerow forms a boundary to the site with Dingle Lane with fencing and further hedgerows found along the remaining boundaries.

Wayside Cottage lies to the north, The Malthouse to the south-west and The Mound, Kendal Cottage and Sunnyview to the south. Open land, well defined by trees and hedgerows, extends beyond the site to the east. The site lies outside of any defined development boundary and falls within the West Midlands Green Belt, as recorded within the 2021 North Warwickshire Local Plan.

The site and its neighbouring context are illustrated at Appendix A, with an aerial photograph provided by the applicant found at Appendix B.

The Proposal

Planning permission is sought for the erection of a detached, two-bedroom 'self/custom build' property following demolition of the existing garages. The application is a resubmission of a previously withdrawn application, reference PAP/2023/0208.

The dwelling measures 11.8m by 6m with a 2m by 4m 'lean-to' provided along its northern elevation, a gabled 1.75m deep single-storey projection at the rear, and an oak porch to the principal elevation. The property would stand 5.95m high to the apex of a gabled roof. Externally, walls will be clad in timber above a brick plinth, laid under a slate roof. The two bedrooms are provided within the roof space with further living accommodation set out at ground floor level.

The dwelling is to be sited to the south of the plot and orientated with its principal elevation running parallel to Dingle Lane. Small pockets of external amenity space are provided to the west and south of the dwelling with a patio located to the rear (east).

Access will be obtained from the existing position in the north-western corner of the site with parking and circulation areas laid out to the north of the property.

The Proposed Site Plan is provided at Appendix C and the Floor Plan and Elevations are at Appendix D.

Background

The previous application for a single dwelling on the site was withdrawn by the applicant, reference PAP/2023/0208.

Development Plan

North Warwickshire Local Plan 2021 - LP1 (Sustainable Development); LP2 (Settlement Hierarchy), LP3 (Green Belt), LP5 (Amount of Development), LP7 (Housing Development), LP8 (Windfall), LP15 (Historic Environment), LP16 (Natural Environment), LP29 (Development Considerations), LP30 (Built Form), LP33 (Water Management), LP34 (Parking) and LP35 (Renewable Energy and Energy Efficiency)

Nether Whitacre Neighbourhood Plan 2023-2038 (Adopted January 2024) - DB1, HP1, HP2, HP3 and TP1

Other Relevant Material Considerations

National Planning Policy Framework 2023 (NPPF)

Planning Practice Guidance (PPG)

MHCLG National Design Guide

Self-Build and Custom Housebuilding Act 2015 (As amended)

Levelling-up and Regeneration Act 2023

Natural Environment & Rural Communities Act 2006

Conservation of Habitats and Species Regulations 2017

Air Quality SPD (2019)

Provision of facilities for waste and recycling for new developments and property conversions SPD (2023)

Car Parking Standards (Local Plan 2021)

Consultations

Environmental Health Officer – No objection subject to conditions.

Warwickshire County Council as Highway Authority – Objection, pending further information. The response is provided in full at Appendix E.

Representations

Nether Whitacre Parish Council object to the application, citing that the proposals are outside of a development boundary, lead to significant harm to the openness of the Greenbelt, and would be imposing on the street scene. The parish conclude that the development is inappropriate within the Green Belt and that special circumstances to justify the development do not exist.

The parishes response is provided in full at Appendix F.

Observations

Planning applications are required to be determined in accordance with the development plan, unless material considerations indicate otherwise, pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

a) Green Belt

The site lies within the West Midlands Green Belt. North Warwickshire Local Plan (NWLP) policy LP3 clarifies how the Green Belt applies to land and settlements within the Borough, affirming that inappropriate development is, by its definition, harmful to the Green Belt and should not be approved except in very special circumstances.

The National Planning Policy Framework (NPPF) provides further Green Belt guidance with appropriate forms of development listed at paragraphs 154 and 155. Para 154(g) deems the infilling or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development, as appropriate Green Belt development.

Previously Developed Land is defined within Annex 2: Glossary of the NPPF as “*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) ...and any associated fixed surface infrastructure...*”.

The application site comprises two, low-level single storey garages and hardstanding and is thus land occupied by a permanent structure. Therefore, the site is considered to be PDL, and, by extension, the scheme represents redevelopment of PDL, satisfying the first caveat of the aforementioned exception.

Consideration thus falls to the whether the proposed development would have a greater impact on openness than the existing development. The concept of openness, although not defined in statute, is generally regarded as a state of being free from built development.

Leading court cases in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 and *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3 confirm that openness is an ‘open-textured’ concept which is capable of possessing both visual and spatial dimensions.

Recent updates to Planning Practice Guidance elucidate this further, listing different factors which can be considered when assessing a proposal’s impact on openness: its spatial and visual aspects, the duration of development and its remediability, and the degree of activity likely to be generated by it (Paragraph: 001 Reference ID: 64-001-20190722).

Currently, the site consists of two single-storey garages, an attached lean-to, and areas of hard surfacing. It is alleged the garages were formerly used in connection with the use of the dwelling at Sunnyview, although no planning permission exists for the residential use of the buildings, or the site in general. A signed letter from the previous landowner states that the site has been used as a residential garden in connection with Sunnyview for several decades; however, this alone is not sufficient to confirm a residential use of the land in question. Indeed, aerial photography is not supportive of the sustained use of the land for a period of over 10 years before to the date of the application.

Notwithstanding the uncertainty surrounding the sites lawful use, the site contains two single-storey garages and a lean-to (albeit in an advanced state of disrepair). The structures have an approximate footprint and volume of 34m² and 69.5m³ respectively, with the garages standing 2.5m high¹. The hard surfacing covers an area of approximately 92m².

The proposed dwelling would be of a palpably greater scale than the existing structures with a building footprint of 89m² (an increase of 162%) and a total building volume of 370m³ (an increase of 432%). Additionally, c.130m² of hard standing would be provided to the north of the property for parking and circulation with further hard surfaces laid out within the curtilage.

The development would noticeably increase the amount and 'spread' of hard surfacing and buildings within the site, which is considered to result in a greater impact on openness from a spatial perspective.

Visually, the existing development has a limited impact due to the garages siting, height, and scale. The proposed dwellings siting, greater height, width, bulk, and massing would render it a much more conspicuous feature than the existing development and readily discernible from within and surrounding the site along Dingle Lane, reducing openness from a visual perspective. The reduction in ground levels by up to 700mm suggested by the applicant is noted; however, this is not considered to alter the above assessment.

Additionally, establishing a two-bedroom dwelling and permanent residential use of the site, with the inevitable domestic paraphernalia and vehicle movements that such a use would entail, generates a greater degree of activity than the existing development, further harming openness.

Given the above, considered holistically, the proposed development would have a greater impact on the openness of the Green Belt than the existing development. Accordingly, the proposals do not meet the Green Belt exception listed above and thus consist of inappropriate development within the Green Belt.

This definitional green belt harm, and moderate actual harm through a loss of openness, is attributed substantial weight in the overall planning balance (paragraph 153 of the NPPF).

¹ Scaled floor and elevation plans of the existing garages have not been provided. Therefore, the calculations are based on the site location plan and officer assessments on-site.

b) Assessment of other 'harms'

i) Settlement Hierarchy and Sustainability

NWLP Policy LP2 sets out a settlement hierarchy for the Borough, essentially a cascade approach which seeks to distribute development sustainably across North Warwickshire at a rate commensurate with the level of services and facilities each settlement possesses. In practice, this means that most new development is directed towards the larger, more sustainable settlements such as Coleshill, Atherstone, and Polesworth and Dordon - Category 1 Market Towns - with comparatively limited development in rural areas. LP29(5) also sets out that all development should encourage sustainable forms of transport with a focus upon pedestrian access and cycle facilities.

These policies are considered to be wholly consistent with the NPPF which seeks to ensure that local plans 'promote a sustainable pattern of development' (paragraph 11a), locate housing 'where it will enhance or maintain the vitality of rural communities' (paragraph 83), and by focusing significant development 'on locations which are or can be made sustainable' (paragraph 108c).

The application site falls within the hamlet of Hogrills End, a rural setting to the north of Shustoke, beyond its reservoir, and outside any defined development boundary. Accordingly, the development is deemed to be category 5 under LP2. The policy makes clear that development in such locations will not, in general, be acceptable.

The settlement pattern in this area is sporadic with the limited development that does exist, generally vernacular built forms and sporadic farmsteads, dispersed along the rural road networks. There are no established services and facilities within Hogrills End nor public transport links. This functional isolation from established settlements would require the proposed occupiers to rely almost exclusively on private motorised travel to larger settlements for day-to-day living, amenities, and places of employment. The distances to larger settlements, combined with the narrow, winding road geometry and lack of footpaths, would discourage active travel, in conflict with LP29(5).

As a category 5 location, LP2 states that special circumstances should exist to justify development. The proposals are not considered to conform to any of those detailed in the policy and fundamentally would locate new housing in an unsustainable location. Consequently, the development would conflict with policy LP2, a key component of the Local Plan, as well as policy LP29(5).

ii) Highway Safety and Parking

Policy LP29(6) of the NWLP states that new development should provide safe and suitable access to the site for all users. Paragraph 115 of the NPPF makes clear that development should only be refused on highways grounds where it would give rise to an unacceptable impact on highway safety, or in situations where the residual, cumulative impacts on the road network would be severe.

Warwickshire County Council, as the Local Highway Authority, have objected to the development, citing several concerns. Firstly, the access is c.6m wide, exceeding the requirements for a single dwelling set out in the Warwickshire County Council Design Guide (3.5m). They also require a bound surfacing for the first 5 metres and positive drainage incorporated.

Moreover, the Authority states that Dingle Lane is subject to the National Speed Limit (60mph for cars), requiring visibility splays of 215m in each direction. The visibility splay described on the proposed site plan indicates an 'x' distance of 2m and 'y' distances of 29m to the north and 33m to the south. Whilst the County acknowledges that actual travel speeds may be lower due to the alignment and topography of the road and adjacent vegetation, speed surveys have not been provided to justify the reduced visibility splays proposed.

Although the access width and bound surfacing could be conditioned, as a speed survey has not been submitted, the application has not demonstrated that the visibility splays proposed would ensure the provision of safe and suitable access to and from the site for all users, failing to accord with NWLP policy LP29(6).

iii) Amenity

Local Plan Policy LP29(9) states that development should avoid and address unacceptable impacts upon neighbouring amenities. The separation distances provided from the new dwelling to adjacent properties to the north and south would ensure that no unacceptable impacts would arise by reason of loss of sunlight, daylight, and overshadowing.

LP29(2) makes clear that development should 'take into account the needs of all users' with paragraph 135(f) of the NPPF adding that decisions should ensure developments provide 'a high standard of amenity for existing and future users.'

The property does not appear to meet the Nationally Described Space Standards: bedroom 2 is below the 11.5m² minimum space standard (9.6m²) and the floor-ceiling height does not exceed 2.3m for 75% of the gross internal area.

Additionally, concern is extended to the quality and utility of the amenity space surrounding the dwelling. All external amenity space consists of relatively shallow strips between outer walls and site boundaries, particularly to the south where the depth narrows to less than 2m, offering limited utility.

The restricted depth and proximity to hedgerow boundaries would also create a highly enclosed and shaded environment. To the west, within the front garden, the maximum depth is just 10 ft. This depth, combined with the height of the boundary hedgerow and the proposed lowered ground levels, is inclined to restrict daylight into the ground floor and front-facing windows.

As a whole, it is considered that the development would not provide its occupants with acceptable living conditions. Paragraph 135(f) of the NPPF makes clear that decisions should ensure developments provide 'a high standard of amenity for existing and future users.' Removal of the visually important boundary hedgerow is unlikely to be acceptable in mitigation.

iv) Design

The NPPF identifies that good design is a vital component of sustainable development, setting out that proposals which are poorly designed and fail to reflect local design policies and government guidance should be refused (p139). At the local level, several policies demonstrate the council's aim of securing high-quality developments within the borough.

NWLP policy LP1 declares that all development must demonstrate a high quality of sustainable design that positively improves an individual settlement's character, appearance, and environmental quality. Policy LP30 (Built Form) provides detailed design guidance for new buildings.

The policy states that all elements of a proposal should be well related and harmonise with the immediate and wider setting (LP30a), with new development expected to reflect characteristic local architecture and materials (LP30d and LP30e) whilst ensuring that buildings and spaces connect to the surrounding environment (LP30f).

There is no objection to the general design of the proposals which is considered appropriate for its rural siting. Massing is appropriately articulated with elevations well-ordered and composed. External materials would be reflective of the immediate and wider setting's prevailing characteristics.

Nether Whitacre PC have expressed concern that the dwelling could, due to the land levels and close proximity to the road, prove very imposing on the street scene. Whilst the concerns are noted, the proposals to lower the ground levels, and the dwellings single storey nature, low eaves height and suitable material use, are considered to ensure that the building would relate well to the immediate and wider setting and not form an unduly imposing feature within the street scene.

The development would accord to LP30 of the North Warwickshire Local Plan.

v) Historic Environment

The Mound and Kendal Cottage, a Grade II Listed timber framed former house which was subsequently divided into two dwellings (the now adjoining Sunnyview) lies approximately 40m to the south of the application site. Whilst imparting no harm to the physical fabric of the listed building, the impact of the development on its setting requires assessment.

Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 sets out that, in considering whether to grant planning permission for development which affects a listed building, or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

NWLP policy LP15 seeks to conserve the 'quality, character, diversity and distinctiveness of the historic environment', and requires any harm to, or loss of significance, to be clearly and convincingly justified.

Kendal Cottage is a Grade II Listed, C16/17 timber-framed cottage, a vernacular building whose significance lies within its origins, decorative exposed framing, and rural setting. The asset's significance and setting have been heavily diluted and harmed through substantial and visually prominent C20 additions which now form the separate dwelling known as Sunnyview. Set against this context, the physical and visual separation from the proposed dwelling, and the developments subsidiary form (6m height, lowered ground levels and low eaves), the development is not considered to propagate harm to the setting of the listed building. Accordingly, the statutory duty is considered fulfilled and the requirements of LP15 are met.

vi) Ecology/Natural Environment

NWLP policy LP14 requires new development to retain existing landscaping where possible and encourages new planting to incorporate native species and provide biodiversity benefits. LP16 states that proposals should protect and enhance the natural environment. In addition to planning policy, there is a complex range of applicable legislation and guidance relating to nature conservation.

Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard to the purpose of conserving biodiversity in the exercise of their functions. Additionally, under domestic and European legislation, protection is given to certain species of wild plants, bird, and animals. In particular, a number of species are protected under the Habitats Directive. These species are often referred to as "European Protected Species" ("EPS") which have full protection under The Conservation of Habitats and Species Regulations 2017, as amended.

The buildings to be demolished are not considered to offer suitable characteristics for roosting bats as their corrugated sheet roof could lead to extreme temperature fluctuations, unsuited for bat habitation. Whilst trees and mature vegetation surround the site, with a small copse and waterbody present to the east, the dwelling would be sited away from the mature trees in the site's north-eastern corner, and sensitive construction measures, including tree and hedge protection, together with landscaping and habitat enhancements, could be secured through condition. Removing ruderal vegetation throughout the site, which is of little ecological value, would not be objectionable. Subject to conditions, the development would comply with the relevant policies and legislative requirements listed above.

vii) Nether Whitacre Neighbourhood Plan

The Nether Whitacre Neighbourhood Plan (NWNP) has recently been adopted following a referendum and thus forms part of the development plan. It has full weight. The applicant asserts that the proposals conform to the NWNP and thus should be supported, relying on an excerpt of supporting text to the housing policies which states that "Development should provide the opportunity for local people to remain within the Parish".

As case law makes clear – see *Gill, R (On the Application Of) v London Borough of Brent [2021] EWHC 67 (Admin)* – decisions should be made in accordance with planning policies and not supporting text which does not have the full force of a policy.

Policy DB1 supports new development within the development boundary, providing such development is in accordance with the adopted Local Plan and the NPPF. The proposals do not conform to the NPPF, and the site lies outside of a development boundary.

HP1 supports new dwellings which represent infilling within the parish development boundary. The development falls outside of the development boundary.

HP2 supports the use of brownfield sites for housing provided that the development also accords with the NPPF and the Local Plan. As set out above, the proposal would not conform to the Green Belt exception for brownfield sites and conflicts with policies LP2, LP3 and LP29 of the North Warwickshire Local Plan.

HP3 requires two parking spaces per dwelling. Three are provided here. Taken as a whole, the development would conflict with the NWNP, and it is material that the parish council, authors of the NWNP, have objected to the development.

c) Considerations advanced by the Applicant.

i) Self-build

Section 1 of the Self Build and Custom Housebuilding Act 2015 provides that relevant authorities (such as district/borough councils) are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. Section 2A of the 2015 Act (as amended by the Housing and Planning Act 2016 and the Levelling-up and Regeneration Act 2023) sets out a duty for relevant authorities which reads as follows:

“An authority to which this section applies must give development permission for the carrying out of self-build and custom housebuilding on enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area in respect of each base period”.

Section 2A(5) defines ‘development permission’ as planning permission or permission in principle (within the meaning of the 1990 Act).

As of 10th January 2024, North Warwickshire’s Self Build Register has 41 entries. At the end of each base period, the legislation provides relevant authorities with 3 years in which to permission an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period.

Notwithstanding the above, it is material that at the Planning and Development Board meeting of 21 May 2024, proposals for a fee charging schedule to enter and be retained on the register were approved. This charging schedule will confirm which entries are still valid.

Accordingly, the 41 ‘figure’ may well be revised in the near future to more accurately reflect demand, particularly given that NWBC have received just 5 new entrants since the start of 2022, and the circumstances of older entrants could well have changed.

In terms of meeting NWBC's duties under the relevant Act, entrants onto the self/custom build (SCB) register over the last four base periods are as follows:

Base period 6 – 31 st October 2020 – 30 th October 2021 – 9 new entries (9 plots by 30 th October 2024)
Base period 7- 31 st October 2021 – 30 th October 2022 – 3 new entries – (3 plots by 30 th October 2025)
Base period 8 - 31 st October 2022 – 30 th October 2023 – 2 new entries – (2 plots by 30 th October 2026)
Base period 9 - 31 st October 2023 – 30 th October 2024 (on-going) – 1 new entry (1 plot by 30 th October 2027)
Total - 15

Recent permissions granted are as follows:

Base Period 6 – 5 plots (PAP/2021/0234 and PAP/2021/0213)
Base Period 7 – 7 plots (PAP/2022/0219, PAP/2022/0166, PAP/2022/0106, PAP/2021/0691, PAP/2021/0602, PAP/2021/0542)
Base Period 8 – 2 plots (PAP/2022/0523)
Base Period 9 – 2 plots (PAP/2023/0267 and PAP/2023/0201) and potentially three plots (TBC)
Total permissions granted – 16 (+3 TBC)

As shown above, NWBC are considered to be fulfilling their duties under the Act – 12 plots are required by 30/10/25, and 16 units have been permissioned to date during the last four base periods.

In addition, North Warwickshire's major housing allocations (H1, H4 and H5 – totalling 3565 units) are required to provide self-build plots by the North Warwickshire Local Plan, indicating that self-build/custom-build plots, in sustainable locations as part of allocated housing sites, are projected to come forward to address demand. NWBC do also acknowledge the very recent legislative changes under the Levelling-up and Regeneration Act 2023, and, moving forward, SCB housing will be explicitly permissioned as such.

Regarding the application itself, it is noted that the applicant joined the register when the 2023 application was submitted, and that the application would deliver a plot for the applicant's daughter.

Consequently, despite the benefits expressed by the applicant, the application would provide a single plot to address the needs of the applicant solely and not contribute to

addressing any wider demand for self-build/custom-build housing within the borough. Moreover, irrespective of the self/custom build benefits, the dwelling would be provided in an unsustainable location.

Considering the current provision of SCB in North Warwickshire, the future provision through housing allocations, the unsustainable location of the site, and the single unit proposed here, it is considered that benefits attributed to self-build housing through the application carry limited weight in the overall balance.

ii) Visual enhancement of the site

Although the development would result in the removal the dilapidated garages and ruderal vegetation across the site, it is not considered that the site's condition has a markedly adverse impact on the amenity of the area. Even if that were not the case, powers under section 215 of the Town and Country Planning Act 1990 can be used to address untidy land effecting the amenity of an area. Allowing land to become untidy is not, of itself, considered to represent justification to permit inappropriate development and the delivery a dwelling in a location that would otherwise be unacceptable.

iii) Personal circumstances

The applicant advances that the development would allow their daughter to access to the housing ladder. Whilst officers sympathise with the applicant, personal circumstances very seldom outweigh other considerations given that the implications of a development subsist long after the circumstances cease to be material.

The desire to provide housing for a relative is not considered to constitute a special circumstance to warrant the grant of planning permission. This consideration is attributed limited weight in the overall planning balance.

iv) Stables at The Malthouse

The applicant sets out that the dwelling is of a comparable scale to a stable block recently constructed on land opposite the application site. The two developments are not comparable, one being for a stable block (appropriate development in the Green Belt subject to preservation of openness) and one which does not comply with Green Belt policy. No weight is attributed to this argument.

d) Conclusion – The Planning Balance

As detailed in preceding sections of this report, the proposals are considered to represent inappropriate development within the Green Belt. The Government attaches great importance to preservation of Green Belts, elucidated by paragraph 142 of the framework. Harm to openness, both visually and spatially, would arise from the development. The proposal would conflict with Policy LP3 of the North Warwickshire Local Plan 2021 and Section 13 of the NPPF.

Moreover, the development fails to accord to the Council's strategic housing strategy under North Warwickshire Local Plan policy LP2, facilitating the creation of a dwelling within an unsustainable part of the borough.

Owing to the sites location and the proposals, discordance with LP2 and LP3, the development would also conflict with policies DB1, HP1 and HP2 of the Nether Whitacre Neighbourhood Plan 2023-2038.

The extensive distances to larger settlements, combined with the narrow, winding road geometry and lack of footpaths, discourages active travel, in conflict with LP29(5) of the North Warwickshire Local Plan. Additionally, safe, and secure access to and from the site has not been demonstrated, failing to accord with LP29(6), and the external amenity space is not considered to provide acceptable living conditions for future occupiers, failing to accord with LP29(2).

The benefits here are the delivery of a dwelling, contributing to the Council's overall housing supply, albeit very minimally, and the provision of a self-build plot which is supported by the NWLP, National Policy and the Self-Build and Custom Housebuilding Act 2015

In the officer's view, given the current level of provision within North Warwickshire, the future delivery of self-build/custom-build units within North Warwickshire's housing allocations, the minimal scale of the development and the sites' unsustainable location, these benefits only carry limited weight in the overall balance.

Whilst the scheme re-develops previously developed land, it would do so in a manner which conflicts with Green Belt policy. As the NPPF Glossary makes clear, it should not be assumed that the whole curtilage of previously developed land should be developed, tempering the benefits arising from the re-development of previously developed land.

Consequently, despite the benefits brought by the development, it is not considered that the Green Belt harm, harm which attracts substantial weighting in the overall planning balance, and the other identified harms are *clearly* outweighed by the benefits as the NPPF states it must be to warrant the granting of planning permission. Consequently, planning permission is to be refused.

e) Human Rights Act, Equality and Diversity

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

This planning application has had due regard to Section 149 of the Equality Act with regard to the Public Sector Equality Duty and the case officer has concluded that the application does not cause discrimination on the grounds of gender, race, and disability.

RECCOMENDATION

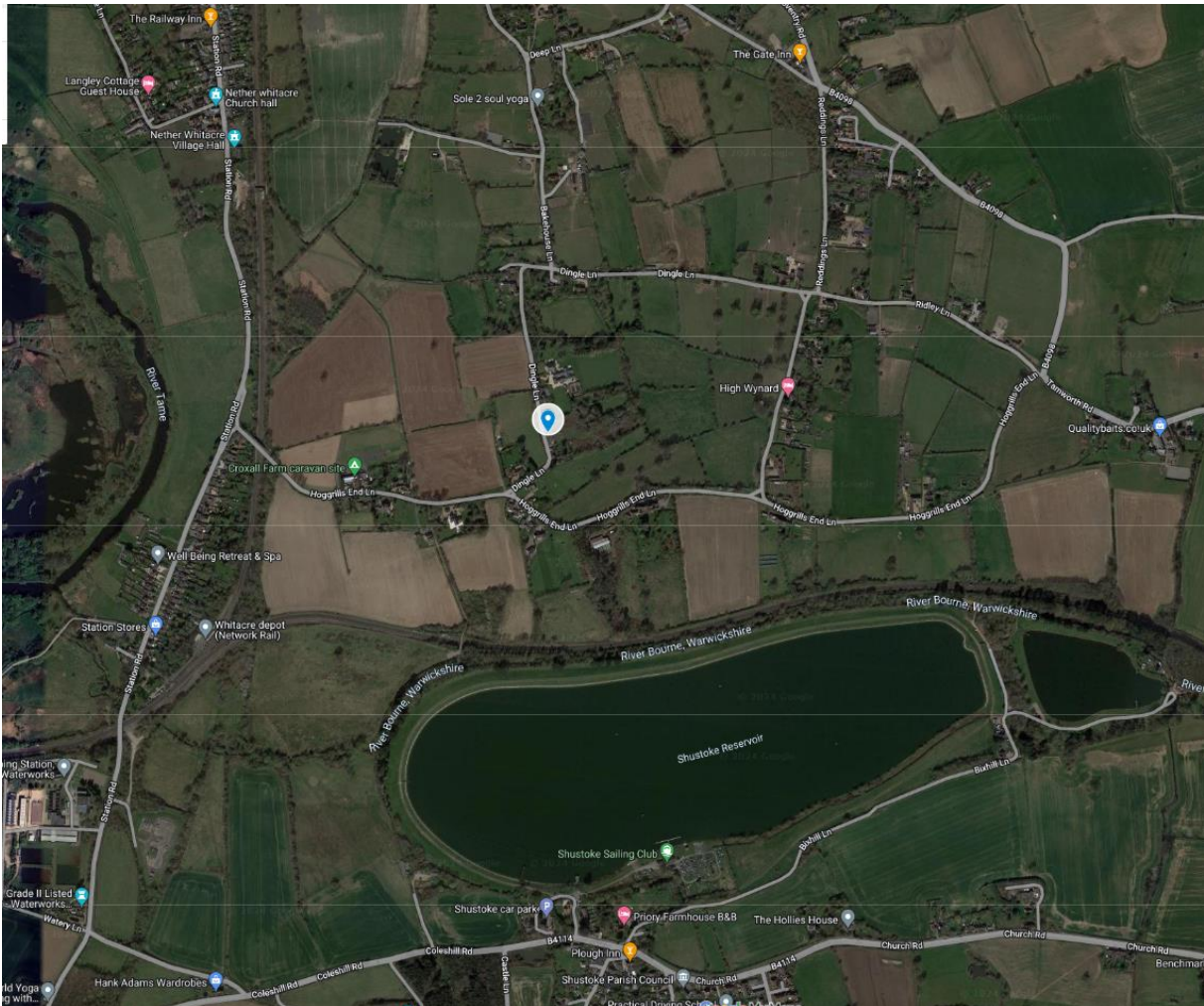
That planning permission is **REFUSED** for the following reasons:

- i) The proposals are considered to represent inappropriate development within the Green Belt. This definitional harm attracts substantial weight against the proposals. Furthermore, owing to the scale, height, massing and footprint of the proposed building, the proposals would harm the visual and spatial openness of the Green Belt, again to which substantial weight is attributed. The proposal would conflict with Policy LP3 of the North Warwickshire Local Plan 2021 and Section 13 of the NPPF as it is not considered that the planning considerations advanced by the applicant clearly outweigh the harms caused.
- ii) The development is located outside of any defined settlement boundary, and the site is not sustainably located owing to the deficiency of local services, facilities, and public transport links. This functional isolation generates a high dependency on private motor vehicle use for day-to-day living. Consequently, the proposals also fail to accord with the Council's spatial approach to the distribution of new development set out within Policy LP2 of the North Warwickshire Local Plan 2021. Owing to the site's location and the proposal's discordance with LP2 and LP3, the development would also conflict with policies DB1, HP1 and HP2 of the Nether Whitacre Neighbourhood Plan 2023-2038.
- iii) The distances to larger settlements, combined with the narrow, winding road geometry and lack of footpaths, discourages active travel, in conflict with LP29(5) of the North Warwickshire Local Plan.
- iv) In the absence of speed surveys to justify the proposed visibility splays, it has not been demonstrated that the proposals provide for safe and secure access to and from the site for all users, failing to meet the requirements of North Warwickshire Local Plan policy LP29(6).
- v) The development is not considered to provide the proposed occupants with acceptable living conditions given the size of the bedroom, the headroom within the dwelling and the extent and limited utility of the amenity space, in conflict with policy LP29(2) of the North Warwickshire Local Plan.

Notes

1. Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through early identification of the planning issues and suggesting amendments to the proposal. However, despite such efforts, the planning objections have not been satisfactorily addressed. As such it is considered that the Council has implemented the requirement set out in paragraph 38 of the National Planning Policy Framework.

Appendix A – Site Context and Photographs



Site denoted by Blue Marker



23 Jul 2024 14:08:08
Dingle Lane
Coleshill
Warwickshire
England



23 Jul 2024 13:45:20
Dingle Lane
Coleshill
Warwickshire
England



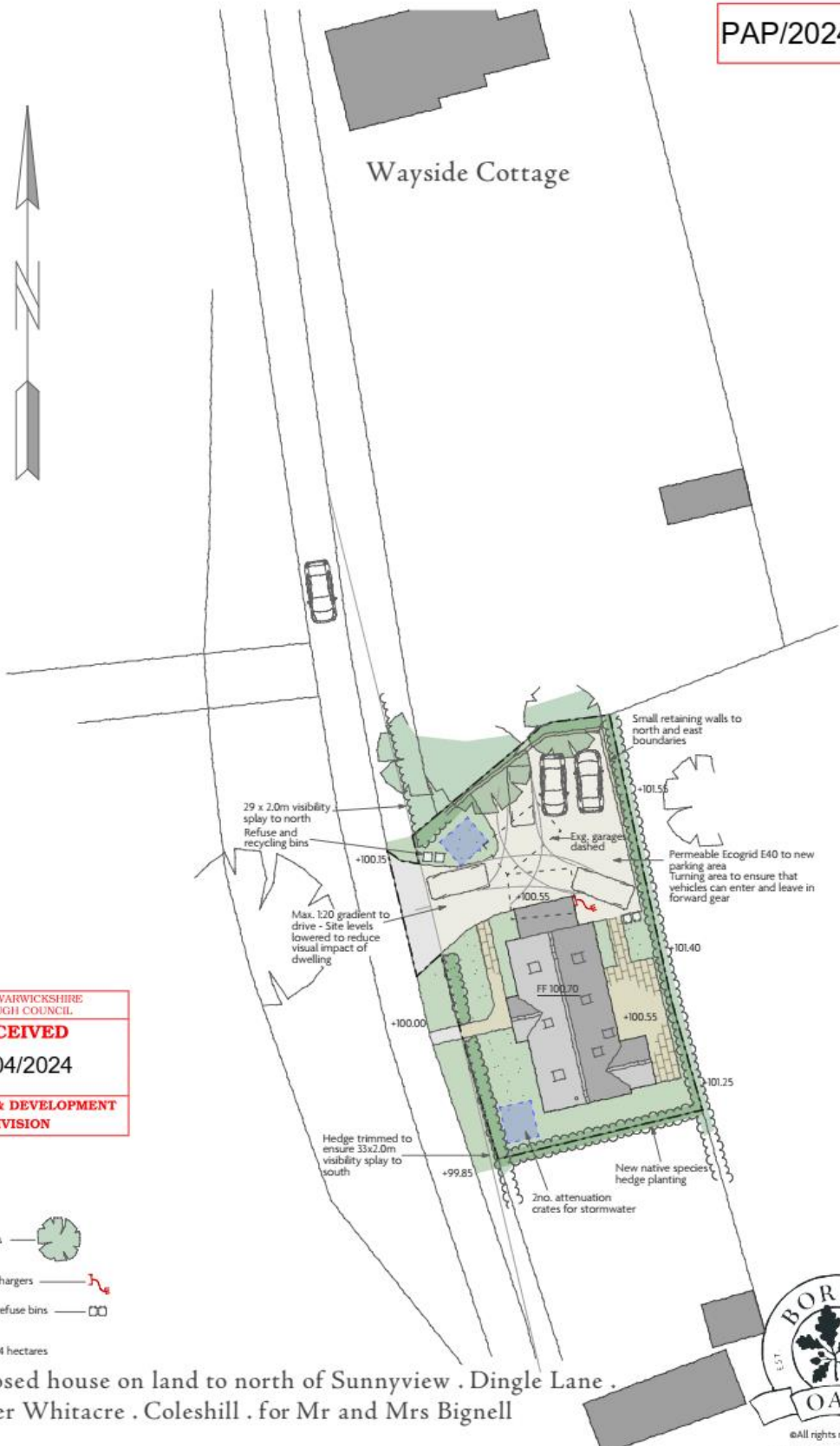
23 Jul 2024 13:49:20
10a Faraday Avenue
Coleshill
Warwickshire
England

Appendix B – Photo requested to be included by the applicant.






Appendix C – Proposed Site Plan

PAP/2024/0189



NORTH WARWICKSHIRE
BOROUGH COUNCIL
RECEIVED
16/04/2024
PLANNING & DEVELOPMENT
DIVISION

- Existing trees 
- Electric car chargers 
- Recycling & refuse bins 

Site area: 0.04 hectares

Proposed house on land to north of Sunnyview . Dingle Lane .
Nether Whitacre . Coleshill . for Mr and Mrs Bignell



SITE PLAN

1:250 ON A3 . Feb. 2024

0 5 10M

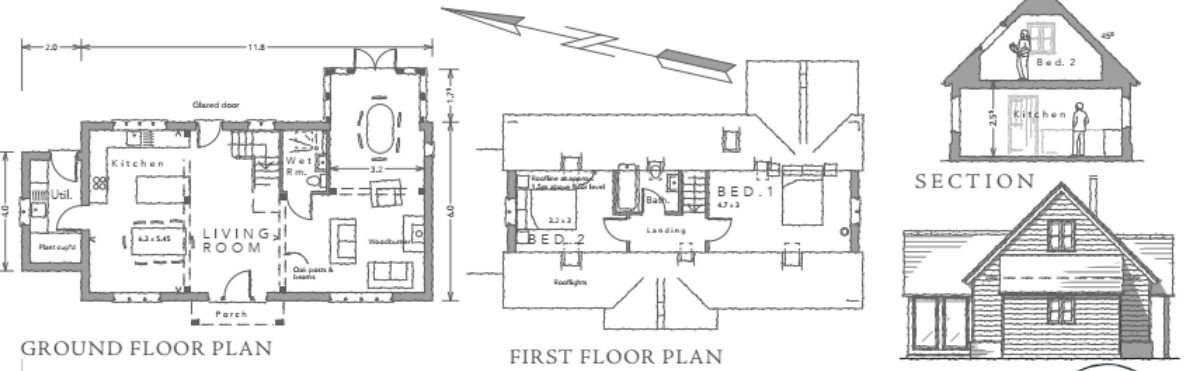
D1998.2B

Revision A: 25.3.24 Turning area, proposed levels and visibility splays shown B:26.3.24 Bins shown etc.

Appendix D – Floor and Elevation Plan

NORTH WARWICKSHIRE
BOROUGH COUNCIL
RECEIVED
16/04/2024
PLANNING & DEVELOPMENT
DIVISION

PAP/2024/0189



GROUND FLOOR PLAN

FIRST FLOOR PLAN

SIDE

External floor area: 120 m²

Proposed house on land to north of Sunnyview . Dingle Lane . Nether Whitacre . Coleshill . for Mr and Mrs Bignell

PLANS & ELEVATIONS

1:100 ON A3 . Feb. 2024

0 1 2 3 4 5M

D1998.1



Appendix E – Warwickshire County Council (Highways) Consultation Response

Your ref: PAP/2024/0189
My ref: 240189
Your letter received: 23rd May 2024



Communities

Shire Hall
Warwick
CV34 4RL

Tel: (01926) 412907

highwayconsultation@warwickshire.gov.uk

www.warwickshire.gov.uk

Mr J Brown
Head of Planning
NORTH WARWICKSHIRE BOROUGH COUNCIL
PO BOX 6, The Council House
South Street, Atherstone
CV9 1DE

FAO : Andrew Horne

4th June 2024

Dear case officers name

PROPOSAL: Demolition of existing garage block and the erection of a single self/custom build dwelling.

LOCATION: Sunnyview, Dingle Lane, Nether Whitacre, Coleshill.

APPLICANT: Mr & Mrs Bignall

Warwickshire County Council, hereby known as the 'Highway Authority', has undertaken a full assessment of the planning application.

Based on the assessment and appraisal of the development proposals the Highway Authority submits the following response of **Objection, pending further information on the following points:**

Access design

The proposed site plan shows the vehicular access as being approx. 6m wide, however this exceeds the requirements for a single dwelling as set out in the WCC Design Guides.

WCC Design Guide 3.4.4 Single/Double Vehicle Access Crossings (from existing public highways) states:

"Vehicular access crossovers should have a width of 3.0 metres (where unbounded) or 3.5 metres (where bounded) where serving one dwelling"

To prevent extraneous material being deposited within the limits of the Public Highway, private driveways must be surfaced with a suitable bound material for the first 5 metres from the back of the public highway footway/service margin

OFFICIAL

*Working for
Warwickshire*

Positive drainage measures must be incorporated into design to ensure that driveways do not discharge surface water onto the public highway.

Amended, scaled, and annotated plans are required showing an access width of no greater than 3.5m, constructed of a bound material, with suitable drainage.

Visibility splays

The vehicular access for this site is off Dingle Lane, which is subject the National Speed Limit (60mph for cars), therefore requiring visibility splays of 215m in each direction as measured to the near edge of the public highway carriageway from a 2.4m set back. However, the visibility splay described on the proposed site plan states an 'x' distance of 2m and 'y' distances of 29m to the north and 33m to the south.

The Highway Authority acknowledge that actual speeds travelled along this road might be lower than the posted speed limit given the alignment and topography of the road and adjacent vegetation. However, as previously requested in the Highway Authority's response for planning app PAP/2023/0208, dated 14th February 2024, a speed survey would be required to justify the lower 'x' & 'y' distances mentioned, this information does not appear to be available on the NWBC Planning portal but the Highway Authority would need to review the speed survey data, along with a plan showing where the survey apparatus was located, to confirm the required visibility splays.

The hedgerows along the western boundary of the site would need to be trimmed and maintained to a height no greater than 600mm to ensure the required visibility is achieved in perpetuity.

An amended, scaled, and annotated visibility splay drawing is also required showing the maximum height of the hedgerow (600mm) as well as the required visibility splay based on the speed survey data passing through land which is under the control of the applicant or the public highway, visibility splays must not pass over 3rd party land.

Please provide a formal re-consultation to the Highway Authority for further comment upon receipt of new and/or amended documents to overcome the above issues.

Yours sincerely

Nikki McCrea

Development Management (Highways)
Planning & Environment
Environment, Planning & Transport

CC – Councillor Andy Jenns/Kingsbury ED - FOR INFORMATION ONLY

Appendix F – Nether Whitare Parish Council Consultation Response

“We have reviewed the revised application and can see part of the proposal is to lower the site to reduce the impact of the build on the surrounding area. There are no detailed plans to show how significant this would be. We are not convinced that this proposal would carry significant weight in favour since the proposed footprint and volume of the dwelling appear to be the same as was previously submitted. We would continue to ask for the application to be REFUSED based on the policies detailed in our original objection below.

While we appreciate that the applicant would like his daughter to have a dwelling in the parish and indeed our Neighbourhood Plan has the aspiration that development should provide the opportunity for local people to remain within the parish, development proposals have to be judged against policy - the NPPF, the Local Plan and the Neighbourhood Plan. A further consideration being the Council has a five-year housing land supply as evidenced in the latest monitoring report – 6.2 years. There is thus no overriding need to boost that supply through just one house for a family member.

This application does not comply with our Neighbourhood Plan policy HP1 because although it provides a house with 2 bedrooms and 2 parking spaces it is not limited infilling and it is not within the development boundary nor does it provide a SUD's scheme to deal with surface water.

We are also of the view that the application is contrary to LP2, LP3 and the NPPF paragraph 154. The site is located outside a defined settlement boundary for the purposes of Policy LP2 which states that in such a location, development will be limited to that necessary for agriculture, forestry or other use that can be shown to require a rural location. Policy LP3 says that “limited infilling may also be acceptable where a site is clearly part of the built form of a settlement – i.e. where there is substantial built development around three or more sides of a site. Neither of the above points apply here. There is no development behind and the “gap” between properties here is large and visually noticeable; there are no continuous line of developments in the vicinity of the site, and equally there are other sizeable gaps. LP3 also states replacements should be located on the same footprint as the existing building unless there are material benefits to the openness of the Green Belt or, when environmental and amenity improvements indicate otherwise. The dimensions of the proposal indicate an immense increase as detailed below.

The planning officer is of the view that this site comprises PDL (we disagree because of a recent planning decision on another site located less than a mile away (PAP/2023/0206). The NPPF para 154 g states that the development of PDL should not have a greater impact on the openness of the Green Belt than the existing development.

The applicant has not provided any existing dimensions/volumes, however, scaling from the site location plan provides a current footprint of approx. 30sqm and the proposed is 89sqm. The volume of the existing is approx. 67.5m³ and the volume of the proposed is 370m³ which is a **448% increase!** This demonstrates the dramatic increase in volume here causing significant harm to the openness of the greenbelt and neighbouring amenities.

Furthermore, the proposed site is on an upward slope, close to the lane and could prove very imposing on the street scene.

The site is in the Green Belt and no special circumstances have been put forward by the applicant to justify the development. This is inappropriate development and thus by definition is harmful to the Green Belt. We respectfully request the application is REFUSED”.

General Development Applications

(5/c) Application No: PAP/2021/0372

Flexdart, Marsh Lane, Water Orton, B46 1NS

Development of 5 industrial units and extension to unit D for Class E (g) (i) (ii) and (iii) (offices, research and development and industrial processes. Class B2 (general industrial) and class B8 uses (storage or distribution). Application for replacement metals reclamation and recycling processing works dealt with by WCC (reference NWB/23CM002) for

Flexdart Ltd

Introduction

This application is being reported to Board as it would be subject to a Section 106 Agreement if the recommendation is supported.

The Site

The application site is located on Marsh Lane (B4118) which generally runs east from Water Orton to the Lichfield Road (A446). It lies to the north of Marsh Lane between the fishing lake formed from gravel extraction to the west and the elevated M42 and M6 toll roads to the east. The River Tame is further to the north with the sewage treatment works beyond and to the south there are the railway lines into Birmingham. The new HS2 railway line is now under construction to the south of the site. Water Orton is approximately 800 metres to the west.

A location Plan is at Appendix A and an aerial photograph of the site is at Appendix B.

The Proposal

The planning application seeks to remove the existing metals reclamation and recycling processing from the site and reposition it further to the east next to the M42. A group of two new industrial buildings would be constructed on the vacated site and these would provide five new industrial units. Additionally, one of four established buildings that are located between the site and the northern frontage of Marsh Lane, would be extended. These would all be integrated around an access road which will also link with those four existing industrial buildings. The relocation of the reclamation use to the east of the site would involve presently unused land immediately adjacent to bottom of the Motorway embankment to be used for material storage as well the erection of a new materials recycling building. To the west of the site is a lake formed from former gravel extraction and the building extension referred to above would extend into part of this lake, thus requiring its infilling and the creation of a new shoreline.

The access arrangements referred to above and shown on the layout will provide a one-way system to operate for the whole site – in off the eastern most access and out from the one to the west. The existing access points would thus be re-used but improved. A further third access which just services the existing western-most frontage building would remain.

The overall proposed layout is at Appendix C – Units 1 to 5 are the new buildings with units A to D being existing. Unit D is the one to be extended and the new Material Building and storage areas are to the far east of the site. The access arrangements are also set out here.

For convenience also, a composite illustration is at Appendix D.

Each of new units numbered 1 to 5 will measure around 1,220 square metres in area and the extension to Unit D will measure 1,394 square metres, thus providing 7,488 square metres in total. The new industrial units are to be a similar height as the existing Unit D, which is the more recent of the established industrial buildings, adjacent to the lake. Units 1-2 would have a ridge height of 12 metres and 8 metres to their eaves. Units 3-5 would have a ridge height of 15 metres and 11 metres to their eaves.

Elevations are at Appendix E.

As indicated in the application header above, a separate planning application has been submitted to the County Council as the Minerals Planning Authority for the re-location of the recycling use and its new building. The applicant had been considering the relocation of the metal extraction facility (MRF) to a better and larger site elsewhere in Warwickshire. However, this ambition has not now been taken forward resulting in the redevelopment of the eastern part of the site for this use. Overall, the area covered by this MRF will be reduced from an existing area of 2.71 hectares to 2.26 hectares. The report below will refer to this separate application.

The applicant not only owns the application site, but also the four existing industrial buildings, the lake and land further to the north along the River Tame. They also own land to the south of Marsh Lane which is proposed to provide an area for bio-diversity offsetting.

The following documentation has also been submitted.

- A design and access statement.
- A noise impact assessment.
- A flood risk assessment.
- A supplementary ground investigation report.
- An ecological report including bio-diversity net gain report.
- An arboricultural report.
- A transport assessment.
- A phasing report.

Background

This site has a lengthy planning history. In summary, the whole of the site and the lake were the subject of sand and gravel extraction in the 1950s. The restoration works resulted in the lake being formed. The industrial area was first granted planning permission in 1951 for the “reclamation of non-ferrous metals” and there has been a whole series of planning permissions for additional buildings and plant in association with that use since then. Planning permission was also granted for the dredging of the

on-site lagoons which had been used in the settling process. Redevelopment schemes to improve the on-site processes, in response to legislation affecting operations on the site and responding to market trends, led to planning permissions for the four new buildings and revised layouts. These have resulted in the current appearance of the site and their re-use for other industrial concerns. As part of one of the most recent permissions, a Section 106 Agreement was signed to retain the larger lake as a recreational fishing lake and for nature conservation purposes.

Mallard Lodge – the original house on the site – was itself connected to a petrol filling station and garage workshop. The dwelling and associated buildings were used for a variety of industrial uses mainly connected with the motor and auto concerns.

There is an Established Use Certificate for the whole site for B2 General Industrial uses.

Development Plan

North Warwickshire Local Plan 2021 - LP1(Sustainable Development); LP2 (Settlement Hierarchy), LP3 (Green Belt), LP11 (Economic Regeneration), LP12 (Employment Areas), LP14 (Landscape), LP16(Natural Environment), LP23 (Transport), LP29 (Development Considerations), LP30 (Built Form), LP33 (Water Management), LP34 (Parking) and LP35 (Renewable Energy)

Water Orton Neighbourhood Plan – CP01 (Expansion of Existing Businesses) and CP03 (Traffic Impacts)

Warwickshire Waste Core Strategy 2013-2028 (July 2013) – CS1 (Waste Management capacity); CS2 (The Spatial Waste Planning Strategy for Warwickshire), CS3 (Strategy for locating large waste sites), CS4 (Strategy for locating small scale waste sites), CS5 (Proposals for re-use, recycling), CS7 (Proposals for disposal facilities) and CS8 (Safeguarding of Waste Management sites)

Other Relevant Material Considerations

National Planning Policy Framework 2023 – (the “NPPF”)

The North Warwickshire Landscape Character Appraisal 2010

The Town and Country Planning (Consultation) (England) Direction 2024

Warwickshire Local Transport Plan

Consultations

Warwickshire Forestry - No objection to the proposal.

Environmental Health Officer - No objection subject to standard conditions.

Warwickshire Fire and Rescue Services - No objection subject to condition

Environment Agency – No objections subject to conditions

Warwickshire County Council (Footpaths) - No objection subject to notes in respect of footpaths

Warwickshire County Council as Lead Local Flood Authority - No objection subject to conditions

Warwickshire County Council as Highway Authority – There was an initial objection, but following the submission of further details and clarification, there is no objection to the principle of the proposal subject to mitigation measures including Section 106 contributions. Highways are yet to provide appropriate conditions. These should be available for the meeting.

Warwickshire County Council (Ecology) - No objection subject to conditions and Section 106 requirements for bio-diversity offsetting requirements

National Highways – No objection

Representations

Water Orton Parish Council has no objections in principle, but makes the following points:

- Welcome introduction of the one-way system and turning points for HGVs.
- Avoidance of gates allowing access onto the access road, turning point and parking for site vehicles.
- Support expansion of existing business.
- Comprehensive landscaping scheme welcomed.
- Green Space adjacent to site should meet recommended standards defined by Natural England and Woodland Trust.
- Should ensure accessible green space meets 2.4 hectares per 1000 population.
- Lake adjacent to site was part of section 106 agreement, LPA needs to ensure this will be carefully managed and not contaminated.
- Appropriate highway works agreement for the following:
 - a) Weight restriction signage from Marsh Lane
 - b) No right turn on exiting the site.
 - c) Reduction of national speed limit.
 - d) Introduction of chicane to prevent HGV's from accessing Water Orton.
 - e) Improvements to bus services
 - f) Electric charging points
 - g) Provision of walking and cycling routes
- Concern about light pollution and visual impact on the village
- Concern about air pollution

12 objections have been received raising the following points:

- Should investigate reducing HGVs along Marsh Lane.
- HS2 is already affecting the area this will lead to more impact.
- Renewable energy should be provided.
- HGV provision on site is inadequate.
- Pollution and air quality is of concern.

- The business should relocate.
- No legal commitment from Beaver metals to move to the new location.
- Flooding is a huge problem on the site.
- The noise impact of the proposal will impact on residents.
- Huge parking problems with parking by Activate Accident Repairs (unit D) that have excess number of vehicles on the adjacent highway.

One letter of support raises the following comments.

- More units and more jobs, this is a vast improvement on the current site.

Observations

The Principle of Development

The site is in the Green Belt. The NPPF says that inappropriate development is harmful to the Green Belt and thus it should not be approved except in very special circumstances. The substantive proposal here is that described in the application for new industrial buildings - the construction of new buildings. This is defined in the NPPF as being inappropriate development and thus there is a presumption here to refuse this proposal. However, the NPPF does define a number of exceptions and the Board will need to consider whether any of these might apply here. There are two “exceptions” which might do so – where the new building is a replacement within the same Use Class, (paragraph 154 (d)) and secondly, if it comprises the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (paragraph 154 (g)). Each of these will now be reviewed.

In this case, the replacement building would be in part of the same Use Class as the existing – a B2 General Industrial Use as defined by the 2020 Use Classes Order. The proposal however also comprises a mixture of Class E (office use), B2 Use (general industrial) and B8 (warehousing) uses. Hence only part of the development passes the first test under this exception. In respect of the other tests under this exception, then it is necessary to assess whether the replacement building is not materially larger than the one it replaces. There is no definition of “materially larger” in the NPPF, but Local Plan policy LP3 says that each case should be treated on its own merits and that both quantitative and qualitative assessments should be made. The justification for the policy suggests that a 30% volume increase could be taken as a guide for the quantitative assessment.

In this case, the area of the existing buildings on the application site is around 8,375 sq. metres and that of the new ones is around 11,502 sq. metres (in total - including the recycling facility) – just over a 30% increase. It is considered that as such, this increase is material in quantitative terms. However, this quantitative assessment just accounts for the buildings on site. The existing site is much more than this and has permission for open recycling storage over the whole of the site up to 8 metres in height. This leads to an open sprawling and untidy appearance when viewed from public vantage points. Although, the proposed buildings are taller, the proposals will present a far improved appearance from Marsh Lane and the adjacent motorway. The development will provide a significantly better appearance. As such the qualitative assessment is considered to outweigh the quantitative one.

The second exception relates to the redevelopment of previously developed land (paragraph 154 (g)). The NPPF provides a definition of previously developed land. This states that it is “land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any other associated fixed surface infrastructure”. Here it is clear and apparent that the majority of the proposed for redevelopment is previously developed land, being used by the recycling facility.

Of the two exceptions it is considered that the proposal best fits with the one affecting the complete or partial redevelopment of previously developed land – particularly as the redevelopment involves the same use. It is agreed that the site is previously developed land because of the presence of the buildings and materials on the site in association with the lawful uses permitted as indicated above. The proposal does represent the complete redevelopment of this land. It is thus necessary to look at the conditions under this exception to assess the impact of the proposal against the existing situation with regard to openness and to the five purposes of including land within the Green Belt.

There is no definition of “openness” in the NPPF, but members will know that the main elements that go to make up any assessment are the spatial and visual impacts. Prominent among these will be how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one). In respect of spatial matter then the amount of new building is greater than the existing, but to be added to this conclusion is the substantial degree of outside storage than presently exists and which is essential to the operation of the lawful use as it is presently managed. This would be reduced and relocated within the new building. Overall, therefore the spatial impact would be comparable to the existing situation. Additionally, from the visual perspective, the existing built development and storage of recycling materials sprawls across the site and is visually degrading. The proposal will provide visually improved environment. In terms of the level of activity associated with the proposal, this will similar the existing situation. Finally, in terms of permanence of the development the removal of the outside recycling storage areas and existing buildings with permanent building will a greater impact. However, there will be spaces between the building and open areas in front of the units which will allow for a sense of space within the scheme.

Balancing all of these matters, it is considered that overall, there would be a no significant adverse harm to the openness of the Green Belt through this proposal over and above that which presently exists. There would neither be any impact on the five purposes of including land within the Green Belt given the current lawful use of the site and site and its setting. In conclusion it is considered that overall, the proposal would accord with these two conditions and thus the proposal would fall into the defined exception in the NPPF and constitute appropriate development.

Other Harms

Landscape

Policy LP14 of the Local Plan says that new development should look to conserve, enhance and where appropriate restore landscape character so as to reflect that as described in the North Warwickshire Landscape Character Assessment of 2010. In this case the site is within the “Cole Valley” landscape area, described as being a broad flat

valley dominated by busy roads, which is contained by urban areas with substantial industrial influences, but with remnants of isolated and fragmented arable and pastoral landscape.

In these circumstances and particularly with regard to the immediate setting of the site and past uses, it is considered that the sensitivity of the site to change is low and thus the proposals could be integrated into this landscape without adversely affecting the characteristics of the whole of the Landscape Character Area. The scale, appearance and use of the proposed development is compatible with the setting of the site. The proposal would thus accord with Local Plan policy LP14.

Highways

Local Plan Policy LP29(6) says that safe and appropriate access should be provided for all users of new development. The purpose of Policy CP01 of the Water Orton Neighbourhood Plan is to “limit any adverse impact of traffic on the village and its residents”. The NPPF advises that planning permission should not be refused on highway grounds unless there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The highway impacts of the proposal have been examined by the appropriate Highway Authorities (Warwickshire County Council and National Highways) and there is no objection to the proposal. The level of car parking has been accepted by the County Council and it is comfortable with the access and egress to the premises. Given the lack of objection from the relevant Highway Authority it is not considered that a refusal reason can be supported at appeal given the NPPF advice that such reasons are only applicable when any highway adverse impact is likely to be “severe”.

The following have been requested by the Warwickshire County Council in respect of Section 106 matters. These will be reviewed in the context of the appropriate legislation later in this report.

- a) A contribution of £2k to be paid on first occupation, towards the re-calibration of the existing traffic signals at the junction Marsh Lane with the Lichfield Road to allow for the development.
- b) A contribution of £200k towards the provision of footways on both sides of Marsh Lane between the site and Water Orton to allow better pedestrian access to the site.
- c) A contribution of £8k towards the cost of making a Traffic Regulation Order to stop parking on the south side of Marsh Lane opposite the site.
- d) A contribution towards the making an Order to reduce speed limits on Marsh Lane.

At present Warwickshire Highways have not provided a list of conditions relating to the proposal, but as indicated above, this should be available for the meeting.

Biodiversity

Local Plan policy LP 16 says that the quality, character, diversity and local distinctiveness of the natural environment is to be protected and enhanced as appropriate relative to the nature of the development proposed and net gains for biodiversity should be sought where possible.

In this instance the applicant intends provide bio-diversity off-setting on land to south of Marsh Lane, which will then be passed to Water Orton Parish Council to maintain and manage. It has been confirmed by WCC Ecology that the proposal will provide a net gain of 14.30% habitat units. This is of substantial weight. To ensure that this is provided, an appropriately worded condition and an Obligation within a Section 106 Agreement will be needed to cover the off-site management and maintenance of the land to south. As such the proposal would then satisfy the requirements of Policy LP16.

Economy benefits

Chapter 1 of the NPPF highlights the need for the planning system to support sustainable economic growth with notable references to job creation and prosperity. Paragraph 17 and chapter 1 of the NPPF sets out that planning should proactively drive and support sustainable economic development. Chapter 2 of the NPPF is consistent with this and sets out support for the vitality and viability of existing town, district and local centres.

In this case there are both temporary economic and permanent benefits. In terms of temporary economic benefits, the development of the land will provide jobs within the local and wider economy. The permanent economic benefits will include the retention of the existing 60 jobs at the recycling facilities and additional jobs within the new buildings which will contribute gross value added to the local economy. As the development is speculative it would be difficult to quantify this amount at present.

Appearance and design

Local Plan policy LP30 on Built form and guidance within the NPPF requires high quality design that reflects the existing area and are well related to the immediate setting. The design of the buildings is considered to be acceptable within the area, and the proposal will remove a substantial untidy area of outside storage. The designs are complimentary and an improvement. The design would satisfy the relevant planning policies.

Residential Amenity

Local Plan Policy LP29 (9) says that new development should avoid and address unacceptable impacts on neighbouring amenities through overlooking, overshadowing, noise, light, air quality or other pollution.

The site lies within an existing lawful industrial estate. A noise impact assessment has been carried out and this concluded that the proposal would not exceed the worst-case existing background noise levels. Appropriately worded planning conditions would ensure that existing residential amenity is protected. The proposal is not considered to result in unacceptable loss of amenity and privacy in the area. The proposal is considered to comply with Local Plan and the NPPF.

Flooding and Drainage

Local Plan policy LP33 requires amongst other things that new development within Flood Zone Three includes a number of mitigation and precautionary measures. The site is predominantly within Flood Zones 2 and 3 and the NPPF states that “less vulnerable” development is compatible within the Zones without the need for exception testing. It is agreed with the applicant that the proposal would be a “less vulnerable development”. Members will have noted that the existing perimeter flood embankments are to remain in situ to the north of the development. The finished floor levels of the building are to be conditioned at an acceptable level. Additionally, the redevelopment of the site does provide a significant opportunity to install a more bespoke drainage system than presently exists. There is no objection from the Environment Agency or the Local Lead Flooding Authority, subject to conditions which would be replicated if recommended for approval.

Phasing of the development

A significant consideration here is that the existing waste recycling operation will be retained on site but moved to the east, adjacent to the M42. This use has been present on the site since 1957. Bearing in mind the finite supply of these strategic recycling business, it is necessary to ensure its retention via a legal agreement. This would ensure that the facility is repositioned on site and the industrial development is not occupied until this happens.

Section 106 Agreement

As indicated above, the Warwickshire County Council has requested a number of contributions towards highways improvements.

Water Orton Parish Council has also requested additional contributions in respect of bus provision, traffic management measures and open space contributions.

Members will be aware that the content of Section 106 Agreements is subject to statutory tests. These are that any obligations must be necessary to make the development acceptable in planning terms; they must be directly related to the development and finally they must be fairly and reasonably related in scale and kind. From these and from experience with other cases, Members will know that contributions and requests that might be suggested to rectify existing issues and issues or concerns that are outside of the control of the development would not pass these tests. The requests already outlined are now assessed against these tests.

The request for the re-calibration of the traffic signals is considered to be directly related to the development and is needed in order to prevent queuing of traffic in Marsh Lane as a consequence of traffic generated from the site. This outcome would accord with Local Plan Policy 29(6) as well as the content of the NPPF – paragraphs 114 to 117.

The request for footpath provision along March Lane into Water Orton is considered to be necessary to make the development acceptable in planning terms. It would enhance accessibility from the village by other means of transport thus offering more sustainable connectivity. This would accord with Local Plan Policies LP1, LP23, LP29 (5) and (6) together with LP27 and the NPPF – paragraphs 89 and 114 to 117.

The request for a contribution towards a parking TRO is also considered to be necessary to make the development acceptable in planning terms. Part of the merits of the proposal is to provide adequate access arrangements as well as on-site parking provision, thus removing the likelihood of on-street parking. As such, an Order here would re-enforce that benefit. This would accord with Local Plan Policy LP29 (6) together with the NPPF at paragraphs 114 to 117.

The request towards Speed Reduction measures in Marsh Lane is not considered to satisfy the tests. This is an existing concern and will probably continue to be an issue, whether or not this application is granted planning permission. As such, it needs to be addressed separately by the Highway Authority.

In respect of the matters raised by the Parish Council then these too are not matters that would satisfy the statutory tests. The development is not of sufficient scale to warrant a public transport contribution and no evidence has been supplied to show that such provision is deliverable or viable. Traffic management measures in Marsh Lane are again related to easing an existing problem – vehicle speeds along Marsh Lane. The applicant and development are not the cause of this issue. The request for open space provision has no relationship with the nature or scope of the application.

As indicated above in the bio-diversity section of the report, the applicant would need to include measures to secure bio-diversity off setting together with its maintenance. It is considered that this requirement is compliant with Local Plan policies, LP1, LP4, LP14, LP30. Paragraph 180 (d) and 186 of the NPPF also provides justification for this approach too. It would be directly related to the development, and it would be proportionate to the size of the development.

In terms of phasing of the development, it is necessary to ensure the retention of the Minerals Recycling Facility at this site. This obligation would require the provision of the new recycling facility, prior to the first occupation of any of the new units or extension. This Obligation is necessary for the satisfactory planning of the site and is directly related to the proposal. It would accord with the policies identified above in the Warwickshire Waste Core Strategy.

Referral

Members will be aware that some Green Belt development due to its size and scale requires referral to the Secretary of State under the 2024 Direction. In this case, the proposal is considered not to be inappropriate development. As such, notwithstanding that the increased floor area is greater than the threshold set out in that Direction, there is no need for referral. It is thus considered that the Board can determine this application.

The Final Planning Balance

Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the starting point for the determination of planning applications:

“if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be

made in accordance with the plan unless material considerations indicate otherwise”

Members now have to assess the final planning balance. The proposal is considered to be appropriate development in Green Belt terms, because it has been assessed as being in accordance with para 154 (g) of the NPPF - the complete redevelopment of previously developed land whilst preserving the openness of the Green Belt and not conflicting with the five purposes of including land within it. No other significant or demonstrable adverse harms have been identified. It is also considered that the proposal can be supported in respect of Development Plan policies in respect of economic regeneration through its re-use of previously developed land within a lawful general industrial use.

Recommendation

That planning permission be GRANTED subject to the completion of a Section 106 Agreement in the terms outlined in this report and to the following conditions together with others that might be recommended by the Highway Authority.

1. Standard three year condition

2. Standard plan numbers condition:

1534 OS Location Plan 21 June 2021

Proposed Site Layout Proposed Development Site, 1534-20 Revision C, dated 27 October 2023;

Reclamation and Recycling Processing Facility, 1534 -21 Revision C, dated 27 October 2023;

Floor Plan 1534-22 Flexdart - Units 1-2 - 1-200 Floor Plan - A1

Floor Plan 1534-23 Flexdart - Units 3-5 - 1-200 Floor Plan - A1

Floor Plan 1534-26 Flexdart - Unit D Extension - 1-200 Floor Plan - A1

Proposed Elevations 1534-27 Flexdart - Units 1 -2 - 1-200 Elevations - A2

Proposed Elevations 1534-28 Flexdart - Units 3-5 - 1-200 Elevations - A2

Proposed Elevations 1534-30 Flexdart - Unit D Extension - 1-200 Elevation - A2

Proposed Site Layout Masterplan, 1534-35 Revision C, dated 27 October 2023

Flood Risk Assessment (FRA) Marsh Lane, Water Orton ref PAP/2021/0372 dated September 2023

Pre-Commencement Conditions

Construction Management Plan

3. No development shall take place, including any works of demolition, until a Construction Environmental Management Plan has been submitted to, and approved in writing by the local planning authority for the relevant phase. The Plan shall provide for:

- i) the parking of vehicles of site operatives and visitors;
- ii) the routing for vehicles accessing the site associated with the construction of the development and signage to identify the route;
- iii) the manoeuvring of vehicles within the site;
- iv) loading and unloading of plant and materials used in constructing the development, including top soil;

- v) the location of site compounds;
- vi) storage of plant and materials;
- vii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- viii) wheel washing facilities;
- ix) measures to control the emission of dust and dirt during construction;
- x) measures to control and mitigate disturbance from noise;
- xi) a scheme for recycling/disposing of waste resulting from construction works;
- xii) any on-site lighting as required during construction;
- xiii) measures to protect existing trees and hedgerows proposed for retention;
- xiv) delivery, demolition and construction working hours; and
- xv) means by which the terms will be monitored, details of a contact person and the procedure for reporting and resolving complaints.

The approved Plan shall be adhered to throughout the construction period of the development.

REASON

In the interests of highway safety, in the interests of residential amenity and the protection trees and hedges.

Landscape and Ecology Management Plan

4. There shall be no development above slab level until a Landscape and Ecology Management Plan (“LEMP”) has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include:

- a) A description and evaluation of the features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) The aims, objectives and targets for the management regime.
- d) Descriptions of the management operations for achieving the aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a thirty-year period).
- g) Details of the monitoring needed to measure the effectiveness of management.
- h) Details for each element of the monitoring programme
- i) Details of the persons or organisation(s) responsible for implementation and monitoring.
- j) Mechanisms of adaptive management to account for necessary changes in the work schedule to achieve the required aims, objectives and targets.
- k) Reporting procedures for each year 1, 2, 5, 10, 20 and 30 with bio-diversity net gain reconciliation calculated at each stage.
- l) The legal and funding mechanisms by which the long-term implementation of the LEMP will be secured by the developer and the management body(ies) responsible for its delivery.
- m) How contingencies and/or remedial action will be identified, agreed and implemented in the event that monitoring under (k) above, shows that the conservation aims and objectives set out in c) above are not being met, so that the development still delivers the full functioning bio-diversity objectives of the originally approved scheme.

REASON

In order to enhance and deliver bio-diversity gain and ecology benefits.

Noise Conditions

5. No phase of the development shall commence on any unit or use until a noise assessment that shall detail any mitigation measures to control noise emanating from that unit or use to residential properties, including proposed operating hours of the units shall be submitted to, and approved in writing by, the Local Planning Authority. The approved measures shall be carried out and completed in full before the respective unit is brought into occupation and shall be retained thereafter.

REASON

To avoid significant adverse impacts on health and quality of life, to mitigate and minimise adverse impacts on health and quality of life and where possible contribute to the improvement of health and quality of life at noise sensitive receptors. [NPPF paragraph 191, Noise Policy Statement for England 2010 and PPG on noise].

6. Following the first use of any unit in any phase of the development hereby approved, no additional externally mounted plant or equipment for heating, cooling or ventilation purposes, nor grilles, ducts, vents for similar internal equipment, shall be fitted, on an individual unit basis, unless full details thereof, including design, acoustic emissions data and any mitigation measures, have first been submitted to, and approved in writing by, the Local Planning Authority.

REASON

To avoid significant adverse impacts on health and quality of life, to mitigate and minimise adverse impacts on health and quality of life and where possible contribute to the improvement of health and quality of life at noise sensitive receptors. [NPPF paragraph 191, Noise Policy Statement for England 2010 and PPG on noise].

7. Prior to the first use of each unit in any phase of the development hereby approved, a Noise Management Plan (NMP) relevant to that unit shall be submitted to, and approved in writing by, the Local Planning Authority. The approved measures within the NMP shall be carried out and completed in full before the respective unit is brought into use and shall be retained thereafter.

REASON

To avoid significant adverse impacts on health and quality of life, to mitigate and minimise adverse impacts on health and quality of life and where possible contribute to the improvement of health and quality of life at noise sensitive receptors. [NPPF paragraph 191, Noise Policy Statement for England 2010 and PPG on noise].

Lighting

8. The development hereby permitted shall not commence until details of all external lighting (to include location, height from ground level, lux level contour plan, and hours of operation) have been submitted to and approved by the Local Planning Authority. External lighting proposed should conform to the protocols set out in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). The development shall be carried out in full accordance with such approved details. In discharging this condition, the Local Planning Authority expects lighting to be restricted in proximity to key habitats, trees, hedges, and the proposed bat boxes and to be kept to a minimum at night across the whole site to minimise impact on emerging and foraging bats. This could be achieved in the following ways:

- ·Narrow spectrum lighting used to avoid the blue-white wavelengths
- ·Lighting directed away from vegetated areas
- ·The brightness of lights will be as low as legally possible
- ·Lighting timed to provide some dark periods
- ·Connections to areas important for foraging will contain dark corridors.
- ·Lighting shielded to avoid spillage onto vegetated areas

REASON

In accordance with NPPF, ODPM Circular 06/2005. In the interest of amenity, the countryside and Green Belt.

Energy Efficiency and Air Quality

9. No development above formation of slab for any particular phase shall take place until an Energy statement for that particular phase of the development which provides at least 10% of the development's energy through low carbon sources, has been submitted to, and approved in writing by, the Local Planning Authority. A total reduction in carbon dioxide emissions beyond Part L 2013 Building Regulations in line with the energy hierarchy shall be achieved, and a reduction in carbon dioxide emissions below residual emissions through renewable technologies shall be achieved in accordance with the relevant statement. The approved measures within the statement shall be carried out before the use or operation of the respective building(s) commences and shall thereafter be maintained in an operated within the development.

REASON

In the interests of achieving sustainable development and meeting development plan policy requirement LP35 of the adopted North Warwickshire Local Plan and the Air Quality SPD.

10. No development above slab level of any phase of development hereby approved shall commence until an 'Electric vehicle infrastructure strategy and implementation plan' and covered cycle storage associated with the relevant phase shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include details of the number, location and maintenance of the electric vehicle charging points and future ducting for that phase. The electric vehicle charging points and covered cycle

storage shall be implemented in accordance with the approved details and timescales for implementation, with the agreed details maintained in a working manner thereafter. Parking or servicing areas not provided with charging points shall be installed in a manner to allow the future installation of electric charging points associated with that phase.

REASON

For avoidance of doubt and to define the permission. In the interests of achieving sustainable development and meeting development plan policy requirement LP35 of the adopted North Warwickshire Local Plan and the Air Quality SPD.

11. No development above slab level shall commence until detail in respect of Broadband information and communications technologies has been submitted and approved in writing. No unit hereby approved shall be occupied until the approved details have been carried out in accordance with the approved details.

REASON

In the interests of achieving sustainable development and meeting development plan policy requirement LP36 of the adopted North Warwickshire Local Plan.

12. Notwithstanding the submitted information, a scheme to offset the air quality impacts from the development and which is based on the Damage Cost Calculation, shall be submitted to and approved in writing by the Local Planning Authority before any development above floor slab level. The approved air quality mitigation measures shall be provided before the development is first brought into use and thereafter retained.

REASON

In the interests of achieving sustainable development and meeting development plan policy requirement LP35 of the adopted North Warwickshire Local Plan and the Air Quality SPD.

Contamination

13. No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:

1. A detailed risk assessment, options appraisal and remediation strategy based on the results of the previous site investigations giving full details of the remediation measures required and how they are to be undertaken. All works shall be carried out by a competent person and agreed in writing by the Local Planning Authority prior to commencement of development.
2. In the event that contamination is found under condition 1, at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a

remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority.

3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (1) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

REASON

In accordance with Government Policy detailed in the National Planning Policy Framework (paragraph 189), 'where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner'. Therefore, should any significant contamination subsequently become apparent then responsibility remains with these parties.

Verification report

14. Prior to any part of the permitted development being brought into use, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

REASON:

To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete. In accordance with Government Policy detailed in the National Planning Policy Framework (paragraph 189), 'where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner'. Therefore, should any significant contamination subsequently become apparent then responsibility remains with these parties.

Highways

15. No phase of the development hereby permitted shall be occupied until the roads serving that phase, including footways, private drives, means of accessing plots, signage indicating HGV access and egress, car parking and manoeuvring areas have been laid out and substantially constructed in accordance with details first submitted to and approved in writing by the local planning authority in consultation with the Highway Authority. Areas for the parking and manoeuvring of vehicles shall be retained for their intended use at all times thereafter.

REASON

In the interest of providing safe access for all users and safety on the public highway.

16. None of the buildings hereby permitted shall be occupied until a Sustainable Travel Plan (STP) based on the Transport Assessment and relevant to the occupier of that building has been submitted to and approved in writing by the local planning authority in consultation with the Strategic Highway Authority. The STP shall then be implemented as approved.

REASON

In the interests of the sustainable modes of travel, and to accord with policy LP23 of the North Warwickshire Local Plan and national guidance.

Flooding

17. The development shall be carried out in accordance with the submitted Flood Risk Assessment (reference PAP/2021/0372 dated September 2023) and the following mitigation measures it details:

- Where practicable, setting the finished floor levels of the proposed units no lower than 75.37mAOD (i.e., 300mm above the maximum flood level during the 100 year plus 22% climate change event and accounting for the model sensitivity associated with the downstream conditions). Where this is not practicable due to plant access requirements, this could be reduced to 150mm above the maximum flood level during the 1% AEP 22% climate change event – subject to Flood Response Plan being put in place.
- New industrial units should be set at least 150mm above the finished ground levels and 300mm above design water level in the surface water drainage system, to prevent flooding from flowing or ponding storm water near doorways and other ingress routes.
- A level for level floodplain compensation will be required within the site boundary to retain the proposed units flood free during the design event and mitigate against the risk of increasing flood risk elsewhere.
- Occupants of the proposed development should sign up for the Environment Agency Flood Warning services. Furthermore, considering the risk of flooding during extreme flood events, and the residual flood risk due to flood defence breach and culvert blockage scenarios, it is recommended that a Flood Response Plan is prepared for the development and the site owners/ occupiers are familiar with it prior to site occupancy.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/ phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

REASON

To reduce the risk of flooding to the proposed development and future occupants.

18. No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles has been submitted to and approved in writing by the Local Planning Authority in consultation with the LLFA. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall:

1. Limit the discharge rate generated by all rainfall events up to and including the 1 in 100 year (plus an allowance for climate change) critical rain storm to the runoff rate of 92l/s for the site in line with the approved surface water drainage strategy (ref: 21005-C002, revision P4, dated 29/6/23).

2. Provide drawings / plans illustrating the proposed sustainable surface water drainage scheme. The strategy agreed to date may be treated as a minimum and further source control SuDS should be considered during the detailed design stages as part of a 'SuDS management train' approach to provide additional benefits and resilience within the design.

3. Provide detail drawings including cross sections, of proposed features such as infiltration structures, attenuation features, and outfall structures. These should be feature-specific demonstrating that such the surface water drainage system(s) are designed in accordance with 'The SuDS Manual', CIRIA Report C753. 4. Provide detailed, network level calculations demonstrating the performance of the proposed system. This should include:

a. Suitable representation of the proposed drainage scheme, details of design criteria used (incl. consideration of a surcharged outfall), and justification of such criteria where relevant.

b. Simulation of the network for a range of durations and return periods including the 1 in 2 year, 1 in 30 year and 1 in 100 year plus 40% climate change events

c. Results should demonstrate the performance of the drainage scheme including attenuation storage, flows in line with agreed discharge rates, potential flood volumes and network status. Results should be provided as a summary for each return period.

d. Evidence should be supported by a suitably labelled plan/schematic (including contributing areas) to allow suitable cross checking of calculations and the proposals.

e. Calculations demonstrating the performance of the network in a total pump failure scenario and with a submerged outfall

5. Provide plans such as external levels plans, supporting the exceedance and overland flow routing provided to date. Such overland flow routing should:

a. Demonstrate how runoff will be directed through the development without exposing properties to flood risk.

b. Consider property finished floor levels and thresholds in relation to exceedance flows. The LLFA recommend FFLs are set to a minimum of 150mm above surrounding ground levels.

c. Recognise that exceedance can occur during any storm event due to a number of factors therefore exceedance management should not rely on calculations demonstrating no flooding.

REASON

To prevent the increased risk of flooding; to improve and protect water quality; and to improve habitat and amenity

19. No occupation shall take place until a Verification Report for the installed surface water drainage system for the site based on the approved Drainage Strategy (21-005-C1000 P1, Dated: 21/11/23) has been submitted in writing by a suitably qualified independent drainage engineer and approved in writing by the Local Planning Authority. The details shall include:

1. Demonstration that any departure from the agreed design is in keeping with the approved principles.
2. Any As-Built Drawings and accompanying photos
3. Results of any performance testing undertaken as a part of the application process (if required / necessary)
4. Copies of any Statutory Approvals, such as Land Drainage Consent for Discharges etc.
5. Confirmation that the system is free from defects, damage and foreign objects

REASON:

To secure the satisfactory drainage of the site in accordance with the agreed strategy, the NPPF and Local Planning Policy.

20. No occupation and subsequent use of the development shall take place until a detailed, site specific maintenance plan is provided to the LPA in consultation with the LLFA. Such maintenance plan should

1. Provide the name of the party responsible, including contact name, address, email address and phone number
2. Include plans showing the locations of features requiring maintenance and how these should be accessed
3. Provide details on how surface water each relevant feature shall be maintained and managed for the life time of the development.
4. Be of a nature to allow an operator, who has no prior knowledge of the scheme, to conduct the required routine maintenance

REASON

To ensure the future maintenance of the sustainable drainage structures.

21. No phase of the development hereby permitted shall be occupied until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes relevant to each phase have been provided in accordance with details first submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of Public Safety from fire and the protection of Emergency Fire Fighters.

On-going

22. The development hereby approved shall provide shall only be used within Use Class E(g) (i) office (ii) research and development (iii) industrial processes, B2 or B8 of the Town and Country Planning (Use Classes) Order (as amended) or for no other purpose.

REASON

To define the permission granted. To restrict any class E uses to those within industrial and commercial estates.

23. The open land within the curtilage of the units or site (indicated red on ordnance survey plan) shall not be used for the storage, display or sale of anything whatsoever.

REASON:

In the interests of the visual amenities of the area and the openness of the land.

24. No gates shall be erected at the vehicular access to the development.

REASON:

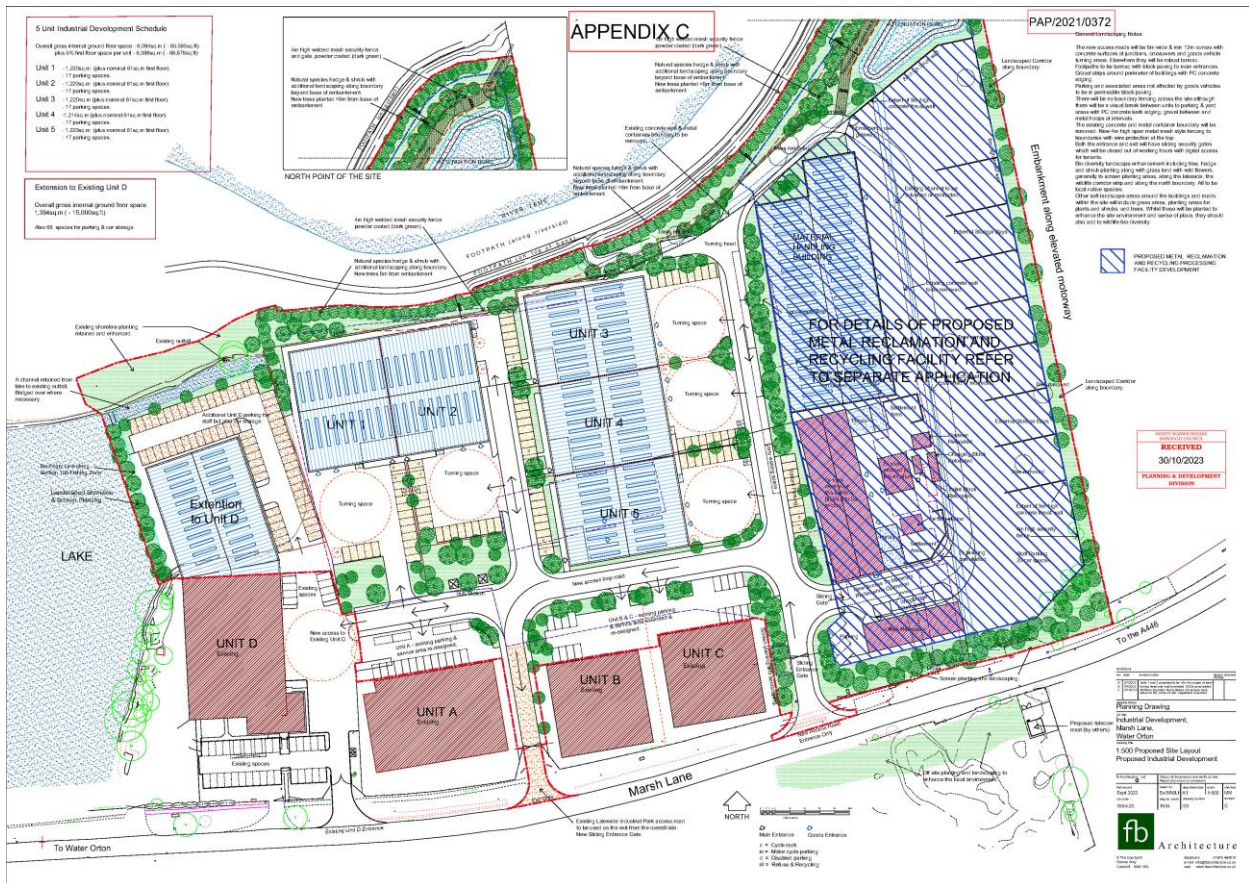
In the interest of highway safety.

SITE LOCATION PLAN
AREA 16 HA
SCALE 1:2500 on A4
CENTRE COORDINATES: 418354, 291674

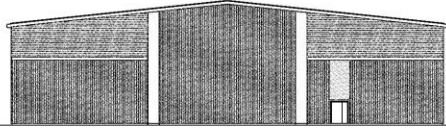


Supplied by Streetwise Maps Ltd
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Licence No: 100047474
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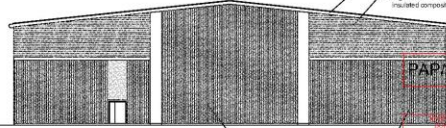
NORTH WARWICKSHIRE
BOROUGH COUNCIL
RECEIVED
21/06/2021
**PLANNING & DEVELOPMENT
DIVISION**



APPENDIX E



Side Elevation - Unit 1



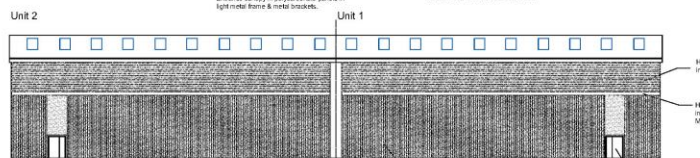
Side Elevation - Unit 2

PAP/2021/0372

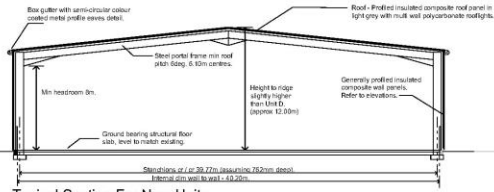
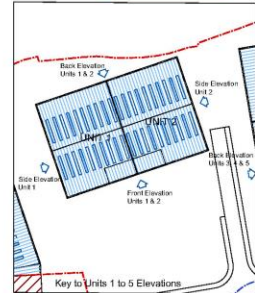
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03/02/2023
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DIVISION



Front Elevation - Units 1 & 2



Back Elevation - Units 1 & 2



Typical Section For New Units

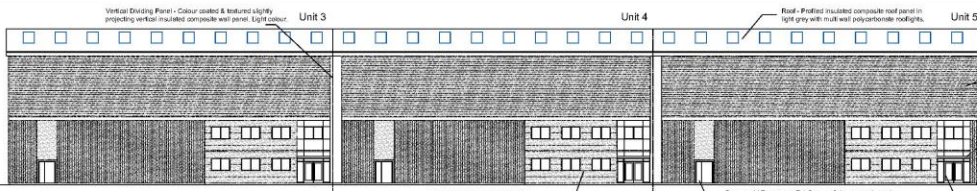
Notes:
Colours & finishes are currently indicative
& to be finalized at a later date.
Dimensions are subject to final agreed
component thicknesses & construction
tolerances.



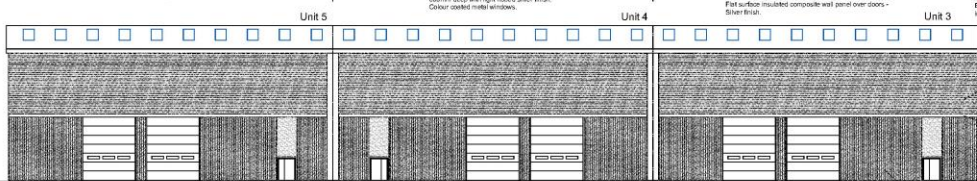
Planning Drawing
Industrial Development,
Marsh Lane,
Water Orton
Units 1 to 2
Industrial Units 1 & 2
1:200 Elevations

Rev	Description	Date	By	Check	Appr
1	Issue for comment and approval	15/03/23	MB	MB	MB
2	Issue for comment and approval	15/03/23	MB	MB	MB
3	Issue for comment and approval	15/03/23	MB	MB	MB

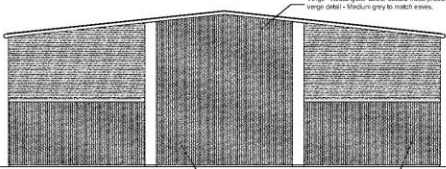
fb Architecture



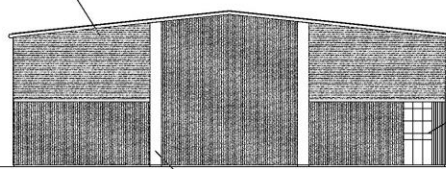
Front Elevation - Units 3, 4 & 5



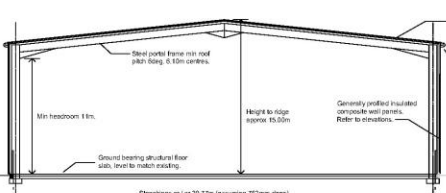
Back Elevation - Units 3, 4 & 5



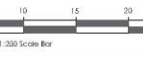
Side Elevation - Unit 3



Side Elevation - Unit 5



Typical Section for Units 3 to 5



PAP/2021/0372

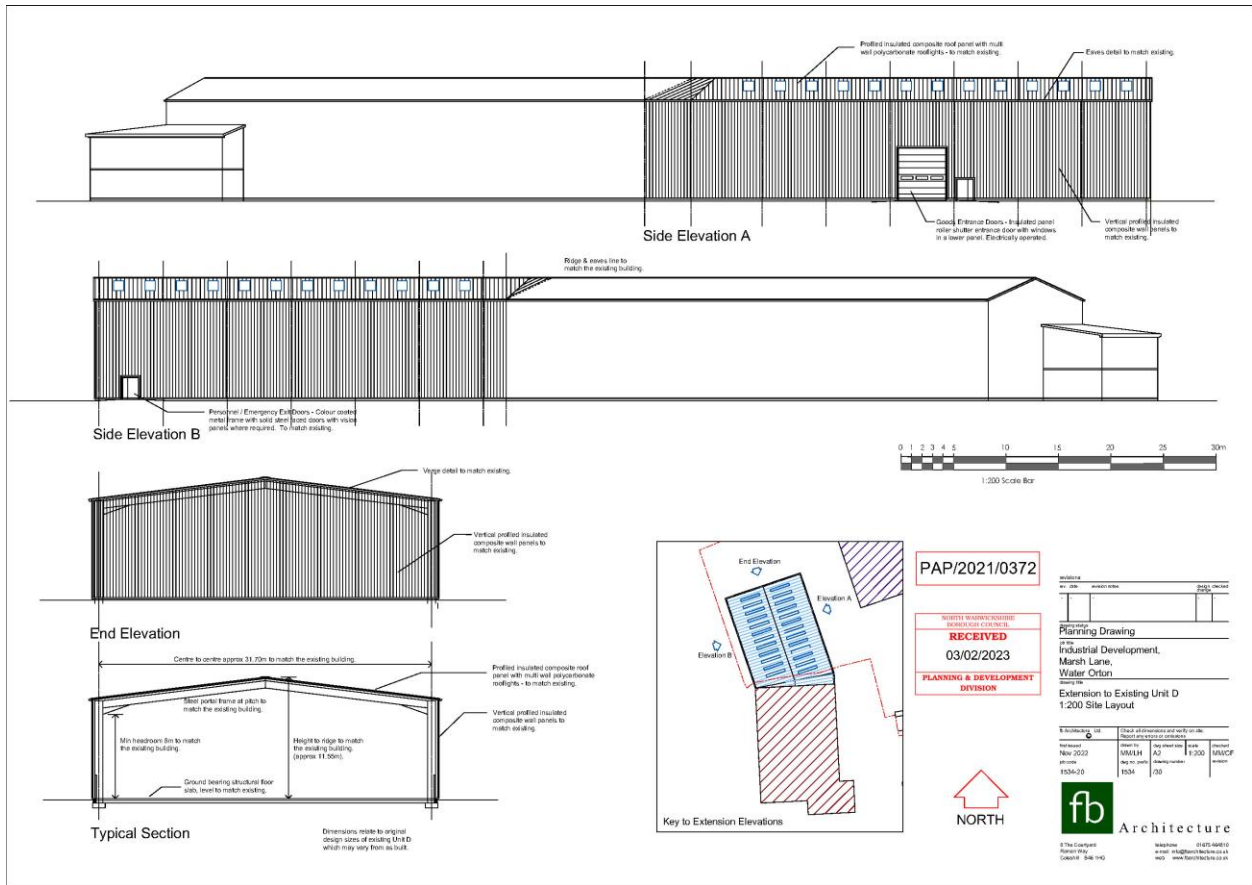
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DIVISION



Planning Drawing
Industrial Development,
Marsh Lane,
Water Orton
Units 3 to 5
Industrial Units 3 to 5
1:200 Elevations

Rev	Description	Date	By	Check	Appr
1	Issue for comment and approval	15/03/23	MB	MB	MB
2	Issue for comment and approval	15/03/23	MB	MB	MB
3	Issue for comment and approval	15/03/23	MB	MB	MB

fb Architecture



PAP/2021/0372

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03/02/2023
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DIVISION



Project No.	Project Name	Project Date	Project Status

Project: Planning Drawing
 Title: Industrial Development,
 Marsh Lane,
 Water Orlan,
 County Wick
 Extension to Existing Unit D
 1:200 Site Layout

Author	Checked	Drawn	Scale	Sheet

fb Architecture
 2 The Courtyard, Marsh Lane, Water Orlan, Co. Wick
 Website: 01475 446610
 Email: info@fbarchitecture.co.uk
 Web: www.fbarchitecture.co.uk

General Development Applications

(5/d) Application No: PAP/2023/0188

Land at, Tamworth Road, Dosthill,

Outline planning application with full details of access (with matters reserved for landscape, scale, layout and appearance) for development comprising up to 22,000sqm (GEA) for flexible Use Class E(g)(ii), Eg(iii), B2 and/or B8 with associated car parking and works (Cross boundary application Tamworth BC reference 0163/2023), for

Summix RLT Developments Ltd

1. Introduction

1.1 The receipt of this application was first referred to the Board in July 2023. That report is attached at Appendix A. The Board resolved to visit the site and a note of that visit is at Appendix B. Both of these Appendices should be treated as an integral part of this current report.

1.2 Members will be aware that a small part of the application site is within Tamworth Borough Council's area – see Appendix C.

1.2 Since the initial submission and its report to the Board, there have been two amendments made. Both relate to the prospective heights of the buildings within the development. The original submission proposed heights of 18.5 metres throughout the site. A first amendment reduced this to 13.5 metres along the southern side of the access road and the second reduced this further to 12.5 metres, whilst retaining the 18.5 metres height elsewhere on the site. The plans for determination in this report are those of this second amendment.

1.3 In respect of other updates, then there has been no change to the Development Plan since the last report. However, the National Planning Policy Framework (the "NPPF") was updated in late December 2023 and any references in this current report will be to that edition. The mandatory 10% nett biodiversity gain requirements do not apply in this case, as the application was submitted before the Regulations took effect in mid-February 2024.

2. Plans to be Determined

2.1 As indicated above, the proposals now before the Board for determination relate to the second amendment. The new Parameters Plan is attached as Appendix D. It retains the three development areas as included in the first amendment, but the maximum building height here is now shown as 12.5 metres for the two Zones, A and B, fronting the service road. The 18.5 metre limit is retained for Zone C. There has been no change to the size of these three Zones and the proposed Use Classes within each also remains as per the first amendment. There has neither been any change in the overall maximum Gross Floor Area of the total development – 22,000 square metres. Members should be aware that this figure includes a 2000 square metres allowance for internal mezzanine space.

2.2 The Green Infrastructure Plan that coincides with this new Parameters Plan is at Appendix E. It shows the proposed tree planting along the service road; the retention of the public footpath together with the pond and areas of existing grass and scrubland running north alongside the railway cutting.

2.3 Members will be aware that the Parameters Plan sets a framework for the eventual development of the site. This would then be “detailed” at the reserved matters stage once the individual occupiers of the three Zones are known. The applicant however has submitted two potential options as to how the reserved matters detailing might be achieved. These are at Appendices F and G, but do not form part of the plans for determination of this outline planning application.

2.4 The amendments described above have arisen due to the applicant responding to concerns about the visual impact of the proposals in the wider surroundings as well as in the immediate setting – particularly on the outlook of occupiers of Ascot Drive on the other side of the service road. The applicant has provided a series of long sections through the site, and these are attached at Appendix H. The lines of these sections are defined in the OS Map at the bottom of the Appendix. Also attached at Appendix I is a series of three sections running from Ascot Drive through to the site – using one of the Options in the illustrative plans – defined in the plan at the bottom of that Appendix. The third of these sections runs through the currently open “gap” at the end of the private drives at the far eastern end of Ascot Drive.

2.5 The applicant has also submitted a series of photographs illustrating this open “gap” as it is now, and the superimposition of the building heights and proposed tree planting at various time intervals – see Appendix J.

3. Background

3.1 The general planning history of the application site and its surroundings was set out in Section 3 of Appendix A.

3.2 In respect of the application site itself, then it was recorded that following restoration of the land, planning permissions had been granted between 1997 and 2010 for industrial uses - including B1, B2 and B8 uses through an approved layout covering the whole site. The layouts included the construction of the access arrangements described in Section 2 above. The 2010 permission here is the last one and it is a renewal of the earlier consents. It is extant because of the construction of the junction onto the A51 together with the embankments for the spur road extending eastwards from this.

3.3 A copy of the 2010 layout is at Appendix K.

4. Representations

4.1 At the time of the initial submission, nineteen letters of objection were received referring to the following matters:

- Noise and light pollution from 24/7 operations.
- There already is noise emanating from the existing premises.
- Access through Dosthill is poor with school premises having to be passed.
- There is no need for further warehouses.
- It will lead to overnight HGV parking.

- There will be an adverse impact on wildlife.
- There are existing flooding and drainage issues which would be exacerbated.
- The site will be a visual eyesore.
- The warehouses will be visually intrusive and dominate the rear outlook from local residences.
- There will be at least 20 houses which back onto this development leading to loss of outlook and privacy particularly from the access road.

4.2 Re-consultation has now taken place in respect of the second amendment. Eleven representations have been received. They all say that the reduction in height to 12.5 metres is immaterial to them, as their key concerns as raised above are not altered - particularly noise and traffic.

4.3 The residents around the drive at the end of Ascot Drive where the “gap” is, and referred to above, submitted their own photographic record of the visual impact of the development proposed under the first amended proposal - see Appendix L. In response to the second amendment, they maintain their objection indicating that there would be no visual impact for at least seven years and also expressing concern about the potential noise impacts.

5. Consultations

Tamworth Borough Council – The application which has been submitted to the Tamworth Borough Council is to be reported to its Planning Committee on 6 August. The officer recommendation is that planning permission is granted subject to conditions.

Warwickshire County Council as Highway Authority - It has no objection to the access arrangements and has expressed an informal view that there is no objection in respect of the wider impact, but a formal response is still awaited. The up-to-date position will be reported at the meeting.

Staffordshire County Council as Highway Authority – No objection.

Warwickshire County Council as Lead Local Flood Authority - No objection subject to conditions.

Staffordshire County Council as Lead Local Flood Authority – No objection subject to conditions.

Warwickshire County Ecologist – An objection has been received based on the ecological assessment of the present site, as the proposals would not enable a bio-diversity net gain.

Warwickshire Archaeology - No objection.

Warwickshire Fire and Rescue Services - No objection subject to a standard condition.
Network Rail - It originally objected because of drainage issues that currently arise from the site and which are affecting the line to the east of the site.

Environmental Health Officer - No objection subject to conditions.

Warwickshire Police (Design) - Detailed comments sent to applicant which will deal with design matters for the subsequent reserved matters application.

Active Travel England - No comments to make.

6. Observations

a) The Principle of the Development

6.1 Members will be aware from the background section of Appendix A - paragraphs 3.1 to 3.11 - and the summary in section 3 above, that the land the subject of this application has the benefit of an extant lawful industrial use. Hence the principle of such development on the site is acknowledged. The key issues with this current application are therefore not related to the principle of the use, but to address any adverse impacts that might arise as a consequence of the new proposals. The representations and consultation responses received as above, identify the most important impacts and the remainder of the report will need to address these, particularly in respect of what mitigation can be included.

6.2 However before doing so, it is necessary to say that the current proposals are different to the approved 2010 scheme - an increase of 2000 square metres of floor space. The mix of employment uses remains about the same - around 50% of the site area being B2/B8. This is not considered to be a material difference, but in any event the impacts of the current proposal are the ones that have to be assessed and those will be evaluated against present Development Plan policy and not against what may have been approved back in 2010.

b) Highways

6.3 Local Plan policy LP29 (6) says that all developments should provide safe and suitable access for all users. The NPPF says that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe – para 115.

6.4 It is of substantial weight that the two relevant Highway Authorities have indicated that they do not object in principle to the proposals. This is very largely as a consequence of the extant planning permission.

6.5 Nevertheless, both Authorities are aware of the matters raised by the representations, and these were the subject of initial concerns from those two Authorities - they both submitted initial “holding” objections. In essence they sought additional information and clarification on a number of matters.

6.6 In respect of off-site matters to the north of the site, then Staffordshire County Council is the relevant Highway Authority. It looked in particular at traffic running through Dosthill and the capacity of the junction of the A51 with the A5 at Two Gates.

As a consequence of further modelling and analysis, it no longer maintains an objection. In respect of off-site matters in Warwickshire, then its County Council was looking at traffic passing through Kingsbury. Similarly, the County has been assessing further modelling and analysis of the A51/A4097 roundabout, and it is the outcome of this that

is still awaited – as referred to in the Consultation section above. As a consequence, the recommendation below allows for this. Should there be no objection, Members are advised that the NPPF guidance is that highway refusals should only arise if there are “severe” residual cumulative impacts. That would not be case if both Highway Authorities do not object.

6.7 In respect of site-specific matters, then Warwickshire County Council is the relevant Highway Authority. It has no objection in principle given the extant permission and because the access junction with the A51 has already been implemented to the specifications required to cater for that permission – and indeed the prospect of it being a junction in connection with a previous proposal for a possible Dosthill By-pass. The County Council therefore consider it to be suitable for the current proposals.

6.8 There are two other matters that Warwickshire County Council as Highway Authority has been asked to comment on - the need for an emergency access and overnight HGV parking.

6.9 In respect of the former, then Warwickshire County Council as Highway Authority points out that the Warwickshire Fire and Rescue Service has not objected to the proposals. The Warwickshire Fire and Rescue Service was specifically asked to look at the proposal in this regard, but it did not lodge an objection, or request a secondary access point. Access around any future buildings on the site will be a matter to be dealt with under the Building Regulations. As a consequence, the Highway Authority has not requested a secondary access.

6.10 In respect of the matter raised about overnight HGV parking – particularly along the length of the access spur road – there are three measures that can be conditioned. The first is that no barriers should be constructed across the access into the site off the spur road such that access can be retained at all times. The second relates to a condition requiring HGV parking space to be provided within the curtilage of each building and that this be included in the details submitted within the reserved matters applications. Finally, Warwickshire County Council has indicated that it would not adopt the spur road or the roads within any approved layout. As such it could not sponsor Traffic Regulations Orders under the Highways Acts - eg. waiting and parking restrictions. This however does mean that the Borough Council itself can impose a planning condition restricting the parking of any vehicle along either side of the spur road as recommended below. The applicant has agreed to such a condition.

6.11 It is therefore in all of these circumstances, subject to final clearance from Warwickshire County Council, that it is considered that the proposals do satisfy the relevant planning policies referred to in para 4.2 above.

c) Landscape

6.12 Policy LP14 of the Local Plan says that new development should look to conserve, enhance and where appropriate restore landscape character so as to reflect that as described in the North Warwickshire Landscape Character Assessment of 2010. This aligns with policy LP1 which says that development must “integrate appropriately with the natural and historic environment”, and also with Policy LP30 which says that proposals should ensure that they are “well related to each other and harmonise with both the immediate and wider surroundings”. This is all reflected in the NPPF at para

135 (c) which says that developments, amongst other things, should be “sympathetic to local character and history including the surrounding built environment and landscape setting”.

6.13 Clearly there is an industrial lawful use of the land here and the site also has other lawful industrial uses around its boundaries. It is low-lying in respect of the surrounding landscape. This setting and the extant use are thus material factors in assessing the overall landscape impact of its location. The landscape character here as described by the 2010 Assessment, is marked by “an indistinct and variable landscape with pockets of agricultural land and woodland, but fragmented by restored soil heaps, large scale industrial buildings and busy roads as well as being bordered by urban development”. Overall, it is considered that the proposal can be absorbed into this landscape. This can be seen from the long sections submitted at Appendix H which illustrate how the proposal as a whole “sits” within a lower lying area of land than much of the surrounding area. The heights of the buildings now proposed, help mitigate its impacts and there are other industrial buildings on three sides of the site or there is land with extant permissions for industrial development. Additionally, the current Parameters Plan outlines a scheme which does mitigate the landscape impact and is one which offers a significant betterment over the extant plans.

6.14 Whilst the proposals do not restore landscape character, they do recognise and respond to the site’s setting sufficiently well, to satisfy the general content of the relevant planning policies.

d) Visual Impact and Residential Amenity

6.15 Local Plan policy LP29(9) says that new development should “avoid and address unacceptable impacts upon neighbouring amenities through overlooking, overshadowing, noise, light, air quality or other pollution”. Policy LP30 says that amongst other things, proposals should “ensure that all elements of the proposal are well related to each other and harmonise with both the immediate setting and wider surroundings”.

6.16 The starting point here is that there is an extant lawful industrial use for the site. Given this and thus that there will be the visual and residential amenity impacts arising from this position, the issue is whether these can be reasonably addressed in order to avoid unacceptable impacts and that the elements of the proposal are well related to the wider surroundings.

6.17 Looking first at the visual impact, it is considered that the reductions in height of the closest buildings to the residential properties of Ascot Drive have been of significant benefit - reducing from 18.5 to 12.5 metres. This is not only in respect of the properties at its far eastern end, but also for all of the other properties which run along the length of Ascot Drive. Whilst it is acknowledged that the success of the proposed tree planting, its maintenance and the period of time to maturity are concerns, the overall outcome is proportionate to the circumstances here. This is evidenced by the long and short-sections in Appendices H, I and J. The proposed landscaping, alongside the rear of the residential properties in Ascot Drive -- see Appendix E - too is a significant benefit which supplements the reductions in height. It is certainly a significant betterment over the extant position - see Appendix K. In light of all of these considerations, it is concluded

that the proposal can be said to satisfy the content of the relevant policies in respect of the visual impact.

6.18 The next matter is that of potential noise impacts. Again there are several factors that need to be included in the final assessment here – the 2010 approval for General Industrial Uses (Use Class B2) alongside the spur road with no “hours” restrictions; the extant Use Class B2 premises at the Hunnebeck site again with no “hours” restrictions, the other B2 users and permissions on the other side of Rush Lane and the knowledge that noise complaints have been made as a consequence of emissions from some of these premises. In other words, the ambient day and night-time noise levels for the setting of this site are potentially higher than that in a residential or semi-rural area. However, voluntary use restrictions by some occupiers does give rise to periods of quieter ambient levels – night times and at weekends. Additionally, the Council and its Environmental Health Officers were involved in the refusal of planning permission on this site for a residential development. An appeal against that refusal was subsequently withdrawn. The noise environment of the setting here is thus one that has been well documented and understood by the Council Environmental Health Officers. As a consequence, the current proposal has been heavily scrutinised by those officers.

6.19 The Environmental Health Officer has not objected to the current proposal, but that is subject to a series of detailed technical noise conditions. Given the background set out in the previous paragraph, it is considered that substantial weight is given to that position. That has been arrived at taking into account that the proposed development lies between unrestricted B2 Users and thus in itself will act as a “buffer” to noise emanating from these premises. That may seem “odd” given the industrial nature of the proposal, but planning conditions can condition design features that assist in further mitigating likely noise concerns, in addition to the more technical noise conditions setting out explicit night and day-time noise thresholds for both internal and external plant, machinery and activity. The design features conditioned would refer to the heights of the buildings themselves through the Parameters Plan, the landscaping proposals, the location of loading and service yards and the parking concerns as expressed above. It is considered that all of these conditions would strongly indicate that the current proposal offers a betterment over the 2010 extant permission as illustrated at Appendix K. The combination of these conditions – in the terms of policy LP29 – would “avoid and address unacceptable” impacts.

e) Flooding and Drainage

6.20 Local Plan policy LP33 requires water runoff from new development to be no more than the natural greenfield runoff rates and developments should hold this water back on the development site through high quality sustainable drainage arrangements which should also reduce pollution and flood risk to nearby watercourses. The NPPF at para 175 says that major developments should incorporate sustainable drainage systems and that these should take account of the advice from the lead local flood authority.

6.21 The representations identify existing issues. Indeed, the two Lead Local Flood Authorities raised initial holding objections. Additional background information and clarification has been submitted to both Authorities sufficient to enable the objections to be lifted in principle, but subject to a series of very detailed conditions. The overall drainage strategy remains that as originally described in Appendix A – paragraph 4.14. Members are aware that the combined advice of the NPPF and the policy objective of

LP33, is that the requirement is for an applicant to demonstrate that the surface water discharge from a development is “self-contained”, in that it does not worsen any existing situation. In other words, it is not the responsibility of the applicant, or indeed the Local Planning Authority, to require that the applicant addresses or resolves existing flooding problems through his development proposal. Here the solution is to provide two “attenuation” basins within the site, one on the eastern boundary and the second along the southern boundary at the lowest points on the site, but still able to discharge into the existing pond in the corridor of open land alongside the railway - see Appendix E. Its outlet at its northern end, discharges into a culvert passing under the railway line, and then towards the east.

6.22 This pond is within the application site. Both Lead Local Flood Authorities are satisfied that the inclusion of this pond is an essential factor in the overall drainage strategy. However, because of silting in the pond reducing the efficacy of the discharge into the culvert, it is currently over-flowing and part of its discharge is overland towards the railway cutting. This is why Network Rail has also lodged a holding objection. There are ongoing discussions between the relevant parties. The issues revolve around the capacity of the pond to take additional flows from the development and secondly its proper maintenance. Network Rail’s objection is not an objection on planning grounds to the proposal as there is the extant planning permission. Its concern is that the maintenance of the pond is not within its ownership and thus outside of its control. As a consequence, there could be the prospect of continuing discharge onto its land and railway assets. The proper maintenance of the pond – even if enlarged - is thus a planning consideration as it is an essential element of the overall drainage strategy for the development. The way forward from a planning perspective would be to include agreement on a maintenance plan for the pond or an enlarged pond, within the overall management plan to be required for the maintenance of the whole surface water system. This could be achieved through an appropriately worded Grampian planning condition – as set out below. This approach would satisfy the relevant policy requirements and be in the interests of all of the parties involved.

f) Heritage

6.23 Local Plan policy LP15 says that the quality, character, diversity and local distinctiveness of the Borough’s historic environment will be conserved and enhanced. In order to do so, an assessment has to be made of the potential impact of the proposals on the significance of heritage assets that might be affected by the proposal, as set out in Section 16 of the NPPF. Whilst there are no assets on the site, the boundary of the Dosthill Conservation Area is several hundred metres to the north-west.

6.24 The Council is under a Statutory Duty to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. To do so, the impact of the proposal on the significance of the Area needs to be assessed.

6.25 The significance of the Conservation Area lies in the retention of the original settlement of Dosthill with surviving properties and some of its semi-rural village character. It is not considered that the proposal would have any harm on this significance due to the separation distances; the intervening topography and built form, the lack of intervisibility and the fact that there is an extent planning permission on the site. As a consequence, the proposal would not harm the character or appearance of the Area, thus satisfying the relevant policy.

g) Biodiversity

6.26 Local Plan policy LP16 says that the quality, character, diversity and local distinctiveness of the natural environment is to be protected and enhanced as appropriate, relative to the nature of the development proposed and net gains for bio-diversity should be sought where possible. The Board is also aware of the new Regulations introduced in February this year. As this proposal was submitted prior to their introduction, there is no mandatory 10% nett gain required. Nevertheless, the proposal still has to show a net bio-diversity gain, where possible, in order to accord with Policy LP16.

6.27 Members will have seen from the consultation section that the County Ecologist has objected to the proposals because there would be no nett gain. However, this response as stated above, is caveated because that conclusion has been reached on the basis of an evaluation of the existing ecological value of the site, without reference to what it might have been under the extant planning permission. The County Ecologist acknowledges this position, indicating quite properly, that the resolution here is a matter for the Local Planning Authority. It was anticipated that the 2010 approved plans would be implemented shortly after approval, but that did not happen. The site has thus re-generated naturally since the landfill operations were completed several years ago before that 2010 permission. Its bio-diversity value has increased throughout that time. The land in the tri-angular corridor between the railway and the residential development, within the Tamworth Borough Council area, was not the subject of the development proposal approved within the 2010 permission. It too has re-generated and is now of value as a potential Wildlife Site. The matter before the Board is thus to balance these different factors.

6.28 Members are advised that the starting point for this assessment has to be the extant planning permission. To a large extent this has been the position taken above when considering the principle of the proposal; the highway and the landscape impacts as well as the visual impacts and matters to do with residential amenity. It would not now be reasonable to deal with the bio-diversity issue any differently. Additionally, the mandatory statutory requirement does not apply to this application and the relevant policy refers to achieving net gain, "where possible". As a consequence, the applicant has agreed to the inclusion of appropriately worded condition as the land outside of the development areas and where there is the most significant bio-diversity interest, is still land that is under his control. It is noteworthy too, that the Officer report before the Tamworth Borough Council Planning Committee for this area is also one of support, subject to the inclusion of conditions. It is thus considered that this approach is proportionate in these circumstances.

7. Conclusion

7.1 Members will be aware that "old" extant planning permissions do surface from time to time. This is one of those and thus the principle of the development is acknowledged. The site has a lawful industrial use. Such permissions however may be "new" to the local community which may well have changed since the date of such a permission. This is the case here. In these circumstances the remit of the Local Planning Authority is to consider and address the impacts arising from this position. This has been undertaken here under a number of different matters as recorded above. As a

consequence, it is considered that an appropriate and proportionate balance has been achieved.

Recommendation

- a) That the Council is minded to GRANT outline planning permission subject to the conditions as set out below together with the addition of conditions as may be recommended by the Warwickshire County Council as Highway Authority.
- b) However, should that Highway Authority raise an objection which cannot be resolved through further planning conditions; Informatives or by legal Agreement, the application be referred back to the Board for further consideration.
- c) The conditions referred to in (a) above are:

Standard Conditions

1. Details of the appearance, landscaping, layout and scale (hereinafter called the “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.

REASON

To comply with Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Act 2004, and to prevent an accumulation of unimplemented planning permissions.

2. If the development hereby permitted is to be constructed in more than one phase, details of the proposed phases of construction shall be submitted to the Local Planning Authority for approval prior to, or at the same time as, the first application for approval of the reserved matters. The Phasing Plan shall include details of the separate and severable phases, or sub-phases of the development. Development shall be carried out in accordance with the approved phasing details, or such other phasing details as shall subsequently be submitted to and approved in writing by the Local Planning Authority.

REASON

To comply with Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Act 2004, and to prevent an accumulation of unimplemented planning permissions.

3. The first application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission. All applications for approval of reserved matters shall be made to the Local Planning Authority not later than five years from the date of this permission.

REASON

To comply with Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Act 2004, and to prevent an accumulation of unimplemented planning permissions.

4. The development hereby permitted shall be begun not later than three years from the date of approval of the last of the reserved matters to be approved.

REASON

To comply with Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Act 2004, and to prevent an accumulation of unimplemented planning permissions.

Defining Conditions

5. The development hereby permitted shall not be carried out except in complete accordance with the following approved plans and documents:
 - a) The Site Location Plan - 23008/SGP/ZZ/ZZ/DR/A/131000 P2 received on 2/5/23.
 - b) The Parameters Plan - 23008/SGP/ZZ/ZZ/DR/A/001001 P7 received on 15/5/24.
 - c) The Green Infrastructure Plan - P23/0345/EN/0007/C/GI received on 15/5/24.
 - d) Existing Site Access - 70102401/SK/002 Rev A received on 20/2/14.
 - e) Existing site access swept path analysis 16.5m artic 701102401/ATR/001Rev B received on 20/2/24.
 - f) The Framework Travel Plan prepared by WSP received on 3/8/23 referenced 70102401/001.

REASON

In order to define the extent and scope of the permission.

6. The development hereby permitted shall provide for no more than a maximum figure of 22,000 square metres of floorspace (GEA) for uses within Use Classes Eg (ii), Eg (iii), B2 and B8 of the Town and Country Planning (Use Classes) Order 2020 (as amended).

REASON

In order to define the scope and extent of the planning permission.

7. The uses approved under Condition 6 above shall be located on the site, as set out in the Parameters Plan approved under Condition 5 above.

REASON

In order to define the scope and extent of the planning permission and in the interests of the amenities of the area.

8. The proposed layout in the reserved matters applications shall be designed in general accordance with the Parameters Plan approved under condition 5. The reserved matters applications shall contain full details of the finished floor levels of all proposed buildings, above ordnance datum, in relation to existing ground levels. In particular, the layout for Zones A and B as defined by the Parameters Plan shall avoid service/loading and unloading areas being located along the northern edge of each of these two Zones.

REASON

In order to define the implementation of the permission so as to reduce the risk of adverse noise impacts.

9. The specific sound from any individual unit arising from internal or external uses, including operational sources of an industrial/commercial nature within the development, the operation of fixed plant, machinery, plant and mobile plant including deliveries, heating, air handling and/or ventilation equipment shall not exceed the levels outlined below:
 - i) 40dB LAeq,1hr at any residential property on Ascot Drive, Haydock Lane or Epsom Close. The specific sound level shall be measured or predicted at a height of 1.5 metres above ground level at 1 metre from the facade containing a habitable room with an opening window, between 0700 and 2300 on any day. The measurements and/predictions should demonstrate the noise limits for daytime are within gardens of the nearest affected noise sensitive receptors at 1.5m above the adjacent ground level as a free field level as defined by BS 7445:2003 "Description and measurement of environmental noise (parts 1 to 3)" for an area of not less than 75% of any dwelling's garden.
 - ii) 35dB LAeq15min at any residential property on Ascot Drive, Haydock Lane or Epsom Close. The specific sound level shall be measured or predicted at a height of 4.5 metres above ground level at 1 metre from the facade containing a habitable room with an opening window of any residential dwelling between 2300 and 0700 on any day.
 - iii) Where the residential dwelling is a bungalow, all measurement heights for day and night time are 1.5 metres above ground level.

REASON

In order to avoid significant adverse noise impacts on health and quality of life in line with the National Planning Policy Framework (para 185); the Noise Policy Statement for England 2010 and Local Plan policy LP29.

10. Within six months of the occupation of any of the new industrial/commercial units within the development hereby permitted, noise compliance monitoring shall be undertaken by a suitably qualified professional and the results of the noise measurements and/or predictions shall be submitted to the Local Planning Authority in writing. The submission should provide evidence that the specific sound level from the industrial/ commercial internal and external sources within that unit arising from its operation of the new development meets the levels as described in condition 9.

If the specific sound level from these sources exceeds the limits set out in condition 9, additional mitigation measures are to be recommended and included in that submission. Any such measures that are approved in writing by the Local Planning Authority, shall then be installed or introduced to the written satisfaction of the Local Planning Authority. These measures shall be permanently retained and maintained in proper working order for the duration of the operational life of the development.

REASON

In order to demonstrate compliance with condition 9 and so to avoid significant adverse noise impacts on health and quality of life in line with the National Planning Policy Framework (para 185); the Noise Policy Statement for England 2010 and Local Plan policy LP29.

11. All access arrangements into, through and out of the site together with all off-site highway alterations shall be carried out in accordance with the plans approved under Condition 5.

REASON

In order to define the scope and extent of the planning permission.

12. There shall be no gate, barrier or other structure constructed or placed across the access into the development area from the spur road running east from the junction with the A51, thus allowing unobstructed vehicular access at all times.

REASON

In order to reduce the potential for noise pollution arising from parked vehicles not being allowed to enter the site and to reduce the potential for on-street vehicular parking.

13. There shall be no on-street parking of any vehicle whatsoever on any part along both sides of and the whole of the spur road running east from the junction with the A51.

REASON

In order to reduce the potential for noise pollution arising from parked vehicles and to reduce the potential for on-street vehicular parking thus leading to highway safety concerns.

14. The layout in the reserved matters applications shall include HGV parking spaces at a minimum of 1 HGV space per 375 square metres of B8 floor space.

REASON:

In order to reduce the potential for noise pollution arising from parked vehicles and to reduce the potential for on-street vehicular parking thus leading to highway safety concerns.

Pre-Commencement Conditions

15. No development shall take place, including any works of demolition or site clearance, until a Construction Environmental Management Plan (CEMP) has first been submitted to and approved in writing by the Local Planning Authority for the whole of the development hereby approved. The Plan shall provide information for:

- a) The parking of vehicles for site operatives and visitors.
- b) The routing for vehicles accessing the site associated with the construction of the development and signage to identify the route.
- c) The manoeuvring of vehicles within the site.
- d) Loading and unloading of plant and materials used in the construction of the development, including top-soil.
- e) The location of the site compounds.
- f) Storage of plant and materials.
- g) The erection and maintenance of security hoarding fencing.
- h) Wheel washing facilities.
- i) Measures to control the emission of dust and dirt during construction.
- j) Measures to control and mitigate disturbance from noise.
- k) A scheme for the recycling/disposal of waste resulting from the construction works.
- l) Any on-site lighting as required during construction.
- m) Measures to protect existing trees and hedgerows proposed for retention.
- n) Delivery, demolition and construction working hours.
- o) The means by which the terms of the CEMP will be monitored including details of the procedure for reporting and resolving complaints as well as the details of the person or persons to contact in such circumstances.

The approved CEMP shall be adhered to at all times throughout the construction period of each phase of the development as approved under Condition 2.

REASON

In the interests of reducing potential harm to residential amenity and in the interests of highway safety.

16.No development shall take place including any works of demolition or site clearance, until a Landscape and Ecological Management Plan (“LEMP”) for the whole site, including the triangular area of land that lies between the railway line to the east, the residential properties to the west and the development area to the south, has first been submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall be in general accordance with the approved Parameters Plan approved under condition 5. The LEMP shall include:

- a) a description and evaluation of the features to be managed;
- b) ecological trends and constraints on site that might influence management,
- c)the aims, objectives and targets for the management,
- d) descriptions of the management operations for achieving the aims and objectives,
- e) prescriptions for management actions,
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a thirty-year period),
- g) Details of the monitoring needed to measure the effectiveness of management,
- h) Details of each element of the monitoring programme,
- i) Details of the persons or organisations(s) responsible for implementation and monitoring,
- j) Mechanisms of adaptive management to account for necessary changes in the work schedule to achieve the required aims, objectives ad targets,
- k)Reporting procedures for each year 1, 2, 5, 10, 20 and 30 with bio-diversity net gain reconciliation calculated at each stage,
- l) The legal and funding mechanisms by which the long-term implementation of the LEMP will be secured by the developer and the management body(ies) responsible for its delivery,
- m) How contingencies and/or remedial action will be identified, agreed and implemented in the event that monitoring under (k) above shows that the conservation aims and objectives set out in (c) above are not being met so that the development still delivers the full functioning bio-diversity objectives of the originally approved scheme.

The details in that Plan shall then be implemented on each phase of the development of the site and it shall be adhered to at all times during the lifetime of the development.

REASON

In the interests of enhancing and protecting bio-diversity.

17. No development shall commence on site including any works of demolition or site clearance, until a detailed surface water drainage scheme for the whole site, based on sustainable drainage principles has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- a) Evidence to show that the discharge rate generated by all rainfall events up to and including the 1 in 100 year (plus an allowance for climate change) critical rain storm is limited to the Qbar greenfield run off rate of 4.32 l/s/ha for the site in line with the Outline Flood Risk Assessment and SUDS Strategy prepared by HWA (v3) dated August 2023.
- b) A detailed assessment demonstrating the on-site water courses suitability as a receptor for surface water run-off from the development. This assessment shall include:
 - A condition survey of the watercourse and evidence of any remedial measures identified as necessary;
 - A review of flood risk impacts from the watercourse demonstrating consideration for downstream receptors off site in the context of the proposals,
 - Evidence demonstrating that all development and surface water infrastructure is outside the anticipated fluvial flood extent.
- c) Drawings/plans illustrating the proposed sustainable surface water drainage scheme. The Outline Flood Risk Assessment and SUDS Strategy prepared by HWA (v3) dated August 2023 may be treated as a minimum and further source control SUDS should be considered during the detailed design stages as part of a "SUDS management train" approach to provide additional benefits and resilience within the design.
- d) Detailed drawings including cross sections, of proposed features such as infiltration structures, attenuation features and outfall structures. These should be feature-specific demonstrating that such surface water drainage systems are designed in accordance with the SUDS Manual CIRIA Report C753 and cross sections should demonstrate that all SUDS features will be accessible for maintenance whilst also providing an adequate easement from the on-site watercourse.
- e) Provision of detailed network level calculations demonstrating the performance of the proposed system to include:
 - suitable representation of the proposed drainage scheme, details of design criteria used (including consideration of a surcharged outfall) with justification of such criteria,
 - simulation of the network for a range of durations and return periods including the 1 in 2 year, 1 in 30 year and 1 in 100 year plus 40% climate change events,

- together with results demonstrating the performance of the drainage scheme including attenuation storage, potential flood volumes and network status for each return period,
 - and evidence to allow suitable cross- checking of calculations and the proposals.
- f) The provision of plans such as external levels plans, supporting the exceedance and overland flow routing provided to date. This overland flow routing should:
- demonstrate how run-off will be directed through the development without exposing properties to flood risk;
 - consider property finished floor levels and thresholds in relating to exceedance flows, and
 - recognition that exceedance can occur due to a number of factors such that exceedance management should not rely on calculations demonstrating no flooding.

Only the scheme that has been approved in writing shall then be implemented in full on site.

REASON

To reduce the risk of increased flooding and to improve and protect water supply.

- 18.No phase of the development hereby permitted shall commence until a scheme for the provision of adequate water supplies and fire hydrants necessary for fire-fighting purposes relevant to each phase, has first been submitted to and approved in writing by the Local Planning Authority. Only the approved scheme shall then be implemented within the relevant phase.

REASON

In the interests of public safety.

- 19.No development within any phase of the development hereby approved shall take place until details of all external lighting specifications for that phase have been submitted to and approved in writing by the Local Planning Authority. The details shall be accompanied by an Impact Assessment in order to show that there are no adverse impacts arising from any proposed light source or from the glow of light arising from each phase. The Assessment shall also include an analysis of the cumulative impact of lighting arising from the whole site. In particular the details shall avoid external lighting being installed on the northernmost elevations of the buildings to be erected in Zones A and B as defined by the Parameters Plan approved under Condition 5 above. The lighting shall be installed, operated and maintained at all times in accordance with the approved details.

REASON

In the interests of reducing the risk of adverse harm to the residential amenity of the local community.

Pre-Occupation Conditions

20. There shall be no occupation of any building hereby approved for business purposes within any phase of the development, until a Drainage Verification Report for the installed surface water drainage system as approved under Condition 17 within that phase, has been submitted to and approved in writing by the Local Planning Authority. It should include:

- a) Demonstration that any departures from the approved design are in keeping with the approved principles.
- b) As built photographs and drawings
- c) The results of any performance testing undertaken as part of the application process,
- d) Copies of all statutory approvals such as Land Drainage Consent for Discharge,
- e) Confirmation that the system is free from defects, damage and foreign objects.

The report should be prepared by a suitably qualified independent drainage engineer.

REASON

To ensure that the development is implemented as approved and thereby reducing the risk of flooding.

21. There shall be no occupation of any building hereby approved for business purposes within any phase of the development until a site-specific maintenance plan for the approved surface water drainage system including the pond as identified on the Green Infrastructure Plan approved under Condition 5, has first been submitted to and approved in writing by the Local Planning Authority. It shall include:

- a) The name of the party responsible, including contact names, address, email address and phone numbers.
- b) Plans showing the locations of features requiring maintenance and how these should be accessed and assessed.
- c) Details of how each feature is to be maintained and managed throughout the lifetime of the development,
- d) Provide details of how site vegetation will be maintained for the lifetime of the development.
- e) The procedures for reporting the monitoring undertaken on an annual basis or other period as may be agreed.
- f) Details of the any remedial measures to be undertaken in order to retain the functioning of the system and the pond, together with its outfall, in accordance with the details approved under Condition 14.

- g) Evidence through the submission of Verification reports that any measures undertaken under (f) above have been completed and that they have achieved the appropriate outcome.

REASON

To ensure that the maintenance of sustainable drainage structures so as to reduce the risk of flooding.

22. No phase of the development hereby permitted shall be occupied for business purposes until the roads serving that phase, including footways, means of accessing plots, car parking and manoeuvring areas have been laid out and substantially constructed in accordance with details first submitted to and approved in writing by the Local Planning Authority. Areas for the parking and manoeuvring of vehicles shall be retained for these purposes at all times thereafter.

REASON

In the interests of highway safety

Other Conditions

23. No works involving the disturbance of any surfacing of public footpath 200/T24/1 or proposals to resurface it shall commence until details of such works are first submitted to and approved in writing by the Local Planning Authority. Only the approved works shall then be implemented on site.

REASON

In the interests of maintaining unobstructed public access.

24. Any contamination that is found during the course of construction within any phase of the development hereby approved, that was not previously identified shall be reported immediately to the Local Planning Authority. Development within that phase shall be suspended and a risk assessment carried out and submitted to the Local Planning Authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to the Local Planning Authority. Work shall then only resume or continue on the development in that phase, in accordance with the schemes that have been approved in writing by the Local Planning Authority.

REASON

In the interests of reducing the risk of future pollution.

Informatives:

- a) The Local Planning Authority has met the requirements of the NPPF in the issue of a positive decision following full engagement with the applicant on a number of technical matters together with securing amendments and planning conditions so as to mitigate potentially adverse impacts.
- b) In respect of Condition 9 above - the term “specific sound” relates to the sound source being assessed. For the avoidance of doubt, the “specific sound source relating to this condition is from any individual unit within the proposed development including all sources of external and internal plant and equipment. The Laeq values represent the “specific sound level”. For the purposes of this planning condition, the “specific sound level” LAeq Tr is the equivalent continuous A-weighted sound pressure level produced by the specific sound source at the assessment location over a given reference time interval i.e. Tr = 1 hr for daytime and Tr = 15 minutes for night-time.
- c) Attention is drawn to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Local Planning Authority will pay particular attention to the potential impact of any proposed advertisement, particularly if illuminated, on the northern facing elevations of any building to be erected in any of the three Zones identified on the Parameters Plan. This is in order to protect the amenities of nearby residential property.
- d) Attention is drawn to the Borough Council’s Air Quality Planning Supplementary Planning Document and the applications for reserved matters should evidence how their proposals have addressed the matters raised therein.

General Development Applications

(5/a) Application No: PAP/2023/0188

Land at, Tamworth Road, Dosthill,

Outline planning application with full details of access (with matters reserved for landscape, scale, layout and appearance) for development comprising up to 23,000sqm (GEA) for flexible Use Class E(g)(ii), Eg(iii), B2 and/or B8 with associated car parking and works for

- Summix RLT Developments Ltd

1. Introduction

1.1 This major application will be reported for determination in due course, but at the present time this report provides an introductory description of the site and proposal, including a summary of the planning history of the site and the most important planning policies relevant to that determination.

1.2 Part of the application site lies within the administrative area of Tamworth Borough Council and thus an application has also been submitted to that Council.

2. The Site

2.1 This is an L-shaped site of 7.8 hectares between the Tamworth Road (the A51) to the west and Rush Lane to the east. To the north is a corridor of open land beyond which are the rear gardens of a residential estate being the southern edge of the built up area of Dosthill. To the south-west, with two common boundaries to the site, is a general industrial site comprising both buildings and a large open yard surrounded by palisade fencing and occupied by Hunnebeck. Beyond Rush Lane to the south -east of the site and lying between the site and the Birmingham-Derby railway line further to the east, is land that is partially occupied by Kingsbury Pallets – a Company that recycles wooden pallets – as well as open restored land. On the other side of the railway line – which is in cutting – are the premises of the Weinerberger Brickworks and an associated clay quarry. A Biffa landfill site is also in this general area to the east of the site and on the other side of the railway. To the south of the site is an access leading to a former mineral extraction and land fill site – known as Hockley No 2.

2.2 The site's highest point is along the A51 frontage and it drops towards its lowest point to the east in the vicinity of the Rush Lane bridge over the railway. The site also falls from the Rush Lane frontage to this lower level. There is a small difference in levels between the site and the open yard of the Hunnebeck premises, but there is a more marked drop immediately to the east of the A51. The site itself is reclaimed land that has a limited amount of natural regeneration and is generally level throughout. There is a hedgerow along its Rush Lane boundary.

2.3 The site includes an existing junction with the A51, including a closed off "spur" extending a few metres into the site. This has been constructed on a ramp or bund that reduces in height as it extends further to the east, almost to the site's eastern boundary. On the other side of this, is a north facing landscaped slope and the rear gardens of the residential premises referred to above. There is also a wooden fence closer to the A51, running at a higher level to the rear of other houses here.

2.4 There is open and naturally regenerated land containing open water in the north-east corner of the site which extends as a corridor of open land running north, but to east of the residential estate and west of the railway cutting.

2.5 A location plan is attached at Appendix A which illustrates this description

2.6 A plan illustrating the two Local Authority areas is at Appendix B and it can be seen that that part in Tamworth's area is the "corridor" of land referred to in paragraph 2.4 above.

3. Background

a) General Historic Background

3.1 The application site together with much of the now developed land as the residential estate, the industrial premises referred to above and the whole of the land between Rush Lane and the railway to the east, was formerly used for the extraction of clay for the manufacture of pipes and bricks. Two large brickworks and numerous brick kilns occupied the whole of this area. As clay was extracted, the brickworks and kilns were demolished with the resultant land being quarried for the final clay reserves. Accompanying these permissions was a Section 106 Agreement signed by both the Staffordshire and Warwickshire County Councils, obligating a corridor of land to be safeguarded for the construction of the southern section of a Dosthill By-Pass with a junction onto the A51. Following extraction, the land was backfilled and a further planning permission was granted by Warwickshire, as Minerals Planning Authority, for restoration following completion of the landfill operations.

3.2 The Weinerbeger brickworks continues to this day, but with clay now extracted from reserves further to the east.

3.3 As final extraction and landfill operations were completed west of the railway line, the present geography of the area came into being.

b) The Hunnebeck Premises

3.4 This site came into being in 1960 when permission was granted for the manufacture of concrete pipes. There were subsequent additions including the extension of the site to include the open yard seen today. It is now occupied by Hunnebeck who supply, pre-assemble, maintain and repair forming and shoring material for the construction and civil engineering sectors.

3.5 From a planning perspective, the Hunnebeck premises have a lawful and unrestricted B2 General Industrial use.

5a/2

c) The Residential Estate

3.6 The residential estate was granted permission in 1997. Its southern limit is defined by the safeguarded land referred to in paragraph 3.1.

d) Land East of Rush Lane

3.7 In 2005 an outline planning permission was granted for B1, B2 and B8 uses for the whole of the land east of Rush Lane and west of the railway cutting. This was extended in 2013. In 2019 a detailed permission was granted for the Kingsbury Pallets business – a B2 use – on the southern portion of this land. This has been implemented and the site is operational today. It is subject to planning conditions restricting working hours.

3.8 The land to the north – the remaining portion of the 2013 site - benefits from the 2005 industrial permission.

e) The Application Site

3.9 Following the restoration of the land, planning permissions have been granted over the period since 1997 up to 2010 for B1, B2 and B8 uses over the site. These include the construction of the access referred to in paragraph 3.1 above. This has been implemented in part – the “spur” referred to in paragraph 2.3.

3.10 The 1997 permission has been taken up through the construction of this “spur” and thus the lawful use of the application site is for industrial development.

3.11 In 2017 an outline planning application for the residential redevelopment of the application site with up to 185 houses was submitted. This was refused on the grounds that it would not be appropriate to agree to residential use within the industrial setting as described above, particularly with unrestricted neighbouring lawful B2 uses. An appeal was lodged, but this was withdrawn in early 2022.

4. The Proposals

4.1 This is an outline application for the commercial re-development of the site and in effect this repeats the permissions granted here since 1997 but brings them into line with the current Use Classes Order. The “E” Use Classes referred to are essentially the former B1 Use Class (office; research and development, and industrial uses which can be carried out in a residential area without causing detriment to the amenities of the area). The “flexibility” referred to in the description enables movement between the uses proposed without the need for further referral back to the Council for a period of ten years. The applicant says that this approach offers flexibility in the letting and market requirements for the units to be constructed here.

4.2 A Parameters Plan is submitted and is part of the application to be determined. This shows two developable areas – Zone A running along the majority of the northern boundary – with a maximum building height of 13.5 metres from finished floor level to ridge, and Zone B covering the remainder of the site with a maximum height of 18.5 metres. The Plan also includes a “Green Infrastructure” area running around the site and including the whole of the “corridor” of land referred to in paragraph 2.4 that falls with the Tamworth Borough Council area. Two illustrative layouts have been provided to show how the site might be laid out within these parameters.

4.3 Vehicular access into the site would be from an extension of the A51 utilising the “spur” mentioned above, with no access off Rush Lane.

4.4 The public right of way that crosses the north-eastern corner of the site would not be affected.

4.5 The Parameters Plan is attached at Appendix C, with the two illustrative layouts at Appendices D and E. A Green Infrastructure Plan is at Appendix F.

4.6 The application is accompanied by a significant amount of documentation.

4.7 A Transport Assessment concludes that the existing access junction arrangement onto the A51 remains suitable for accommodating the proposed development and thus no off-site highway improvements are recommended. The Assessment identifies the cycling and pedestrian infrastructure with a shared footway/cycleway running along the east side of the A51 into Dosthill. The bus stops on that road alongside the site are also mentioned. A Travel Plan has also been submitted which sets out proposals to encourage the use of public and shared transport as well as appropriate cycle and pedestrian links – e.g., secure cycle storage on site, pedestrian/cycle links through the site and setting up a car share scheme.

4.8 A Noise Impact Assessment describes work done to assess the existing ambient noise levels over a range of different measures. It then looks at both noise generated from the proposal as well as from the access road. In respect of the former then, the Assessment concludes that noise generated by the development should be controlled through the design of the site layout and through planning conditions, there being no significant impact in principle. In terms of the noise generated from use of the access road, the Assessment concludes that this would not have a materially greater impact over the existing traffic noise arising from the A51. A Construction Management Plan should be conditioned in the event of a permission being granted.

4.9 An Air Quality Assessment concludes that with appropriate mitigation measures in place the effect of dust and particulate matter during the construction period would constitute a low risk, but that once operational there would be no significant impact based on national assessment criteria.

4.10 A Landscape and Visual Impact Assessment notes that the site is not subject to any statutory or non-statutory landscape designation. The Assessment concludes that the baseline character of the setting will be completely altered as a consequence of the proposal with an impact, but that within the wider context of the significant industrial and commercial development on the edge of a suburban area, the magnitude of that impact would be low. Implementation of the proposed landscaping and green infrastructure will help mitigate this further. In terms of the visual impact, then the Assessment says that the site is “contained”, given the setting and with the proposed parameters plan respecting the fall in levels across the site, the visual impact would be limited, however particular care should be taken in ensuring sufficient landscaping along the northern frontage so as to reduce the impact of the development from first floor windows in the nearby residential estate.

4.11 A Preliminary Ecological Appraisal describes a number of habitats over the site – dense rose and bramble scrub, semi-improved and marshy grass land, a number of trees and a large on-site pond supporting a reed bed with other ephemeral ponds. However, the site as a whole is largely homogenous and lacking the heterogeneity required to create the complex network of transitional habitats which are considered to be ecologically valuable. The proposed retention of the trees along the southern boundary and sensitive enhancements around the setting of the pond are considered to be beneficial to bio-diversity gain. Any enhancements to strengthen and support green corridors would add value to the overall site. In terms of the fauna then there was no evidence found of reptiles, bats, badgers, otters or water voles. The pond was found to have potential for great crested newts. There are two Sites of Special Scientific Interest within two kilometres of the site – Kingsbury Brickworks and Kingsbury Wood - but because of the geological designation of the first and the separation distance from the second, no adverse impacts on the SSSI's are identified. There are several non-statutory Wildlife and Potential Wildlife Sites within a kilometre of the site, but there is unlikely to be any adverse impact on these, provided protection and precautionary measures are included during the construction phases. The drainage measures to be implemented should also not change the existing hydrological regimes or the water quality.

4.12 An Arboricultural Assessment identifies no ancient or veteran trees on the site and that tree cover is limited to low quality groups along the eastern and southern boundaries, but with trees of moderate quality towards the northern and north-eastern boundaries – particularly in the east of the residential estate. These trees would be retained in the proposed green infrastructure area shown on the Parameters Plan. New tree and hedgerow planting along the site boundaries will help with bio-diversity gain and to visually screen the site from Rush Lane.

4.13 A Heritage Assessment concludes that as the site has been the subject of substantial extraction and infilling as well as having the original buildings all demolished there is no longer any underground heritage interest. There is considered to be no harm to Listed Buildings or the Conservation Area in Dosthill – around 400 metres to the north-west of the site - because of intervening built development.

4.14 A Flood Risk and Drainage Assessment identifies the site as falling within Flood Zone One, the one most suitable for new development – particularly as the proposed use is one of the less vulnerable “end users”. All other flooding risks are considered to be low, particularly if Sustainable Surface Water drainage systems are introduced. These should be split into several features which would eventually discharge into the pond in the north-east of the site and the wider open watercourse network – the naturally lowest point on the site. These too will have the benefit of removing the existing surface water collections in the lower parts of the site. There is a public foul water sewer in the north-east corner of the site flowing to the north-east. Underground gravity connections will be made to this, unless the levels require a pumping system.

4.15 A Lighting Assessment says that at this outline stage in the process, there are no details that can be assessed. It does however identify the location as being in the “suburban” zone of national guidance. That is “well inhabited rural and urban settlements, small town centres of suburban locations”. The design at detailed stage would thus respect the maximum lighting levels for the Zone. Within the development too, there would be a variety of areas with different levels of lighting – e.g., loading areas and perimeter lighting. The two illustrative layouts both show the areas that need to have higher levels of lighting at the rear of buildings away from the residential area to the north.

4.16 An Energy Statement confirms that the development will need to conform to the new Building Regulations being introduced in respect of energy efficient design and generation of energy from renewable sources. The Statement confirms that Air Source Heat Pumps and Solar Photovoltaic Panels would be appropriate for the development.

4.17 A Preliminary Ground Conditions and Coal Mining Risk Assessment describes the history of the site in some detail concluding with its infilling and capping in 1999. It says that the site is considered to be of low to moderate environmental sensitivity given the aquifers below the site and the absence of a source protection zone or potable water supply abstractions within the surrounding area and the historic landfilling of the site and the wider area. In terms of potential contamination then ground gas mitigation measures are recommended retaining the existing venting arrangements, together with measures to remediate marginal concentrations of metals and hydrocarbons. There is a low risk from historic mining activity.

4.18 The Applicant has provided a summary of the socio-economic benefits which he sees arising. These are an estimated 288 temporary jobs during the construction phase with financial benefits to the local construction businesses during the 18 month build out timeframe and between some 300 and 600 FTE jobs on site, once the development is operational depending on the occupiers.

4.19 Statement of Community Involvement describes the applicant’s pre-application consultation work. He refers to a dedicated consultation website and that over 600 leaflets were distributed to local residents and businesses. Local Councillors, the MP’s and Parish Council were also contacted. There have been 45 responses which highlighted the main issues as being traffic and highways, noise and the impact on wildlife.

4.20 Planning Statement draws all of these documents together and puts forward the applicant's case and his assessment of the proposal against the relevant planning policies of the Development Plan

5. Development Plan

The North Warwickshire Local Plan 2021 – LP1(Sustainable Development); LP2 (Settlement Hierarchy), LP5 (Amount of Development), LP14 (Landscape), LP15 (Historic Environment), LP16 (Natural Environment), LP17 (Green Infrastructure), LP27 (Walking and Cycling), LP29 (Development Considerations), LP30 (Built Form), LP33 (Water Management), LP34 (Parking) and LP35 (Renewable Energy)

6. Other Material Planning Considerations

The National Planning Policy Framework – (the “NPPF”)

The Tamworth Borough Council Local Plan 2006 – 2031: Policies SC2 (Presumption in favour of Sustainable Development); EC7 (Strategic Employment Areas), EN1 (Landscape Character), EN3 (Open Space and Green and Blue Links), EN4 (Protecting and Enhancing Biodiversity), EN5 (Design of New Development), SU1 (Sustainable Transport Network), SU2 (Delivering Sustainable Transport), SU3 (Climate Change Mitigation), SU4 (Flood Risk and Water Management) and SU5 (Pollution, Ground Conditions, Minerals and Soils)

Emerging Tamworth Local Plan – Issues and Options 2022

The North Warwickshire Landscape Character Assessment 2010

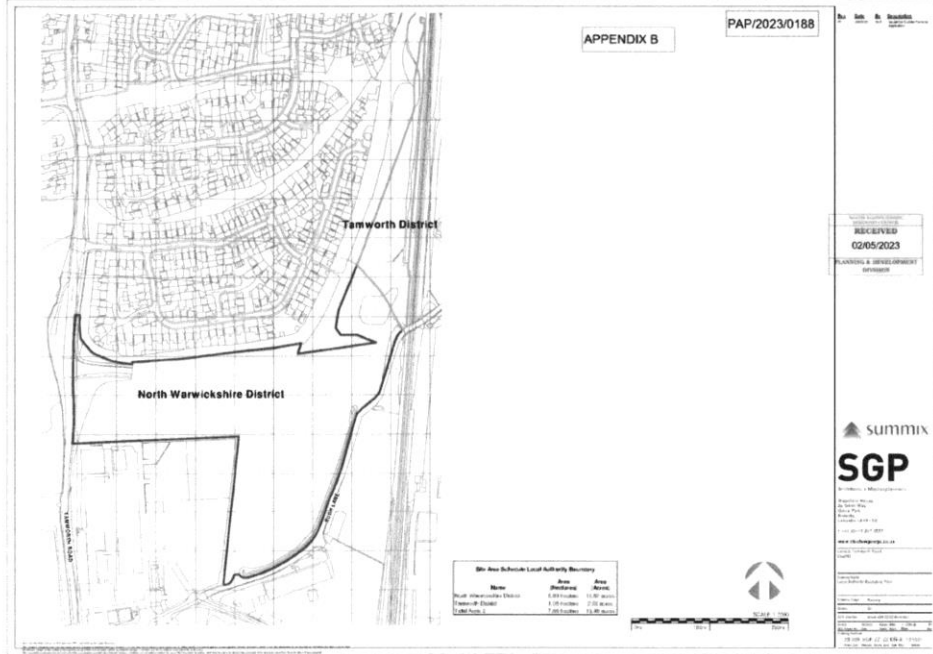
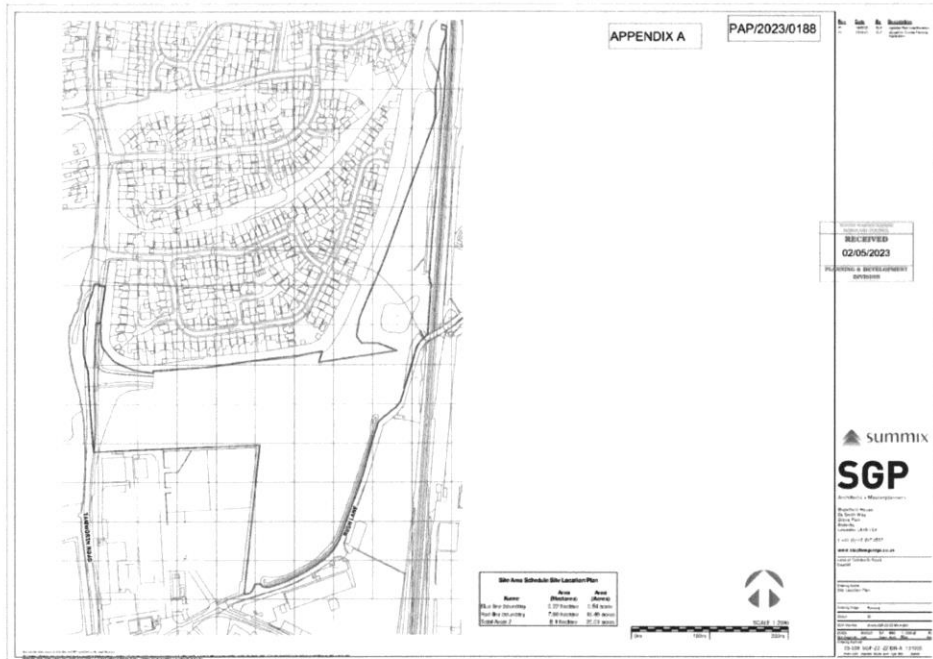
7. Observations

7.1 The Board will have noticed that there are material planning considerations here which suggest that there may be no objection in principle to this proposal. The Board will need to satisfy itself that any impacts arising from the proposal do not cause demonstrable harm either individually or cumulatively. The main ones to consider are the visual impacts together with potential issues arising from the traffic generated by the proposal as well as from noise, given that this was the main focus of attention with the last application. The Board will also need to be satisfied that there is bio-diversity nett gain arising from the development.

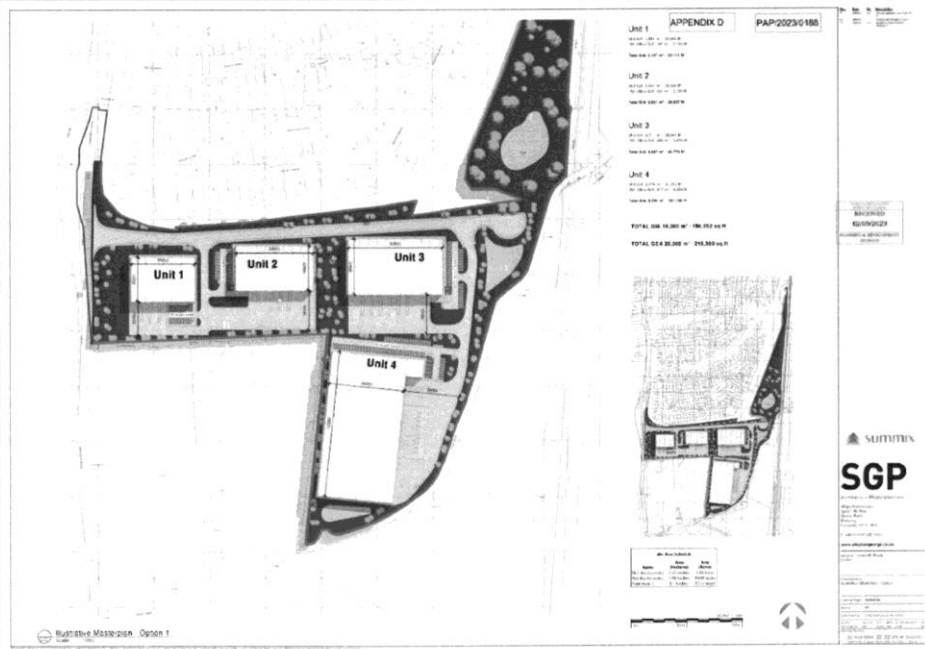
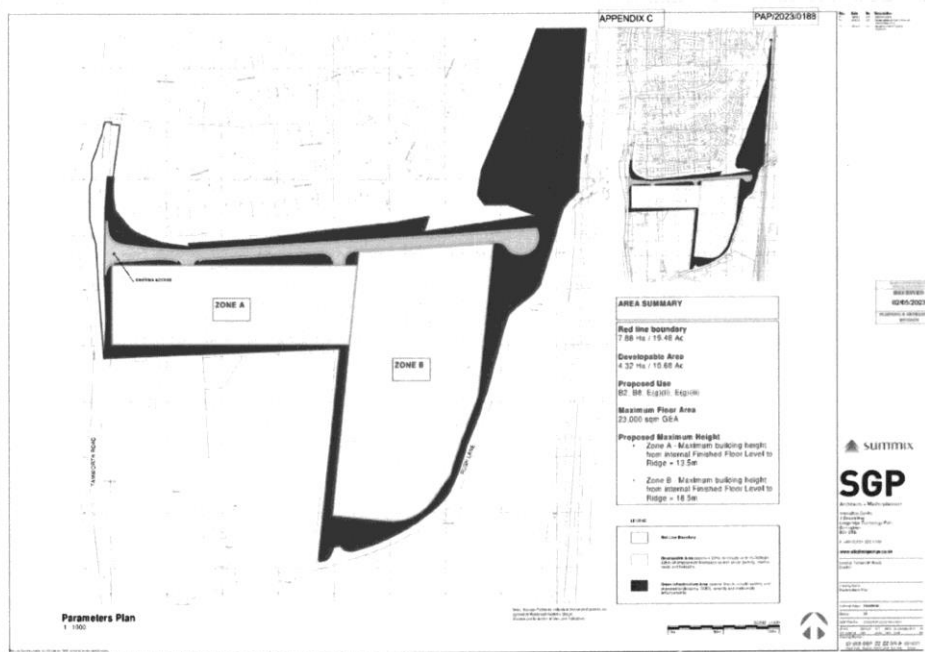
7.2 The determination report will outline the consultation responses in order to assist in the Board's consideration of these potential impacts, so as to verify or not the conclusions from the applicant's documentation.

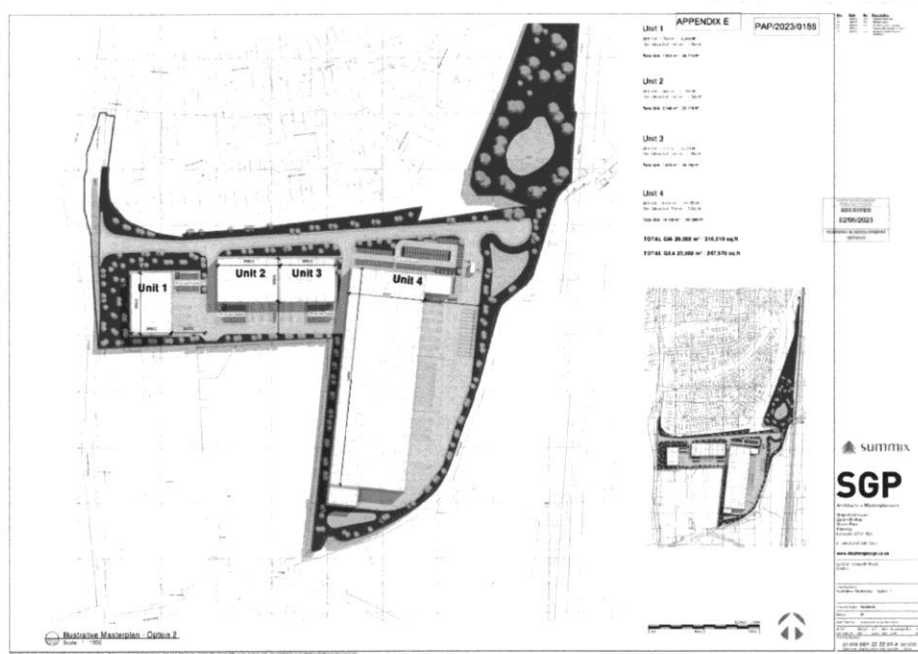
Recommendation

That the receipt of the application be noted.



5a/8

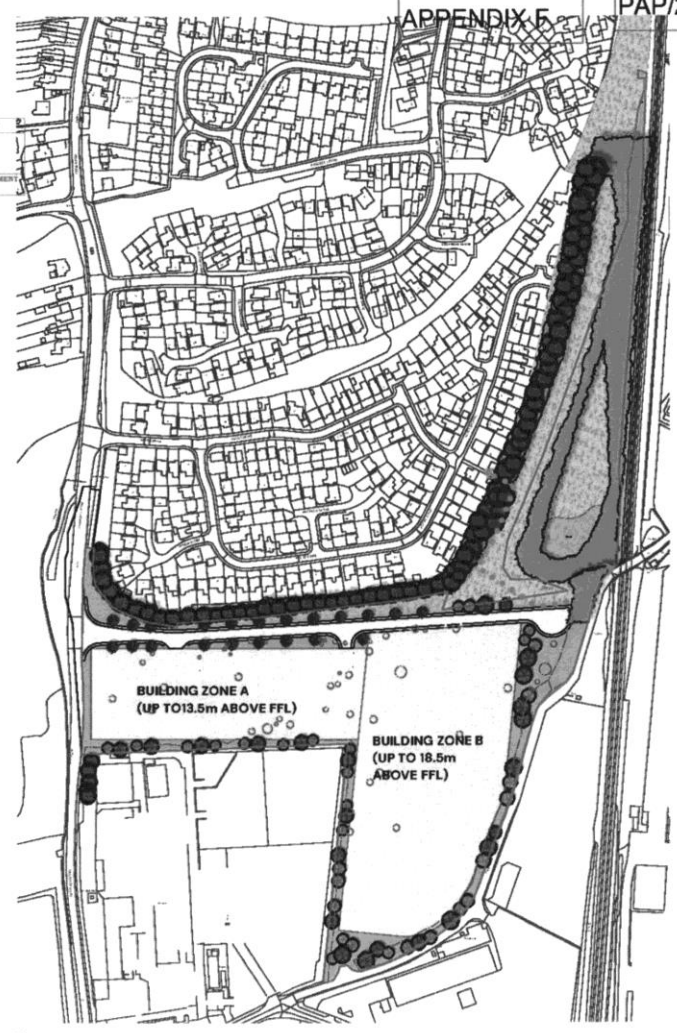













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- Key**
-  Site Boundary
 -  Existing 9m tree belt retained (Based on FPCR's Arboricultural Assessment dated April 2023)
 -  Existing mixed native tree and scrub planting retained (Based on FPCR's Arboricultural Assessment dated April 2023)
 -  Existing tree/group proposed to be removed (Based on FPCR's Arboricultural Assessment dated April 2023)
 -  Existing grassland retained
 -  Existing pond and associated habitat retained
 -  Proposed tree lined avenue with understory planting
 -  Proposed landscape 'edges' with tree, hedgerow and understory planting
 -  Existing public footpath retained with localised surfacing improvement

Land at Tamworth Road, Dosthill, Tamworth - Figure 7: Green Infrastructure Plan



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PAP/2023/0188

Rush Lane, Dosthill

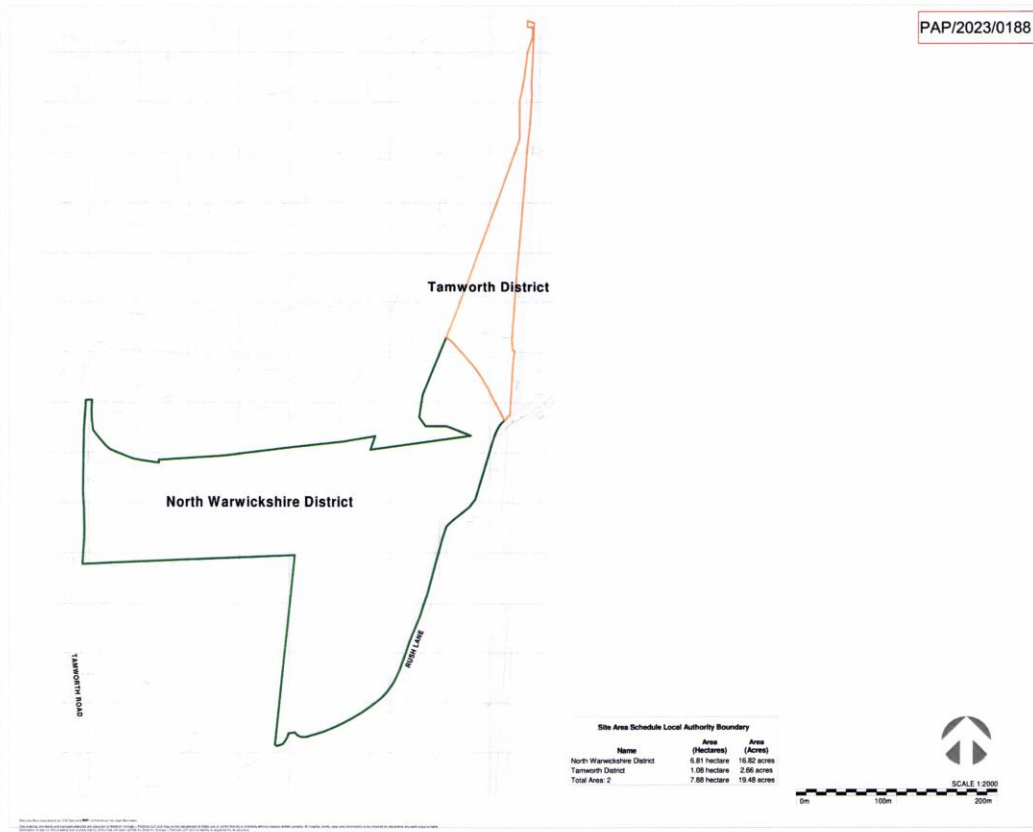
Site Visit – 22nd July 2023 at 1100

Present: Cllrs Fowler, Gosling, Philips, Ridley and Simpson together with J Brown

1. Members met on the A51 where the current "spur" road runs to the east across the northern part of the site.
2. They were shown plans of the extent of the site and illustrative layouts.
3. From here Members saw the A51, the raised level of the spur road, the Hunnebeck building and the brickworks on the other side of Rush Lane. In particular they noted the changes in levels sloping away from the A51 towards the east and the change between the spur road and the Hunnebeck premises.
4. The line of the residential properties in Ascot Drive immediately to the north was pointed out as well as the tree cover between them and the line of the spur.
5. Members then walked eastwards into the site stopping at the end of the Hunnebeck yard. There they saw the extent of that yard, the storage of materials in the yard and the lighting columns around its perimeter. The levels of the larger site and those of Ascot Drive were again noted.
6. The buildings of the brickworks and Kingsbury Pallets were pointed out.
7. Members then walked down to the eastern edge of the site where they saw the open land that lies between the railway line and the edge of the residential development which is within the Tamworth Borough Council area.
8. Whilst here they looked at the existing ponds here as well as across the site to the Kingsbury Pallets building and the A51 to the west.
9. The ground levels were again noted.
10. Members then made their way back to the A51.
11. The visit concluded at around 1140.

APPENDIX C

PAP/2023/0188



Site Area Schedule Local Authority Boundary

Name	Area (hectares)	Area (Acres)
North Warwickshire District	6.81 hectare	16.82 acres
Tamworth District	1.08 hectare	2.66 acres
Total Area 2	7.89 hectare	19.48 acres

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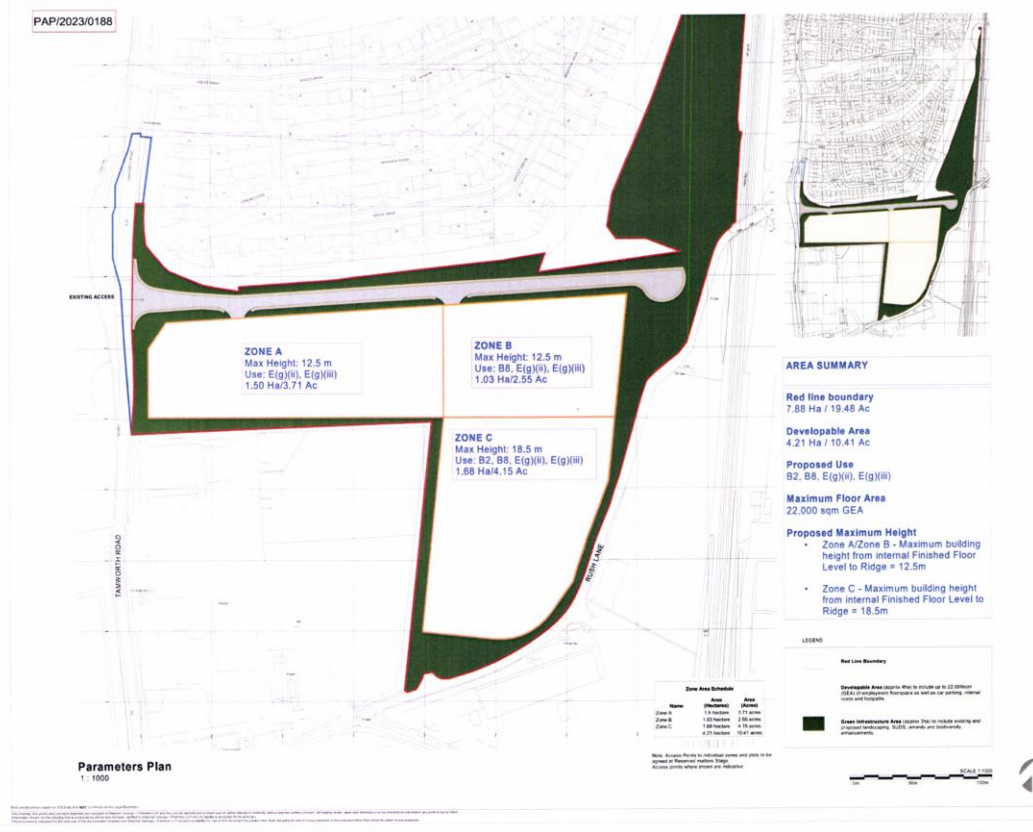
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Land at Tamworth Road, Derby

Project Name: Planning
Date: 15/05/2024
SGP Ref No: 23-008-SGP-22-22-08-A-131021
Scale: 1:1000
Drawing No: 23-008-SGP-22-22-08-A-131021

APPENDIX D

PAP/2023/0188



ZONE A
Max Height: 12.5 m
Use: E(g)(ii), E(g)(iii)
1.50 Ha/3.71 Ac

ZONE B
Max Height: 12.5 m
Use: B8, E(g)(ii), E(g)(iii)
1.03 Ha/2.55 Ac

ZONE C
Max Height: 18.5 m
Use: B2, B8, E(g)(ii), E(g)(iii)
1.88 Ha/4.15 Ac

AREA SUMMARY

Red line boundary
7.88 Ha / 19.48 Ac

Developable Area
4.21 Ha / 10.41 Ac

Proposed Use
B2, B8, E(g)(ii), E(g)(iii)

Maximum Floor Area
22,000 sqm GEA

Proposed Maximum Height

- Zone A/Zone B - Maximum building height from internal Finished Floor Level to Ridge = 12.5m
- Zone C - Maximum building height from internal Finished Floor Level to Ridge = 18.5m

Zone Area Schedule

Name	Area (hectares)	Area (Acres)
Zone A	1.50 hectare	3.71 acres
Zone B	1.03 hectare	2.55 acres
Zone C	1.88 hectare	4.15 acres
Total	4.41 hectare	10.41 acres

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Land at Tamworth Road, Derby

Project Name: Planning
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Key

- | | |
|--|--|
|  Site Boundary |  Existing pond and associated habitat retained |
|  Existing 9m tree belt retained
(Based on FPCR's Arboricultural Assessment dated April 2023) |  Proposed tree lined avenue with understorey planting |
|  Existing mixed native tree and scrub planting retained
(Based on FPCR's Arboricultural Assessment dated April 2023) |  Proposed landscape 'edges' with tree, hedgerow and understorey planting |
|  Existing tree/group proposed to be removed
(Based on FPCR's Arboricultural Assessment dated April 2023) |  Existing public footpath retained with localised surfacing improvement |
|  Existing grassland retained |  Proposed open detention basin (based on HWA's Outline Flood Risk Assessment & SUDs Strategy V02) |

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Land at Tamworth Road, Dosthill, Tamworth - Figure 7: Green Infrastructure Plan



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APPENDIX F



PAP/2023/0188

Unit	Unit GDA	Unit GEA	Total GDA	Total GEA
Unit 1	100 GDA: 1,857 m ² / 20,000 sq ft 150 Office GDA: 167 m ² / 1,804 sq ft Total GDA: 2,024 m ² / 21,804 sq ft			
Unit 2	100 GDA: 2,466 m ² / 26,500 sq ft 150 Office GDA: 207 m ² / 2,237 sq ft Total GDA: 2,673 m ² / 28,737 sq ft			
Unit 3	100 GDA: 3,717 m ² / 39,948 sq ft 150 Office GDA: 359 m ² / 3,856 sq ft Total GDA: 4,076 m ² / 43,804 sq ft			
Unit 4	100 GDA: 6,476 m ² / 69,923 sq ft 150 Office GDA: 517 m ² / 5,553 sq ft Total GDA: 6,993 m ² / 75,476 sq ft			
TOTAL GDA		18,369 m² / 198,352 sq ft		
TOTAL GEA		20,500 m² / 219,300 sq ft		



Site Area Schedule	Area
Name	Area
Site Area Schedule	Area
Total Area	20.500 sqm

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Illustrative Masterplan - Option 1
Scale: 1:1000

APPENDIX G



PAP/2023/0188

Unit	Unit GDA	Unit GEA	Total GDA	Total GEA
Unit 1	100 GDA: 1,789 m ² / 19,163 sq ft 150 Office GDA: 164 m ² / 1,758 sq ft Total GDA: 1,953 m ² / 20,921 sq ft			
Unit 2	100 GDA: 3,067 m ² / 33,081 sq ft 150 Office GDA: 164 m ² / 1,758 sq ft Total GDA: 3,231 m ² / 34,839 sq ft			
Unit 3	100 GDA: 3,712 m ² / 39,921 sq ft 150 Office GDA: 364 m ² / 3,918 sq ft Total GDA: 4,076 m ² / 43,839 sq ft			
Unit 4	100 GDA: 16,025 m ² / 172,452 sq ft 150 Office GDA: 718 m ² / 7,733 sq ft Total GDA: 16,743 m ² / 180,185 sq ft			
TOTAL GDA		20,988 m² / 225,810 sq ft		
TOTAL GEA		23,000 m² / 245,370 sq ft		

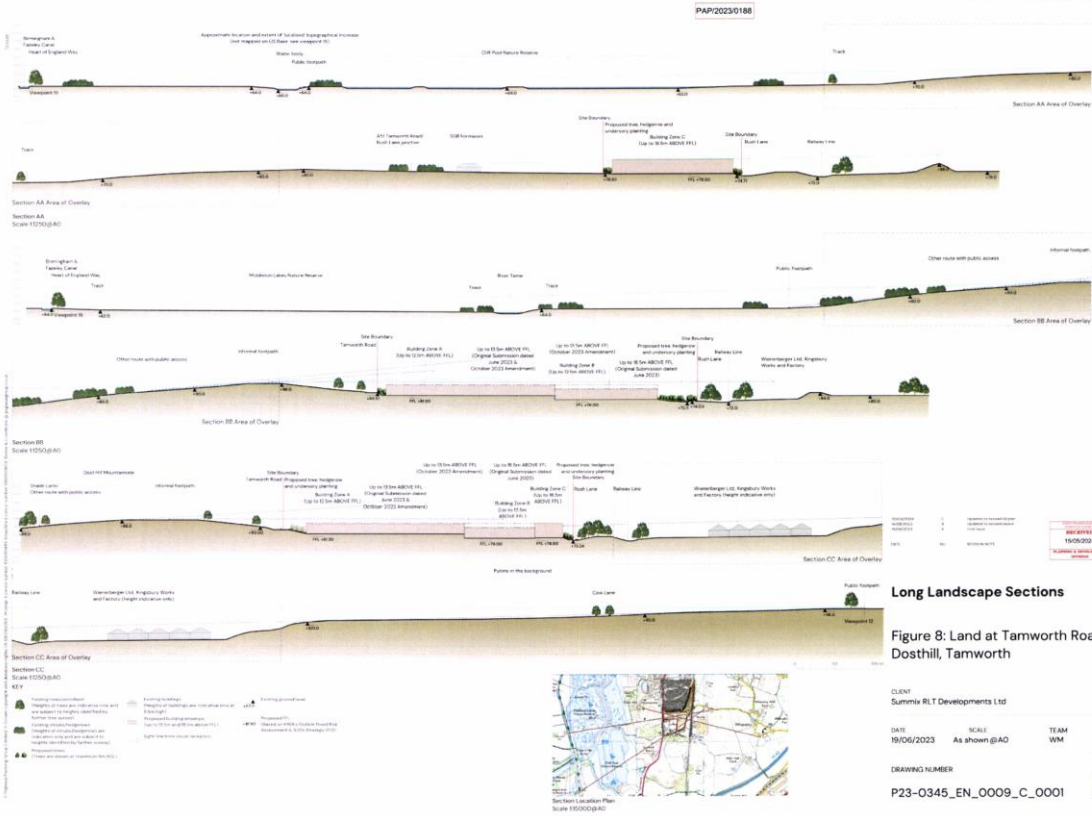


Site Area Schedule	Area
Name	Area
Site Area Schedule	Area
Total Area	23.000 sqm

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www.sgpplanning.co.uk
Lead of Technical Road
Division

Illustrative Masterplan - Option 2
Scale: 1:1000



Land at Tamworth Road Dosthill

4.1. Viewpoint 4 - Baseline (Viewing Distance 30cm - This is the distance from eye to paper to gain a true representation of the image)



4.2. Viewpoint 4 - Proposed view at year 1 (Viewing Distance 30cm - This is the distance from eye to paper to gain a true representation of the image)

----- Unit 3 @ 12.5m



4.3. Viewpoint 4 - Proposed view at year 7 (Viewing Distance 30cm - This is the distance from eye to paper to gain a true representation of the image)

----- Unit 3 @ 12.5m



4.4. Viewpoint 4 - Proposed view of year 15 (Viewing Distance 30cm - This is the distance from eye to paper to gain a true representation of the image)

----- Unit 3 @ 12.5m



APPENDIX J

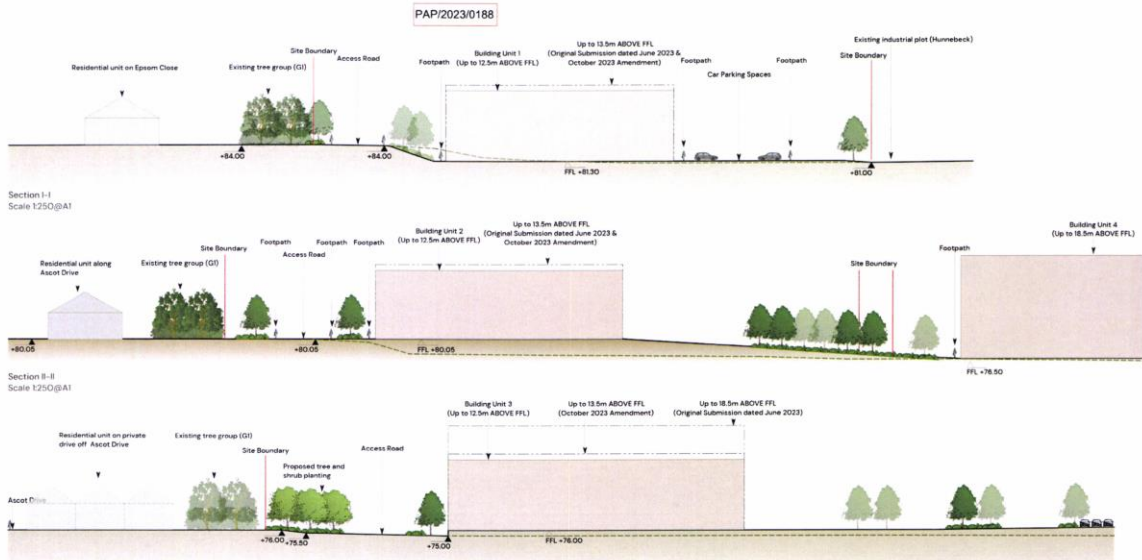


Figure 9: Illustrative Landscape Sections
Land at Tamworth Road, Dosthill, Tamworth

15/05/2024
PLANNING & DEVELOPMENT
EXTENSION

000602004	8	Updated to CP plan
000602021	4	Final Issue
DATE:	NO.	REVISION NOTE

CL:RMT
Summit RLT Developments Ltd

DATE:	SCALE:	TEAM:	APPROV:
2023.08.01	1:250@A1	WM/SL	JEP

DRAWING NUMBER
P23-0345_EN_0010_B_0001

PEGASUS GROUP

KEY

- Existing trees/ tree groups (heights of trees based on FPOR) Arboricultural Assessment dated April 2023)
- Proposed trees (Trees are shown at maximum 8m AGE)
- Existing buildings (heights of buildings are indicative only at 8m high)
- Existing ground line
- Proposed building envelope (see to 13.5m and 18.5m above FFL)
- Existing ground level
- Proposed ground line
- Proposed FFL (Based on W03 & 3/2024 Flood Risk Assessment & SUDS Strategy V02)

Section Location Plan
Scale 1:5000@A1

2010/0292



The Council is a member of the Strategic Planning Committee. It is a statutory requirement that the Council should have regard to the Strategic Planning Committee's recommendations in relation to the proposed development. The Council is required to have regard to the Strategic Planning Committee's recommendations in relation to the proposed development. The Council is required to have regard to the Strategic Planning Committee's recommendations in relation to the proposed development.

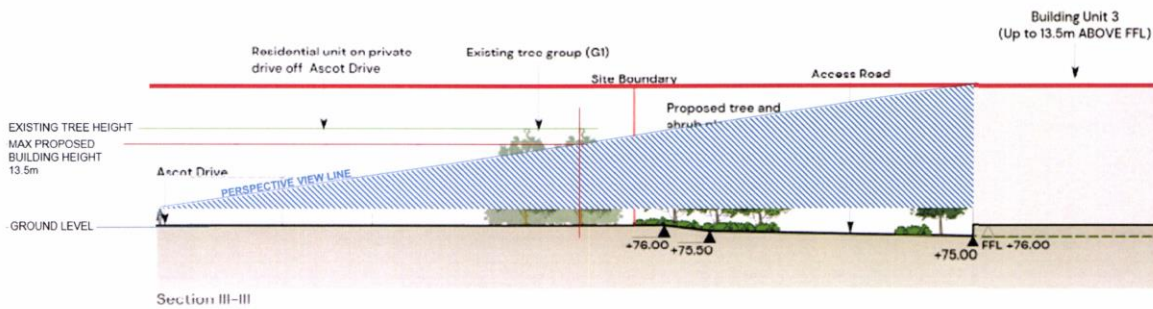
Accommodation Schedule

- Offices
16,100 sqft (1496sqm) gross
 - B1/B2 High Tech units
40,000 sqft (3716sqm) gross
 - B2 Small Industrial
22,750 sqft (2114sqm) gross
 - B2/B8 Distribution/Industrial
100,000 sqft (9,290sqm) including 10% offices
- Total Gross Building Area For Development: 178,850 sqft (16,616m²)
- 50 co. Sheltered Cycle Hoops
- Total Car Parking Spaces For Development: 273 Spaces

NORTH WARWICKSHIRE
BOROUGH COUNCIL
RECEIVED
10-Jun-10
PLANNING & DEVELOPMENT
DIVISION

Site Layout Plan - Planning Drawing
Savills
Development
Industrial and Offices
AS1: Bath Lane
Dosthill nr Tamworth
Site Layout Plan
webbgray
1:1000 Jan 2008 004 JAC/DMF
75/3 1002

Perspective View Visual Impact @ eyelevel from Ascot Drive



View of Proposed 13.5m Unit 3 Building before 'Proposed Tree and Shrub plantation'



View of Proposed 13.5m Unit 3 Building showing approximated 'Proposed Tree and Shrub plantation'



2009

(Build +6yrs)



2010

(Build +7yrs)



2012

(Build +9yrs)



2019

(Build +16yrs)



2023

(Build +20yrs)



Image source: Google Streetview

Agenda Item No 6

Planning and Development Board

5 August 2024

**Report of the
Head of Development Control**

**Hall Farm, Farthing Lane,
Curdworth**

1 Summary

- 1.1 The report outlines the background to the making of an Emergency Tree Preservation Order in respect of a Willow tree at Hall Farm in Curdworth.

Recommendation to the Board

That the Board confirms action taken under the Chief Executive's Emergency Powers to make a Tree Preservation Order in respect of a Willow tree at Hall Farm, Farthing Lane, Curdworth.

2 Background

- 2.1 Officers became aware of works being undertaken to create a new access onto Farthing Lane in Curdworth. Further investigation revealed that this was to create a new route into a car parking area. That route over-ran the roots of a willow tree and indications were given to officers that the tree would be removed.

- 2.2 As the tree was considered to be "under threat" and given the appearance of the tree in the neighbourhood, Officers requested that an urgent assessment be undertaken by Warwickshire Tree Officers to evaluate the potential for the tree to be protected by an Order. Appropriate officers visited the tree and reported back to the Council that the tree was worthy of an Order.

- 2.3 A location Plan is at Appendix A and photographs of the tree and the works are at Appendix B with the Tree Assessment is at Appendix C.

3 Action Taken

- 3.1 Members will be aware that a Tree Preservation Order is made if it appears to a Local Planning Authority that it is "in the interests of amenity" to do so. Here the tree is visible to the public at large and is sited in one of the oldest parts of the village. There are trees in the vicinity including other willow trees and a Weeping Ash. The tree adds to the character and appearance of the area. The Assessment confirms that the tree, although in poor condition, has longevity and that it is clearly visible with a habitat importance. It is in these circumstances that an Order was agreed.

- 3.2 In light of the immediate threat to the tree, the Chairman was consulted and with his support, the Chief Executive was asked to use his emergency powers.
- 3.3 The Order was duly made and served with copies being displayed on site and handed to the owners of the land.
- 3.4 The purpose of the report is thus to ask the Board to confirm the action taken in the making of the Order.

4 Next Steps

- 4.1 Once the Order is served, the people who have an interest in the land are invited to submit representations and these will then be referred to the Board in due course. After considering any representations received, the Board can confirm the Order or not.

5 Report Implications

5.1 Financial and Value for Money Implications

- 5.1.1 There are no implications in making the Order, but if confirmed, then there may be implications, in that compensation may be payable, if Consent is refused for works to a protected tree.

5.2 Legal and Human rights Implications

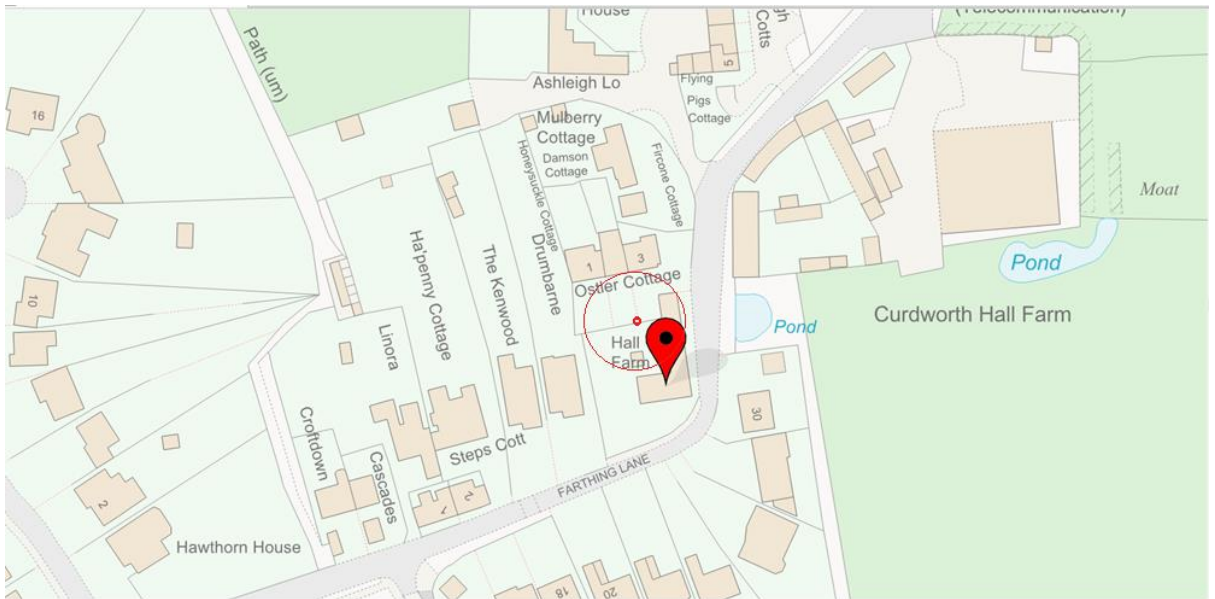
- 5.2.1 The relevant legislation requires the Council to serve notice on landowners and others affected by the Tree Preservation Order that the Order has been made and that they may object to the Order. A minimum period of 28 days must be allowed for them to do so. Objections may be made on any grounds and when deciding whether or not to confirm the Order, the Council must consider any properly made objection. The Council may confirm the Order at any time within six months of the date on which it is made and when doing so, may modify its provisions (but may not extend it to include additional trees).

5.3 Environment and Sustainability Implications

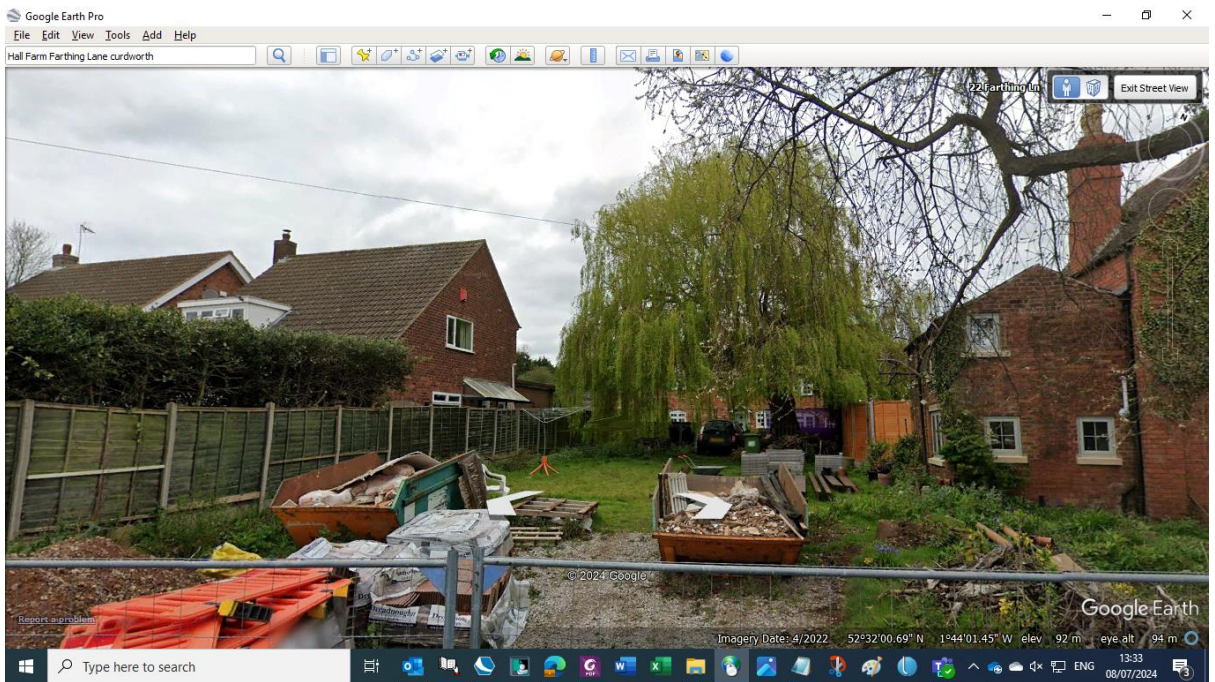
The tree to be protected exhibits amenity value for both the present and future amenity of the area given its species, appearance and prominence in the street scene. The protection of trees where appropriate, accords with the Council's Development Plan in seeking to protect and retain the rural character of the Borough.

The Contact Officer for this report is Jeff Brown (719310).

Appendix A



Appendix B



TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 11/07/2024 Surveyor: Matthew Alford

Tree details

TPO Ref (if applicable):

Tree/Group No: 2LYD Species: Willow

Owner (if known):

Location: Hall Farm, Farthing Lane, Curdworth B76 9HE

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS**Part 1: Amenity assessment****a) Condition & suitability for TPO**

- | | |
|--------------------------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair/satisfactory | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead/dying/dangerous* | Unsuitable |

Score & Notes

3

* Relates to existing context and is intended to apply to severe irremediable defects only

b) Retention span (in years) & suitability for TPO

- | | |
|-----------|-----------------|
| 5) 100+ | Highly suitable |
| 4) 40-100 | Very suitable |
| 2) 20-40 | Suitable |
| 1) 10-20 | Just suitable |
| 0) <10* | Unsuitable |

Score & Notes

4

* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality**c) Relative public visibility & suitability for TPO**

Consider realistic potential for future visibility with changed land use

- | | |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public | Suitable |
| 3) Medium trees, or large trees with limited view only | Suitable |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable |
| 1) Trees not visible to the public, regardless of size | Probably unsuitable |

Score & Notes

4

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- | | |
|--|--------------------------|
| 5) Principal components of formal arboricultural features, or veteran trees | Score & Notes |
| 4) Tree groups, or principal members of groups important for their cohesion | |
| 3) Trees with identifiable historic, commemorative or habitat importance | |
| 2) Trees of particularly good form, especially if rare or unusual | |
| 1) Trees with none of the above additional redeeming features (inc. those of indifferent form) | |
| -1) Trees with poor form or which are generally unsuitable for their location | |

3

Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

- | | |
|---|--------------------------|
| 5) Immediate threat to tree inc. s.211 Notice | Score & Notes |
| 3) Foreseeable threat to tree | |
| 2) Perceived threat to tree | |
| 1) Precautionary only | |

5

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-6 | TPO indefensible |
| 7-11 | Does not merit TPO |
| 12-15 | TPO defensible |
| 16+ | Definitely merits TPO |

Add Scores for Total:

19

Decision:

Yes TPO

Agenda Item No 7

Planning and Development Board

5 August 2024

**Report of the
Head of Development Control**

Appeal Updates

1 Summary

1.1 The report updates Members on a recent appeal decisions.

<p>Recommendation to the Board</p> <p>That the report be noted.</p>

2 Appeal Decisions

a) 23 Tamworth Road, Polesworth

2.1 This case dealt with the erection of a new house within an existing garden to number 23. Although the site was within the development boundary for Polesworth, the Inspector agreed with officers that the new building would not be in-keeping with the character of this particular part of the settlement. It would thus not satisfy the requirements of Local Plan policy LP30.

...

2.2 The appeal letter is at Appendix A

b) West of Higham Lane, Nuneaton

2.3 This case was for 650 houses off Higham Lane in Nuneaton, but a very small corridor of the site was in North Warwickshire. No development was proposed on this piece of land but as it was included in the site, the Council was a party for the appeal. We did not determine our application. The Inspector dismissed the appeals.

2.4 The main interest from this Council's point of view was that an approval here on an un-allocated housing site would take-up capacity on the A5, thus prejudicing the delivery of allocated housing sites in North Warwickshire. National Highways did not maintain its original objection and thus the Inspector had no material evidence before him to demonstrate that the proposal would compromise the operation of the A5. This is frustrating from North Warwickshire's perspective, as it does not resolve the on-going concerns about the A5.

2.5 In respect of the local road network, the Inspector concluded that without significant off-site highway works in Nuneaton, existing junctions would become significantly congested but that there was no certainty over the delivery of the funding for these works. In the absence of these improvements, there would be severe residual cumulative impacts contrary to the NPPF. This counted against the appeal being allowed.

2.6 There were also Local Plan conflicts notwithstanding that Nuneaton and Bedworth Borough Council was found not to have a five-year housing land supply.

... 2.7 The decision letter is at Appendix B.

c) Weddington Road, Nuneaton

2.8 Although this site is not in North Warwickshire, it adjoins our boundary with Nuneaton and Bedworth - being between the built-up area of Nuneaton and Caldecote. The Inspector found that the site was not suitable because of the lack of alternative pedestrian, cycle and bus linkages and connections to the existing built-up area of Weddington; that the highway impacts would not be severe, that the development fails to recognise the intrinsic character of the countryside hereabouts, and that it would cause less than substantial harm to the Caldecote Conservation Area. Notwithstanding his finding that the Council did not have a five-year housing land supply he concluded that the cumulative level of harms was of such weight to dismiss the appeal.

2.9 The decision letter is not attached as the site is not within North Warwickshire. Copies can be made available if requested.

d) Austrey

2.9 This case involved the erection of two houses on the corner of Warton Lane with Bishop's Cleeve on the edge of the village. The Inspector found that the site added to the rural character of this part of the village and that its development would also harm the setting of nearby heritage assets. Moreover, the addition of two houses - even marked out as for self-build - was not sufficient reason to overcome the harms caused to those assets or the loss of the rural distinctiveness of this part of Austrey.

... 2.10 The decision letter is at Appendix C.

e) Caldecote

2.11 This case dealt with a large extension to a residential property which has been the subject of previous applications and Board reports. The Inspector concluded that the latest amendments - effectively reducing the roof height of the extension - would not give rise to an unacceptable level of harm to the residential amenities of the neighbouring property.

... 2.12 The decision letter is at Appendix D.

3 Report Implications

3.1 Environment, Sustainability and Human Health

- 3.1.1 The Polesworth and Austrey decisions support the Council's policy of ensuring that new development is appropriately designed for its setting.
- 3.1.2 The importance of showing strong and deliverable non-vehicular connections to established services and facilities was significant in both of the Nuneaton decisions.

The Contact Officer for this report is Jeff Brown (719310).



Appeal Decision

Site visit made on 26 June 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2024

Appeal Ref: APP/R3705/W/23/3333466

23 Tamworth Road, Polesworth, Warwickshire B78 1HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ian Albrighton against the decision of North Warwickshire Borough Council.
 - The application Ref is PAP/2023/0128.
 - The development proposed is one new dwelling.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - whether the development would provide acceptable living conditions for its future occupiers with regard to outdoor amenity space; and
 - the effect of the development on the living conditions of neighbouring occupiers in respect of privacy.

Reasons

Character and appearance

3. The appeal site accommodates a two-storey detached dwelling. It is bounded by Tamworth Road to the north, Ensor Drive to the south and a canal to the east. The surrounding dwellings are mostly also detached but comprise a mix of bungalows and two-storey dwellings. The only departure from this is the dwelling at No 5a which lies to the west of the site and, with No 5, forms a pair of semi-detached houses. Nonetheless the general character of the area is strongly informed by the detached form of the houses and the resultant spaces in between.
4. In addition, when walking along Miner's Walk, which is the footpath that runs between the site and the canal, the mature trees at the site and along the canal edge, add a verdant element which is a positive characteristic of the area. The open spaces between the existing house and Tamworth Road, and to the bungalow at 2 Miner's Walk provide a sense of spaciousness.
5. The proposed dwelling would be two-storey and would be similar in its proportions to the existing house. The plans show there would be a gap of

800mm between the existing and proposed houses. This would be considerably less than the gaps between other detached properties nearby. Consequently with such a narrow gap, the two dwellings would appear cramped together. This effect would be exacerbated by their two-storey height plus their facing gable ends. The development would also result in the loss of a substantial part of the characteristic open and verdant gap between No 23 and 2 Miner's Walk.

6. It is noted that this part of Ensor Drive falls to the canal and so the dwelling would be lower than the houses at Nos 1 to 5a. It is also recognised that the house at 5a extends to the back edge of the pavement, whereas the proposal would be slightly stepped back. However, when seen from Ensor Drive, the cramped effect and the reduction in spaciousness to No 2 would still be apparent.
7. The mature trees alongside the canal would help to provide some visual mitigation from canal side positions. Nonetheless, the dwelling would be visible through the trees and because the ground level at the site is higher than that along either side of the canal, particularly the east side, the dwelling would appear particularly prominent.
8. The development would therefore appear incongruous in its setting and would harm the character and appearance of the area. It would hence conflict with policy LP30 of the North Warwickshire Local Plan which says that all development should respect and reflect the existing pattern, character and appearance of its setting.

Living conditions – future occupiers

9. The new dwelling would be located within the garden of the existing house. Its garden would be between the house and the parking spaces and would amount to 62 square metres. In my view this would be insufficient for a large three bedroomed family house such as that proposed.
10. The appellant points out that the Council have no minimum size standards for garden spaces but suggests that the garden would meet the standards set by other Councils nearby. However I have no substantive evidence of this and in view of the lack of any standards applicable to this case, it is a matter of planning judgement.
11. It is noted that the existing garden at the site is larger than others nearby and it is certainly the case that No 23 would be left with a sufficiently sized garden. However, although other nearby gardens are smaller than the existing garden, they would appear to be larger than that proposed, possibly with the exception of that at Nos 5 and 5a. In any case the presence of a few small gardens elsewhere should not justify the provision of an inadequate garden in this case.
12. As a result I consider the development would fail to provide a sufficiently sized outdoor amenity space and would therefore not provide satisfactory living conditions for its future occupiers. The development would therefore fail to accord with Local Plan policy LP29 which generally seeks to ensure proposals meet the needs of residents.

Living conditions – neighbours

13. The officer's report stated that the distance between the proposal and the dwellings on Ensor Drive would be similar to the distance that there currently is

between No 23 and those neighbouring properties. For that reason it is considered there would be no harmful overlooking. However the Council's subsequent appeal statement states there would be adverse overlooking to No 5. I agree with their initial reasoning and assessment.

14. The appeal statement also says there would be overlooking to the houses on the east side of the canal, which was not a concern raised in the officer's report. The distance between the houses to the east and the site, and the presence of some mature trees on the canal side, leads me to consider that there would be no unacceptable degree of overlooking here either.
15. Consequently, there would be no unacceptable loss of privacy for the occupiers of neighbouring properties. Therefore, in this regard, the development would accord with policy LP29 which says that development should avoid unacceptable impacts upon neighbouring amenities, such as through overlooking.

Conclusion

16. Although the proposal would not unacceptably affect the privacy of neighbouring residents, it would fail to provide acceptable living conditions for its own future residents and would harm the character and appearance of the area. It therefore would conflict with the development plan taken as a whole. Consequently it would fail to accord with policy LP1 of the Local Plan which requires proposals to be in accordance with its policies. There are no other considerations to indicate a decision other than in accordance with the development plan. As such, the appeal is dismissed.

A Owen

INSPECTOR

Appeal Decisions

Inquiry opened on 30 April 2024

Site visits made on 03 May 2024 and 10 May 2024

by Mike Robins MSc BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2024

Appeal A Ref: APP/W3710/W/23/3329913

Land West of Higham Lane, Nuneaton, Warwickshire, CV10 0TX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Richborough Estates Ltd and Mr Robert Jones against the decision of Nuneaton and Bedworth Borough Council.
- The application Ref is 038602.
- The development now proposed is for up to 650 residential dwellings and land for a 1FE primary school including a new access roundabout, with associated parking, access roads, public open space, landscaping, sustainable drainage and associated works (with access only, all other matters are reserved)

Appeal B Ref: APP/R3705/W/23/3329915

Land West of Higham Lane, Nuneaton, Warwickshire, CV10 0TX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
- The appeal is made by Richborough Estates Ltd and Mr Robert Jones against North Warwickshire Borough Council.
- The application Ref is PAP/2022/0049.
- The development now proposed is for up to 650 residential dwellings and land for a 1FE primary school including a new access roundabout, with associated parking, access roads, public open space, landscaping, sustainable drainage and associated works (with access only, all other matters are reserved) (Cross Boundary NBBC 038602)

Decision

1. The appeal is dismissed.
2. The appeal is dismissed and planning permission for up to 650 residential dwellings and land for a 1FE primary school including a new access roundabout, with associated parking, access roads, public open space, landscaping, sustainable drainage and associated works (with access only, all other matters are reserved) (Cross Boundary NBBC 038602) is refused.

Procedural Matters

3. The Inquiry opened on the 30 April and sat for 9 days in total, including one day held virtually.
4. I am conscious that there are three separate Inquiries underway for large housing proposals in the general area north of Nuneaton. I have noted some

- discussions that they could have been considered together if called in by the Secretary of State, although it was confirmed that this was not pursued.
5. I am also aware that there were common factors in terms of the evidence presented by the Council, as well as the housing land supply evidence presented by the various appellants, who used the same witness. However, because of the timings of the events it is likely that even this evidence may have changed. The other two schemes are not being led by the same appellant as here and, as acknowledged by all parties in the discussions held during this Inquiry, there are agreed to be material differences between the sites. Accordingly, I have only considered the merits and potential effects of this scheme based on the evidence presented to me with no reference to evidence presented at the other Inquiries, other than that supplied directly as part of the core documents.
 6. Both appeals before me are made in outline with all matters other than access being reserved for future determination. Although there are two linked appeals, they relate to the same scheme, with two applications required due to the proposal straddling the boundary between Nuneaton and Bedworth Borough Council (NBBC) and North Warwickshire Borough Council (NWBC) areas. Only a very small part of the proposal site lies within the boundary of NWBC, and, although they submitted a proof of evidence, and contributed to discussion in relation to conditions and obligations, they did not formally take part in the Inquiry. As a consequence there is no need to consider the linked appeals separately in this decision.
 7. Alongside NBBC, Warwickshire County Council (WCC) submitted evidence in relation to the locational accessibility of the site as well as the effects on the local road network in support of the Council's position. References to 'the Council' throughout this report are to NBBC.
 8. National Highways (NH) were granted Rule 6 status and took part in the submission and presentation of evidence in relation to the Strategic Road Network, in this case specifically the A5. However, following their witness's evidence, they chose to take no further part in the Inquiry, although they did contribute to discussion regarding conditions and obligations.
 9. During the course of the appeal, the appellants chose to vary their application in response to advice relating to revised requirements for education contributions. Accordingly, the proposal was changed from up to 700 residential dwellings to up to 650 with the inclusion of a single form entry primary school.
 10. While normally an appeal should consider the application as put to the Council, in light of the circumstances and the consultation carried out on this revised scheme, I was prepared to accept the change having found that there would be no prejudice to any party from doing so. I have reflected this change in the banner headings above.
 11. I carried out a number of unaccompanied site visits both before, during and after the submission of evidence, informed by the views of the main parties. These included an overview of the site from surrounding roads, its relationship to the strategic and local road network including a number of junctions associated with the A47 route from the A5 towards Nuneaton. I also walked along and observed the site from the Weddington Country Walk (WCW), a

footpath and national cycle route to the northwestern side of the site, and visited its connection to the town via Weddington Way.

Preliminary Matters

12. The Inquiry was originally scheduled to be heard in January 2024, but delayed to allow for the proper assessment of, among other matters, revised and new modelling work, notably in relation to highway capacity matters. In the run up to and following the submission of proofs, a number of Statements of Common Ground (SoCG) were produced, including some that reached full agreement and were signed by the main, relevant parties. These included one relating to ecology and biodiversity net gain (BNG), one with NWBC, which addressed their concerns regarding noise and highway capacity, notably the A5, an overarching one with NBBC, as well as ones regarding Housing Land Supply and Sustainable Accessibility.
13. As a result, a number of matters initially identified as main issues in the appeal were addressed, or agreed to be able to be addressed, through conditions or legal undertakings.
14. To that extent, at the Inquiry the appellants, NBBC and WCC submitted an agreement under s106 of the Town and Country Planning Act 1990. Further Unilateral Undertakings were submitted by the appellants to WCC in relation to highway improvements, and to NWBC, in relation to open space provision.
15. Community Infrastructure Levy (CIL) Compliance schedules were sought and provided by the relevant Councils and while there was broad agreement, some matters remained in dispute. I consider whether or not those matters meet the tests set out in the CIL Regulations (as amended) and deal with this matter later in the decision.
16. The various Proofs of Evidence, Appendices, and Rebuttals, as well as core documents and those submitted in the course of the Inquiry, can be found at: [Watling Street - 038602 - OneDrive \(sharepoint.com\)](https://www.sharepoint.com/:w/Document.aspx?d=038602).

Main Issues

17. Accordingly I now set out the main issues in this case as:
 - Whether the proposal complies with the development plan and, if not, whether there are any material considerations that would justify a departure from it, including the extent of the housing land supply shortfall;
 - The effect of the proposed development on highway capacity and safety; and
 - Whether the benefits of the proposed development are significantly and demonstrably outweighed by any identified harm, the planning balance.

Reasons

Background and Policy Position

18. The appeal site runs to some 42.7 Hectares and is currently in agricultural use, comprising a number of fields divided by existing hedgerows with access points off the A5 and Higham Lane. Described variously as land west of Higham Lane, East of Elms Farm or adjacent to Watling Street, the A5, this is a long but relatively narrow site enclosed by the A5 to the north, the WCW cycle

path/footpath to the west, which is also part of a Local Wildlife Site (LWS), Higham Lane to the east and a large, allocated site, referred to as Top Farm, to the south. To the west of the WCW, the open agricultural fields are proposed to be developed as an extension to the MIRA employment site, as allocated in the North Warwickshire Local Plan, adopted 2021, (NWLP). While not now contested, there were initial concerns from NWBC over the relationship between the residential properties proposed and the employment uses on this site.

19. Top Farm, identified in the Nuneaton and Bedworth Borough Plan 2011-2031, adopted 2019 (the Local Plan), as a significant part of the strategic housing allocation HSG1, is a new neighbourhood under development to include up to 1,700 new homes, a primary school and secondary school, as well as a local centre with retail and community facilities.
20. To the east of the site, across Higham Road, are recent housing developments in later construction and sales phases, identified as Heritage Fields and Eaton Place. Granted permission in 2018, these developments comprise some 650 houses.
21. On site, the latest illustrative parameters plan¹ indicates housing through the spine of the site running roughly west to east, while a new primary school is proposed for part of the site where it extends southward into the Top Farm site. A strip of open green infrastructure is shown between the houses and the A5, through which the vehicular access is proposed via a new roundabout on the A5.
22. Other connections are for pedestrian or cycle access to WCW at the point nearest to the A5 and the tunnel through which that route extends to land beyond it, and from Higham Lane where a bus gate is proposed to allow a new bus route through the site; no other vehicular use is proposed through this access, other than in emergency situations. What is identified as a further emergency access route is indicated with details to be secured later connecting from the western part of the site to the A5.

Compliance with the Development Plan

23. The development plan for the site includes the NWLP and the Local Plan. However, for the purposes of the majority of issues for the two linked appeals, it is compliance with the Local Plan that forms the main points of contention; the position of NBBC is endorsed on that basis by NWBC.
24. The Council's concerns centre on their view that the proposal would conflict with their overall housing strategy. In effect, they consider that it represents development outside of the settlement boundary in an area they consider to be unsustainably located away from employment, services and facilities and contrary to the express focus of their approach in the Local Plan. In addition, they argue it would be contrary to the strategy of the emerging Borough Plan Review (the BPR) and of such a scale that it would be premature and prejudicial to that strategy. The site, they say, was considered under both the extant Local Plan and the emerging BPR and found not to be suitable.
25. There are a number of components to these concerns, which the appellants refute. They argue that the Local Plan housing land supply demonstrates a

¹ n1680_004 Rev F

significant shortfall over the plan period and a need for additional housing sites now. These components include the current and emerging policy position and settlement hierarchy, the housing land supply and the location of the site and its sustainability, both in policy and accessibility terms.

Policy Position and Settlement Strategy

26. The Local Plan sets out an overarching presumption in favour of sustainable development, aligned with the National Planning Policy Framework (the Framework). Policy DS2 seeks that most development will be directed to Nuneaton, with Bedworth, Bulkington and other settlements being considered as secondary or tertiary settlement where development should come forward only at a scale reflecting their role and function.
27. The Key Diagram shows the Plan's ambition of large-scale allocations to the north and south of Nuneaton and on the fringes of the other settlements. In a Borough relatively constrained by Green Belt land, these ambitions led to specific Green Belt releases² and revisions to the settlement boundaries to reflect the allocations. Consequently, Policy DS3 promotes development within the settlement boundaries and restricts that outside of them to a limited range of uses that require such locations. The proposal before me represents housing outside the settlement boundary and would therefore conflict with Policy DS3.
28. However, the Local Plan, as a result of a modification introduced during the Examination, includes some flexibility to respond to housing delivery over the plan period. Policy DS8 sets out actions to be taken where it is apparent that the delivery rates are falling short. Much of the evidence in this Inquiry focussed on compliance with Policy DS8.
29. Nonetheless, the Council argue that the strategy, even with the flexibility of Policy DS8, would still not support further development to the north of Nuneaton. To support this, they referred me to commentary from the Examining Inspector's Report, arguing this shows such development would not meet the expectations of the policy. They refer to comments regarding the area north of Nuneaton, which included: "*Whilst it can accommodate an appreciable proportion of the Borough's growth to 2031, there are sound reasons why the Plan should not allocate further development in this direction.*"; and specifically, in relation to further development, that: "*Additional peripheral development at this location would result in a disjointed and unsustainable pattern of development.*"
30. Notably the Council argue that in Policy DS8, edge of settlement means development within the boundary, not outside, and that any such development has to be sustainable, which, based on the Inspector's comments, they say development beyond the allocated HSG1 site would not be. I address the matter of site-specific sustainable accessibility below.
31. Furthermore, the Council argue that this proposal would be premature. I deal with this matter and the weight to be afforded to the emerging plan later, but the BPR is promoting a reduced level of housing need, citing that, amongst other matters, the expectations of meeting Coventry's housing needs were overstated. The emerging development strategy promotes a number of allocated sites to meet a need based on that assessed³ with additional housing

² Policy DS7

³ Through the Housing and Economic Development Needs Assessment (HEDNA)

numbers responding to economic growth. Put simply, the figures presented suggest that the current Plan target of 812 per annum (pa) should be 442pa under the Standard Method, 408pa under the HEDNA and 545pa in the BPR. The BPR is proposed to include similar flexibility to Policy DS8 in an emerging policy. However, these housing figures are disputed in specific objections to the emerging Plan.

32. At the heart of the arguments here is the delivery of housing, so I turn to the housing land supply and the assessment of shortfalls.

Housing Land Supply (HLS)

33. The Council initially argued that they could demonstrate in excess of a 4-year HLS, which, under relatively recent changes to the Framework, is what they considered they were required to demonstrate. Despite falling behind the Plan's housing trajectory, and accepting that Policy DS8 was engaged, the Council stated that they have taken steps to address a small shortfall they anticipated at the end of the Plan period. These actions included increased levels of resourcing, working with developers and working with others, including Homes England, to secure funding for infrastructure to unlock development.
34. The appellant challenged that the Council only needed to demonstrate a 4-year supply and pointed out that the Council's assessments of their supply have reduced considerably over the past few months. The SoCG on this matter set out that the Council position going into the Inquiry was 4.06 years, the appellants' 2.74.
35. During the Inquiry, some concessions have led to the Council now accepting their supply could drop below 4 years and that new permissions will be required for alternative sites, outside of the strategy, to deal with the shortfall against housing requirements. Consequently, they accept that Policy DS8 is engaged, as is the tilted balance⁴ and that, dependant on the level of shortfall, this might require sites outside of the settlement boundary.
36. The supply must be assessed against the 5-year requirement plus an appropriate buffer, whether considered against the 4 or 5-year supply. In this case, there is common ground on this and the requirement against which the supply is to be addressed is agreed as 6078 dwellings, including a 20% buffer. The matter of whether a 4 or 5-year supply should be considered was set out in proofs and in a note submitted to this, and reportedly, the other Inquiries, by the Council's advocate. However, as noted, the Local Plan was on the cusp of reaching the 5-year mark where the Framework's requirements do change.
37. Consequently as the Plan at the time of this decision will be in excess of 5-years old, Framework paragraph 76 does not apply, and paragraph 77 confirms that a supply needs to be demonstrated subject to paragraph 226. The Council have presented ongoing reviews of their HLS, and made no argument that the requirement after the 5-year threshold should now be based on local housing need; consequently I have accepted that the requirement is that set out by the adopted strategic policies⁵. Paragraph 226 confirms that where a Council have submitted an emerging Local Plan for examination, which NBBC have, then

⁴ As prescribed in paragraph 11 of the Framework

⁵ In accordance with Framework Footnote 42

- they need only demonstrate a supply of deliverable sites sufficient to provide 4 years' worth of housing.
38. Following the round table session on the HLS, I requested an updated version of the parties' housing positions⁶. This confirmed the shortfall, as at 1 April 2023, was 1603 dwellings, which the Council argue, accepting the circumstances regarding HSG4 Woodlands⁷, would reflect a shortfall, subject to their actions of some 524 at the end of the plan period. Conversely on the basis of their own review of the 10 contested sites and the 'SHLAA Sites'⁸, the appellants argue that the shortfall would increase to 2553 dwellings.
39. The onus on demonstrating whether housing is deliverable rests with the Council. The Framework assists in confirming that deliverable sites should be available now, offer a suitable location for development now and be achievable with a realistic prospect that housing will be delivered within the Plan period. In these circumstances, where sites have full planning permission there is agreement that they are deliverable, the difference between the parties here is with the sites with outline permission and the major allocations.
40. From my perspective there is always an element of judgment in considering deliverability and there will always be uncertainties ranging from resourcing pressures within a Council to variations in market conditions or the timing of necessary infrastructure delivery. Nonetheless, this judgment needs to be supported by clear evidence to show a realistic prospect of housing completions, such evidence must be specific and not just reflect ambition or assertion. It should always be based on the latest available evidence and is not tied to the base date. However, while the simplistic use of proformas was discussed⁹, I consider that a Council can legitimately be expected to rely on statements made by developers as a reflection of their actual intentions.
41. The parties' positions were set out in tabular form accompanying the HLS SoCG; I set out below my findings based on this and discussions at the round table session.

Discovery Academy

42. The Council identify 58 dwellings contributing to the supply. The appellants note that there is no evidence of progress on reserved matters (RM) with no delivery partner identified and consider there will be no dwellings delivered.
43. The Council reported that a very recent s73 permission had been granted, simplifying the delivery of the two phases, that funding was accessible and that the tendering process was underway for a delivery partner.
44. That there have been significant delays in the past with this scheme is clear, and the Council's anticipated submission of RMs in June seems optimistic. Nonetheless, this appears to be a case influenced by under-resourcing in the Council and the Warwickshire Property and Development Group (WPDG), the development arm of WCC. I am satisfied that the Council have committed resources to this and there does appear to be progress with the s73 permission

⁶ ID6

⁷ Addressed below

⁸ Strategic Housing Land Availability Assessment (SHLAA) Sites promoted by the Council as part of their actions under Policy DS8

⁹ and the appellants referred me to CD7.23, APP/Q3115/W/20/3265861

and anticipated completion of the tendering process; I note the commitments that are made in relation to this site by WPDG.

45. Furthermore, the trajectory indicates a timetable to deliver a relatively small number of dwellings that allows for some flexibility and overall, I am satisfied that the 58 dwellings can be considered part of the supply.

Callendar Farm

46. The Council have identified 658 dwellings as part of the supply, this is challenged by the appellants who consider that there is only clear evidence for 543, a difference of 115.
47. This is part of the Council's largest allocated site, HSG1, which for this part has outline permission and RM approval for 543. The Council accept that while a RM application for 190 units was refused last year, a recent, new application has been made. The developer is near to completion on the neighbouring site and have confirmed their intention to transfer over to this site. The appellants accept that RM approvals are in place but do not consider sufficient evidence is made out to support the final 115 units.
48. The submission of the new RM application in April is noted, as is the positive ongoing permissions and delivery of infrastructure, including the link road. With a developer committed to the site and the availability of construction teams reaching completion on the neighbouring site, I consider that there is a strong likelihood of housing completions, and I note the developer's confirmation of that commitment, subject to timescales for completion of RMs and conditions.
49. However, the appellants point to the length of time for the previous refusal of RMs and question whether the site can deliver the build out rates to achieve the anticipated supply.
50. In this case, I am satisfied that the evidence of communication and closer working between the Council and the developer, coupled with the recent submission of the RMs and the favourable conditions to support an early start to construction means that there is a reasonable prospect of dwellings being delivered on this site. However, I do not find the evidence sufficient to confirm the anticipated start dates and an additional one-year delay is more realistic, reducing the delivery to 75 dwellings.

Remainder of Top Farm

51. This is another part of the HSG1 allocation and the Council report 560 dwellings within the supply. The appellants argue against any being included.
52. This is an allocated site with developers delivering housing across a number of phases and significant infrastructure agreed and under construction. I note that with confirmation of School construction being underway, with delivery in 2025, as well as the link road progress, there are positive signs for delivery of housing on this site. Nonetheless, based on the evidence before me, I am concerned that this does not support the optimistic early delivery of housing in this financial year. Furthermore, despite the Council referring to some examples of such high proposed build out rates in their rebuttal evidence, linked to some extent to the proposed timber construction methodology, I am not convinced that such rates are realistic here, not even with the proposed

mix of market, affordable and self-build units. I also note that while there are clear statements anticipating delivery from the developer, there is also acknowledgment of slippage in the programme.

53. To my mind there is a realistic prospect of housing delivery on this site, but insufficient evidence to support the start date and build out rates promoted by the Council. Realistically, and this can only be a judgment, a delay of a year and a lower build out rate, reduced to 100, would suggest a more likely supply of 250 dwellings.

Gipsy Lane

54. The Council identify 345 dwellings from this allocated site (HSG3) within the supply. The appellants accept RM approval is in place for part of that, but consider that the delays, which they originally considered may reduce the figure to 250 are now so pronounced that they argue they will lead to a lower figure of 159 dwellings.
55. This is an allocated site which the Council report as having outline permission for 575 units and RM approval for 158 and an RM application pending for 418. The appellants question the delivery, referring to a lack of evidence to support potential resolution of highway matters, in particular. Importantly, I note that recent and ongoing meetings are reported that would appear to confirm that the outstanding matter to complete the RM approval relates solely to a highway matter and does not require further committee approval. I also note the latest information relating to the Road Safety Audit. Furthermore, the developer confirms that they anticipate delivery of 80 units per year from two outlets.
56. Despite the misgivings of the appellants, there is no restriction to delivery initially of the 78 units with full planning permission starting this year and the evidence supports a realistic prospect of resolution of the highway matters allowing for a developer commitment of 80 units per year subsequently.
57. Accordingly, 345 dwellings should be considered in the supply.

Hospital Lane

58. The Council identify 280 dwellings from this allocated site (HSG5) within the supply. The appellants consider that with no RM application and no evidence of progress towards one, they argue against any being included.
59. Evidence promoted by the Council indicates pre-application discussions and anticipation of an RM application 'imminently'. The developer has confirmed they could deliver 40 units in 2025 and 100 per year after that.
60. Critically, while I have noted above that weight should be given to developer statements, such anticipated rates remain dependant on the timing of RM approvals. To my mind, there is a greater risk of delay here, with no clear evidence of a timetable for submission or approval of RMs in this case, although a developer is, by their own statements, committed to pursue this. While I have given credit to the Council's commitment to additional resourcing to address backlogs in approvals of existing applications, the early start on site suggested here is not supported by clear evidence.
61. Nonetheless, the commitment made by the developer to comply with the timescales of the promoter's SoCG may give reassurance that some housing

may come through, but that must be evidenced. While it can only be a judgement, based on commitments made by the Council to other development and the realistic timeframes suggested by those, it would appear unlikely that substantial delivery could start, and completions be realised prior to years 4 or even 5. I cannot therefore, at present suggest that there is a realistic prospect of housing completions beyond that in year 5 on this site, and would suggest that the 280 dwellings are reduced to 100.

West of Bulkington (Vistry)

62. Part of the wider HSG8 allocation, the Council identify 149 dwellings within the supply. The appellants argue against any being included.
63. The Council argue that the site has full planning permission subject to completion of a s106 agreement and the developer is reported to be able to deliver all of the units within the 5-year period. However, the appellants point out that the s106 has been considered imminent for some time and there may be questions over the deliverability of the site if it cannot be agreed.
64. Notwithstanding this, I have evidence that the s106 has been, or soon will be sealed. I am satisfied that this represents clear evidence that the site can proceed. The build out rates promoted appear reasonable and consequently I consider that the 149 dwelling should form part of the supply.

West of Bulkington (Elford Homes)

65. Again this is part of the wider HSG8 allocation, where the Council identify 42 dwellings as part of the supply. The appellants argue against any being included.
66. The appellants point out that it took 3 years to approve the outline permission and there is no clear evidence to show progress towards an RM application. However, I note the Council report that the bidding process is complete, and a developer has been appointed with no constraints to development of the site. While this may be the case, it is still necessary to provide realistic evidence of a timetable for submission and approval of RMs, as well as confirmation of build out rates. While this represents a relatively small development, and there would appear to be flexibility to allow for a delay of at least a year, more evidence is needed to show that there is a realistic prospect of housing being delivered on this site.
67. Accordingly, I would suggest that, at present, the 42 dwellings should not be considered as part of the supply.

West of Bulkington (Rosconn)

68. A further part of the HSG8 allocation, the Council identify 80 dwellings in the supply. The appellants argue against any being included.
69. Although the Council suggest that outline planning permission has been approved, the appellants consider that this may be questioned as it was not available at the time of the Inquiry. In principle, even were the outline permission to have been approved, clear evidence is required to show that a developer is prepared to pursue the RM applications, that an application can be approved and that all constraints are addressed prior to construction starting and completions being achieved on site. The Council argue that the developer

has a track record in the area and that this part of the allocation is not constrained by access.

70. Nonetheless, despite the SoCG offered, there is no timetable or clear commitment to one before me, and while this represents a scheme for which the trajectory suggests some flexibility with proposed completions not until 2026, to be considered, there must be clear evidence of a reasonable prospect of delivery. In this case, that evidence is currently lacking.

71. Accordingly, I would suggest that, at present, the 80 dwellings should not be considered as part of the supply

Phoenix Way/Wilson Lane

72. The Council identify 73 dwellings from this site (EMP2) in the supply. The appellants argue against any being included.

73. The site has a relatively recent outline permission for 73 units, with a meeting with the appointed developer reported to have taken place recently. In this case, a developer is confirmed as being in place and a SoCG with the promoter also confirms that an RM application will be submitted in 2024. Further steps have been taken to separate the employment and residential elements of the site in terms of conditions and s106 obligations.

74. However, while to my mind this represents a step forward in terms of evidence of progress with the site, the appellants continue to point out that there is no direct evidence of the intention of the developer or timescale for a RM application.

75. While I accept that, with the additional progress steps, the relatively small-scale of the proposal and the potential within the trajectory to deal with some slippage, I consider that in this particular case, there is a realistic prospect of housing completions within the supply period. Accordingly, I would suggest that the 73 dwellings are included in the supply.

Former Hawkesbury Golf Course

76. An allocated site, HSG12, the Council indicate 345 dwellings in the supply. The appellants accept that part of the site has full planning permission and much of the remainder has RM approval, but some 66 dwellings do not, and they suggest these should be excluded, identifying only 279 dwellings in the supply

77. The Council confirm that the developer for the contested element is currently that involved in the initial phase of 110 units with RM approval and they say, are already preparing an RM application for the remainder. With ongoing construction throughout the supply period, the Council argue that, following the grant of the RMs, the remaining 66 dwellings can easily be accommodated during the period.

78. That the same developer has expressly confirmed it is their intention to pursue the RMs for the remaining phase following determination of the earlier phase provides confidence that the RM application will be forthcoming. The earlier phase permission is in place, and the existing trajectory shows reasonable capacity to the back end of the supply period to accommodate the additional units.

79. Accordingly, I am satisfied that the Council can rely on the developer commitments and the additional 66 units can be considered within the supply, meaning 345 dwellings in total.

Conclusion on contested sites

80. The outcome of these discussions and my appraisal of these sites means that I find there to be a minimum reduction in the housing identified on sites with outline permissions and strategic allocations of some 652 dwellings. This can only be an estimate based on judgment of the evidence provided and will be a figure that could change with changing circumstances and market conditions. Nonetheless, it would mean that on this measure, the Council would be unable to demonstrate a 4-year supply.

Other HLS matters

81. The Council accepted that they have fallen behind the projected trajectory at this stage of the Plan. They have also accepted that Policy DS8 was engaged. When discussions at the Inquiry turned to actions they were taking, they highlighted that they had promoted some SHLAA sites and some non-strategic allocations, set out in the BPR but likely to be considered in the supply period, and considered that windfall allowances could be considered at a higher level because of previous year's delivery. They also confirmed additional resourcing and release of additional funding.

82. The appellants considered that the majority of the actions were accounted for in the supply already, or were introduced unreasonably as they related to sites that are draft allocations awaiting examination. In relation to the proposed uplift in windfall allowances, I am with the appellants that this is not reasonable, as windfalls are accounted for on long-term averages and will experience highs and lows throughout a plan period.

83. Resolving the detail of these concerns would add little to the necessary assessment, although I have accepted and reflected on the Council increased involvement and resourcing in some of my findings on the contested sites. However, a point that was specifically addressed was that of Woodlands Farm, (HSG4) Although identified for delivery of some 150 dwellings, the Council accepted that permission had been refused for an application for that number, and the site itself was identified in the BPR as being de-allocated. The Council reasonably accepted that the 150 dwellings at Woodlands should not be considered within the supply.

Conclusion on HLS

84. Such assessments are of their time and cannot be entirely precise, but my assessment of deliverability, made against the Framework's expectations, are that there are likely to be some sites that cannot achieve the Council's suggested build out rates. Nonetheless, there is sufficient evidence of progress on others to confirm that they can be considered within the assessment of the 5YHLS. To that end, taking account of my findings, the position on Woodlands and the party's assessments, an alternative supply position can be demonstrated as follows:

Supply to be demonstrated = 6078 (agreed)		
Council Position	Appellants' Position	Calculated Inquiry Position
4941-150 = 4791	3332 - 150 = 3182	4791-652 = 4139
3.94 Years	2.61 Years	3.4 years

85. Consequently, my assessment would suggest a figure which would represent around a 3.4 year supply, I do not suggest that this can be considered a fully accurate representation, and the figure would likely lie between the appellants and Council figures, but it confirms that a 4-year supply cannot be demonstrated and the presumption set out in the Framework is engaged.
86. On this basis, the appellants argue that the proposal before me represents a necessary scheme in compliance with that part of Policy DS8 that allows for further sites to be considered.

Prematurity

87. The Council accept that even on their best figures there would be a shortfall of 524 units, on my figures that would be nearer 1176 and, on the appellants', some 2553. Consequently, I have noted the Council's arguments regarding prematurity, and have considered them in light of the very clear position set out in the Framework in relation to the limited circumstances in which that may arise, and the fact that the Council accept their resolution on this matter related not to a single site but to all three of the appeals currently in play.
88. There are no specific rules that dictate when a plan can be considered at an advanced stage¹⁰, to my mind, it is very much a matter of context. The BPR has been submitted, Examining Inspectors have been appointed and the first hearing dates have been set up. This would appear to be relatively advanced, but critically there are clear and unresolved objections to policies which are expressly relevant here, notably that of the housing requirement going forward.
89. In some cases, a plan may be considered advanced at an even earlier stage than this, if there were no, or very limited objections for example; however, that is not the case here. Consequently, I consider the BPR is not at an advanced stage sufficient to support a finding that the proposal is premature in the limited circumstances set out in the Framework.
90. Put simply, I consider that the Council need to be considering additional sites to ensure cogent delivery of current plan expectations. While some of the evidence put to me suggests that they are actively pursuing some options for that, and that they believe that the housing requirement will reduce on adoption of the BPR, I am not convinced that these options, or the BPR, are so advanced as to find that this appeal, considered on its own merits, would represent additional housing sufficient to undermine that emerging Plan.

¹⁰ Framework paragraph 49b

Policy DS8 and additional sites

91. Policy DS8 states that an action that should be considered would be to bring forward additional sites where it can be demonstrated that such sites will assist with delivery to address short-term needs.
92. The Council argued that the Judkins Quarry site could be brought forward, although I note that it is already within the trajectory as delivering some 150 dwellings in the supply period. The Council suggest that this could be extended, and they are considering it as a prospect for the BPR. However, I note that an outline application has been withdrawn, there must therefore be some question over the delivery already anticipated from this site. I also note the appellants' own review of the landscape and other constraints on that site. Nonetheless, even were additional housing to be delivered at Judkins Quarry, this would not address the shortfall apparent within the Council housing supply.
93. I consider it is therefore legitimate to consider whether the appeal site would comply with the expectations of additional sites as sought by Policy DS8. To that end, the expectations are set out within the policy: that initial priority be given to sustainable sites and edge of settlement sites, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The Council argue that this is neither edge of settlement nor sustainable.
94. I can see nothing in the policy, read on its face, which suggests that an edge of settlement site must be within it. The Council suggest that it is not logical that an edge of settlement site could only be found sustainable through the presumption approach, before the Policy itself introduces the same balance argument. However, while there may be some overlap of the principles of sustainability, edge of settlement and the tilted balance, this cannot imply the term 'within the settlement' is to be read as part of the Policy. More reasonably it suggests that initial priority could be assessed when comparing the sustainability of sites, this may include sites within the settlement boundary or, as the policy itself refers to, town centre redevelopment opportunities. In practical terms, the Council were unable to readily identify sites that could be brought forward within the settlement boundary, and I am of the view that the policy can include sites for assessment that lie outside of the boundary.
95. The question turns to sustainability, which in part relates to the sustainable accessibility of the site.
96. A SoCG on this matter was agreed following the round table session at the Inquiry¹¹ confirming that the site would, in principle, have connections to the WCW cycle route and footpath, into Top Farm, and its associated school, mixed use district centre, leisure and community centre uses, and opportunities for access to bus services. As noted above, the proposal also includes routing of bus services directly into the site.
97. The SoCG includes walking distances from the western, eastern and central parcels of the site, necessary because of the long and narrow footprint, and distances were also set out in submitted tables¹².

¹¹ ID10

¹² ID5

98. The parties disagree on the extent and deliverability of the connections, the delivery and management of the bus gate and the extent to which WCW can be considered suitable for commuting. Overall, the Council considered the site to be removed from the town centre, major employment sites, including the hospital, and from good transport links to Coventry. For all of those reasons, they considered that it was not in the preferred areas for housing development and should be considered unsustainable.
99. A plethora of different preferred and desirable walking distances are often gleaned from guidance documents and presented as justification or otherwise for the accessibility of a site. Realistically, the actual use of routes is often a function of their nature, be that surfacing, gradient, perceived safety or lighting, as much as it is about distance, although the concept of the 800m walkable neighbourhood is a useful measure, in my view, when considering such distances.
100. Edge of settlement sites must, by their nature, represent some compromise over an idolised, sustainable site with everything within walkable distance; such sites are rarely, if ever found outside of the larger order town centres in any event. The important matter to consider is whether a site, by location and by design, offers connection to a range of services and facilities as well as realistic options to promote walking, cycling and public transport use, providing a genuine choice of transport modes¹³. Such approaches are promoted in Local Plan Policy HS2, which seeks that proposals target a 15% modal shift providing adequate accessibility, connectivity to strategic facilities and delivery of safe and sustainable transport options to the wider transport network.
101. In this context, I have assessed the site's location, connections and the alternative transport options presented. The site would be further removed from the town centre than the large-scale allocation promoting the new neighbourhood at Top Farm under HSG1. I have noted the Inspector's comments in the Local Plan report and accept that the site would be away from the employment sites and connectivity to Coventry to the south of Nuneaton. However, this does not mean that it would be isolated. The MIRA site, with its significant expansion proposed, would be in close proximity, the Top Farm facilities, subject to connectivity, would be a short distance away, and further education, leisure and retail options are still available to the north of the centre, albeit it not within immediate walking distance. The site itself includes a proposed primary school.
102. Turning to the proposed connections. The Council argue that connections to both the WCW and into Top Farm are insufficient and not secured. I noted the potential difficulties of connection resulting from height differences and the important wildlife and landscape features of much of the WCW alongside the site. The obvious point of connection, which would represent limited disturbance to such features, is the proposed point in the northwest corner of the site. In an ideal world, greater permeability with additional connections could be provided, but while this single connection may slightly increase distances heading to the south from some parts of the site, it is well placed for access to the north for recreational purposes or to link to the MIRA site. WCW itself is well-surfaced down to the A444, but not lit, other than at the tunnel under the A5, but it would provide an excellent recreational route, albeit, other

¹³ Framework paragraphs 108 and 109

- than to the MIRA site, I consider that, while offering a choice, it would not be a particularly attractive route for cycle commuting into the town.
103. The southern link, again proposed as a single connection, is questioned by the Council because of the as yet undefined layout of the phase of the Top Farm site it would connect to. This phase is reported to be in the ownership of, and will be delivered by the Council for recreational and leisure use. I can see no reason why a suitable footpath and cycle connection could not be provided here.
104. I am reassured that the secondary school and the district centre are identified in the earlier phases of development at Top Farm, and this connection will provide an important link to the facilities there. Put simply, without this link, the walking distances via the main entrance or even the proposed bus gate, are not, in the majority of cases, viable so as to confirm this as a sustainably accessible site.
105. Beyond these connections, the proposal would also have pedestrian and cycle access through the bus gate and the main entrance, with appropriate crossing facilities. Overall, I consider that a number of educational, retail, employment and day to day services would be within reasonable walking and cycling distance.
106. In terms of alternative transport options, the current bus links are noted and the proposed diversion through the site would enhance connectivity significantly. The Council question the form and management of the bus gate, but I am satisfied that with the location shown, the detail of control, be that road markings, signage or signals, can be agreed and secured. Such bus gates are an increasingly common feature of public transport prioritisation. I am satisfied that the bus links would provide some provision, albeit limited into the evening and on Sundays, to higher order shopping and employment options and to the wider network via the train station.
107. In terms of modal shift, this is a long but narrow site and consequently walking distances and the attractiveness of connections must vary, nonetheless, I consider that the proposal would provide options for alternative transport provision and for walking or cycling, despite the Council concerns that only 10% of car trips are shown going towards the town centres. The 15% is a target and the options could represent links to the wide area, including the MIRA site, or the further bus and cycle routes that may otherwise have been undertaken by car.
108. This by no means makes this location highly sustainable in accessibility terms, but it is clear that its location and design, and particularly its immediate and close relationship to the developing neighbourhood at Top Farm to the south, means that it does present options for genuine alternative transport choices. I consider that it would comply with that part of Policy HS2 related to accessibility.

Other matters

109. Before I turn to conclusions on the policy position and settlement strategy, an additional argument put by the Council was that the housing market would be saturated with further delivery on this site, potentially compromising development on the allocated sites within the Local Plan strategy. While I have

noted their position, and I accept this is a large site, the scheme would represent some 80 dwelling per annum. In terms of delivery within this plan period, and noting the likelihood of a shortfall, I do not consider that this would compromise delivery elsewhere on the strategic allocations.

Conclusion on the Policy Position

110. I can understand the Council's desire to fulfil on a housing strategy that would provide a broad sweep of development around the centres of Nuneaton and Bedworth and ensure a balance between the large new community to the north with the employment centres and development areas to the south, where the important connections and support for Coventry's needs are also best served. When read in this context, the comments of the Examining Inspector for the Local Plan logically sought to limit additional development to the north of Nuneaton and beyond HSG1. However, I do not think that these comments can be read as excluding all development, if considered necessary, and must be viewed under the lens of the strategy under consideration at that time, and the inclusion of Policy DS8.
111. I have not found that the existing allocations would be materially compromised by further development here, and find that this site, with its strong connections into the emerging community and facilities at Top Farm, and opportunities for wider connections, is sufficiently well located to avoid some of the concerns that legitimately could arise with disjointed and unconnected expansion beyond the A5, for example, or peripheral to Top Farm. Furthermore, while I deal with this briefly below, this proposal would have limited additional effects in terms of the landscape character of the area. Consequently, while there is clear conflict with Policy DS3, it aligns with the relevant requirements of Policies HS2 and DS8, subject to that Policy's, and Policy DS1 and the Framework's presumption, which I address in the planning balance below.

Highway Capacity and Safety

112. I turn then to highway matters. Initial objections from NH regarding the Strategic Road Network (SRN) were not maintained, and I am satisfied that there is no material evidence to demonstrate that the scheme would compromise the operation of the A5. Furthermore, initial concerns that the models used had not taken account of the change in the proposal to less houses but a primary school, were not pursued, as NH and WCC accepted that traffic generation would be similar.
113. In relation to the local road network, the appellants initially modelled the impacts of traffic associated with the scheme on an individual junction model basis (IJM). It was reported that, in contrast to the other appeals currently underway in the area, the appellants here then modelled the effects using the Nuneaton and Bedworth Wide Area PARAMICS model (NBWA), a microsimulation model which takes account of driver behaviour, including realignment in response to congestion. This led to the submission of a second Transport Assessment (TA) in December 2023.
114. While this modelling was supported by WCC, who hold the licence for the model, and there is some common ground over the findings in terms of the overall impacts to the road network on the 2031 Reference Case, there is

disagreement over the extent of effects, including on highway safety, and the delivery of acceptable levels of mitigation.

115. Policy HS2 sets out the Council's approach to these matters seeking that proposals meet acceptable levels of impact on existing highway networks and provide mitigation measures to meet this acceptable level. It is common ground that this does not mean that there should be no impact at all from development, nor that development contributing to some increased congestion is unacceptable, but that acceptability is tied to the Framework tests. There are some differences between the parties as regards the application of the Framework, notably paragraphs 114 and 115, but in my view, the test is whether residential cumulative impacts on the road network would be severe, which is accepted to be a relatively high bar, and/or whether the proposal would lead to an unacceptable impact on highways safety.
116. Dealing with capacity first. The issues of the current network were considered by all parties. The appellants considered there to be relatively limited levels of queuing at peak periods on the A5/Higham Lane junctions, more noticeable levels on the A5/Longsoot/Dodwells junctions and, although moderate levels only were reported at Eastboro Way junction, queues were apparent on the A47/Higham Lane junction during the AM peak. WCC provides their own analysis, reportedly using Clearview Intelligent journey time monitoring, finding extensive issues with queueing around both the Higham Lane/A47 and Eastboro Way/A47 junctions. I took the opportunity to visit the junctions and surrounding roads during the AM peak, the PM peak and when schools were closing. I accept my visits were of brief duration, nonetheless, I observed significant queuing, notably at the A47/Higham Lane junction, which was more pronounced in the AM rather than the PM peak, the effects were less pronounced at the Eastboro Way junction. It would appear that the introduction of school traffic in advance of the PM peak may limit the effects.
117. Although WCC raised concerns that there were and would be impacts across the network, the focus of discussions, correctly in my view, were on the effects on the Higham Lane and the Eastboro Way junctions on the A47, leading from the A5 into the centre of Nuneaton. It is common ground that without any intervention there would be, as a result of traffic and development growth, significant pressures on these junctions in the future. Confirming this view, the Strategic Transport Assessment¹⁴, July 2023 (the STA), found that these two improvements are considered as priority schemes and essential to maintain an acceptable level of network operation. Importantly, the STA accepted that the improvements are not currently within the capital scheme, and it was common ground at the Inquiry that there was no evidence that they could be funded at this time.
118. Without delivery of these improvements, based on planned growth, the model confirms these junctions would significantly exceed their capacity. There are a number of scenarios that can be considered in this case, variously addressing the future network with or without the junction improvements and with or without the appeal proposal. The STA itself sets out the 2031 Reference Case, which includes the two junction improvements, notwithstanding their lack of funding.

¹⁴ CD 6.56

119. The appellants argue that the appropriate comparison is between the network without the junction improvements and that with the development and the improvements arguing that, in offering to fund the improvements, they not only address the mitigation required to an acceptable level but a general betterment across the network.
120. These matters are challenged by WCC, arguing that further analysis should have been provided in the TA, that the development would have a significant impact when compared against the Reference Case and that the sum offered to deliver the schemes is insufficient and not CIL Compliant. Nonetheless, although WCC conceded that there would be a significant betterment overall were the improvements to be delivered, they still highlighted concerns that the modelling implied impacts would still occur at the Higham Lane junction even with the improvements, and without the additional traffic associated with the development.
121. To my mind, without a very significant change in the funding landscape, the improvement needed are not going to be delivered. There is nothing in the STA or in the responses given at the Inquiry to suggest that such funding is, or will be available. Consequently the question must be whether the appeal proposal with the improvements represents acceptable mitigation for the impacts from the development.
122. There may be other roads and junctions where it can be shown that impacts would occur, and I note the WCC argue that even though there would be a general betterment, the junction improvements proposed were not to address this development, but that from the local plan allocations, and other measures should have been considered and may be required. Nonetheless, this position must be considered alongside a strong argument that without the junction improvements, conditions would become significantly congested, notably at these two junctions, without the development and with no anticipation of the delivery of funding for these.
123. This would be a very large scheme contributing additional traffic along Higham Lane and across the wider network. In terms of capacity, I consider, on review of the evidence, including the A47 Scheme Review and IJM outputs for these junctions, that this demonstrates that the development would have a severe effect at these junctions without the improvements. For clarity, my conclusions on this are not based on the bandings of the model outputs, but reviewed against the Framework tests. While there may be some effects contributing to residual cumulative impacts even with the improvements, as set out by WCC, I do not consider that the evidence has made out that this would be severe, nor do I find that the challenges to the level of detail WCC says was lacking from the TA a determinative factor.
124. While some Inspectors have dealt with cases where existing and future conditions, without an appeal development, are shown to be already compromised, but have found that, in effect, any additional traffic movements from that development would be harmful¹⁵, the appellants challenge this by reference to *R (Hawkhurst PC) v Tunbridge Wells BC and others* [2020] 3019 (Admin)¹⁶. *Hawkhurst* deals with incremental small-scale contributions to an already congested network, finding that a blanket objection on such a basis

¹⁵ Set out in Mr Edwardes Appendix B

¹⁶ CD7.36

was not appropriate. In effect, that a case-by-case assessment was still necessary to judge whether an individual development's impacts can be considered severe.

125. This is perhaps less relevant when the case set out now by the appellants is considered. They accept that their intention is to mitigate significant impacts through funding of the two junction improvements, and that this, alongside the approaches made to support alternative transport modes, which can be secured through conditions, obligations and a Travel Plan, would address any residual cumulative impacts and the effect overall would not be severe.
126. Turning to safety impacts, the appellants argue that this cannot be simply aligned with increased queuing or exceedance of junction capacity; they point to the limited traffic incident levels recorded. WCC argue that the area, particularly around Higham Lane, has retail and significant educational uses. They highlight situations where queuing would lead to the blocking of other junctions and pedestrian crossings, to increased levels of right turns to avoid queues and severance issues for pedestrians caused by the queuing and potentially leading to greater risks.
127. I concur that increased congestion does not necessarily correlate to increased highway safety risks. My own observation of the roads here is that there are reasonable levels of footway provision, good crossing points, albeit I note WCC's position that the one south of Eastboro junction is very close to both the exit and entrance, as well as to the box junction turn to St Nicholas Park Drive. Nonetheless, there may be circumstances, such as pedestrians choosing to cross between traffic when heavily congested, that might result in increased risks. What is relevant, in the scenario where the appellants are offering to fund the junction improvements, is whether there would be such occurrences.
128. Consequently, the provision of the improvements is at the heart of this case and two issues arise: would the improvements be deliverable and if so whether the funding offer would be CIL compliant?
129. The improvements are identified in the STA, including plans for the two junctions and the road between them. Importantly, the STA projects an estimated cost at £9.8 million¹⁷. The improvements are identified as being¹⁸: capacity enhancement to the A47/Higham Lane roundabout notably on the northern and western approaches; several new/relocated pedestrian crossings along the A47; and widening to the A47/Eastboro Way roundabout on the approaches, which increases from two to three lanes, and on the circulatory, which increases from two to three lanes.
130. On review of the plans and of the potential costings, there is no clear way to understand how much of that cost is related directly to the junction improvements and how much to the relocation of pedestrian crossings or other improvements to the road linking the two junctions, nor whether the additional works beyond the junctions are considered necessary as part of the capacity improvements or for other reasons. While the appellants refer to other improvements, cycling for example, within the funding, I can see nothing that would suggest that the overall costing set out in the STA is vastly inflated or

¹⁷ STA Table Appendix H: £4.2M for Higham Lane/A47 and £5.6M for Eastboro Way/A47

¹⁸ STA paragraph 4.52

presenting works that would go beyond that necessary to address the significant capacity impacts modelled on these junctions.

131. I need to set this figure against that now put forward by the appellants as meeting the costs of the improvements. The original TA did not address such improvements. The revised TA indicates that the development would provide a suitable contribution to assist in bringing forward one or more of these improvements. An email to WCC suggested that it was the appellants' intention to fund the improvements, and by the time of the submission of proofs of evidence, this offer was that the appellants proposed to fund, via a s106, a contribution towards the junction improvements described by Sheets 1 and 4 of the Jacobs Drawing¹⁹, which would appear to represent the junctions and not the interlinking road elements.
132. At the Inquiry, it was confirmed that this funding was intended to be made to WCC for the whole of the junction improvements, but on the basis of the plans referred to, not the interlinking road. The funding for this was calculated as being around £3.5M, for both schemes²⁰. This calculation includes some detail and refers to the plans as above. However, there was no substantive commentary in submitted proofs as to the difference between the two costings now presented to this Inquiry.
133. The appellants argue that the Council/WCC should have dealt with this matter in their submission of evidence and that they themselves were confident in their costings. Although I can understand some frustration from the appellants that neither WCC nor the Council expressly challenged their costs initially, I disagree with this position.
134. The gulf in the cost estimates is clear from evidence available to those calculating the costs. However, DWH Project Management, who did not provide evidence directly, did not appear to provide any comments on this, nor did the appellants' highway witness. Furthermore, it is not clear to me or fully explained, why they should have chosen to fund only the plans set out for the junctions. The position on funding and delivery of cycle schemes remains unclear and there is little substantive evidence put to me by the appellants that the other improvements, including what is described as several new/relocated pedestrian crossings, are not an important part of the overall scheme, even if they perhaps related to safety rather than capacity issues. Finally, I do not consider that the appellants' argument that there is no other figure in evidence is correct. There may not be detail in the STA, but it is an important document in which many junction improvements have been costed, and it includes the drawings.
135. To argue that the Council should have known from December 2023 that this offer was in play is also not correct, up until the Inquiry it could be argued that there was some confusion over whether the appellants were seeking to contribute, partly fund, or deliver the improvements, and even now it appears that they are not seeking to deliver all that the STA identifies as part of the essential priority works.
136. While I was referred to suggestions that there may be some funding secured, or some contributory funding from other schemes, the report referred

¹⁹ Appendix F of the TA, also in the STA

²⁰ Mr McKinney's Proof, Appendix H18

to²¹ predates the STA, and in my view offers no further clarification. The Council/WCC could have entered into more productive conversations about what exactly was meant, but I am conscious that the Council teams were involved in other Inquiries, and had no indication up until a point less than a month before the Inquiry was initially due to open that such an offer was to be made, and no figures until a month before the delayed Inquiry did open. Put simply, I have frustrations that there were potentially missed opportunities to address this matter and explain the very significant differences between the two costings, and while I had no choice but to resist later submissions on this in the Inquiry itself, for reasons of fairness and to avoid undue delays, for such a fundamental part of this scheme, this should have been addressed considerably earlier.

137. The appellants argue that they properly produced the evidence four weeks before the Inquiry. The reality is that this evidence proposes significant offsite highway improvements that go to the heart of the acceptability of the scheme, and the onus is on the appellants to fully justify the need and the costings. In any case, such measures should not be contemplated at such a late stage, in my view, and, while I accept that all parties bear some responsibility for this, such a matter should have been resolved prior to submission of the appeal.
138. I appreciate this may seem unduly critical of parties, but I am faced with an unenviable choice. That is, on the appellants' case, accepting a figure because they say WCC has not justified why it is less than their costings, or rejecting it because the appellants have not justified it will be sufficient for WCC to actually complete the works, but with limited arguments from WCC as to why. If I accept it, doing so would allow delivery of a large-scale housing scheme with unacceptable highway capacity impacts and possibly safety ones too, were the sum be insufficient to meet the cost of WCC delivery. It would create significant questions over management of that funding and potentially impacts on the public purse to rectify such issues.
139. That is not feasible in my view. The solution may entail delivery of the works under a s278 agreement, or must entail engagement beyond anything presented to me at this Inquiry. I am not saying that improvements that would mitigate the development to a sufficient level to mean the impacts would not be severe are not possible for around £3.5M, but on all that I have seen, it has not been demonstrated. While there was some discussion that the improvements could be linked to delivery of the housing under a Grampian condition, in light of my finding, I consider that this would not be reasonable, with the delivery devolved to WCC who are adamant that the sums are insufficient and with the potential for delays that could extend well beyond the realistic implementation of the proposal.
140. I deal with the CIL compliance issues of this funding below, but in conclusion I consider that, in absence of a secured sum demonstrably sufficient to ensure delivery of necessary highway improvements, the proposed mitigation is not cost effectively mitigated to an acceptable degree, and in absence of the improvements, there would be severe residual cumulative impacts on the road network. The proposal would be contrary to Policy HS2 and the Framework in this regard.

²¹ CD7.02 Top Farm

Other Matters

141. Two further issues were raised in relation to highway matters. Firstly there was concern expressed by NH, but also others, that such a large scheme was to be served by a single access. While I understand and am aware of guidance in some areas that large schemes should be served by more than a single access, often to deal with maintaining access, the appellants point out that the proposed bus gate could be used in emergency circumstances. As the main access would be on the SRN, they say such an occurrence would be highly unlikely. Furthermore, there is an emergency access proposed in the northwest corner of the site, albeit there are limited details on that at present. Overall, I am satisfied that the proposed single-point access would be acceptable in this case.
142. Secondly, that the proposed access would affect the entrance to Kings Lodge. I have limited information from any interested party on this, but from the drawings it is clear that the necessary alignment and form of the junction proposed would restrict right turns in and out of that property. This was addressed in the TA, and I note that it would mean some extra distances for those needing to U-turn at the nearby junctions, and would require a Traffic Regulation Order. This is a separate consent, and I can see no reason why it would represent an insuperable issue in this case.
143. Turning to other issues, I am satisfied that the provision of appropriate conditions could address the matters of noise and agent of change restriction on the emerging development on the MIRA site. Issues relating to ecology and Biodiversity Net Gain have been addressed in the agreed SoCG. I am satisfied that the site could achieve the necessary levels of net gain.
144. A number of interested parties, including the local ward Councillor who spoke at the Inquiry, raised further concerns. These included that the single form entry primary school proposed would not be financially viable or likely to be delivered. However, I have no such evidence from the education authority, who have endorsed this provision, and its delivery can be assured through obligations or conditions.
145. Other concerns included the loss of countryside and harm to the landscape character. The site is currently in relatively open, agricultural use. Its present circumstances are that it is an area of open land some distance from the existing developed edge of Nuneaton. However, that position is changing, and as Top Farm develops, this site will increasingly be seen, in landscape terms, as a strip of land sandwiched between housing and the A5, with well-defined containment to the west and east also.
146. I appreciate that there have been delays in delivery of housing and infrastructure at Top Farm and concerns that there may not be alignment were the appeal site to come forward in advance of Top Farm, but I am reassured that there are commitments to the link road and the secondary school. I note the evidence from the appellants on landscape matters, and the acceptance from the Council on this matter too, that it is seen by both parties as contributing to weight but not a fundamental reason to dismiss the case. I concur, but consider that it is a site that contributes to the landscape character as a large-scale buffer between the settlement and the A5 and a notable component of the Landscape Character Area. With careful design, a buffer can be retained and indeed some positive delivery of public open space and

retention of landscape features could assist to soften the effects of development on the site. Indeed here, the A5 itself represents a strong boundary feature, and the site is, despite its height above the surroundings, well contained in short- and long-range views.

147. Accordingly, there would be some harm though failing to conserve the landscape character and this would represent development in the countryside. It would be contrary to Policy DS3, as set out above and accepted by all parties, and Policy NE5 of the Local Plan, albeit I consider that the harm in landscape terms would be limited.

Planning Obligations

148. I start from the requirements of CIL Regulation 122 that a planning obligation can only be a reason to grant planning permission provided that it is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

149. The obligations in this case include a number of matters, most of which are agreed and have been addressed in the CIL Compliance Schedules submitted by the relevant Councils²². There is no dispute in relation to the commitments to libraries, public rights of way, public transport contributions, including bus stops, road safety and sustainable transport, skylarks, parks and open spaces, sports and recreation provision, biodiversity enhancements, sustainable drainage and healthcare. Affordable housing is set out, and compliant in terms of quantum and mix with the requirement of Policy H2.

150. While the principle of education contributions are accepted, the appellants have presented an alternative assessment²³ based on DfE multipliers as opposed to the WCC approach, which does not define different yields based on a presumption that the primary growth will feed into secondary provision requirements. Irrespective of which approach is used, I can be satisfied that a compliant scheme could be delivered that would address the need to mitigate for population growth in terms of education.

151. Finally, I turn to the highway funding. The Council suggest that, irrespective of the appropriate figure, the offer to fully fund the highway works cannot be CIL compliant. This is because the works are required for, and would benefit the wider road network and are not related in scale and kind to the traffic impacts of the development itself, referring me to *DB Symmetry v Swindon BC* [2022] UKSC 33.

152. Factually, the improvements identified in the STA are linked to wider traffic growth associated with strategic development delivery. The increases associated with the development would be a significant additional component of this. Consequently, the improvement works, as opposed to other such contributions found to be unacceptable in other cases referred to, are directly related to the proposal and necessary to make it acceptable in planning terms.

153. The issue here is whether the improvements can be achieved without the full funding by the appellants. No substantive evidence has been put to me that

²² ID11 and ID12

²³ S106 Agreement Appendix 4

they would be delivered if only a lower amount, calculated as proportional to the traffic growth of the development itself, for example, was provided.

154. Similarly, partially funding some of the improvements to satisfy solely the increase in capacity needed cannot practicably be delivered. In such circumstances, the CIL duty is to consider whether the sums are fairly and reasonably related in scale. In this case, I consider it reasonable that, with no other options to achieve the improvements, they can be considered reasonably related and CIL compliant.
155. Overall, I am satisfied that all the contributions and obligations referred to above accord with relevant planning policies and guidance and therefore with the requirements set out in the Regulations and the Framework and can be taken into consideration.

Planning Balance

156. I have found that the proposal would be contrary to Policy DS3, Policy NE5 and Policy HS2 of the Local Plan.
157. In terms of the housing strategy, that conflict with Policy DS3 does fall to be considered against Policy DS8. To be clear, were I not having to consider further policy conflict under Policy HS2, on the basis of the evidence before me, including the relative sustainability of the site, my findings on prematurity and the situation regarding the current delivery and anticipated shortfall in housing delivery, I would have found this proposal to accord with that Policy. The matter of conflict with Policy NE5 would have been given limited weight due the relatively contained nature of the site and association with development to be delivered, and would not signify harm sufficient to represent a conflict with the Plan overall.
158. However, I have found harm under Policy HS2 to which I give substantial weight, and Policy DS8 requires an assessment of whether any adverse impacts would significantly and demonstrably outweigh the benefits.
159. My findings on the HLS situation also suggest that policies most important for determining the application are out-of-date and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. To that end I have found the highway impacts on the local road network would be severe.
160. The appellants set out that the site would deliver some 240 houses in the 5-year supply period and 360 in the Plan period. I consider that the market housing element of this represents significant weight in favour of the proposal. Affordable housing would be policy compliant. There is no doubt that the delivery of affordable housing must be a key priority across the country and accordingly it can also be given significant weight, I appreciate that the main parties accepted this as substantial, and I accept that there is a shortfall across the area and some 163 units would be of benefit. In such a location I give only limited weight to the benefits of the proposed bungalows. I find some moderate weight would also accrue from economic benefits, notably in the construction period, as well as the provision of public open space and BNG.
161. There is no doubt that the appeal scheme would offer very significant benefits as I have outlined above. However, there would also be very

substantial harm, harm that would lead to non-compliance with Policy DS8 and the development plan as a whole. My judgement is that the adverse impacts would also significantly and demonstrably outweigh the benefits, when assessed against Framework policy as a whole. In the circumstances of this case there are therefore no material considerations to indicate that this decision should be made otherwise than in accordance with the development plan.

Conclusion

162. I have taken account of all other matters that have been raised, but have found nothing to alter my conclusion that the appeal should not succeed.

Mike Robins

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Sarah Reid KC and Martin Carter Instructed by Richborough Estates Ltd
Who called:

Ben Pycroft Emery Planning – Director
BA(Hons) Dip TP MRTPI

Gerard McKinney Hub Transport Planning – Director
MSc TP&M CMILT

Mike O’Brien Pinnacle Planning – Director
MTCP MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Richard Humphreys KC Instructed by Nuneaton and Bedworth
Who called: Borough Solicitor

Sarah Matile Principal Planning Officer
BA(MPlan) MRTPI

Karen Watkins Highway Development Management
Engineer – Warwickshire County Council

James Edwards SLR Consulting Ltd – Director (Transport
BSc Modelling)

Karina Duncan Principal Planning Officer
MA BSc(Hons)

FOR NATIONAL HIGHWAYS

Ruth Stockley KC Instructed by National Highways

Who called:

Russel Gray Spatial Planner

For Conditions and Legal Undertakings Session:

Appellants:	Councils:	National Highways:
Mr Knight	Mr Richardson	Mr Bellingham
Mr Hammond	Ms Gutteridge	
Mr Hunt	Mr Hall	
	Mr Lowe	
	Mr Griffin	

INTERESTED PARTIES:

Councillor Kondakor Local Councillor

INQUIRY DOCUMENTS

Available at [Inquiry Documents - OneDrive \(sharepoint.com\)](#)

ID1	Agenda Report and Minutes
ID2	CLG Select Committee Report and Government Response 2011
ID3	Appellants' Opening Statement
ID4	NBBC Opening Statement
ID5	Table of Agreed Distances to Facilities
ID6	Agreed Note re Housing Shortfall Position
ID7	National Highways Opening Statement
ID8	PINS Letter ref Borough Plan Review Timetable
ID9	Email - Mr McKinney – Highway Improvements Costings
ID10	Sustainable Accessibility SoCG
ID11	NBBC CIL Compliance Statement
ID12	WCC CIL Compliance Statement
ID13	Recommended Planning Conditions – NBBC, NWBC and NH
ID14	S106 Agreement and Unilateral Undertakings
ID15	NBBC Closing Statement
ID16	Appellants' Closing Statement

Core Documents available on [Core Documents - OneDrive \(sharepoint.com\)](#)



Appeal Decision

Site visit made on 4 June 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2024

Appeal Ref: APP/R3705/W/23/3331488

Land 50 metres west of 55 Warton Lane, Austrey CV9 3EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr Aaron Eidukas against the decision of North Warwickshire Borough Council.
- The application Ref is PAP/2023/0006.
- The development proposed is change of use to residential and erection of two detached houses.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address for the site from the Decision Notice and the appeal form as this more accurately reflects the location of the site.
3. The planning application was submitted in outline with all matters reserved except for access. I have had regard to the Outline Plans WLA/01/02 REV A, Landscape Plan Revised and Landscape Plan Post Development which show how the site might be developed but treated each element of the drawings as indicative, apart from the details of the access, when considering the likely impact of the proposal on the matters set out in the main issues below.
4. The National Planning Policy Framework (the Framework) was revised in December 2023 after the Council's decision and the submission of the appeal. Paragraph 76 of the Framework introduces criteria under which local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing. While the Council meets the criteria and is not required to provide a minimum of five years' worth of housing, it has nevertheless submitted evidence demonstrating 5.3 years housing supply. I have taken into account the Council's housing land supply position in the determination of this appeal.
5. Other revisions to the Framework do not alter the parts therein upon which this appeal turns, so I have had regard to its content, and I am satisfied that this has not prejudiced any party.

Main Issues

6. The main issues are:
 - the effect of the proposal on the character and appearance of the area, including landscape character;

- whether the proposal would preserve or enhance the setting of a Grade II listed building, known as Flavel¹ and, its effect on the setting and significance of a non-designated heritage asset (NDHA), known as Saddlers Cottage; and
- whether the site is a suitable location for the proposed development with reference to the Council's settlement hierarchy and its compliance with other policies of the development plan.

Reasons

Character and appearance

7. The appeal site is a paddock located on the periphery of the village of Austrey where built development meets open countryside. Situated on the western side of Warton Lane at its junction with Bishops Cleeve, it occupies a prominent corner position near the south-west entrance of the village. The land is currently an undeveloped open grass field bordered by substantial hedgerows and trees. A metal gate on Warton Lane provides access to the site.
8. Opposite the site, on the other side of Warton Lane is Bishops Cottage which is a two-storey pebble-dashed house, and Flavel. Flavel Court sits behind Flavel and contains a small cul-de-sac of modern detached two-storey houses. Contemporary housing is also located on the south-east side of Warton Lane and on both sides of Bishops Cleeve. Next to the site is the NDHA.
9. The appeal site falls within Landscape Character Area 1: No Man's Heath Warton Lowlands within the North Warwickshire Landscape Character Assessment 2010 (LCA). Policy LP14 of the North Warwickshire Local Plan (NWLP) requires development to conserve and enhance landscape character within the landscape character areas as defined in the LCA.
10. The LCA describes the landscape character of the area as being distinctly rural with strong rectilinear hedge patterns, small flat pastoral fields, scattered farmsteads and nucleated hilltop villages. The landscape management strategy for this area includes conserving the historic field pattern and reinforcing the existing development pattern of the rural villages.
11. The appeal site falls outside the Austrey settlement boundary as defined by the NWLP. While the site is contained on three sides by development, the buildings south of Warton Lane are situated within countryside and display more rural characteristics. The proposal would therefore amount to an incursion into the countryside and divide the site into two plots which would erode the historic field pattern and remove the openness of the site.
12. The site's substantial hedgerow and tree boundary together with its openness as a green field reinforce the rural character of this part of the village. While the Landscape Plans indicate the majority of the existing hedgerows and trees could be retained and enhanced, the proposal would nevertheless encroach into open countryside and occupy a field that contributes significantly to the distinctive character of the locality.
13. Despite modern housing to the south-east of Warton Lane, the prevailing character of the area is defined by its verdant setting and the appearance and

¹ List Entry Number: 1034710.

scale of the traditional homes on Warton Lane. The potential size and mass of the buildings as shown in the Outline Plans would not reflect the scale and character of the existing dwellings in the area. The proposed dwellings would potentially fill most of the width of the site with little break in built form, appearing dominant within its setting.

14. For the reasons above, I conclude the proposal would have a significantly detrimental effect on the character and appearance of the area, including the landscape character of the area. It would conflict with Policies LP1, LP14, LP29 and LP30 of the NWLP which require, among other matters, that development improve the individual settlement's character, conserve and enhance landscape character, protect and enhance the natural environment and respect and reflect the existing pattern, character, and appearance of its setting.

Significance and settings of heritage assets

15. Notwithstanding the absence of any objection from the Council's Heritage Officer, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 205 of the NPPF requires decision-makers to give great weight to the asset's conservation. Paragraph 209 of Framework also indicates that the effect on the significance of a non-designated heritage asset should be taken into account.
16. Flavel is a Grade II listed building built in the mid to late 18th Century. Its significance is derived from its age, architecture, and contribution it makes to the evolution of the village. The house displays Flemish bond brickwork with a string course and moulded brick cornice. The building has a striking symmetrical front with a five-window arrangement of nine pane sashes and cambered arches on the ground floor. A low brick wall defines the simple stone paved garden to the front giving the house an arresting presence on Warton Lane.
17. The appellant's Heritage Statement shows that there is no evidence from historic maps or records that the appeal site was associated with Flavel and that its grounds were concentrated to the rear of the property. Even so, the setting of Flavel is significantly enhanced by its outlook and the openness of the green field in front. Its character and appearance is enriched by its setting on the edge of the village where countryside meets settlement.
18. The rear of the property has been extended with a two-storey rear wing and a modern conservatory. The rear and side of Flavel has also been subject to modern housing development at 55 Warton Lane and Flavel Court. As a consequence, the setting of Flavel has been harmed by the presence of these built forms. However, its open setting to the front contributes to the significance and appreciation of the property's most special features on the front elevation.
19. The NDHA is located next to the appeal site and is bordered by hedges and trees. While the Council does not currently have a local list, it considers it a NDHA. Thought to be constructed at a similar time to Flavel, the name of the property, coupled with its courtyard style U-shape plan form and edge of

settlement location adjacent to fields, indicate that it was occupied by a saddler. Its significance stems from its age, architecture and contribution to the evolution of the village. Of late 18th to early 19th century, the two-storey brick building displays a number of different bonds such as Flemish garden wall and common bond with a white painted finish. Within this context, the NDHA is considered to have at least moderate significance.

20. The 1844 Tithe Map shows that the NDHA and the appeal site were under the same ownership, with the appeal site being described as pasture. This strong functional and historical connection reinforces the importance of the appeal site to the setting and significance of the NDHA.
21. Flavel and the NDHA form a small cluster of heritage assets on the fringe of the village where the built form quickly transitions into open countryside. The grouping of the two heritage assets and their shared setting adds to the distinctiveness of this part of the village.

Effect of the proposal on the setting of the listed building and the NDHA

22. The appeal site contributes significantly to the character of this part of the village by virtue of its verdant, undeveloped and open characteristics. Glimpses of the appeal site and Flavel can be seen from Warton Lane on approach into the village from the south-west. The proposed development would close off the openness of the setting and reduce visibility of Flavel as one enters the village. It would remove the open outlook of Flavel and encroach on its setting, being harmful to its character and appearance. In terms of the Framework, the harm identified would be less than substantial, which is agreed by the main parties.
23. The proposed development would also encroach on the setting of the NDHA and severely erode the historic connection between the appeal site and the NDHA. The Outline Plans show a large dwelling sited close to the boundary of the NDHA which could dominate the setting of the NDHA and have a looming effect upon it. As a consequence, the proposal could diminish rather than preserve the positive contribution the site currently makes to the setting and thereby significance of the heritage asset.

Public benefits and conclusions on the second main issue

24. Paragraph 208 of the Framework establishes that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Paragraph 209 of the Framework also suggests a weighing exercise in relation to proposals affecting NDHA that has regard to the scale of harm or loss and the significance of the heritage asset.
25. I acknowledge that the provision of housing is a clear public benefit, and that the Council's 5.3 years' worth of deliverable housing sites does not represent a ceiling on housing delivery. However, the fact that the proposal would only deliver two dwellings mean that its contribution to the overall housing supply in the Borough would be limited. As such, the benefits of two dwellings only attract a moderate amount of weight.
26. Similarly, the economic benefit of two dwellings to the local community would be minimal due to the scale of the development. There would be some associated social and economic benefits during the period of construction and

- once the dwellings are occupied. However, the scale of development proposed means the contribution to the local economy and community would be limited.
27. The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) (the Act) places a duty on relevant authorities to keep a register of individuals and associations of individuals who wish to acquire serviced plots of land for their self-build or custom housebuilding. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Policy LP7 of the NWLP requires development proposals to make serviced self-build and custom build plots available unless it would be unfeasible due to the nature of the proposed development.
 28. As of the 10 January 2024 there were 39 residents on the Council's self-build and custom homebuilding register. I acknowledge that the provision of two plots for self-build and custom homebuilding would amount to a benefit but the unilateral undertaking (UU) before me has not been signed.
 29. The Biodiversity Gain Requirements (Exemptions) Regulations 2024 came into force on the 12 February 2024. While the proposal is not be required to provide a mandatory 10% bio-diversity gain as the application was made before 2 April 2024, the appellant's UU includes a £20,021 contribution towards off-setting biodiversity. The Council considers this would comply with Policy LP16 of the NWLP, but the UU is unsigned.
 30. Section 18 of the Procedural Guide – Planning Appeals – England (May 2024) states the Inspector will not delay the issue of a decision to wait for an obligation to be executed unless there are very exceptional circumstances. There is nothing before me to indicate any exceptional circumstances to delay my decision for this to be completed. Therefore, in the absence of a legal agreement to secure the custom build dwellings and biodiversity off-setting contribution, they would only be afforded no more than very limited weight.
 31. Paragraph 195 of the Framework states that heritage assets are an irreplaceable resource. The stated public benefits of the proposal carry some weight in combination, however on the basis that paragraph 205 of the Framework establishes that great weight should be given to the conservation of a designated heritage asset, they would not be sufficient to outweigh the harm identified. The setting of the listed building, that being Flavel, would not be preserved, contrary to the expectation of the PLBCA.
 32. I have also found that the proposal would significantly harm the setting and significance of the NDHA, and the stated public benefits would not outweigh the harm identified.
 33. For the above reasons, I conclude that the proposal would fail to preserve or enhance the setting of Flavel, a Grade II listed building, and would have a significantly harmful effect on the setting and significance of Saddlers Cottage, a NDHA. This would conflict with Policy LP15 of the NWLP which seeks to conserve and enhance the quality, character, diversity and local distinctiveness of the historic environment. There would also be conflict with abovementioned aims of the Framework.

Suitable location

34. There is dispute between the main parties regarding whether the appeal site is in a Category 4 or 5 location with respect to Policy LP2 of the NWLP which sets out the settlement hierarchy and seeks to control the pattern of development throughout the Borough. While there is no definition of the term 'directly adjacent' in the NWLP, the clear physical and enduring feature of Warton Lane separates the area to the west of Warton Lane which is more rural in character, from the east of Warton Lane which is more built-up. The substantial hedges and trees around the boundary of the appeal site also distinguishes it from the more urbanised area within the settlement boundary. Based on the evidence before me, I consider the appeal site would not be situated directly adjacent to the settlement boundary and therefore falls within a Category 5 location.
35. Policy LP2 states that development in Category 5 locations "will not generally be acceptable, albeit as set out above that there may be some instances where development may be appropriately located and would enhance or maintain the vitality of rural communities under this category." Policy LP2 also requires all development, whether it be a Category 4 or 5 location, to have regard to other policies in the NWLP.
36. While there is no definition of the term 'appropriately located' in the NWLP, the proposal would conflict with Policies LP1, LP14, LP15, LP29 and LP30 of the NWLP for the reasons given above and the provision of two dwellings would only be likely to have a limited effect on the vitality of the community.
37. For these reasons, I conclude that the site would not be a suitable location for the proposed development with reference to the Council's settlement hierarchy and its compliance with other policies of the development plan. In particular, it would conflict with Policy LP2 of the NWLP which sets out the settlement hierarchy and seeks to control the pattern of development throughout the Borough.

Other Matters

38. The appellant has drawn my attention to a planning permission² granted by the Council for a development of three houses adjacent to the adopted development boundary for Newton Regis. However, there are clear material differences between the proposal and this example. These include the fact that it does not affect the setting of a listed building or a NDHA. The listed building known as Newton House is much further away to the dwellings permitted than Flavel and the NDHA are to the proposal.

Planning Balance

39. I have already identified the benefits of the appeal scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise and judgement in relation to the heritage assets.
40. Compliance with the development plan in relation to ecology and highways will weigh neither in favour or against the proposal and is therefore considered neutral.

² Application reference: PAP/2021/0064.

41. In terms of harm, the proposal would not comply with development plan policy in respect of its failure to preserve the settings of the Grade II listed building and the NDHA, and in terms of its effect on the character or appearance of the area. It would also not be consistent with the Council's settlement hierarchy. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, and I find that the adverse impacts of the proposal are matters of great weight against the grant of planning permission that outweigh the stated benefits.

Conclusion

42. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

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INSPECTOR



Appeal Decision

Site visit made on 24 June 2024

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10th July 2024

Appeal Ref: APP/R3705/D/23/3335867

South View, Weddington Lane, Caldecote CV10 0TS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Mark Spencer against the decision of North Warwickshire Borough Council.
- The application Reference is PAP/2022/0298.
- The development proposed is described as a 'proposed garage, gym and link to existing property.'

Decision

1. The appeal is allowed and planning permission is granted for a proposed garage, gym and link to existing property; at South View, Weddington Lane, Caldecote CV10 0TS; in accordance with the terms of the application Ref PAP/2022/0298, subject to the conditions attached as an annexe to this letter.

Preliminary Matters

2. I acknowledge and appreciate the planning history and background to this planning application which has resulted in a number of revisions and amendments to the scheme, where this current proposal seeks to lower the apex of the roof together with the incorporation of a hipped roof. Having read the appeal documents, there appears to be general agreement that the design of the proposal is acceptable and meets the design policies of the development plan; and also that the development would not cause adverse harm to the protected tree in the front garden. The one outstanding issue on the Decision Notice appears to be related to impact to living conditions of the neighbouring property. Taking this into account together with the refusal reasons, and for the avoidance of doubt I will not revisit the principle of the scheme and only look into those matters in dispute.
3. Upon my site visit, much of the development had been constructed which includes the footprint and walls and part of the roof of the development, meaning that the development is partly retrospective. It is noted that the proposal being applied for has a lower roof apex over the garage than the roof that has been constructed. I have made my decision on this basis.

Main Issue

4. The main issue is the effect of the development upon the living conditions of the neighbouring dwelling referred to as 'Timberlea,' with particular regard to sense of enclosure, overshadowing and access to light.

Reasons

5. The appeal site is part of a small group of dwellings located in a relatively detached position from the nearby villages. Building plots and dwellings are relatively large, with an emphasis on vegetation and spaces in and around dwellings. The appeal site is known as 'South View' and contains the main body of the dwelling situated to the rear of the plot, running from north to south, and with a later extension to the north which is set close to the northern boundary. It is from this extension, that the current proposal is constructed and runs west to east, close to the shared boundary with the neighbouring property Timberlea. The proposed subject projection of South View as part of this appeal is the snug and garage building that runs close to the eastern boundary and forward of the built form of Timberlea, adjacent to a paved area to the front of Timberlea which appears to be utilised for vehicular parking.
6. The side elevation of Timberlea is setback approximately 4 metres from the garage building of the appeal property with Timberlea also constructed at a slightly lower ground level than the appeal site. Timberlea also faces east and its main window openings face east and west. The side elevation facing the garage and snug includes a door and a small obscurely glazed bathroom window. The windows in the front elevation have full height glazing with the nearest window to the common boundary with the appeal site being a study, and the furthest window along the eastern façade fronts the lounge room.
7. In terms of access to light, both parties refer to a Daylight and Sunlight report which indicates that the property satisfies guidance¹ in terms of allowing sufficient access to light. Whilst I have not been presented with the report, given the direction of the sun, much of the overshadowing caused by the appeal building would be towards the morning, with Timberlea gaining access to sunlight during the afternoon and evening hours. This is also replicated in photos shared by the occupiers of Timberlea which show the extent of shadow experienced during the morning. Given that the photographs are from the structure as completed, the lowering of the roof form as proposed would reduce the amount of overshadowing shown in these photographs. I can appreciate that the level of sunlight received by Timberlea will be reduced by the development when compared to the scenario before the structure was erected, however the level of sunlight received by Timberlea would still be sufficient and not to a level where it would cause significant detriment upon the living conditions of Timberlea from overshadowing or loss of light.
8. Turning to outlook, the roof form of the garage building is pitched so that the lowest point is closest to Timberlea, some 4 metres away with the roof pitch graduating away from the property. The proposed extension would project to the front of the dwelling adjacent Timberlea, but given the depth and width of the adjacent property, together with the large amount of tree cover, Timberlea would have adequate level of access to sky from the front garden and the windows of the property. Whilst I agree that there would be a change to outlook from Timberlea, I disagree that it would be to a level that could be considered to cause 'serious and adverse' detriment to the living conditions of this property.

¹ Building Research Establishment (BRE) publication 'Site layout planning for daylight and sunlight'

9. I am also aware of comments made during the application process with regards to Articles 1, 2 and Article 8 of the European Convention on Human Rights or Human Rights, as incorporated by the Human Rights Act 1998.
10. Articles 1 and 2 provides that everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following conviction of a crime for which this penalty is provided by law. In relation to this appeal, relevant components of Articles 1 and 2 overlap with Article 8 which provides that everyone has the right to respect for their private and family life, their home and their correspondence. These Articles are referred to under similar circumstances in that the neighbouring occupier considers that the proposal would result in a shorter life expectancy for themselves and that the approval of such an application would affect the right of the neighbour to enjoy their property.
11. Based on the appeal documents, whilst there may be some change to the existing conditions as a result of the proposal, this would not be to a level where unacceptable harm would be caused to the neighbouring occupier or any future occupiers. I have no evidence to suggest that the proposal would shorten the life expectancy of the neighbour, and the neighbour would be able to adequately enjoy their property as a result of the proposal and the aforementioned discussion with regards to access to light and sense of enclosure. I note that the neighbouring resident has also referred to lack of privacy and overlooking, however there are no windows or direct views into the neighbouring property from the appeal site which would cause any privacy concerns. Having regard to the legitimate and well-established planning policy aims to protect the living conditions of the occupants and neighbouring dwellings, in this case I consider that greater weight attaches to the public interest. Approval of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the neighbour.
12. Taking the above into account, I disagree that the proposal would result in unacceptable impacts to living conditions as a result of sense of enclosure, overshadowing or access to light. Consequently, the proposed scheme is made in accordance with North Warwickshire Local Plan Policies LP29 and LP30 which both seek to safeguard the living conditions of surrounding occupiers.

Other Matters

13. I note that there is discussion from interested parties with regards to a duty for the Council to make determinations on future uses of the building; the lack of compliance with building regulations; Considerations regarding health and well being; that the application does not reflect comments made within a previous application; and that there are concerns regarding pollution in terms of noise and smell. There is no ability for the Planning Authority to make judgements upon future uses of the building beyond the application, it can only make decisions based upon the use that is applied for. If a material change of use occurs, this would require planning permission and then a further assessment of the planning merits of the case would occur as part of this application. Compliance with Building Regulations is not a planning matter with this concern being able to be dealt with outside this appeal process. Considerations with regards to health and well being have been incorporated into planning policy and is part of the decision making process. There is no duty that binds a planning authority to make decisions in accordance with comments previously

expressed in officer reports relating to other applications. The Officer report in question dates from 2012 a substantial time which has passed and reflects a different policy position. The consideration of an application is based upon its planning merits which has been the case in this particular application. These considerations have formed part of the decision making process as part of the application and of this appeal. With regards to pollution, this would be commensurate with a domestic use and as such the use of a garage would not generate additional noise or smells above levels normally associated with domestic use which would not cause detriment to the living conditions of surrounding occupiers.

14. I also note submissions by third parties of a number of newspaper articles which show structures having been constructed without planning permission and that have since been requested to be removed. Given the variance in different forms and developments, I am unclear how these examples or considerations involving these examples relate to the current proposal, with these cases demonstrating that each application should be considered on their merits and if they are seen to be contrary to the development plan and/or material considerations, then they are sought to be removed. These examples are not analogous to the scheme as part of this appeal and do not justify support for the refusal of the application.
15. I also note discussions regarding the Corporate Manslaughter and Homicide Act 2007 in relation to the tree on the appeal site falling, or from items from the roof falling onto the neighbouring property. Planning matters relate to the integrity and impact upon the tree whereby any impacts have been assessed as being suitable as a result of the development in accordance with the development plan. I have not being presented with any additional evidence to consider which counters the arguments of the Council and of the Appellant with regards to the tree and its compliance with the development plan. In terms of objects falling from the roof, this is beyond a planning matter and would be best dealt with civilly. Taking the above into account, the matters raised do not constitute material considerations that would change the appropriateness of the development.

Conclusion and Conditions

16. Representations were made to the effect that the rights of the adjoining occupier, under Articles 1, 2 and 8 as set out in the Human Rights Act 1998 would be violated if the appeal were allowed. However, I have found that the proposed development would not result in adverse detriment from overlooking, sense of enclosure, access to light or overshadowed so that the neighbour would suffer unacceptable harm to their living conditions. The development would not conflict with Local Plan Policy DE1 or guidance in the SPD. I am satisfied that a grant of planning permission would not unacceptably interfere with the neighbour's right to a private and family life and home. It is proportionate in the circumstances to allow the appeal.
17. For these reasons, and having considered all matters raised in evidence and from what I saw during my site visit, I conclude that the appeal should be allowed and planning permission granted, subject to the conditions attached as an annexe.
18. The Council in their Appeal Form response detailed that should the appeal be allowed, that specific conditions should be placed on the Decision Notice. I have

considered the conditions as specified in the beginning of this letter in accordance with the Planning Practice Guidance (PPG). Suggested Conditions 1 and 2 are regarding time limit and approved plans which are standard conditions which set the standard time limit and approved plans which are necessary for the avoidance of doubt and in the interests of proper planning. The notice of 6 months within the decision notice to start is considered a reasonable timeframe to commence the alterations as much of the scheme has already commenced. Suggested Condition 3 seeks that that facing materials of the scheme are submitted for approval, which is necessary as this condition enables the development to fit in with the character and appearance of the existing dwelling and the locality. Suggested condition 4 seeks that any new openings require consent which is necessary in order to avoid further concerns and assessment of any implications to living conditions. Suggested Condition 5 seeks that the garage only is used for residential type uses. Any other uses beyond the enjoyment of a residential use, would constitute a change of use and would require planning permission in any event. As such the condition is unnecessary and would not meet the tests of conditions of the PPG. This condition is therefore not included.

J Somers
INSPECTOR

ANNEXE: SCHEDULE OF CONDITIONS TO BE INSERTED

1. The development to which this permission relates must be begun no later than the expiration of six months from the date of this permission.
2. The development hereby approved shall not be carried out otherwise than in accordance with plan numbers:
 - 9606/21 Rev b, 'Plans and Elevations,' received by the Local Planning Authority on 14 July 2023;
 - 9606/23A, 'Site Cross Sections,' received by the Local Planning Authority on 15 June 2023; and
 - 9606/01, 'Site Layout,' received by the Local Planning Authority on 13 June 2022.
3. Notwithstanding the details shown on the approved plans, the facing material to be used on the building shall be rendered blockwork, the colour of which shall first have been agreed in writing by the Local Planning Authority.
4. No additional openings within any elevation of the building hereby approved or within any part of its roof shall be made or installed.

END OF SECTION