

(7) Application No: PAP/2020/0341

Land Adjacent The Lodge, Tamworth Road, Cliff,

Material change of use of land for stationing of caravans for residential use for Gypsy-Traveller family with associated development (relocated access, hard standing and package treatment plant) - part retrospective, for

Mr & Mrs J Doherty

Introduction

This application is referred to the Board in view of its past interest in the site.

The Site

This is two hectares of land on the western side of the A51 Tamworth Road between Kingsbury and Dosthill, just over half a kilometre from the northern edge of Kingsbury. It sits immediately to the north of the dwelling known as The Lodge separated from it by a fence. To the west is the River Tame beyond a mature tree belt of some 25 metres in depth. To the north is further open agricultural land separated by a fence and the eastern road frontage is marked by a hedgerow. The site is within a wholly agricultural landscape. The small hamlet of Cliff is some 250 metres to the north.

To the north west of the site is a caravan site which is separated from the application site by a mature hedgerow and trees.

The south eastern corner of the site nearest The Lodge is presently occupied by a residential traveller's pitch. This pitch is accessed from an existing field gate access close to The Lodge. There is a partially newly created access further to the north.

The Proposal

The proposal is for no more than two caravans (one mobile home and one tourer) for occupation by a gypsy/traveller family. No day room is proposed. The pitch would be on the north side of the newly created access referred to above with the land prepared as an area of hardstanding. The mobile home is not proposed to be raised as the present one is to the south of the access – rather it would stand on the hardstanding. The water treatment plant would be within the hardstanding area. Additionally, there would be new landscaping planted between the pitch and the northern boundary as well as strengthening the existing frontage hedgerow. This would be also extended around the remaining site boundaries which enclose land to be used for equestrian use.

The existing pitch described above would be removed and the land restored with the existing access closed.

The applicant has expressed a view that whilst a permanent permission is sought he would accept a temporary and personal planning condition limiting occupation to the family for a period of five years.

The applicant's family includes four children and there are some health issues, but they are registered with the local GP and the children attend the local school. The family has an identified need for the education and health of the children. Their horses are currently stabled around 30 miles away.

The proposals and site location as seen at Appendix A.

Background

a) Factual Matters

Planning permission was refused in December 2018 for the use of the site for a gypsy site comprising five pitches with dayrooms as well as equestrian buildings. A subsequent appeal was dismissed. A copy of the refused plan is at Appendix B and the appeal decision letter is at Appendix C.

A second application for a single pitch gypsy site with a day room, septic tank and the relocation of the access was refused in November 2019. A subsequent appeal was dismissed in June 2020. A copy of the refused plan is at Appendix D with the appeal decision letter at Appendix E.

The application site is the subject of a Court Order dated 3 September 2020. This enables the applicant to remain on the site until the determination of this current third application, whether by the Council or the Planning Inspectorate. In the event of a permission, then that will supersede the Order. In the event of a refusal, then the applicant has to cease the use of the land for residential purposes and remove the associated caravans, hardstanding and structures within eight weeks of that decision.

b) The Third Application

Members will no doubt be aware of changes in planning legislation which aim to prevent the submission of repetitive planning applications. That legislation has been reviewed given the history set out above. Officers are satisfied, after taking legal advice, that this third application can be determined. It is thus reported to this Board.

The reasons for this are now set out.

The description of the application is physically "similar" to that which was considered in the second appeal - Appendices D and E. Although the pitch has "moved" to the northern side of the new access it is still within the application site itself which has not altered. These changes will need to be considered by the Board. However rather than focus on these matters, the applicant considers that there is now fresh evidence which was not before the Inspector at the time of his decision in June this year. It is agreed that this is the case and this is why the application can be determined. This fresh evidence is said to consist of an updated Assessment of the need in the Borough for Gypsy and Traveller Accommodation; secondly the changed circumstances of the family and finally the present COVID situation. These will be discussed in more detail below, but at this stage Members are reminded that as a consequence of this fresh evidence and the changes to the physical content of the application, assessment of the final planning balance in this case will also change.

Development Plan

The Core Strategy 2014 – NW1 (Sustainable Development); NW2 (Settlement Hierarchy), NW3 (Green Belt), NW7 (Gypsy and Travellers), NW8 (Gypsy and Traveller Sites), NW10 (Development Considerations), NW12 (Quality of Development) and NW13 (Natural Environment)

Saved Policies of the North Warwickshire Local Plan 2006 – ENV13 (Building Design); ENV14 (Access Design) and TPT3 (Access and Sustainable Travel and Transport)

Other Material Planning Considerations

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

National Planning Practice Guidance – (the “NPPG”)

The Planning Policy for Traveller Sites 2015 - (the “PPTS”)

The Submitted Local Plan for North Warwickshire 2018 – LP1 (Sustainable Development); LP2 (Settlement Hierarchy), LP3 (Green Belt), LP6 (Amount of Development), LP10 (Gypsy and Travellers), LP14 (Landscape) LP31 (Development Considerations) and LP32 (Built Form)

North Warwickshire Landscape Character Assessment 2010

Appeal Decisions APP/R3705/W/19/3242521 and APP/R3705/19/3220135

The Gypsy and Traveller Accommodation Assessment 2019 – (the “GTAA”)

Consultations

Environmental Health Officer – No objection subject to standard conditions

Warwickshire County Council (Rights of Way) – No objection

HS2 Ltd – No objection

Warwickshire County Council as Highway Authority – No objection subject to conditions

Representations

At the time of preparing this report there have been 88 representations received objecting to the proposal. The following matters have been raised in these objections:

- Previous applications have been refused and appeals dismissed
- This is inappropriate development in the Green Belt which harms its openness
- The gypsy pitch is not in-keeping

- There would be added pressure on local services which are already at capacity
- The A51 is a “fast” road which is heavily used and the proposal will add traffic to that
- There is already light pollution from the existing site
- Hedgerows have been removed
- If new pitches are required, they should not be in the Green Belt

There have also been 14 representations received supporting the proposal for the following reasons:

- The plot of land is much improved
- Given the M42 and the HS route, this would not be out of keeping
- The family should be welcomed and given a stable home – the children already attend local schools
- No harm is being caused

The Kingsbury Parish Council objects on the following grounds:

- Previous cases have all been refused. The changes to the application do not make any difference to the decisions already made
- It is inappropriate development in the countryside and its rural setting
- There are no exceptional circumstances here
- The new access is a safety risk

The Dosthill and Two Gates Resident’s Association has objected on the following grounds:

- The site is still in the Green Belt
- The access will create a safety hazard
- The large size of the site suggests further development

Craig Tracey MP has objected because it is inappropriate in the Green Belt referring to its permanence and its openness. He does not consider that the applicant has demonstrated very special circumstances.

Observations

a) The Green Belt

The site is in the Green Belt. Herein the NPPF states that inappropriate development is harmful to the Green Belt and therefore carries a presumption of refusal. The NPPF also provides guidance on what development should be considered to be inappropriate. The proposal is for a material change in the use of the land and the NPPF says that this category of development would be inappropriate unless it preserves the openness of the Green Belt and does not conflict with the five purposes of including land within it. It is thus necessary to assess the current application against these two conditions. Members are reminded not to assume that because there have been two previous decisions where the change of use in those cases was found to be inappropriate, that the current application is also inappropriate. It has to be considered afresh.

In this regard Members are reminded that the current proposal is “smaller” in scale:

- the proportion of the whole site to be used for the “single” pitch is less than that proposed in the June 2020 refusal – compare Appendix A with Appendix D
- The amount of built development on that pitch is also less - no day room and no solid timber panel boundary fencing
- The mobile home would stand on the ground and not be raised.

Openness is not defined in the NPPF but in planning terms it is usually understood as meaning the absence of development. The NPPG however does provide guidance and this draws attention to a number of elements that go together to make up “openness”. There is a spatial element. Here the appearance and perception of the existing space is one of a large open tract of land on either side of the A51 running from Kingsbury north to Cliff. This open area will be materially altered by the proposal in that the proposal introduces new development. That involves a new engineered access and the structures on an area of hardstanding. That will lead to some spatial containment of that large open tract of land. There is also a visual element to openness. Here the proposed development introduces something visually and noticeably different to the setting of the wider area. The site is in the public realm visible from the highway and its footpaths.

The third element is to assess the activity that would be introduced to the site as a consequence of the development. Here that involves traffic, parked vehicles, comings and goings, family activity, external lighting and all of the delivery and other visits made to a residential site. The final element is whether the development would have permanent or temporary impacts. Here the proposal is for a permanent change notwithstanding that a temporary permission is open for consideration. As a consequence of all of these elements it is considered that notwithstanding the reduced scale of the proposal, there would still be as a matter of fact and degree, a worsening of openness. It is also considered that the proposal would conflict with one of the purposes of including land within the Green Belt - namely that it would not safeguard the countryside from encroachment. It is thus concluded that the proposal is inappropriate development in the Green Belt and thus by definition in the NPPF, it causes substantial Green Belt harm.

The Inspector in dealing with the last proposal concluded that that was inappropriate development in the Green Belt – Appendix E. Notwithstanding that that was for a different proposal it is opportune to look at the various matters which the Inspector drew on in that case to see how they affect consideration of the present reduced proposal. He refers to matters such as, “the nature of the use and the ancillary buildings and associated residential paraphernalia that would arise” and the creation of “a more urban physical form which detracts significantly from the otherwise mainly open rural character of the area and especially the area north of The Lodge”. It is considered that these two matters are still applicable and thus that the conclusion that this development is inappropriate remains.

The Inspector in that case concluded that because of his findings on the above matters that the degree of actual Green Belt harm was significant – para 29. However as recorded above, this current application is reduced in scale from that considered by the Inspector in June 2020. However, because the setting here is particularly open; the development adjoins the road and because the degree of activity associated with a residential use will not change, it is still considered that the degree of actual Green Belt harm will be significant.

In conclusion therefore the proposal amounts to inappropriate development in the Green Belt and that it would have significant harm to the openness of the Green Belt. Substantial weight has to be given to this harm in the final planning balance as required by the NPPF.

b) Other Harms

There will be a visual and landscape impact as this section of the field would take on a materially different appearance by fact and by degree. Core Strategy policy NW12 requires all new development to positively improve the environmental quality of an area and Policy NW13 requires the quality, character and local distinctiveness of the natural environment to be protected and enhanced. These policies are not out-of-date as they accord fully with Section 12 of the NPPF.

The site lies within the Tamworth-Urban Fringe Farmlands landscape character area as defined in the 2010 Landscape Character Assessment. This is characterised by “an indistinct and variable landscape with relatively flat open arable fields and pockets of pastoral land, fragmented by spoil heaps, large scale industrial buildings and busy roads, bordered by the settlement edges of Tamworth, Dordon and Kingsbury”, and “generally the indistinct topography and combination of peripheral elements limits the open views to within the area”. The management strategies for the area include, “maintaining a broad landscape character to both sides of the M42” and “conserving remaining pastoral character”. The environmental quality of this area is of an open rural setting. The proposal will introduce new landscaping thus adding value, but there would also be new development and its associated activity. This would not conserve the remaining pastoral character. The Inspector in the last case considered that the proposal in front of him would have a significant adverse effect and thus that proposal would conflict with the Core Strategy policies – paragraph 16 of his letter. However, the current proposal is reduced in scale. Nevertheless, it is considered there would still be significant harm caused for the reasons set out in the Green Belt assessment above.

It is not considered that there would be unacceptable impacts on any heritage assets, ecological assets or as a consequence of surface water or foul water disposal arrangements and neither causing unacceptable impacts on the residential amenity of neighbouring occupiers.

The proposed access arrangements have been considered to be safe by the Highway Authority. This carries substantial weight. The site has direct access to bus services linking Tamworth with Kingsbury and there is a bus stop a short distance from the site. The road here too has a footpath into Kingsbury on the same side of the road as the application site. In these circumstances it is not considered that material harm could be defended. It is also of substantial weight that the Inspector dealing with the last case did not find any highway harm – and that too was for a single pitch using the new access.

Policy NW8 of the Core Strategy is a criteria-based policy which is used to assess proposed gypsy and traveller residential sites. It is not out of date and carries full weight as it is within the adopted Development Plan and is considered to accord with the NPPF – paragraph 61 – as well as the PPTS – paragraphs 8 to 13 but particularly paragraph 11. The key matter here is that the policy refers to the assessment of sites outside of the Green Belt. The appeal site does not satisfy the prime locational criterion set out in the introduction to this policy. It is a matter of fact that the site is not inside of, nor does it adjoin a named settlement that has a settlement boundary outside of the Green Belt. As a matter of fact, the proposal therefore does not accord with NW8.

Notwithstanding this position NW8 does provide a basis for an assessment of potential other harms and these should be considered. The proposal would satisfy all of the criteria within this policy save for one – that is given the landscape and visual harm identified above, the site could not be assimilated into the surrounding landscape.

c) The Harm Side of the Planning Balance

On this side of the balance is the substantial harm to be given to the inappropriateness of the development in the Green Belt; the significant actual Green Belt harm caused, the significant landscape and visual harm caused as well as the site not being able to be assimilated into the surrounding landscape. Together these add up to significant harm being caused.

It is now necessary to assess the other side of the balance.

d) The Applicant's Case

As indicated above the applicant has reduced the scale of the proposal such that he considers that the cumulative level of harm on that side of the planning balance is now also reduced. As recorded above, that conclusion is not wholly accepted.

Additionally, the applicant has specifically drawn attention to three fresh matters that should be considered by the Board.

The first relates to the overall level of need for Gypsy and Traveller sites in the Borough. The applicant's case in short, is that the Core Strategy was adopted in 2014 and its policy NW7 which sets out the requirement over the plan period (up to 2028) was based on a 2008 Assessment. That is now out of date as evidenced by a 2019 Assessment which has been submitted to the Inspector handling the Examination into the Emerging Local Plan. It therefore is a new material planning consideration which was unavailable to the Inspector dealing with the last planning application. The 2019 Assessment shows an increased need for new pitches up to 2033 and thus this application should be supported as the requirement set out in NW7 has already been achieved and is thus out-of-date. It is agreed that this is a new material planning consideration and thus Members should give it weight in their overall assessment on the final planning balance.

The second relates to the personal circumstances of the family. Whilst the two previous appeals did consider the health needs of the children, other concerns have now been identified and these should be dealt with in the final planning balance.

The third relates to the omission of the Inspector in the last appeal to consider the impacts of the Covid19 pandemic on the family and their traveller characteristics in the event of a dismissal of that appeal. That decision was dated June 2020 and the lockdown implications from as early as March on the family were not raised in the decision letter. By way of example the applicant indicates that when travelling they have not been able to access facilities and services – particularly at touring sites. Additionally, many travellers are self-employed as is the family here and thus there has been a loss of income. The point is made that if there is a refusal here and roadside travel is commenced, there would be greater adverse health, education and income impacts on the family, than for a family in the settled community. The PPTS definition of a gypsy and traveller expects this community to travel for an economic purpose and that has been curtailed because of the lockdown and social distancing requirements. Members should give weight to this

consideration when assessing the final balance because the impact of a refusal on the family needs to be given explicit recognition in these current circumstances.

Additionally, the applicant points to the PPTS and its Policy E. This says that “subject to the best interests of the children, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances”. The applicant draws attention to other matters in this case which in this case he considers would carry sufficient weight to outweigh the general approach set out in the policy. These are:

- Failure of the Council to update its gypsy and traveller requirements
- Failure of the Council to suggest suitable alternative sites
- 60% of the Borough is in the Green Belt and with it becoming increasingly difficult to deliver sites outside of the Green Belt in accordance with Policy NW8, some exceptions will have to be made – e.g. the Corley site in the Borough.
- A temporary planning permission should be considered, particularly as there are no permanent buildings being proposed; the site could be readily restored and this would allow a final decision to be taken on the evidence in the 2019 GTAA and to identify new sites to satisfy that new requirement.

All of these matters now need to be assessed in the final planning balance.

e) The Final Planning Balance

All of the applicant’s considerations carry weight. The Board is advised by the NPPF when considering the final planning balance, to assess whether they “clearly” outweigh the total harm caused as identified in section (c) above, so as to amount to the very special circumstances in order to support the proposal.

The first issue to address is the question of gypsy and traveller provision and delivery in the Borough. Firstly, it is necessary to provide some background. This will be explained under three headings – the evidence background; the actual delivery to date and the position in respect of the status of the 2019 GTAA.

The Core Strategy requirement for Gypsy and Traveller sites over the plan period 2011 – 2028 was based on a GTAA dated 2008. Policy NW7 requires nine residential pitches as a consequence. The same GTAA was used in the preparation of the emerging Local Plan as Submitted in 2018. This was because no representations or evidence was submitted in the preparation of the Plan from any Gypsy and Traveller representative body to the contrary despite being consulted. As a consequence, the respective policy in the Submitted Local Plan – LP6 – retains the requirement of nine residential pitches. The Inspector handling the Examination of the Submitted Plan queried this position. As neighbouring Local Authorities had already commissioned a new joint GTAA, the Borough Council joined in that commission and the Assessment was prepared in 2019. This was subsequently sent to the Inspector along with additional information that he had requested.

Members will be aware that planning permissions for traveller pitches have been granted by the Council or at appeal since the adoption of the Core Strategy. At present there have been 22 pitches permitted since 2011. The 2019 GTAA concludes that a further 19 are required from 2019 up to 2033 (the expiry date of the Submitted Local Plan).

The 2019 GTAA has not been adopted by the Borough Council. It has been forwarded to the Examination Inspector as updated evidence for him to evaluate and then to make recommendations to the Council. It is likely that he will recommend a Main Modification to reflect this updated evidence, to change the number of residential pitches between 2019 and 2033 to 19, with no requirement for further transit provision. The Council's position is to commit to the early preparation of a Development Plan Document ("DPD") in which the recommendations of the of the Inspector can be taken forward and sites allocated to meet this need. As Members are aware the position should be clarified before the end of the year when Main Modifications to the Submitted Plan are likely to be published.

The applicant's case here is that the requirement set out in NW7 has been met such that that policy is out-of-date. Moreover, the number of permissions granted has exceeded the figure set out therein, which evidences a greater need and this is confirmed by the 2019 GTAA. Whilst not adopted, it is a material planning consideration of weight in the public domain as it has been submitted to the Examination Inspector.

It is accepted that policy NW7 is out-of-date. However, planning permissions have been granted through the development management process for 22 new pitches. That is to say that Policy NW8 is delivering traveller pitches in the Borough. NW8 is not out of date as it accords with the NPPF and the PPTS as indicated above. This was the position set out be the Inspector in the last appeal – paras 18 and 19 of Appendix E. It is agreed that he did not have the 2019 GTAA before him. In this regard he says "provision has been made for the supply of sites to meet and well exceed the previously identified local need, but the emerging local plan will need to ensure that such provision reflects the current and predicted future need". This is precisely why the Council is recommending to the Inspector that it will deal with this matter through the Local Plan process via a DPD.

The two most important policies in the Core Strategy for the delivery of gypsy and traveller sites are NW7 and NW8. Whilst the former is out of date, the latter is not. The current proposal does not accord with NW8. The 2019 GTAA contains new evidence, but that does not mean that planning permission has to be granted. Any proposals still have to be assessed against policy NW8 and any others that are most relevant to the principle of the development – in this case the NPPF guidance on Green Belts and Policies NW12 and NW13 of the Core Strategy. Harm has been found in respect of these policies. As a consequence, it is considered that the applicant's first argument that the new evidence of need "trumps" the harm caused is not accepted, as clearly the Council is continuing to deliver pitches in accordance with its Development Plan.

The previous Inspector described the personal circumstances of the applicant family in paras 20 and 21 of his letter – Appendix E. It is understood from the applicant that the weight that was given to these circumstances was under-estimated. However, the Inspector at para 33 gives considerable weight to the circumstances of the appellant's family and concludes that them remaining on the site would provide a settled base with continued access to medical and educational facilities. That would also be in the best interests of the children. That would also mean the family not having to live "on the roadside". The Inspector was mindful of the Public Sector Equality Directive in coming to his decision and the Board too is reminded of its obligations under the Directive. The weight to be given to providing "stability" to the family thus certainly remains as significant as advanced by the applicant. Additionally, it can be argued as the applicant does, that the current COVID 19 situation and its consequences, has had and is having a disproportionate adverse impact on the travelling community. Guidance is provided in

para 16 of the PPTS, which says that “subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.” It is not considered that the circumstances here warrant taking a decision outside of this guidance. The reasons are:

- The Council is delivering traveller pitches such that this exceeds Development Plan requirements
- Even where policies are out of date, the NPPF explicitly recognises the Green Belt as a “protected” area.
- In this case the proposal amounts to inappropriate development and thus substantial harm is caused to the Green Belt.
- The other most relevant planning policies to determination of this application are NW8, NW12 and NW13 of the Core Strategy
- Cumulatively significant harm is caused to these policies
- Even although the level of that harm may be reduced from the previous case here, it still will be permanent and significant, even with an occupancy condition.
- There will be interference to the rights of the family if there is a refusal here, but that was not found to be overriding in the last appeal case.
- The Covid 19 implications apply to the whole community and there will be disproportionate harm to members of the settled community too.
- The greater public interest is in the retention of the Green Belt.

Members are asked to assess the final planning balance bearing in mind these factors, but also whether recognition of matters such as reduced levels of harm and the importance of retaining a stable base for the whole family would indicate that the applicant’s arguments do now “clearly” outweigh the harms caused. The applicant is arguing that they do because of the revisions made in this application and the new evidence base. It is agreed that the assessment may well be more finely balanced than the case before the last Inspector, but that there is still “clear” water between the two sides for the reasons set out above.

Given the changes made to the application and to the new evidence base which the applicant argues will have to be taken into account by the Council in its emerging Local Plan, the suggestion of a temporary consent should be considered by the Board. That is not agreed because:

- Green Belt and other harm will still be caused
- The emerging local Plan will address any new evidence base, but that does not mean that Policies NW8, NW12 and NW13 as taken forward into that Plan as policies LP1, LP10, and LP14 will be withdrawn.
- Hence even in the knowledge of that base, the likelihood is still that permission may not be forthcoming.

Members may wish to take a different view.

The Board will also need to look at the expediency of enforcement action here should the recommendation below be agreed. It is noted above that the September Court Order requires any appeal to be lodged within 28 days of the decision rather than the usual 6 months. Additionally, that Order enables the applicant to remain on site until the outcome of any appeal. It also sets out requirements in the event of a dismissal of any appeal. In

effect therefore the Order is an Enforcement Notice with a compliance period set out and a list of compliance requirements. It is considered that it would not be expedient to serve a separate Notice in these circumstances.

Recommendation

A) That planning permission be **REFUSED** for the following reason:

1. The site is in the Green Belt. It is considered that the development amounts to inappropriate development as it fails to preserve the openness of the Green Belt and it conflicts with the purposes of including land within the Green Belt. The applicant's case is not considered to clearly outweigh the cumulative Green Belt and other harm caused such as not to amount to the very special circumstances needed to support them. The proposal does not accord with policies NW8, NW12 and NW13 of the North Warwickshire Core Strategy 2014 as supported by the National Planning Policy Framework 2019.

Notes

1. Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues and suggesting amendments to the proposal. However despite such efforts, the planning objections and issues have not been satisfactorily addressed/the suggested amendments have not been supplied. As such it is considered that the Council has implemented the requirement set out in paragraph 38 of the National Planning Policy Framework.
- B) That it is not considered expedient to serve an Enforcement Notice at this time for the reasons outlined in this report.

BACKGROUND PAPERS

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2020/0341

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	1/7/2020
2	Neighbours - 88	Representations of objections and comments	5/8/2020 – 02/09/2020
3	Neighbours – 14	Representation of support / no objection	12/08/20 – 20/08/2020
4	NWBC Environmental Health	Consultation response	12/08/2020
5	WCC Rights of Way	Consultation Response	14/08/2020
6	HS2	Consultation response	18/08/2020
7	WCC Flood Authority	Consultation response	17/08/2020
8	WCC Highways	Consultation response	19/08/2020
9	Kingsbury Parish Council	Consultation response	24/08/2020
10	MP Craig Tracey	Application comments	26/08/2020
11	WCC Highways	Consultation response	11/09/2020
12	Press notice	Consultation	06/08/20 – 30/08/2020
13	Various parties	Application emails	09/07/2020 – 14/09/2020

Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.

A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.

Appendix A – Proposed plan



Appendix B – 2018 application refused plan



Appendix C – PAP/2018/0435 application Appeal decision in 2019



Appeal Decision

Hearing Held on 12 November 2019

Site visit made on 12 November 2019

by **Elaine Worthington BA (Hons) MTP MUED MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19th November 2019

Appeal Ref: APP/R3705/W/19/3220135

Land adjacent to The Lodge, Tamworth Road, Cliff, B78 2DS

- 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 Mrs T Doherty against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2018/0435, dated 11 July 2018, was refused by notice dated 12 December 2018.
 - The development proposed is the change of use of land to equestrian use and use as a gypsy site comprising of 5 pitches with dayrooms including the relocation of access, a stables block, ménage and installation of treatment plant.
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Decision

1. The appeal is dismissed.

Background

2. The appeal site is open grassed land with a road frontage to Tamworth Road and is within the Green Belt. It adjoins the adjacent dwelling and stables at The Lodge to the south. The river Tame and a mature tree belt lie to the west. A caravan park and associated caravan storage area adjoins the rear part of the site to the north and there are open fields on the other side of Tamworth Road to the east with the M42 beyond.
3. The Council accepts that the appellant and her husband meet the definition of gypsies and travellers set out in the Glossary to the Planning Policy for Traveller sites (PPTS) and it was confirmed at the hearing that they are Irish Travellers. I see no reason to come to a different view on this matter.
4. The south east corner of the appeal site has been occupied by the appellant and her family since February 2019 and a static caravan and two touring caravans are sited there. This unauthorised occupation of part the site is the subject of an injunction. A planning application¹ for the change of use to equestrian land and use of the site as a single gypsy pitch was refused on the 4 November 2019. Whilst the red line boundary for that application is the same as that for the appeal proposal, the single pitch proposed in that case only covers that part of the site currently occupied by the appellant (and shown on the appeal plans as a paddock). This being so, the parties are agreed that what is on site is a separate development that does not form part of the scheme before me.

¹ Reference PAP/2019/0427

5. The Council's decision notice includes two reasons for refusal, the second of which relates to highway safety in relation to the proposed access. However, the appellant has provided a Road Safety Stage One Report and amended plans which the Highway Authority confirms address its previous objections. On this basis, despite the continued concerns of local residents, the Council confirmed at the hearing that it did not wish to defend this reason for refusal.
6. This background has led to my identification of the main issues below.

Main Issues

7. The main issues in this case are:
 - Whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) (including its effect on openness and the purposes of the Green Belt); and
 - The effect of the proposal on the character and appearance of the surrounding area; and
 - If it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development?

8. The National Planning Policy Framework (the Framework) is clear that the government attaches great importance to Green Belts and that their essential characteristics are their openness and permanence.
9. The appeal proposal includes two elements, a change of use to a gypsy site and an equestrian use. The submitted plans show five gypsy and traveller pitches to rear of the site and paddocks and stables to the front of the site closest to Tamworth Road. Policy E of the Planning Policy for Travellers Sites (August 2015) (PPTS) specifically defines traveller sites as inappropriate development in the Green Belt (paragraph 16). The appellant argues that the equestrian use proposed would not in itself be inappropriate development in the Green Belt. However, taken as a whole, the appeal proposal concerns the change of use of the land to a mixed gypsy and equestrian use.
10. Paragraph 146 of the Framework establishes that certain forms of development are not inappropriate within the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include material changes in the use of land (criterion e).
11. Policy NW3 of the North Warwickshire Local Plan Core Strategy (Core Strategy) refers to the Green Belt generally, and the supporting text at paragraph 7.1 states that within Green Belts the primary aim is to maintain the open nature of the area and that there is a general presumption against development that is inappropriate except in very special circumstances.

12. Openness is an essential characteristic of the Green Belt. It has a visual dimension as well as a spatial aspect. The proposal would introduce five residential pitches, each of which would include a static caravan, an amenity block and one touring caravan. A stable building would also be constructed and the development as a whole would be served by a new access. Boundary fences would also be erected and both the residential and equestrian use of the site would introduce associated paraphernalia and activity including the parking of vehicles. In spatial terms it would introduce a good deal of development into what is an open field.
13. The proposed paddocks would be to the front of the site closest to Tamworth Road. The stable building would be set back from the road frontage behind one of the paddocks and the five residential pitches would be beyond this to the rear of the site some 150 metres from the road. The site is adjacent to The Lodge immediately to the south for much of its southern boundary, and the caravan park adjoins the rear part of the site to the north. There is a substantial mature tree belt to the west of the site and a hedgerow to the site's frontage with Tamworth Road.
14. Even so, despite the proposed layout of the site and the existing development nearby, the site is visible in views from Tamworth Road (particularly on approach from the north) and from Cliff Hall Lane. This is so despite the existing hedgerows there, particularly in the winter months when the vegetation is not in leaf. Whilst additional landscaping is proposed, in my view the proposed development, including that towards the rear of the site, would be readily perceived from these viewpoints, as well as through the gap that would be created by the proposed access on Tamworth Road. Thus, the loss of openness resulting from the proposal would be evident.
15. As such, overall the proposal would lead to that part of the Green Belt in which the appeal site is located being much more built up than it is now. This would lead to a loss of openness. Given the currently open nature of the site, the harm caused in this regard would be considerable.
16. The purposes of the Green Belt are set out at paragraph 134 of the Framework and include to assist in safeguarding the countryside from encroachment (criterion c). The proposal would introduce built development to the countryside. In doing so, and impinging on openness as described, the proposal would not be consistent with site's role in safeguarding the countryside from encroachment. It would therefore have an adverse effect on one of the purposes of including land in the Green Belt. Given the size of the site in relation to the wider Green Belt in which it sits and the existing development nearby, the harm caused in this regard would be limited.
17. The appellant refers to the route of the proposed HS2 rail line which I understand would run to the east of the site on the other side of Tamworth Road close to the line of the nearby M42. Whilst I note the appellant's view that this would significantly diminish the status of the Green Belt, the intended route of the rail line is somewhat divorced from the appeal site and does not form part of its immediate context. Whilst the development of HS2 would inevitably alter the nature of the Green Belt in the wider area, I am not persuaded that the possibility of this future development lessens the appeal scheme's impact on the Green Belt, or serves to justify it.

18. Bringing matters together, I consider that the proposal would fail to preserve the openness of the Green Belt and would conflict with one of the purposes of including land within it. Thus, it would not meet the terms of criterion (e) of paragraph 146 of the Framework. I therefore conclude that the proposal would be inappropriate development for the purposes of national Green Belt policy as set out in the Framework. This harm attracts substantial weight as set out at paragraph 144 of the Framework. It would also be contrary to Core Strategy Policy NW3.

Openness and purposes

19. For the reasons set out above, in addition to the harm that would be caused by its inappropriateness, the proposal would also have a detrimental impact on openness and would fail to prevent encroachment and so undermine one of the purposes of the Green Belt. This harm also attracts substantial weight as set out at paragraph 144 of the Framework.

Character and appearance

20. Core Strategy Policy NW12 requires good quality development that positively improves a settlement's character and appearance together with the environmental quality of the area. Core Strategy Policy NW8 is permissive of gypsy and traveller sites outside the Green Belt and advises that such sites will be assessed using a number of criteria. The final criterion requires that the site can be assimilated into the surroundings and landscaped without any significant adverse effect.
21. The appeal site is within the 'Tamworth – Urban Fringe Farmlands' area as identified in the North Warwickshire Landscape Character Assessment 2010 and forms part of a flat agricultural landscape. As set out above, it is adjacent to The Lodge and the caravan park. There are also other examples of scattered development nearby and number of properties on Cliff Hall Lane. Nevertheless, the site adjoins a large field to the north which runs up to Cliff Hall Lane, and there are open fields on the other side of Tamworth Road to the east and beyond The Lodge to the south. As such, the appeal site has an open and undeveloped rural character and appears very much as part of the wider surrounding countryside.
22. As previously described, the residential pitches would be set well back into the site and away from Tamworth Road and would adjoin the tree belt to the west. The stables would not be on the road frontage and would be built of timber and I accept that along with the paddocks they would appear generally sympathetic to their rural surroundings. I also note the appellant's argument that the fencing and hardstanding would not in itself require planning permission. Even so, as considered above, the proposal would be appreciated in views from Tamworth Road and Cliff Hall Lane. This would be so despite the additional planting around the boundaries that is intended.
23. In this context, I consider that the proposal as a whole would be appreciated as an unwelcome pocket of urbanising development in the countryside that would fail to protect and detract from the rural character of its surroundings. Even taking into account the additional landscaping proposed, I am not persuaded that the proposal could be readily assimilated into its surroundings without any significant adverse effect.

24. I therefore conclude on this main issue that the proposal would be harmful to the character and appearance of the surrounding area. This would be contrary to Core Strategy Policies NW8 and NW12. It would also be at odds with paragraph 127 of the Framework which requires development to be sympathetic to local character including landscape setting (c), and paragraph 170 of the Framework which requires planning decisions to contribute to and enhance the natural and local environment.

Other considerations

25. According to paragraph 143 of the Framework inappropriate development is by definition harmful to the Green Belt. Paragraph 144 advises that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The appellant has put forward a number of other considerations in this case.

The need for and supply of gypsy sites

26. The PPTS aims to promote more private traveller site provision and to increase the number of traveller sites in appropriate locations with planning permission to address under provision and maintain an appropriate level of supply. It also requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 year's worth of sites against their locally set targets.
27. Core Strategy Policy NW7 identifies a need for 9 residential and 5 transit gypsy and traveller pitches from 2011 to 2028. This is based on the findings of the North Warwickshire and Nuneaton and Bedworth Gypsy and Travellers Accommodation Assessment 2013 (GTAA). The Council indicates that since 2011 some 19 residential pitches and 12 transit pitches have been permitted in the borough. The appellant does not dispute this. I accept that this exceeds the requirements set out in Core Strategy Policy NW7 and means that the Council has maintained 5 years' worth of deliverable sites against its locally set target.
28. The appellant is concerned that the need identified in Core Strategy Policy NW7 is an underestimation, and that no allocations have been made despite a number of years of the plan period remaining. However, the assessment of need that informed the Core Strategy is not before me for consideration. That said, I am mindful that the requirement set out in Core Strategy Policy NW7 is not a cap and does not prevent other appropriate sites coming forward. I am also conscious that the GTAA is a number of years old.
29. Policy LP6 of the emerging North Warwickshire Local Plan Submission March 2018 (Emerging Local Plan) contains the same targets for gypsy and traveller sites as Core Strategy Policy NW7 and is based on the same 2013 GTAA. As a result of the ongoing Examination of the Emerging Local Plan the GTAA is being updated and a new study has been commissioned. This is yet to be published and is not before me. Any updated GTAA (and any consequent modifications to Policy LP6) are in any event matters for the Examination of the Emerging Local Plan. However, as things stand, the evidence base is somewhat out of date and it is not possible to accurately estimate current levels of need.

30. The appellant considers the high numbers of planning applications for gypsy and traveller sites in the borough since 2011 to be an indication of a need for private sites. The Council accepts that there are some unauthorised encampments in the borough, and although the Council has provided no information on the availability of pitches on public sites, the appellant refers to these being overcrowded and full, with no waiting lists in operation. These factors, along with the appellant's failure to find an alternative site, add to this argument. Accordingly, although the targets in Core Strategy Policy NW7 have been met, that updated evidence will find a greater level of need for gypsy and traveller sites in the borough cannot be ruled out.

Alternative sites

31. The appellant has been looking for a suitable site within a 30/50 mile radius for around two years, but has not found any. In her experience, nearby public sites are full and overcrowded, and pitches on private sites are not for sale and are kept for family members. Whilst the Council refers to some brownfield sites in the borough that are available for purchase, it recognises that these do not have planning permission to be used as gypsy sites (and may have permission for other uses including residential development) and accepts that their cost can be prohibitive. Based on the evidence before me, no known suitable alternative sites are available for the appellant and her family.

Personal circumstances and accommodation needs

32. The appellant and her family previously lived on the County Council run site at Alvecote where the appellant has two aging aunts. However, due to the overcrowded conditions there they moved to a house in Erdington for a number of months, and from there, on to part of the appeal site.
33. The family are all registered at the Peartree Surgery in Kingsbury. The appellant has specific health conditions which were discussed at the hearing and makes regular trips to Hope Hospital every 3 to 4 weeks. The appellant has four children ranging in age from 4 to 17 years. Two of the children have specific health conditions which were outlined at the hearing and are on regular medication. The younger two children are at Kingsbury Primary School and attend after school activities there. I understand that they are doing well and have established friendships. The eldest child is considering attending college in the future, though it is unknown where at this time.
34. The appeal site would provide a settled base from which the appellant and her family could continue to access education and health care more readily. This would be advantageous to the well-being of the family and it would also be in the best interests of the children. These matters count in favour of the proposal and accord with the aims of the PPTS to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure.
35. Additionally, the proposal would allow the appellant to keep her four horses on the site. These were previously stabled at Brownhills but are now in Coventry on a temporary basis. The appeal site would allow the appellant to provide on-site care and security for her horses as part of her traditional lifestyle and I appreciate that Policy F of the PPTS encourages mixed use traveller sites. The proposal would also reduce the number of car journeys and carbon emissions that are associated with caring for the horses at distance and allow the

appellant to be close to her aunts at Alvecote and provide care for them as they grow older.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development

36. The proposal would be inappropriate development in the Green Belt and as such would cause substantial harm. It would also cause considerable harm to the openness and limited harm to one of the purposes of the Green Belt. These factors also attract substantial weight against the scheme. Additionally, the proposal would cause harm to the character and appearance of the area and conflict with the development plan in these regards.
37. On the other hand, in the context of the uncertain levels of need for gypsy and traveller sites in the area, alongside the absence of any allocated sites in the borough and the lack of alternative sites for the appellant, the contribution that the proposal would make to the supply of gypsy and traveller sites is a benefit which counts in its favour. However, the currently unknown nature of the likely future need for sites, limits the weight I attach to this benefit.
38. As set out above, the appellant's personal circumstances and the provision of a settled base for the family to maintain access to education and health facilities, proximity to family members and care for her horses, are all benefits of the proposal which add a good deal of weight in its favour. However, I am conscious that the proposal is for five pitches, not just one. At the hearing the appellant clarified that all five pitches would all be occupied by family members. The appellant and her husband (and dependents) would occupy one pitch and two pitches would be earmarked for her eldest children (aged 16 and 17) when they are ready to move out. The remaining two pitches would be retained in wider family occupation (for example by the appellant's parents, or those of her husband) or would potentially be occupied by the younger children when the times comes.
39. Whilst I appreciate the appellant's wish to provide accommodation in the longer term for her family and understand that the eldest two children are likely to marry in the next few years, as thing stand, the appellant's personal circumstances (and those of their family) only extend to the requirement for a single pitch. In my view, the need for further pitches for family members in the future is a matter for consideration when and if it arises and should be considered with regard to any personal circumstances at that time. As such, the personal circumstances outlined in support of this appeal cannot be reasonably used to justify the scale of the proposal for five pitches.
40. The proposal would be located relatively close to services and facilities and it has not been put to me that it would not meet the sustainability considerations set out in paragraph 13 of the PPTS. Whilst it considers the proposal to be away from existing settlements, the Council raises no particular objections to the proposal in these regards or in terms of the corresponding criteria in Core Strategy Policy NW8. The absence of harm in relation to these factors counts neither for, nor against the proposal.
41. The appellant considers that the future occupiers of the site would use local services and facilities and so support the local economy. However, whilst this is a benefit of the proposal, the proposal's contribution in this regard would be

limited by its relatively small scale. Although there would also be some use of local contractors in the construction phase, these would be relatively modest and short-lived. The appellant also argues that there would be some gains in biodiversity arising from the proposed boundary planting. Nevertheless, any such gains would need to be considered alongside the loss of a good deal of the the open site to development along with the introduction of activity there and the consequent effect of this on biodiversity. Accordingly, I attach only very moderate weight to these benefits of the proposal.

42. I confirm that I have considered the possibility of granting a temporary planning permission (since a permission with a limited period would to some extent lessen the scheme's impact on the Green Belt and the character and appearance of the area and reduce the amount of resultant harm). However, Planning Practice Guidance (the Guidance) indicates that circumstances where a temporary permission may be appropriate include where a trial run is necessary in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. It has not been put to me that such circumstances apply in this instance.
43. The Council does not consider a time limited permission to be appropriate due to the levels of harm that would arise even on a temporary basis and given the scale and extent of the development proposed. The appellant also considers that the investment that would be required to develop the site as proposed would not be viable over a temporary period. Taking all these factors into account, I also consider that a temporary permission is not justified.
44. Since it was raised at the hearing, I have also considered whether a personal permission (to restrict the occupation of the site to the appellant and her immediate family) would be appropriate. As set out in the Guidance, planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. However, for the reasons given, as I see it, the appellant's personal circumstances can only be reasonably applied to her aspiration for a single pitch at the appeal site. Even if these were to be accepted, an exceptional personal need for the remaining four pitches proposed cannot be demonstrated on these grounds. Accordingly, I am not persuaded that this is an exceptional occasion whereby the proposal before me is justified on the grounds of who would benefit from it.
45. The appellant considers Core Strategy Policies NW7 and NW8 to be out of date and refers to paragraph 11 of the Framework and the presumption in favour of sustainable development. However, with footnote 6 of section (d) (i) of paragraph 11 in mind, I confirm that the since the land is designated as Green Belt the application of policies in the Framework provides a clear reason for refusing the development proposed.
46. I have had regard to the requirements of Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998, and am aware that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Convention on the Rights of the Child. However, I am mindful that the appellant's individual rights for respect for private and family life (along

with the best interests of the children) must be weighed against other factors including the wider public interest and legitimate interests of other individuals.

47. I have also considered the Public Sector Equality Duty (PSED) at section 139 of the Equality Act 2010 to which I am subject. Since the appellant is an Irish Traveller Section 149 of the Act is relevant. Because there is the potential for my decision to affect persons (the appellant and her family) with a protected characteristic(s) I have had due regard to the three equality principles set out in Section 149 (1) of the Act.
48. To dismiss the appeal would disrupt the education of two of the children and the healthcare of two of the children and the appellant. The negative impacts of dismissing the appeal arise since the family may be forced into a roadside existence and intermittent use of unauthorised sites. This would interfere with the best interests of the children and each member of the family's right for respect for private and family life and lends some additional weight in favour of the appeal.
49. However, I have found that the proposal would cause substantial harm to the Green Belt and further harm to the character and appearance of the surrounding area and am satisfied that the well-established and legitimate aim of granting planning permission in accordance with the development plan and planning policies which seek to protect Green Belts and the countryside in the wider public interest, can only be adequately safeguarded by the refusal of permission in this instance. Whilst bearing in mind the need to eliminate discrimination and promote equality of opportunity, in my view the adverse impacts of dismissing the scheme on the appellant and her family are necessary and proportionate.
50. Policy E of the PPTs advises that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
51. Bringing matters together, the other considerations in this case and the benefits of the proposal, even taking into account the family's Article 8 rights and the PSED considerations, do not clearly outweigh the totality of the harm identified. As such, the very special circumstances necessary to justify the development do not exist.

Conclusion

52. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR

Appendix D – PAP/2019/0427 refused plan





Appendix E – PAP/2019/0427, 2020 appeal decision



Appeal Decision

Site visit made on 11 May 2020

by **David Murray BA (Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 June 2020

Appeal Ref: APP/R3705/W/19/3242521
The Willows, Tamworth Road, Cliff, B78 2DS.

- 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 Mrs T Doherty against the decision of North Warwickshire Borough Council.
 - The application Ref. PAP/2019/0427, dated 16 July 2019, was refused by notice dated 5 November 2019.
 - The development proposed is the change of use of land to equestrian use and use as a single pitch gypsy site with day room, installation of septic tank and relocation of the access.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are whether the proposal constitutes inappropriate development in the Green Belt, and if so, whether the harm to the Green Belt, together with any other harm, is outweighed by other factors, including the appellant's personal circumstances and the best interests of children in the household, so as to constitute the very special circumstances necessary to justify the development.

Reasons

Background

3. The appeal site comprises a rectangular area of grassed land which lies in an area of countryside to the south of the hamlet of Cliff and to the east of the River Tame. The site fronts the A51 Tamworth Road which passes over the M42 to the south of the site, and there is a caravan/camping park on land partly to the north. The site and the surrounding area form part of the West Midlands Green Belt.
4. At the time of my visit I noted that there was a residential mobile home on the land together with two touring caravans, and a wooden building. A gap appeared to have been made in the roadside hedge to form a new access to the land and the part of the overall site used for the residential pitch was partly screened by timber fencing and trellis. The remainder of the site was fenced off as paddocks.

5. I have taken account of a previous appeal decision made in November 2019 under ref. APP/R3705/W/19/3220135. This case involved a proposal by the present appellant to develop a gypsy site comprising 5 pitches with dayrooms, together with equestrian use, a ménage and stables, on the same appeal site. The appeal was dismissed.
6. The Council advises that following the unauthorised occupation of the site as a traveller's site in February 2019 an injunction was granted by the High Court to remove the unauthorised development. This was varied in March 2019 to enable the defendants to site one mobile home and two caravans on the land pending the above appeal decision. The Council says that the use as a gypsy/traveller's site has continued notwithstanding the injunction and there is contempt of the Court Order but that is a separate legal matter to this planning appeal.

Policy context and principle of development

7. The development plan comprises the North Warwickshire Local Plan Core Strategy (CS) adopted in 2014 and saved policies in the North Warwickshire Local Plan. It is apparent that the Council is also preparing a revised local plan – the Submission Local Plan 2018 (SLP) which has been submitted for Examination and the Examination in Public has now taken place. Although the Council relies on the policies in the CS, two emerging policies in the SLP are relevant and will be addressed in the relevant issue.
8. There are two main aspects to the proposal: the change of use to equestrian use and the use as a single pitch gypsy site. The equestrian use has not been shown to be contentious in principle and therefore this policy section concentrates on the proposed use as a gypsy site. The CS policies most relevant to the principle of the development are: NW3 applicable to the Green Belt; NW7 and NW8 in relation to development for gypsies and travellers; and NW12 concerning the general quality of development. However, Policy NW3 mainly indicates the extent of the Green Belt and how settlements and infill development will be treated and does not give other policy guidance on development within the Green Belt. Therefore, on this aspect greater weight should be given to guidance set out in the National Planning Policy Framework (NPPF).
9. The appellant's agent says that as the CS was adopted prior to the publication of the national 'Planning policy for traveller sites' (PPTS) in 2015, the above policies should be considered as 'out of date'. However, it is not the related timescale of the two documents that is most relevant but whether there is any substantial difference in the policy provision.
10. CS Policy NW7 deals with the overall provision of gypsy and traveller sites, which I will consider in a subsequent issue, but I note that the Council recognises that the requirements of this policy have been met in numerical terms and that paragraph 11(d) of the NPPF applies in that element of the plan.
11. Policy NW8 sets out a series of criteria for the assessment of proposals for gypsy and traveller sites and the Council submits that the proposal fails the final bullet point in respect of the effect on the landscape which I will also consider in a subsequent issue. However, the preliminary part of the policy makes clear that to be acceptable in principle proposals for gypsy and traveller

sites need to be located inside, adjoining or within a reasonable distance of a settlement boundary outside of the Green Belt, whereas the appeal site lies within the Green Belt. This policy is not materially at odds with the guidance in the PPTS particularly as set out in Policy E. Therefore, Policy NW8 should not be considered 'out of date' and section 38(6) of the Act applies¹ and the appeal should be decided in accordance with the development plan unless material considerations indicate otherwise.

12. I conclude on this issue that the principle of the proposed single pitch gypsy site and its associated development conflicts with the locational criteria set out in Policy NW8 the most relevant part in the development plan.

Whether 'inappropriate development' in the Green Belt and effect on its openness

13. Guidance in paragraphs 143-146 of the NPPF indicates that the erection of new buildings and some changes of use are 'inappropriate development' harmful to the Green Belt which should not be approved except in very special circumstances. I am satisfied that the proposed gypsy site would be 'inappropriate development' because of the nature of the use and the ancillary building and associated residential paraphernalia that would arise from the use, and it is not one of the specified exceptions put forward. The proposal therefore conflicts with the specific guidance in the NPPF.
14. In terms of the effect on openness, this has a visual as well as a spatial dimension. At the site visit I found that the mobile home, caravans and the proposed day room would be visible from Tamworth Road. The presence of these parts of the proposal together with the area of hardstanding for parking and screen fencing create a more urban physical form which detracts significantly from the otherwise mainly open rural character of the area and especially the area to the north of The Lodge.
15. I recognise that part of this visual impact stems from the loss of the roadside hedge removed for the access and the proposals seeks to introduce replacement landscaping/planting to help screen the site from the road in the long term. However, in the short to medium term I find that the proposal would have a discernible and harmful visual impact on the openness of the area when seen from the public realm of Tamworth Road. Moreover, even if the development was substantially screened from public view the development of the residential gypsy pitch would have a significant adverse impact on the openness of the Green Belt and would not preserve it. Thus, the proposal would be contrary to the guidance in paragraph 146 the NPPF even if it was regarded as mainly a change of use.

Effect on the landscape

16. Similar concerns apply regarding the effect on the general rural landscape of the area. Although I noted the scattered other development around the vicinity of the site, the dominant landscape character is one of open fields and a verdant form. The proposal to develop part of the open grassed field with a traveller site would not assimilate into the surroundings and landscape of the area even with the additional planting proposed. I assess the visual impact as significant and this adverse effect means that the proposal conflicts with the final bullet point of Policy NW8.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

Need for and supply of gypsy sites

17. Policy B of the PPTS indicates that Councils must be able to identify and annually update a five years supply of deliverable sites for gypsies and travellers measured against locally set targets. CS Policy NW7 indicates that 9 residential and 5 transit Gypsy and Traveller sites will be provided between 2011 and 2028. This provision is based on a Gypsy and Traveller Accommodation Assessment (GTAA) undertaken in 2008. The appellant and the Council agree that since 2012 the Council has granted permission for up to 19 residential pitches and 12 transit pitches and on this basis it is demonstrated that the strategic requirements of Policy NW7 up until 2028 have already been met although the significant 'over-provision' may be an indication of more recent unmet local need.
18. I understand that emerging policy LP6 of the SLP repeats the requirements of CS Policy NW7. The appellant refers to and the Council acknowledges interim comments from the SLP Examining Inspector who questioned the figures set out in Policy LP6 as the evidence base is considered to be out of date. Accordingly, the Council has commissioned, along with neighbouring authorities, an update of the GTAA and publication of the results is awaited. These will no doubt feed into the further examination of the SLP and reflect the weight that can be given to Policy LP6 in due course. However, as the evidence stands at the moment there is nothing before me to show that the level of permissions granted for residential gypsy and traveller sites will not continue to meet the level of need identified.
19. I conclude on this issue that at the moment provision has been made by the Council though development management decisions for the supply of gypsy and traveller sites to meet and well exceed the previously identified local need but the emerging local plan will need to ensure that such provision reflects current and predicted future need.

Personal circumstances and children

20. The appellant's agent's statement sets out the background to the appellant's move to the appeal site; her medical condition and her family support who live locally. Further, the appellant has four children aged between 4 and 17 and the two youngest of these attend local schools. Moreover, they suffer from a medical condition and are registered with a local surgery. The headteacher of the school has written to say that the children attend school (or at that time pre-school) and are settled in school making friends and with good attendance.
21. Staying on the appeal site would continue to give the children a stable base in which to continue their education and social development and where both the appellant and the children would be able to obtain appropriate medical care including from the local surgery and hospital. The proposal would also enable the appellant to keep her horses on site rather than having to travel to tend them.
22. The appellant and her family are said to have been looking for an alternative site within a 30-50 mile radius for some time but that no alternative sites are available. The use of other 'brown field' sites was suggested by the Council at the previous appeal hearing but the appellant says these were not available for purchase or they may be allocated for alternative uses which are said to be cost prohibitive for the appellant. The use of other 'brown field' sites is said to

have been suggested by the Council at the previous appeal hearing but the appellant says these were not available for purchase or they may be allocated for alternative uses which are said to be cost prohibitive for the appellant.

23. The previous Inspector concluded that there were no known alternative sites for the appeal for the appellant and her family to turn to and that still appears to be the case.

Other considerations

24. Many other concerns about the proposal were put forward at application stage by the local community. I have had regard to these together with the individual letters and petition in support of the proposal submitted along with the appellant's case.
25. Some people allege conflict of the proposal with the route of the HS2² but I understand that the appeal site is not on land safeguarded for the route at the moment and therefore this is not an issue material to the decision. Concerns have also been expressed about the access to the site and the effect on highway safety, but I understand that the highway authority now raises no objection to the amended plans of the access and there is no other evidence before me to demonstrate that the proposal would harm highway safety.
26. No other factor has been shown to be of such importance that it is critical to the planning balance.

Planning and Green Belt balance

27. At the start of the planning balance I have borne in mind the requirements of the Public Sector Equality Duty and I have placed no other issue above the best interests of the children in this case.
28. Bringing my conclusions on the main issues together, I have found that the proposal for a single pitch gypsy site and equestrian use would conflict with the relevant CS Policy NW8 as the site is located in the Green Belt and would also result in a significant adverse effect on the local landscape contrary to the provisions of the final bullet point of that policy.
29. In terms of the Green Belt I have found that the proposal amounts to 'inappropriate development' and it would have a significant adverse effect on the openness of the Green Belt. Substantial weight has to be given to this harm in accordance with paragraph 144 of the NPPF.
30. This conflict with the development plan and Green Belt guidance in the NPPF has to be balanced with other factors.
31. The Council has been able to demonstrate a five year supply of new gypsy and traveller sites to meet Policy CS7 however the fact that the total provision for the plan period to 2028 has already been well exceeded may be an indication that the survey information is out of date and/or there is at present an unmet demand.
32. The appellant argues that because CS policy CS7 is spent as the allocations for gypsy and traveller sited have been met, therefore paragraph 11(d) applies to the decision process. However, I have found that Policy CS8 is still relevant to

² High Speed Rail Link 2 – London to the Midlands and the North

(8) Application No: PAP/2020/0348 and PAP/2020/0349

1 & 2 Nightingale Cottages, Tamworth Road, Nether Whitacre, B46 2PL

Erection of oak framed garden room extensions to rear elevations, for

Mr & Mrs Lloyd & Howard

Introduction

These applications were referred to the August meeting of the Board, but determination was deferred in order to enable Members to visit the site. With the agreement of the Chairman and given the current restrictions on “gatherings” the visit is due to take place before the meeting with full social distancing measures in place. A note will be prepared for the Board

The previous report is attached at Appendix A.

Observations

There are no further matters to update the Board on since the last report and there have been no material changes in planning circumstances since the meeting.

Recommendation

That planning permission and listed building consent be **REFUSED** for the reasons set out in Appendix A.

(9) Application No: PAP/2020/0348 & PAP/2020/0349

1 & 2 Nightingale Cottages, Tamworth Road, Nether Whitacre, B46 2PL

Erection of oak framed garden room extensions to rear elevations, for

Mr & Mrs Lloyd and Howard

Introduction

The applications for planning permission and listed building consent are reported to Board at the request of the Chairman of the Planning and Development Board in view of the heritage implications.

The Site

The site is located in the dispersed settlement of Nether Whitacre and is accessed off Tamworth Road being approximately 130 metres east of the junction with Ridley Lane. It is located within the Green Belt and is a wholly rural context. The cottages are Heritage Assets Listed as Grade 2 Buildings and are important in the rural setting. The context of the site in its immediate surroundings is illustrated at Appendix A.

The Proposal

These are for the erection of joint oak framed single storey garden room extensions to the rear elevations of both 1 and 2 Nightingale Cottages. The extensions would comprise a flat roof glazed arrangement with central lantern to No. 2 Nightingale Cottages and an 'L' shaped pitched and flat roofed glazed extension to No. 1 Nightingale Cottages, each with oak framed sections and separated by a purpose built party wall. The design of the garden rooms can be viewed at Appendix B.

Background

There has been a small number of applications for the site in the past. No. 2 has previously benefitted from permission for an outbuilding which comprises the garage block and a room within the roof void. No 1 has also benefitted from permission for a garden room extension in 2008 although the garden room extension was not implemented at the time. In 2007 consent was permitted for the replacement of windows.

More recently planning permission and listed building consent under planning applications ref: PAP/2019/0493 and PAP/2019/0494 were refused for extensions of a similar design.

The cottages are significant due to their architectural style, being timber framed cottages that are characteristic of the rural vernacular in North Warwickshire. Many timber framed buildings survive in the Arden landscape today.

By way of understanding the architectural significance of the building, then the Historic England list entry highlights the significance of the cottages at Appendix C.

Development Plan

The Core Strategy 2014 – NW3 (Green Belt); NW10 (development Considerations), NW12 (Quality of Development) and NW14 (Historic Environment)

Saved Policies of the North Warwickshire Local Plan 2006 - ENV11(Neighbour Amenities); ENV13 (Building Design) and ENV16 (Listed Buildings)

Other Relevant Material Considerations

The Planning (Listed Buildings and Conservation Areas) Act 1990

The National Planning Policy Framework 2019 – (the “NPPF”)

The North Warwickshire Local Plan Submission Version, March 2018 - LP3 (Green Belt); LP15 (Historic Environment), LP31(Development Considerations) and LP32(Built Form).

Representations

None received

Observations

The main consideration is whether the design of the proposal causes harm to the character and special architecture of the Grade 2 listed cottages and the whether there any other harms arise associated with design, green belt and amenity.

a) Design

It has been established under the previous application that the principle of an extension to the two cottages is not disputed. It is possible to extend listed buildings. However, it is the design and the proportions of the extensions which have been in question on the previous applications and this remains the key matter under the present submissions.

The proposed extensions would be constructed of oak sourced from a renewable forest and so the method and principle of construction is a sustainable one. In terms of the design, then a contemporary design is a logical approach in that it offers a visual juxtaposition to that of the original architecture and does not replicate the significant features of the cottage. In many respects contemporary extensions to listed buildings can be appropriate additions depending on the context, size and proportions of the extension. The applicant has provided a Heritage Statement that accompanies the applications and this illustrates examples of similar extensions approved by other Planning Authorities. However, because of the individual heritage significance of each unique listed building, all applications have to be considered on their own merits.

The existing cottages (once a single house) are traditional in form and in architecture and are wholly characteristic of the local vernacular. The design of the extensions are therefore contemporary additions which can be viewed in the context of the host cottages by the illustrations at Appendix B.

The style of the extensions is essentially a hybrid of a modern conservatory in form supported by an exposed oak frame with oversized components. It is considered that there are a number of elements which are not sympathetic to the appearance of the host cottages These are:

- The heavy proportions of the extensions with the heavy eaves design. These are at odds with the proportions of the timber frame of the host cottages. As such the proposed extensions have a far too dominant form on the rear elevation of the cottages.
- The span of the extensions form an elongated massing across the entire rear elevation of the pair of cottages and without any break in the building line (except for the party wall). The extensions substantially dilute the character of the rear elevation. The simplicity of the existing appearance of the rear elevation would be concealed and thus it would be difficult to “read” the cottages as a pair from the perspective of the proposed rear elevation.
- The introduction of a party wall has a degree of permanency and offers a “clumsy” approach to overcoming an issue between the cottages As such the junctions of the extension with the cottage and the party wall do not compliment the host buildings’ historic features.

The design, though contemporary, is considered to be more suited to buildings of later periods rather than that of 17th century timber framed cottages. As indicated above a contemporary approach will not fit all types of historic buildings and can only be assessed in the context of those which may have limited architectural features.

Based on the assessment above, then the architectural design of the host cottages are of high significance with regards to the timber frame. It is the form of the extensions that considerably dilutes the appearance of cottage from the perspective of its rear elevation. The visual appreciation of the cottages is reduced and is not an organic form of extension given the limited proportions of the existing cottages.

Consideration also needs to be given to the re-location of rainwater goods and service pipes, as to whether the relocation of these elements should harm any fabric on the host cottages. There is also the matter in reducing the ground level to the exterior patio area in order that the garden room extensions are at the same level as the host cottage. It is considered that from a design perspective the proposal, even with regards to the justification provided in the Heritage Statement could not be supported and thus the proposal is not in accordance with saved policy ENV16 or policy NW14 of the Core Strategy.

b) Heritage Asset

Nos. 1 and 2 Nightingale Cottages are listed at Grade 2. As such Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, places a duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses.

bi) Assessment of significance

The significance of the Heritage Asset is the surviving architecture namely the timber framed building, brick infill panels and chimney stack, along with the surviving form, which is legible as once being a single building being a "Hall" which has evolved over the centuries resulting in the present building on the site today. It was likely to have been in use as a high-status residence associated with the management of the landscape. The setting retains its intrinsic rural character typical of the Arden landscape and the rolling countryside of North Warwickshire.

It is considered that the form and siting of the garden room extensions would be harmful to the special architectural and historic interest of the building and does not offer an enhancement.

bii) Setting

The proposal harms the immediate setting in terms of the visual appreciation that would be diluted when viewing the rear elevation of the cottages in the context of the architectural form of the host dwellings.

It does not however harm the wider setting, because views of the extensions are limited and are not visible from any public vantage points.

biii) Assessment of harm

The NPPF at Paragraph 195 requires that, "*Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply*":

Paragraph 196 confirms that, "*Where a development proposal will 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 including, where appropriate, securing its optimum viable use.*"

In terms of harm on the listed building then the proposal would be considered to amount to less than substantial harm on the Heritage Asset, although that harm would be assessed as being at the high end of "less than substantial harm". The harm would be that the size of the proposal in terms of its elongated appearance, significantly diluting the architectural significance of the rear elevation of the listed cottages and harm caused by the "massing" on the rear elevation resulting in a very awkward juxtaposition. The harms identified must also be outweighed by the public benefits of the proposal if it is to be supported.

biv) Balancing public benefit

In this case the benefits generated by the proposal would be wholly "private" in that the occupants wish to enlarge their own living space. This is not considered to provide any public benefit and would not even outweigh the less than substantial harm caused on the architectural significance of the Heritage Asset.

b) Final Heritage Balance

The proposal is not considered to enhance the listed building or its immediate setting based on the assessment made above and therefore the proposals are considered to be contrary to Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990; Section 16 of the NPPF, to saved policy ENV16 and policy NW14 of the Core Strategy.

In terms of any other planning considerations then the following are also relevant:

c) Green Belt

The site is in the Green Belt and thus as the proposals involve building operations, the development would be inappropriate by definition in the NPPF, thus carrying the presumption of refusal. There are however exceptions to this and the relevant one here is to establish if the building operations proposed are "disproportionate" to the original buildings. It is considered not, as the proposals are single storey. They have a greater impact on increased footprint but not on volume. The previous refusals were neither based on Green Belt harm. As such it is considered that there is accordance with NW3 of the Core Strategy.

d) Neighbour Amenities

The listed building comprising these two cottages is sited some distance away from neighbouring properties and only the front elevation and side elevations of these cottages can be viewed from the public realm. The extensions would not be wholly visible and do not therefore impact upon the privacy or amenity of any neighbouring occupiers. It is acknowledged that a design for the garden rooms to each cottage would have regard to a party wall separation and therefore no loss of privacy nor light would occur between the neighbouring occupiers. Overall, the proposal is not considered to result in a loss of amenity, privacy or loss of light that would result in unacceptable loss of amenity and privacy in the area. The proposal is not therefore contrary to policy NW10.

e) Drainage

The finished floor level will likely be reduced, as the patio area has been made up slightly on higher ground to compensate the slight difference in floor level within each cottage compared with that of the patio. Surface water drainage will therefore be assessed under any submission for compliance with Building Regulations and soakaways will likely be provided should ground conditions allow. It is likely that the proposal will be at odds with the route of existing rainwater goods.

Conclusion

It is considered that the proposal should be refused given that it would not comply with saved policies ENV13 or ENV16 of the North Warwickshire Local Plan 2006 and policies NW12 and NW14 of the Core Strategy. It offers a visually harmful juxtaposition with regards to the siting on the rear elevation of the listed cottages.

Recommendations

- a) That application PAP/2020/0348 be **REFUSED** for the following reason:
1. The proposal for extensions on the pair of listed cottages are not considered to be of a sympathetic form in that the linear design of the proposal obscures the rear elevations to both cottages and provides an incongruous addition and an awkward juxtaposition and does not compliment or enhance the buildings historic features. There are no material considerations that would outweigh a policy refusal on the grounds of design or heritage considerations and any benefits generated by the proposal are not considered to outweigh the harm on the significance of the designated heritage asset and thus is contrary to saved policies ENV13 and ENV16 of the North Warwickshire Local Plan, 2006 and the design and heritage requirements outlined in policies NW12 and NW14 of the Core Strategy and Section 16 of the National Planning Policy Framework and to Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

INFORMATIVES

1. Notwithstanding this refusal, the Local Planning Authority has worked with the agent in a positive and proactive manner through having addressed design issues in past applications and through quickly determining the application. The planning issues have not been satisfactorily addressed by the resubmission. As such it is considered that the Council has implemented the requirement set out in paragraphs 36 of the National Planning Policy Framework.
- b) That the application for the Listed Building Consent PAP/2020/0349 also be **REFUSED** for the following reason:

1. The proposal for extensions on the pair of listed cottages are not considered to be of a sympathetic form in that the linear design of the proposal obscures the rear elevations to both cottages and provides an incongruous addition and an awkward juxtaposition and does not compliment or enhance the buildings historic features. There are no material considerations that would outweigh a policy refusal on the grounds of design or heritage considerations and any benefits generated by the proposal are not considered to outweigh the harm on the significance of the designated heritage asset and thus is contrary to saved policies ENV13 and ENV16 of the North Warwickshire Local Plan, 2006 and the design and heritage requirements outlined in policies NW12 and NW14 of the Core Strategy and Section 16 of the National Planning Policy Framework and to Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

INFORMATIVES

1. Notwithstanding this refusal, the Local Planning Authority has worked with the agent in a positive and proactive manner through having addressed design issues in past applications and through quickly determining the application. The planning issues have not been satisfactorily addressed by the resubmission. As such it is considered that the Council has implemented the requirement set out in paragraphs 36 of the National Planning Policy Framework.

BACKGROUND PAPERS

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

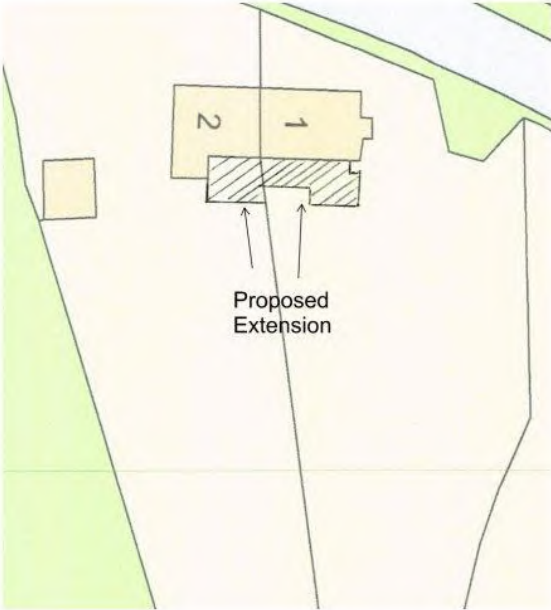
Planning Application No: PAP/2020/0348 and PAP/2020/0349

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	06.07.2020

Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.

A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.

APPENDIX A

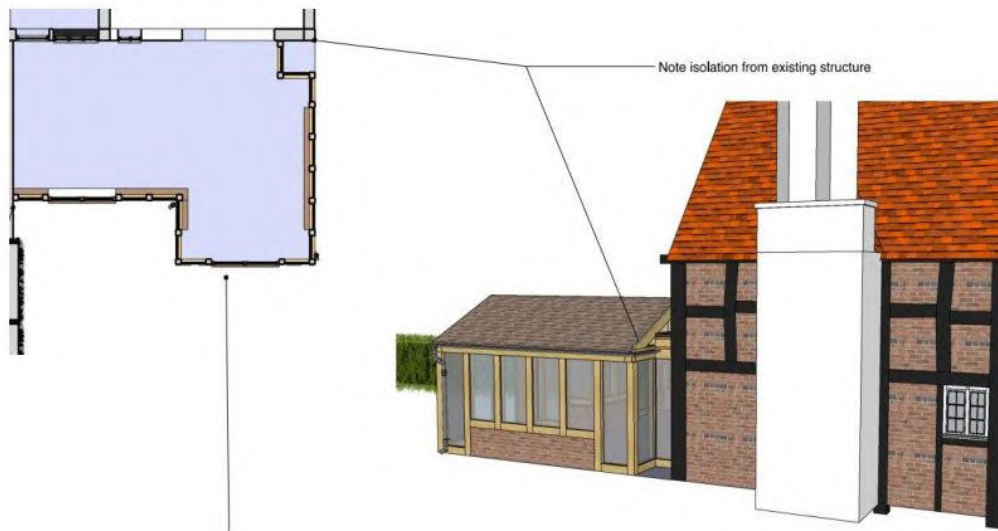


APPENDIX B

Design for No. 1 Nightingale Cottages – elevations:



Ground floor plan and schematics:



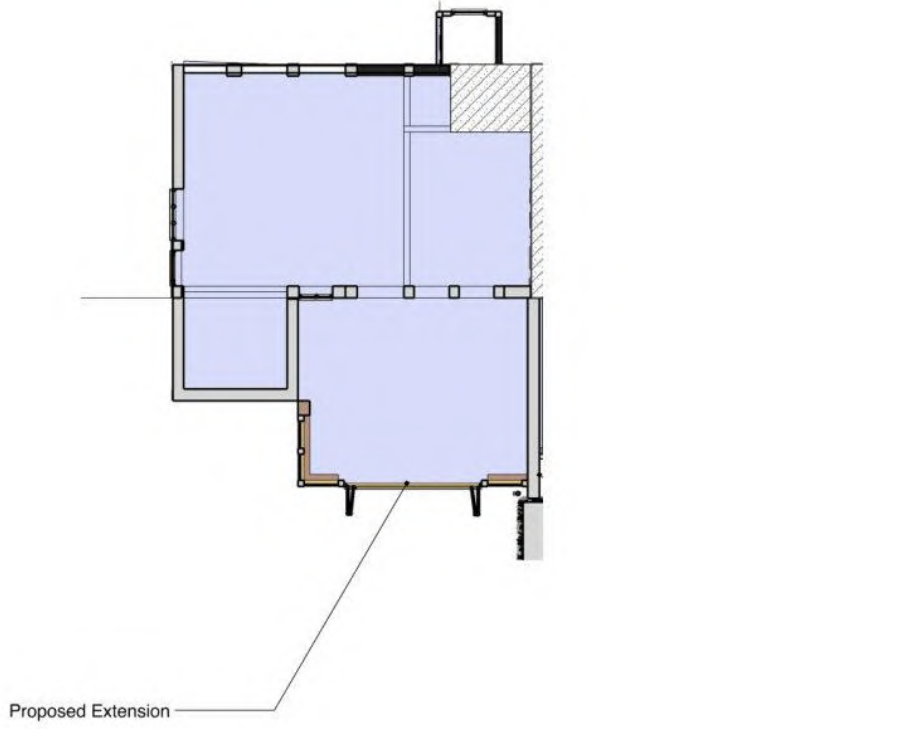
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PLANNING & DEVELOPMENT
DIVISION



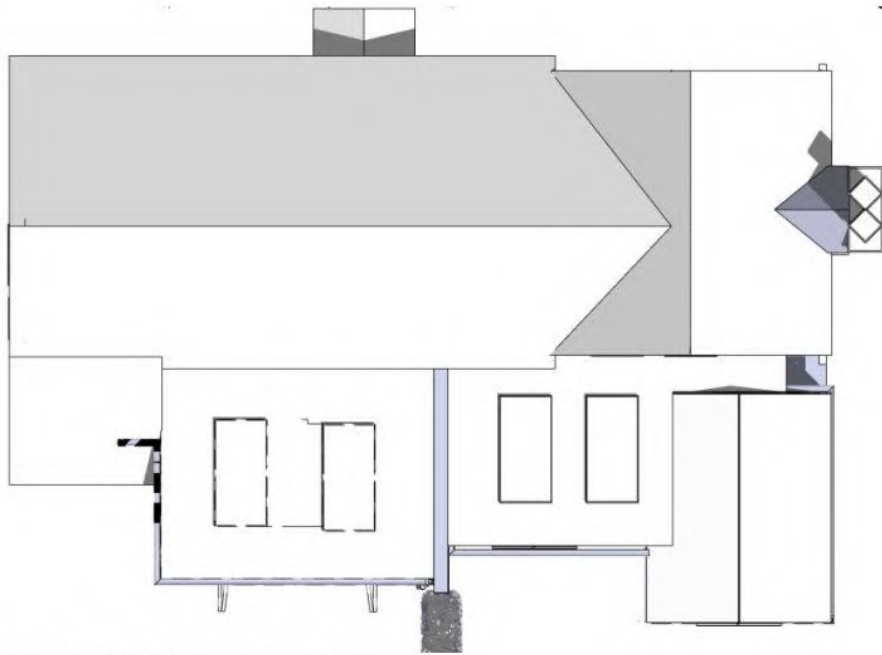
Design for No. 2 Nightingale Cottages – Elevations:



No. 2 Nightingale Cottages – Ground floor plan and schematics



No.1 and No.2 Nightingale Cottages – Roof Plan:



Roof Plan

Existing elevations to the cottages:



Rear of No. 1 Nightingale Cottages (as existing)

3/183

5/320



Rear of No. 2 Nightingale Cottages – as existing

3/184

5/321

APPENDIX C

NETHER WHITACRE TAMWORTH ROAD SP29SW (South side) 5/105 Nightingale Cottages 27/02/87 - II House, now divided into 2 dwellings. Probably early C17 with later C17 extensions including a porch dated T.H. 1663. Timber-framed with brick infill panels; plain-tile roof; brick integral end stack to hall range and sandstone lateral external stack to cross-wing with 2 lozenge shaped brick shafts. Hall range aligned east-west facing north with cross-wing to the east, it's end walls flush with the side walls of the hall range. The latter was extended to the west in the later C17. 2-storey main range with gabled cross-wing to the left of 2 storeys and attic. 5-window front: mainly late C19/early C20 casements, irregularly spaced. The early C17 part of the house to the left has 4 tiers of square panels up to eaves level, and the cross-wing has double collar roof truss with V-struts above the upper collar and vertical struts below both, and a cambered tie beam. The later C17 extension to the right also has 4 tiers of panels but these are larger and wider. There are 2 types of braces; those to the cross-wing are curved whereas the others occupy the corners of the panels like brackets. Gabled porch to left of centre with V-struts in the gable. Exposed queen strut roof truss in the right hand gable with one pair of purlins and a ridge piece.

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Agenda Item No 6

Planning and Development Board

5 October 2020

Report of the Chief Executive

Planning Consultations

1 Summary

- 1.1 This report brings to Members' attention recent consultations relating to Planning, including the White Paper "*Planning for the Future*".
- 1.2 A copy of the report considered at the Executive Board meeting held on 21 September 2020 is attached at Appendix A.

Recommendation to the Board

In accordance with the recommendation at Executive Board any comments from the Board be incorporated into the response to the consultation on the White Paper.

The Contact Officer for this report is Dorothy Barratt (01827 719250).

Agenda Item No 12

Executive Board

21 September 2020

Report of the Chief Executive

Planning Consultations

1 Summary

- 1.1 This report summaries and provides comments on the recent consultations relating to Planning, including the White Paper "*Planning for the Future*".

Recommendation to the Board:

- a That the report be considered by Planning and Development Board and the LDF Sub-Committee; and**
- b That the Chief Executive, in consultation with the Leader, Chairs of the above Boards and Opposition Spokespeople, will send a response to meet the deadline of 1 October and 29 October for each of the consultations.**

2 Consultation

- 2.1 Consultation has taken place with the relevant Members and any comments received will be reported at the meeting.

3 Introduction

- 3.1 On 6 August 2020, the Government published major changes to the Planning system. Some changes are discussed in the White Paper "Planning for the Future", whilst others are included in a consultation regarding proposed changes to the planning system. The consultation for the former runs for 12 weeks and closes at 11.45 pm on Thursday 29 October 2020, whilst the latter is open for comment until 1 October 2020.
- 3.2 The report will also be considered by the LDF Sub-Committee (1 October) and the Planning and Development Board (5 October). As both of these meetings are taking place after the closing date of the latter consultation, the Chief Executive, in consultation with the Leader of the Council and Opposition Spokespersons, will submit comments to meet the deadline of 1 October and then for the 29 October.
- 3.3 Although there are changes being proposed to the planning system in both papers that are interlinked, each paper will be taken in turn.

4 White Paper “Planning for the Future”

4.1 The White Paper sets out a wide-ranging package of proposals to reform the planning system. These can be summarised as:-

- Sets out three pillars for the future of planning:-
 - review how development is planned,
 - bring a new focus to design and sustainability, and
 - reform how infrastructure associated with development is delivered.
- It proposes long-term structural changes to the planning system, rather than more immediate amendments to existing processes.
- Move towards a zonal system with areas of England allocated as either Growth Areas, Renewal Areas or Protected Areas.
- Local Plans must be prepared from start to finish within 30 months and will be for 10 years, instead of the current 15 years.
- Local Plans will be digitised, with increased emphasis on map-based planning, to make development plans more accessible and reduce their length. The nature and process of public engagement will radically change, with increased emphasis on digitalisation of plans and method of engagement with increased interaction during plan-making.
- Reform of planning contributions, including the abolition of CIL and Section 106 Agreements intended to accelerate the delivery of development whilst continuing to provide affordable housing.
- A new Infrastructure Levy (IL) will capture land value uplift created by a planning approval and use this to enhance infrastructure delivery. Affordable homes delivered on-site would be offset against the proposed Levy, with First Homes also incentivised this way and to be sold at a 30% minimum discount to market homes.
- The changes are intended to ensure enough land supply comes forward over the Local Plan period.
- A revised Standard Method (part of the other consultation on planning reforms) will establish the housing requirement for an area and it will be the responsibility of local authorities to allocate sufficient land for housing.
- Adjoining authorities have the option to prepare plans on a joint basis and agree an alternative distribution of their housing requirement. Although the Duty to Co-operate is to be removed, there remains an unofficial duty for agreement across local authority boundaries to address areas of greatest need.

- First Homes is expected to take priority over other forms of affordable home ownership. For example, if a local plan required 30% of affordable housing to be shared ownership before, under the new rules it should require 25% First Homes and just 5% shared ownership.
- Proposal 12 suggests a Design and Place Making Chief Officer.
- Proposal 23 hints at resourcing - fees will still be set nationally, but the new IL could contain an element for plan making – paras 5.18/19.
- Enforcement to be “strengthened” although light on detail and resourcing – paras 5.29/30

5 **Observations on White Paper**

- 5.1 There is an emphasis on speeding up the planning system with automatic planning permission in growth and renewal areas. There is a tension in the logic of what is trying to be achieved. We all want a ‘better planning system’ – quicker, more involvement for the public, more certainty, more permissions of the right sort of development, more protection from the wrong sort and more delivery of what has been permitted. However, the White Paper in effect wants to change the Development Control/consideration of the final planning application into a more ‘rubber stamp’/tick box exercise. By this stage, only changes from the original scheme and the final detail should be discussed as all the matters of principle will have been agreed at the Plan making stage.
- 5.2 For this to work then, the allocations in the Local Plan, particularly the major allocations in the new Growth Areas, will need more detail and assurance that there are no technical reasons why the development approved in principle will not smoothly process through the Development Control part of the system, as the idea is that very few important matters will need deciding at that stage. Some level of assurance on delivery is currently undertaken at Local Plan stage, but it is suggested that this will need to increase and therefore rather than making Local Plans quicker and less complex, that process will need to look at things in more depth. With the possible exception of environmental controls, the White Paper doesn’t identify anything that is currently assessed – flooding, transport, open space, density, housing need, etc, – that will not need to be assessed in the future. If that is the case, then all that is proposed is to move the detailed discussion from the Development Control/planning application stage to the Local Plan stage. It might be quicker at one end, but slower at the other.

- 5.3 This then leads onto another tension – greater public involvement. Although there is mention of Neighbourhood Plans and community involvement, it is difficult at the present time to see how and where these will fit into the new system. In the current system, there is much less public interest in the Plan making stage for a variety of reasons. There is much more interest in the planning application stage. Unless a way is developed to change this, then the White Paper will just move the real decision to the stage that has less public involvement. One of the aims of the White Paper is to regain trust in the system, but that is likely to reduce trust – unless there is a change, people will get involved in an application and be told it's all been sorted 10 years ago. The White Paper should make it clear that there may be fewer 'physical' consultations in the future.
- 5.4 One solution to this may be to have a far more 'closed' development system. A reduced Plan from 15 years to 10 years might help but, if Local Plans were in effect the method of granting a rolling programme of 5 years' worth of housing, then the process could deal in one place with the principles (levels of housing, spatial distribution, etc) and provide all the detail required to grant an actual permission so that everyone would know what housing would be built to maintain 5 or more years housing for the needs of that area.
- 5.5 This would have to be accompanied with some sort of incentive system to make developers build. There are currently outstanding permissions for 1 million houses in the country – 3 years supply. There is very little in the White Paper about delivery – it is all demand side; two paragraphs in an 80 page document. If the desire is to increase certainty and 'planned-ness' then both sides of the demand and supply calculation need to be addressed.
- 5.6 There is also a link to trust here – one of the most frustrating things for Members and the public is when speculative schemes in areas not allocated are granted permission, particularly in circumstances where it is acknowledged that it's not a very suitable location but has only got through because, at a particular point in time, the Local Plan and controls are 'out of date'. This could result in more speculative schemes, ie, schemes that are furthest from delivery – sites put forward to take advantage of the current status of the Plan, but with none of the details needed for delivery having been agreed. This is even more the case because whether the Local Plan is out of date can be manipulated by developers not bringing sites forward for delivery. This constant move between 'out of date' and fully in force brings the system into disrepute. More certain in terms of permissions *and* delivery is therefore needed and not really addressed in the White Paper.
- 5.7 For this to be most effective, the door would then close and there would be far fewer opportunities for speculative development. Developers would know that only sites that have been taken through the Local Plan process will be developed, as there should be less risk of sites not coming forward if all the details have been considered and if there are incentives to actually develop. This will provide less flexibility in the system, but there needs to be an honest

appraisal of the fact that certainty comes at the expense of flexibility and vice versa.

- 5.8 There is no evidence put forward in the White Paper as to when land moves from a possible strategic asset holding status, to a definite development project. Our experience is that this isn't necessarily at allocation or even outline permission stage, but at detailed permission stage (and often even after that). If we are trying to get to the point where sites will actually get developed at the earliest point, then we need more evidence that an 'enhanced permission in principle' concept will move us along that route. The feeling is that it is only when an actual developer is on board and in project initiation mode that there is any certainty about housing starting to be built. If the Government wishes to increase the certainty in the system, then it might be better for Local Plans to grant in effect actual permissions, with financial penalties if not developed within, say, 5 years. The horse trading between landowners, option holders and developers therefore would have to come much earlier in the project promotion stage, bringing everything else forward with it.
- 5.9 One financial penalty could be for sites with permission, but not developed, to be charged business rates as a commercial property rather than, for example, as having an agricultural rating when the real value of land with permission is included in developer's asset sheets (but not taxed accordingly).
- 5.10 Overall, therefore, there is a significant tension at the heart of the proposal – simplifying, without taking much out; greater trust and involvement but moving the 'power'/decisions to the stage of the system that currently gets least public attention; trying to determine detailed matters too early in the process and not at the planning application or delivery stage; nothing on delivery; a 'cake and eat it approach' to certainty – clearer allocations but still leaving flexibility therefore not providing sufficient incentives in the system to clearly identify sites for enough housing that will actually be delivered because the work from a financial/business sense and also practically.
- 5.11 Given that 9 out of 10 applications are approved by local planning authorities and there are permissions for 1 million unbuilt homes, it could be argued that there is less of a problem than suggested in the White Paper and that more attention should be given to the supply side.
- 5.12 It is also not clear what will change other than for 'growth areas' – for protected areas (such as Green Belt) then we can 'justify more stringent development controls'; for renewal areas there would be a 'statutory presumption in favour of development being granted'. Members will recall these or very similar phrases being used for land within development boundaries or for land in the Green Belt.
- 5.13 The focus of the White Paper is clearly on housing with a lack of detail on how other development, such as employment land and renewable energy should be viewed. More detail is required.

- 5.14 The existing Local Plan system already allocates zones - land for different types of development and promotes good design and sustainable place-making. However, in the new system, once land has been zoned it is assumed that the land designated has 'permission in principle'. As mentioned above, public involvement is expected upfront, but this is often the most difficult time for members of the public to get involved as they cannot imagine the final development. There needs to be ways of making developments come alive and understood. This again has implications on the skills and resources available. Standardised mapping and the move to more digital formats should be welcomed. However, funding to assist with this should be a key requirement.
- 5.15 The ability of local authorities to adopt new technology for consultation and plan production needs further understanding to ensure this is adequately resourced. More detail is also required on the resources needed to deliver this, within LPAs and consultees. Impact on the Planning Inspectorate isn't mentioned either.
- 5.16 This fundamental change to the existing system will take time to become embedded by everyone involved, utilising a range of skill sets and, while a transitional period is indicated, it is not clear how long this would remain in place. Past experience suggests that such a large change could have the opposite effect initially to cause delay in the delivery of new plans and in timely decision-making and thus initially leading to less land being brought forward.
- 5.17 First Homes is discussed further below in relation to the other consultation, but within the White Paper there is no mention of delivering housing for rent, a significant recent contributor to meeting local housing needs.
- 5.18 On infrastructure, more openness does need to be brought to Section 106 Agreements, but they don't delay development significantly. Local Planning Authorities need more say in and over bigger infrastructure decisions – at the moment, it feels like we try to develop plans to 'squeeze' into what is going to happen with infrastructure. Whilst Local Plan allocations should reflect where people go in terms of transport, schools, community facilities, etc, allocations should also have more of a 'pull' impact on infrastructure. For example, as soon as land was allocated near to the A5, that gave much greater focus and consideration of whether to fund improvements to the A5.
- 5.19 The principle behind CIL was that it would reduce the complexity of the Section 106 process. Section 106 Agreements create a direct link between new development and the measures necessary to mitigate the effects of new proposals. It will be important for the new Infrastructure Levy (IL) to be able to address complex issues and ensure mitigation at a site level is adequately funded and infrastructure delivered at the time it is required.
- 5.20 The changes to planning contributions are quiet on the mechanism for delivering infrastructure such as schools and GP surgeries and it is unclear

how local authorities should deliver infrastructure where values fall below the proposed threshold for the new Levy.

- 5.21 Finally, in relation to the emerging Local Plan which is at examination it is strongly advised to continue to progress the current Draft Local Plan, otherwise we will have a gap of planning policy (even worse than our current situation).

6 Proposed changes to the current planning system (Consultation on changes to planning policy and regulations)

- 6.1 Below is a summary of the overall document before looking at each main proposal in more detail.

- The consultation sets out the government's proposed changes to the current planning system, which should be considered in conjunction with the White Paper: 'Planning for the future'.
- The measures are seen to improve the effectiveness of the current system.
- The four main proposals in the consultation are:-
 - i changes to the standard method for assessing local housing need;
 - ii securing of First Homes;
 - iii temporarily lifting the small sites threshold to support SME builders; and
 - iv extending Permission in Principle to major development.

- 6.2 Each of these main proposals will now be considered in turn.

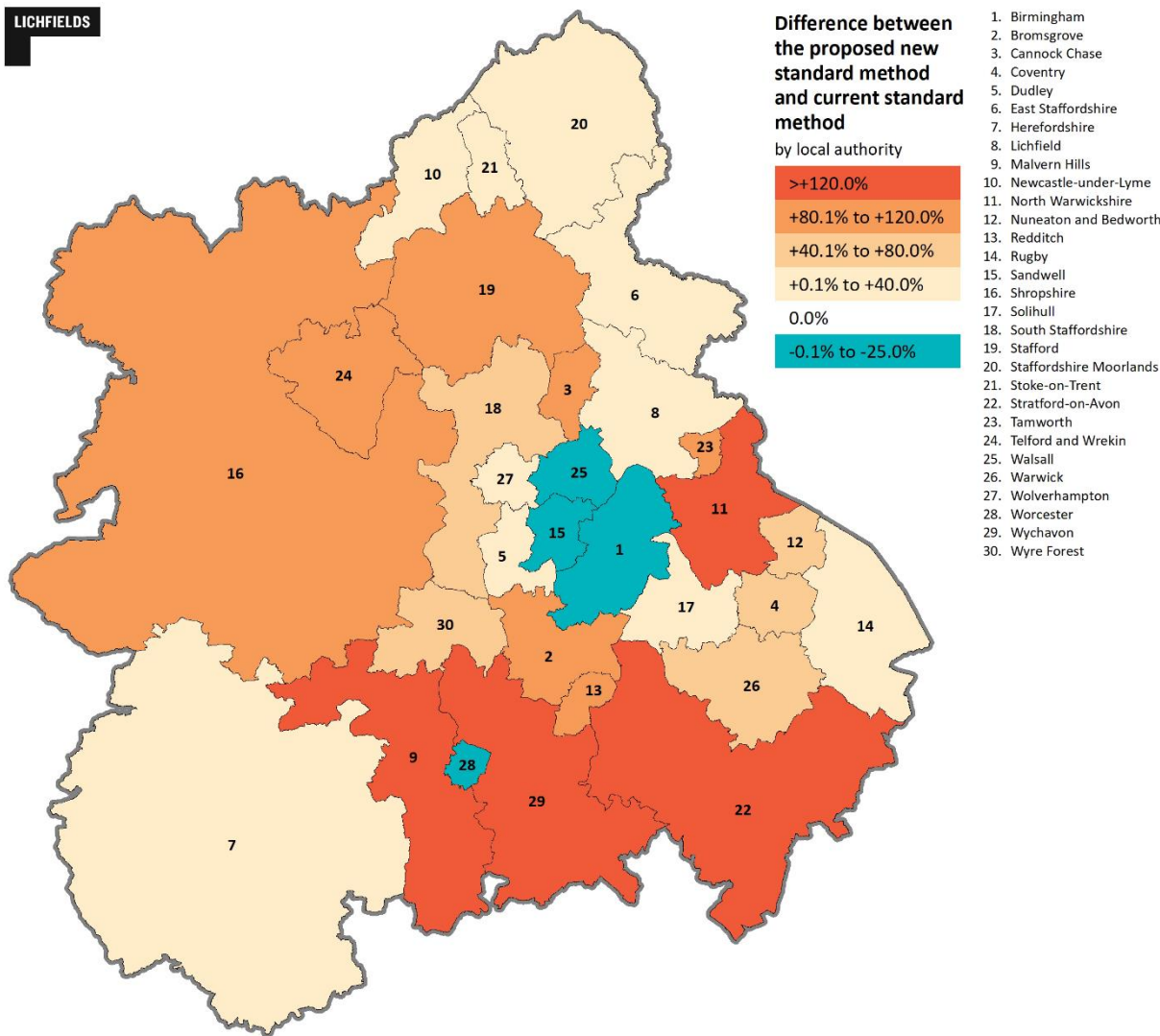
The Standard Method

- 6.3 The consultation proposes a revised standard method for calculating local housing need, which will be used as the basis for plans created prior to any changes outlined in Planning for the Future being introduced. A new element will be introduced into the standard method, a percentage of existing housing stock levels, which will take into account the number of homes that are already in an area. Household projections will be retained as part of the new blended approach which takes account of stock. An affordability adjustment will be introduced that takes into account changes over time, in addition to the existing approach of considering absolute affordability. Where affordability improves, this will be reflected by lower need for housing being identified. The consultation also proposes removing the cap which artificially suppresses the level of housing identified.

Observations:

6.4 Whilst having a set 10 year figure with no duty to co-operate and attempts to increase supply in high cost areas to bring prices down are all laudable, there are, however, real and obvious problems with the new methodology. The table below shows the projected impact.

		New LHN figure	Old LHN figure (source Lichfields)	Local Plan annual requirement*	2020-30 projections annual requirement	Average delivery last 3 years (Source Lichfields)		New LHN vs Old LHN	%	New LHN vs local plan annual requirement	%	New LHN vs 2018 house hold projection	%	New LHN vs last 3 years average delivery	%
	Cannock Chase	575	278	241	394	410		297	107%	334	139%	182	46%	165	40%
	Lichfield	423	321	478	191	538		102	32%	-55	-11%	233	122%	-115	-21%
	Newcastle-under-Lyme	395	355	285	323	303		40	11%	110	38%	72	22%	92	30%
	South Staffordshire	364	254	175	205	253		110	43%	189	108%	159	77%	111	44%
	Tamworth	305	149	177	72	209		156	105%	128	73%	233	322%	96	46%
	North Warwickshire	439	171	454	305	297		268	157%	-15	-3%	135	44%	142	48%
	Stratford-on-Avon	1,675	603	730	786	1321		1,072	178%	945	129%	889	113%	354	27%
	Birmingham	3,056	3,577	2555	2,216	3,003		-521	-15%	501	20%	841	38%	53	2%
	Dudley	880	636	806	661	692		244	38%	74	9%	219	33%	188	27%
	Sandwell	1,141	1,488	1,074	846	784		-347	-23%	67	6%	295	35%	357	46%
	Solihull	1,011	807	791	555	696		204	25%	220	28%	456	82%	315	45%
	Walsall	823	862	599	745	663		-39	-5%	224	37%	79	11%	160	24%
	Wolverhampton	844	750	671	698	688		94	13%	173	26%	147	21%	156	23%
	Bromsgrove	694	379	368	386	337		315	83%	326	89%	308	80%	357	106%
	Redditch	368	174	337	96	319		194	112%	31	9%	272	284%	49	15%
	GBBCHMA	12,600	10,449	9,456	8,154	10,210		2,151	21%	3,144	33%	4,446	55%	2,390	23%
	GBBCHMA conurbation	7,756	8,120	6,496	5,720	6,526		-364	-4%	1,260	19%	2,036	36%	1,230	19%
	GBBCHMA shires	4,845	2,329	2,960	2,434	3,684		2,516	108%	1,885	64%	2,410	99%	1,161	32%



6.5 Again, there is no real attempt to sort out delivery from the development industry. Allocating more houses to high cost/high demand areas will only work if it brings average prices down and that means increased delivery. Developers are unlikely to voluntarily 'kill the golden goose' and this may perpetuate high demand if supply levels are maintained at or just below demand levels which may have little effect on price. It also leaves areas with 'cooler' markets with less housing than they may need.

6.6 This is shown in the West Midlands were overall need for the Greater Birmingham and Black Country areas increases by 21% but there is a reduction in the conurbations, compared with a 106% increase in the Shire areas. Our figure is a 157% increase (old figure of 268 dpa, proposed figure 439) although, because of the Duty to Co-operate, this is actually less than the figure we have in our Local Plan (note, this may need to be adjusted upwards due to new projections under the current system).

- 6.7 The prospects for delivery don't seem to be considered. Reports as part of the calculation of the Greater Birmingham Housing Market need suggest it will be a stretch for the market to deliver this level of housing given the historic performance and need.
- 6.8 Overall therefore, this just seems to take a market signals or market led approach without any consideration of what the market is actually doing, or what we want it to do. Clearly, putting housing where people want to live is an important consideration, but reductions in our urban areas or cooler markets will have implications.
- 6.9 Further adjustments are suggested in the Planning White Paper, but the details aren't set out and therefore the effects cannot be fully assessed.
- 6.10 There are provisions for a transitional period, meaning there is the potential for local authorities to be working to four different methods for calculating their housing requirement. It is unclear how this change will affect development management decisions taken in the interim period.
- 6.11 Is a nationally set figure going to make things simpler and quicker at a Local Plan examination? In practice, and as expressed by the Housing Minister since publication of the White Paper, this is only seen as the starting point and will leave much still to debate at examinations.
- 6.12 The merits of the Affordability Adjustment are unclear as it appears to be trying to tackle a south-east issue, rather than considering the issue from a local perspective.

Delivering First Homes

- 6.13 The Government consulted on its First Homes proposals in February 2020. This included consultation around both the design of the First Homes scheme and changes to the planning system to support its delivery. The Government response to this consultation has been published and this consultation is now seeking views on the detail of the proposed changes to the current planning system.
- 6.14 The consultation proposes that a minimum of 25% of all affordable housing units secured through developer contributions should be First Homes. This will be a national threshold, set out in planning policy. Initially, these affordable housing units will be secured through Section 106 planning obligations, but eventually they would be secured through the Infrastructure Levy (Planning for the Future, Pillar Three).

Observations:

- 6.15 Affordable housing definition includes a wide range of housing, from socially rented through to low cost market. However, for North Warwickshire, it is considered that First Homes will only deal with a small amount of the housing need in the Borough. There is therefore a concern that the largest amount of need which is for socially rented accommodation will not be provided for. The approach being advocated does not appear to be flexible to allow for negotiations and changes to match local requirements.

Supporting Small & Medium-Sized Developers

- 6.16 SME builders have been declining in the long term and were hit hard by the last recession. There were 16% more builder and developer insolvencies in 2019 than in 2018, the vast majority of which were SMEs. They are now under further pressure due to Covid-19.
- 6.17 The consultation proposes raising the small sites threshold to up to either 40 or 50 new homes, through changes to national planning policy. This will be for an initial 18 month period whilst the impact of the raised threshold is monitored. The consultation proposes scaling up the site size threshold for affordable housing contributions at the same proportion as the increase in number of homes threshold.
- 6.18 The Government's aim is to reduce the burden of contributions on SMEs for more sites for a time-limited period during economic recovery from Covid-19.

Observations:

- 6.19 Support for SMEs in the short term is welcomed. However, there is concern that larger scale developers will become more interested in smaller sites, making the environment more challenging for SMEs.
- 6.20 Most developments in North Warwickshire are on small sites. A reduction in the ability to seek affordable housing provision will have a long-term impact on the Borough and will only push up need further.

Permission in Principle

- 6.21 This is designed to separate decision making on 'in principle' issues, addressing land use, location and scale of development from matters of technical detail, such as the design of buildings, tenure mix, transport and environmental matters. The aim is to give up-front certainty that the fundamental principles of development are acceptable before developers need to work up detailed plans and commission technical studies. It also ensures that the principle of development only needs to be established once. The consultation proposes removing the restriction on Permission in Principle for major development to expand the current Permission in Principle framework for housing-led development. The proposal imposes no limit for

commercial development space, provided that housing occupies the majority of the floorspace in the overall Permission in Principle scheme.

Observations:

6.22 Permission in Principle is similar to outline permission, except much of the work will fall to the Borough Council to ensure everything is in order. The proposed 28 day turn around is extremely unrealistic to make sure that developments comply with the requirements for the site. It may be cheaper, quicker and easier for a developer to come on to a site once all of the details have been ironed out, but there still needs to be a lot of work upfront. Master planning and design codes will be extremely important.

7 Report Implications

7.1 Finance and Value for Money Implications

7.1.1 It is unclear at the present time the exact financial implications of such big changes to the planning system. However, it is expected that there will be a need for investment in technology as well as training of both officers and Members.

7.2 Human Resources Implications

7.2.1 The exact implications on the two Planning Teams is unclear and will not become clear until details are forthcoming. A further report will be brought to Board once these emerge.

The Contact Officer for this report is Dorothy Barratt (01827 719250).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date

Agenda Item No 7

Planning and Development Board

5 October 2020

**Report of the
Chief Executive**

**Warwickshire Minerals Plan
Update – Statement of Common
Ground, Examination Hearing
Date – Outstanding Issues**

1 Summary

- 1.1 This report updates and informs Members of the Warwickshire County Council's Minerals Plan Examination in Public (EiP). This stage follows the Regulation 19 consultations already undertaken on the Minerals Local Plan, which Members will recall were Reported to Planning and Development Board on 10 December 2018 and 9 July 2019 (Minerals plan update and policy MCS 10 – Underground coal gasification consultation).
- 1.2 The Report and Appendices includes a Draft Statement of Common Ground (SoCG) between the Borough Council and County Council and a summary of the outstanding issues to be dealt with through Written Representations by the Inspector into the Plan.

Recommendation to the Board

- a That Members note the date for the Examination Hearings into the Minerals Local Plan; and**
- b That the Statement of Common Ground recommendations and responses contained within the report are noted, agreed, signed and Members note the outstanding issues remaining will be dealt with through the written representation process, by the Inspector into the Plan.**

2 Minerals Plan Examination in Public

- 2.1 A Planning Inspector has been appointed to undertake an independent examination into the soundness of the Warwickshire Minerals Plan (the Plan). The Inspector's task is to consider the soundness and legal compliance of the submitted Plan, based on the criteria set out in paragraph 35 of the National Planning Policy Framework 2019 (the Framework) and associated regulations, namely the Planning and Compulsory Purchase Act 2004, the Localism Act 2011 and the Town and Country Planning (Local Planning) (England) Regulations 2012. Hearing Sessions for the Warwickshire Minerals

Local Plan Examination have been rescheduled for Tuesday 20 and Wednesday 21 October 2020.

- 2.2 Members have already commented on the Warwickshire Minerals Plan, and a copy of the earlier Board Reports are available to view at –
10 December 2018 Report -

https://www.northwarks.gov.uk/meetings/meeting/795/planning_and_development_board

and 9 July 2019 MCS10 Report -

https://www.northwarks.gov.uk/download/meetings/id/2163/download_the_agenda_reports_and_appendices

- 2.3 The Examination page for the Warwickshire Minerals Plan is available to view online at –

https://warwickshire-consult.objective.co.uk/portal/warwickshire_minerals_plan_examination_webs_ite

3 Statement of Common Ground

- 3.1 Following a meeting the Borough Council and the County planning team, the County Council has drafted a “Statement of Common Ground” and a series of Plan Modifications to address the Council’s submissions to the Regulation 19 consultations on the Warwickshire Minerals Plan. This SoCG is attached as Appendix 1 to this report.

...

- 3.2 The SoCG includes revised text for the Plan Modifications to address issues and concerns raised by the Borough Council. These Modifications include text changes relating to minerals safeguarding, coal extraction and underground coal gasification that the County hope will address the comments expressed in NWBC’s representations. Modifications are shown **in Bold** or ~~strikethrough~~ and are summarised as follows;

- Policy MC5 Safeguarding of Minerals and Minerals Infrastructure Mods includes removal of the text requirement ~~unless “prior extraction” takes place.~~, removing the requirement for “automatic extraction” of the minerals which helps the Borough in circumstances where development and conflicting Local plan allocations are affected in sustainable and/or sensitive locations;
- Policy MC5 Modifications also now includes reference to **mineral specific buffer distances for proximal development of between 150 – 500m,** which was an issue of some concern to Members;
- Policy Modifications also address some Borough concerns over sand and gravel and coal extraction. The use/addition of the term “needlessly” helps prevent wholesale constraint on non-mineral developments in mineral safeguarded areas, where they can clearly be shown to be needed and

necessary through the Local Plan process, supporting application evidence and NPPF support, the Mod noted as follows;

- “Non-mineral development, except for those types of development set out in Appendix 3, **should** shall not normally be permitted if **it** they would **needlessly unnecessarily sterilise mineral resources or would prejudice or jeopardise the use of existing and planned mineral sites or existing and future** and future mineral sites and mineral infrastructure. or prejudice or jeopardise their use by creating incompatible land uses nearby.”
- In **Policy MCS 8 – Hydrocarbon Development - Coal Mining (surface and deep mining)** Modifications that the Borough sought in relation to the NPPF presumption against the extraction of coal are included, noting as follows:
 - “ ~~†~~**The** NPPF gives a general presumption against the extraction of coal, **clarifying that the benefits of mineral extraction that should be given great weight do not extend to coal extraction, and that planning permission should only be granted in certain limited circumstances.**”
 - Similar Borough concerns regarding **Policy MCS 10 - Underground Coal Gasification** have also been addressed with tightening up of the Reasoned justification text and Policy noting the requirement for support only : “if it is **clearly and compellingly** demonstrated that the proposal is **required to meet national and local energy policy requirements, is carbon free, safe,** environmentally acceptable or can be made so by planning conditions or obligations, and that it provides national, local or community benefits which clearly outweigh the likely adverse impacts. so as to justify the grant of planning permission”
 - **Policy MCS 10** modifications in the SoCG also note that – “**but future development opportunities would be focussed on great depth (over 600m) and offshore to avoid environmental damage (subsidence and contamination of the water environment).**”
 - and :- “**the government announced in December 2016 that “it was not minded to support the development of the technology in the UK”.**”, which should provide some re-assurance to Members.
 - There is also additional Plan text re-inforcing and strengthening environmental requirements and concerns as follows;
 - “**8.74 To reach the Government’s commitment to net-zero greenhouse gas emissions by 2050 future development of onshore UCG would need to demonstrate that amongst other things it was capable of being operated at a commercial scale; it was needed in terms of national energy policy, safe and carbon free; and it was capable of being made environmentally acceptable (including any residual environmental impacts).**”

- and **“8.77 8.72 Developers should avoid developing proposals within influencing distance of major population centres and sites designated as being internationally or nationally important for nature conservation. Heritage assets and their settings should also be avoided. Consideration will need to be given to amongst other issues the impact of proposals on public health (including the submission of a health impact assessment), existing infrastructure and utilities, air quality, the water environment and to the management and disposal of waste products”. ...and... “ . The ability of the proposals to secure net-zero greenhouse gas emissions will be a key determinant if any form of onshore UCG is to take place in Warwickshire during the plan period.”**

3.3 Note, however, not all suggestions and text changes sought by the Borough have been accommodated as some inevitably conflict with, or are difficult to comply with the current Minerals Planning Guidance, particularly where these are dealing with the Minerals Safeguarding issues and requirements around prior extraction and avoidance of sterilization.

3.4 There is some clarification on developers proposing non-minerals developments that may affect or encroach current sites, putting the responsibility for assessing impacts in their hands noting as follows; **“ . It is the non-minerals developer’s (applicant “agent of change”) responsibility to determine site specific potential impacts, as well as the identification and implementation of suitable mitigation measures. The approved mitigation measures shall be carried out and implemented before the non-mineral development is completed. This could be achieved for example by the imposition of suitably worded planning conditions on the non-mineral development consent and/or through a planning obligation. The MPA will determine if the non-mineral development is likely to constrain or hinder the existing and potential use of the infrastructure site.”**

3.5 Much of this additional text is to ensure compliance with para 182 of the NPPF dealing with safeguarding existing operators under the 'agent of change' principle. This requires new development to integrate with existing business and community facilities, with specific mention of existing development not being subject to unreasonable restrictions being put on them due to new development.

4 **Outstanding Issues**

4.1 Members should note that a number of outstanding issues and comments submitted to the Plan Consultation remain to be addressed. These are contains in the attached Appendix 2 to this report, titled **Table 1: Responses to NWBC member comments / issues raised previously that have not**

been fully addressed, which highlights those outstanding areas that primarily cover the following (summary of NWBC comments shown in *“italics”*);

1. *the use of stand-off distances for the sites (between extraction activity and location of existing properties) for proposals within North Warwickshire.* Some of these concerns are addressed in the modification for Policy MC5 above, in reference to the MC5 Modifications including reference to **mineral specific buffer distances for proximal development of between 150 – 500m,**

2. *to only seek prior extraction where there is a clear economic need and demand for the mineral resource and any extraction will not impact adversely on existing built development.*

Again, some of the modifications above address this issue, but not necessarily wholly.

3. *The relevant Policy on the Lea Marston site in the Publication version of the Plan, Policy S9, does include criteria requiring development to take into account any mitigation approved to minimize the impact of HS2 on Lea Marston village. Nevertheless, with the approval of the Hybrid Bill and advancement of both Phase 1 and 2 of HS2 these concerns are gaining increasing concern and prominence.....*And concerns around the engagement of the County with HS2 and pressure for any potential minerals needs and extraction this might generate that may impact on Lea Marston and Kingsbury Park areas. Much of this has been overtaken by events and the subsequent statements made by HS2 that they would not be seeking prior extraction on safeguarded areas affected by the route, to avoid potential impacts and costs on the delivery and stability of the route/line.

4. Similarly, the issues around the *the HS2 Railhead and Hams Lane Access sidings* has changed with the sidings and railhead now replaced by the concrete batching works and the statement that HS2 would not be seeking prior extraction helps clarify matters and address some concerns.

5. Outstanding concerns around potential need to update/review mineral safeguarding areas and maps remain and the continuing concerns over HGV traffic impacts.

5 Recommendations

5.1 It is recommended that the the Draft SoCG attached is signed and Members note the outstanding comments not yet addressed/agreed in Appendix 2 that will be proceeding on to the Examination Hearings to be addressed by the Plan’s Inspector in late October.

5.2 The issues outstanding will be addressed through the Written Representation process for the Plans Examination and would not need or require the attendance by the Borough at the actual hearings. The Planning Inspector will

have all earlier submissions from the Borough as information and should be able to address and recognise the Boroughs outstanding concerns without the need for the Borough to express these in person.

- 5.3 The Borough also have our own Local Plan consultation currently in progress which we would wish to avoid being impacted by the need to attend the Minerals Plan hearings if possible, as we may be organising our own hearings into the Local Plan around that time.

6 Report Implications

6.1 Environment and Sustainability Implications

- 6.1.1 The Warwickshire Minerals Plan update and Policy MCS 10 – Underground coal gasification consultation has a sustainability appraisal that considers the overall social, economic and environmental implications of the plan.

6.2 Financial Implications

- 6.2.1 There are no financial implications arising from this consultation.

The Contact Officer for this report is Dorothy Barratt (719450).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date
Draft SoCG	WCC	Appendix 1	
Table 1: Outstanding Issues not yet addressed	WCC	Appendix 2	

Warwickshire Minerals Plan 2018

Statement of Common Ground – Coal, minerals safeguarding & underground coal gasification

Warwickshire County Council, as Minerals Planning Authority (MPA)

and

North Warwickshire Borough Council (NWBC)

February 2020

*Working for
Warwickshire*

Introduction and background

This Statement of Common Ground (SoCG) has been prepared by the MPA in response to representations received from NWBC in respect to Regulation 19 consultations on the Warwickshire Minerals Plan ('the Plan') and address relevant Matters, Issues and Questions raised by the Inspector, in relation to minerals safeguarding and underground coal gasification. Since submission the MPA and NWBC officers met to discuss the representations and progressing a SoCG, which would address these, on Tuesday 11 February 2020.

Throughout this SoCG reference is made to submission document number references with a SUB prefix, this relates to the numbered documents found in the Submission Documents library found at:

https://warwickshire-consult.objective.co.uk/portal/warwickshire_minerals_plan_submission

Prior to submission of the Plan to the Secretary of State, the MPA prepared a Statement on Compliance with the Duty to Cooperate (SUB20) and a list of proposed changes for Inspector consideration (SUB23). The Plan was submitted on the 29 November 2019 together with other submission documents. SUB20 outlines engagement prior to submission, addresses points raised by NWBC and outlines some of the information expected in SoCGs, as indicated in the planning practice guidance on Plan-making¹ dated 15 March 2019.

Representations have been logged by the MPA as follows:

¹ <https://www.gov.uk/guidance/plan-making>

Table 1: NWBC representations

Representation Number	Relevant Plan provision	Topic	Basis of representation
PUB18256	Policy MCS 8 Paragraph 8.45 - 8.48 Issue 13	Coal	Plan unsound as: <ul style="list-style-type: none"> • Not consistent with national planning policy
PUB18259	Policy DM 10	Mineral Safeguarding	Policy unsound, as: <ul style="list-style-type: none"> • Not positively prepared; • Not consistent with national planning policy
MCS1016	Policy MCS 10	Underground Coal Gasification	Policy unsound, as: <ul style="list-style-type: none"> • Not justified; • Not effective.

Some of the changes proposed for the Inspector’s consideration have been developed further since submission. Relevant changes informed by NWBC’s comments are addressed later in Table 2.

As outlined in the Planning Practice Guidance on Plan-making², “under section 20(7C) of the 2004 Planning and Compulsory Purchase Act (as amended) the Inspector must recommend ‘main modifications’ (changes that materially affect the policies) to make a submitted local plan sound and legally compliant”…….”The local planning authority can also put forward ‘additional modifications’ of its own to deal with more minor matters”.

NWBC recommendations addressing plan soundness which will need to be considered as main modifications. Where changes give clarification there is the potential to address these as ‘additional modifications’³.

Both parties agree that this is a sound approach.

² Found at <https://www.gov.uk/guidance/plan-making>. Last updated 23 July 2019. Paragraph: 057 Reference ID: 61-057-20190315

³ Consistent with the provisions of section 23 (3) of the 2004 Planning and Compulsory Purchase Act (as amended)

Table 2: Proposed changes for agreement to inform modifications

Policy / text references	Possible changes Proposed deletions are struck through and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
Chapter 5 Issue 3	<p>Issue 3 - Mineral Safeguarding and Prior Extraction (see Policies MCS5 and DM10)</p> <p>The NPPF states that Mineral Planning Authorities should define Mineral Safeguarding Areas (MSAs) in order that known locations of specific minerals resources of local and national importance are not needlessly sterilised by non-mineral development <u>where this should be avoided</u>. There is no presumption that any resources defined will be worked. However, where planning applications for non-mineral development are submitted, the relevant district or borough should consult the County Council and where it would be practicable and environmentally feasible to work the mineral, we may <u>and should</u> seek a mineral assessment to be carried out prior to determination.</p> <p>Where it would be practicable and environmentally feasible to work the mineral then <u>Where it would be practicable and environmentally feasible to work the mineral then</u> in some cases we may insist on prior extraction of the mineral before the non-mineral development is carried out <u>will be supported</u>.</p> <p>Safeguarding extends to ensuring that existing or potential facilities required for the transportation and storage of minerals are also protected. Where there are planned, existing or potential rail heads, rail links to quarries, wharfage and associated storage, handling and processing facilities for the bulk transport by rail or inland waterways of minerals, including recycled, secondary and marine-dredged materials, these should be safeguarded. At present there is no bulk transportation of minerals by either rail or inland waterways in Warwickshire and no prospect of different modes of transport becoming available in the foreseeable future. In addition, safeguarding should also be extended to existing, planned and potential sites for concrete batching, the manufacture of coated materials, other concrete products and the handling, processing and distribution of substitute, recycled and secondary aggregate material.</p> <p><u>Paragraph 182 in the NPPF states existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.</u></p>	<p>To respond to the issues raised by the Mineral Products Association and North Warwickshire Borough Council and to comply with the NPPF February 2019 paragraph 182.</p> <p>NWBC seek text changes from “will not be permitted” to wording in the first Reg 19 (2016) such as “shall not normally be permitted” in Policy MCS5 or “should not proceed” in Policy DM10.</p>

Policy / text references	Possible changes Proposed deletions are struck through and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
	<p><u>Where the operation of an existing mineral working and/or facility/site could have an adverse effect on new development (including changes of use) in its vicinity, the applicant (or “agent of change”) should provide suitable mitigation before the development has been completed.</u></p>	
Chapter 5 Issue 13	<p><u>Issue 13 - Coal (see Policy MCS8)</u></p> <p>In Whilst the NPPF (paras 205 and 211) there is gives a general presumption against the extraction of coal. <u>Even though</u> there are large coal reserves in the County there there appear to be <u>are</u> no plans to reopen Daw Mill Colliery by UK Coal, which closed in 2013 following a major underground fire, nor Neither does there appear to be any plan to sink another pit head or even return to surface coal extraction in the County. As there are large coal reserves deep underground and on the surface in the north of the County and in the Warwickshire coalfield and there is likely to be a shortage of energy nationally in the short to medium term, there <u>may be</u> is always going to be a the possibility that coal is <u>may be</u> considered economically viable to extract in the future (see Fig 1.7). <u>However, unless the proposal is environmentally acceptable it will need to provide national, local or community benefits which clearly outweigh its likely impacts taking all relevant matters into account, including any residual environmental impacts.</u> Therefore, Policy MCS 8 provides guidance for the consideration of any such proposal.</p>	<p>To respond to the issue raised by North Warwickshire Borough Council and to comply with NPPF February 2019 paragraphs 205 and 2011.</p> <p>NWBC considered that the Plan does not sufficiently reflect the reduced economic weight/ or benefit and the strengthened presumption against coal extraction in the new NPPF 2018.</p>
Chapter 8 Policy MCS 5	<p><u>Policy MCS 5 - Safeguarding of Minerals and Minerals Infrastructure (see also Policy DM10)</u></p> <p>Warwickshire’s sand and gravel, crushed rock, brick-making clay resources, cement raw materials, <u>shallow coal</u> and building stone <u>and existing mineral sites or existing and future mineral infrastructure</u> will be safeguarded against needless sterilisation by non- minerals development., unless “prior extraction” takes place.</p> <p>Safeguarded mineral resources are defined by a Mineral Safeguarding Area illustrated on the Maps in Appendix 2. <u>The general location of infrastructure associated with other minerals in the county is shown on Fig 1.3</u> Minerals infrastructure <u>for the production of construction materials</u> safeguarded in Warwickshire <u>is detailed in Appendix 4 and</u> comprises:</p>	<p>To respond to the issues raised by the Mineral Products Association and North Warwickshire Borough Council and to clarify the policy.</p> <p>NWBC seek text changes from “will not be permitted” to wording in the first Reg 19 (2016) such as “shall not normally be permitted” in Policy MCS5 or “should not proceed” in Policy DM10.</p>

Policy / text references	Possible changes Proposed deletions are strikethrough and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
	<ul style="list-style-type: none"> • permitted and allocated mineral sites (<u>see Fig 1.10</u>); • concrete batching plants; • mortar plant; • asphalt plants; • concrete products plant; and • recycled and secondary aggregates sites (see shown on Fig 1.8). <p>Non-mineral development, except for those types of development set out in Appendix 3, <u>should</u> shall not normally be permitted if it they would <u>needlessly unnecessarily</u> sterilise <u>mineral resources or would prejudice or jeopardise the use of</u> existing <u>and planned</u> <u>mineral sites or existing and future</u> and future mineral sites and mineral infrastructure. or prejudice or jeopardise their use by creating incompatible land uses nearby.</p>	
Chapter 8 Policy MCS 5 Text	<p>8.23 The key safeguarded mineral resources in Warwickshire are sand and gravel, crushed rock, brick-making clay resources, cement raw materials, <u>shallow coal</u> and building stone. <u>The coal MSA is based on a 2006 study carried out by the British Geological Survey for The Coal Authority (British Geological Survey, Minerals Safeguarding Areas for Warwickshire, Economic Minerals Programme, Open Report, OR/08/065).</u> These resources have been identified for long term safeguarding beyond the life of this plan and are designated as MSAs and shown illustrated on the Maps in Appendix 2.</p> <p>8.24 The Maps were produced as part of a report produced on behalf of the MPA by the British Geological Survey which mapped the extent of mineral resources in the County and the latest guidance <u>and include mineral specific buffer distances for proximal development of between 150 – 500m</u>. From time to time the MSAs may be reviewed and updated as mineral resources become exhausted or as the result of exploratory or detailed drilling as part of the preparation of <u>a</u> planning application for minerals development or a mineral survey and assessment report submitted with a planning application for non-mineral development.....</p> <p>8.27 The encroachment of incompatible activities around minerals development sites/facilities may create conflict due to either the more sensitive nature of other forms of development or their</p>	<p>To respond to the issue raised by the Mineral Products Association.</p> <p>NWBC seek text changes from “will not be permitted” to wording similar to the first Reg 19 (2016) such as “shall not normally be permitted” in Policy MCS5 or “should not proceed” in Policy DM10.</p>

Policy / text references	Possible changes Proposed deletions are striketrough and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
	<p>on-going occupation or usage. This could potentially impose constraints, reducing the viability of future mineral operations. It is the non- minerals developer's (applicant "agent of change") responsibility to determine site specific potential impacts, as well as the identification and implementation of <u>suitable</u> mitigation measures. The approved mitigation measures shall be carried out and implemented before the non-mineral development is completed. This could be achieved for example by the imposition of suitably worded planning conditions on the non-mineral development consent and/or through a planning obligation. where necessary. The MPA may advise that development should not be permitted if it would constrain the effective operation of existing sites or sites allocated for future mineral development.</p>	
<p>Chapter 8 Policy MCS 8</p>	<p>Policy MCS 8 – Hydrocarbon Development Coal Mining (surface and deep mining)</p> <p>Proposals for coal mining will only be approved where the proposal is demonstrated to be environmentally acceptable, or can be made so through planning conditions and/or obligations. Where this cannot be demonstrated, planning permission will only be granted where the proposal is demonstrated to provide national, local or community benefits which that clearly outweigh the adverse impacts arising from the proposal (taking all relevant matters into account, including any residual environmental impacts).</p> <p>In particular, appropriate consideration will need to be given to the proposal's impacts in terms of:</p> <ul style="list-style-type: none"> a) contribution to delivering an indigenous source of energy and securing a diverse energy mix; b) disposal of colliery spoil (deep mining); c) minimising the nature and extent of surface subsidence (deep mining) d) arrangements for the extraction and stockpiling of other minerals (surface mining). 	<p>To respond to the issues raised by North Warwickshire Borough Council and to comply with the NPPF February 2019 paragraphs 205 and 211.</p> <p>The MPA have added an 'or' next to the 'and' when discussing how proposals can be made environmentally acceptable. This is to acknowledge that the paragraph 211 of the NPPF states that planning conditions or obligations may be required, but that in some situations both conditions and obligations may need to be applied to achieve acceptability at the planning application stage.</p> <p>NWBC considered that the Plan does not sufficiently reflect the reduced economic weight/ or benefit and the strengthened presumption against coal extraction in the new NPPF 2018.</p>

Policy / text references	Possible changes Proposed deletions are struck through and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
Chapter 8 Policy MCS 8 Text	<p>8.45 Whilst The NPPF gives a general presumption against the extraction of coal, <u>clarifying that the benefits of mineral extraction that should be given great weight do not extend to coal extraction, and that planning permission should only be granted in certain limited circumstances, which are also outlined in this policy.</u></p> <p>8.46 There are large coal reserves deep underground in the Warwickshire Coalfield but there are no plans to reopen Daw Mill Colliery and neither does there appear to be any plan to sink another pit head. While there are shallow coal resources in the north of the County there does not appear to be any interest at the present in extracting those resources. Given If there is likely to be a shortage of energy nationally in the short to medium term there is always going to be the possibility that then coal may be considered economically viable to extract in the future and proposals may come forward.</p>	<p>To respond to the issues raised by North Warwickshire Borough Council, to ensure that the text equates to the policy and to comply with the NPPF February 2019 paragraphs 205 and 211.</p> <p>NWBC considered that the Plan does not sufficiently reflect the reduced economic weight/ or benefit and the strengthened presumption against coal extraction in the new NPPF 2018.</p>
Chapter 8 Policy MCS 10	<p>Policy MCS 10 - Underground Coal Gasification Proposals for Underground Coal Gasification, the production of syngas and the erection of plant to utilise the gas to produce energy and/or other fuels and chemical feedstocks will only be supported if it is clearly and compellingly demonstrated that the proposal is required to meet national and local energy policy requirements, is carbon free, safe, environmentally acceptable or can be made so by planning conditions or obligations, and that it provides national, local or community benefits which clearly outweigh the likely adverse impacts. so as to justify the grant of planning permission.</p>	<p>To update the plan and to respond to the issues raised by consultees, including NWBC.</p> <p>NWBC requested additional changes requiring the policy to refer to national need, safe operation, and that there are no suitable sustainable alternatives.</p> <p>Discussion with Mike Dittman, NWBC, on 10 February 2020 clarified that the reference to suitable sustainable alternatives related specifically to alternative sources of energy, other than Underground Coal Gasification (UCG).</p> <p>Currently national planning policies do not specify a need to consider alternative energy sources to UCG, because of this there is the potential for changes to the policy requiring this to be considered unsound.</p> <p>Rather than referring to a need to consider alternative energy</p>

Policy / text references	Possible changes Proposed deletions are striketrough and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
		sources, the MPA has proposed additional text requiring clear and compelling evidence that UCG is needed to meet national and local energy policy requirements considering the limited support in paragraph 211 of the NPPF for coal extraction. This would enable consideration of the energy policy requirements at the time proposals come forward for determination.
Chapter 8 Policy MCS 10 Text	<p>8.68 Underground Coal Gasification (UCG) is a separate process to fracking involving controlled combustion of coal seams beneath the ground and the recovery of the resulting gases. The coal can be accessed by carefully controlled directional drilling of several wells that penetrate the coal seam for an appropriate distance. Normally two wells are required one to inject steam and air or oxygen to ignite the seam and the other to recover the gas-water vapour mixture (syngas). Syngas is mainly a mixture of methane, hydrogen, carbon monoxide and carbon dioxide. The gas can be utilised in on-site and/or off- site plant to produce energy (via gas combustion), fuels (diesels) and chemical feedstocks (fertilisers). <u>Commercial scale operations would involve a number of borehole sets to produce sufficient quantities of gas for either large scale power generation or for the production of fuels and chemicals.</u></p> <p><u>8.69 However, there are very few examples of this technology having been/being used commercially anywhere in the world. Where the industry has operated, this has been typically at a pilot or trial scale such as at “El Tremedal” near Alcorisa, Teruel in Spain (the first European trial at great depth and high pressure) in 1997.</u></p> <p><u>8.70. In 2004 the British Geological Survey published a report on the UK coal resources available for exploitation by the new technologies of Underground Coal Gasification, Coal Bed Methane and Carbon Dioxide Sequestration. This overview report identified that parts of the Warwickshire Coalfield was suitable for UCG based on the information and knowledge of the technology available at that time. Whether impurities in the coal would limit the quality of the gas produced in Warwickshire was not covered in the report.</u></p> <p><u>8.71 The report prompted further interest in UCG in the UK but future development opportunities would be focussed on great depth (over 600m) and offshore to avoid</u></p>	<p>To update the plan and to respond to the issues raised by consultees.</p> <p>NWBC requested further justification text on the process.</p>

Policy / text references	Possible changes Proposed deletions are strikethrough and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
	<p><u>environmental damage (subsidence and contamination of the water environment).</u></p> <p><u>8.72 In 2015, the Government commissioned a report (the “Atkins Report”) to provide a high evidence statement on the global warming potential that the production and use of syngas from UCG would have, based on the likely end uses of the syngas, in comparison to current and conventional processes. The report found that emissions would be too high to be consistent with the government’s commitment to a low carbon future. As a result, the government announced in December 2016 that “it was not minded to support the development of the technology in the UK”.</u></p> <p><u>8.73 At the same time the Scottish Government had commissioned an independent review of UCG and this report concluded that it would be wise to consider an approach to UCG based on a precautionary presumption whereby operation of UCG might be considered only where a series of tests could be applied and passed. Having considered the report the Scottish Government announced that it could not support the technology and therefore it would have no place in Scotland’s energy mix at this time. However, in England the government’s consideration of the Atkins Report did not lead to a ban or their withdrawal of any licence. The NPPF (paragraph 204 a) still indicates that coal (gasified by underground methods or otherwise) remains a mineral resource of local and national importance.</u></p> <p><u>8.74 To reach the Government’s commitment to net-zero greenhouse gas emissions by 2050 future development of onshore UCG would need to demonstrate that amongst other things it was capable of being operated at a commercial scale; it was needed in terms of national energy policy, safe and carbon free; and it was capable of being made environmentally acceptable (including any residual environmental impacts).</u></p> <p>8.69 Any power station that proposes to use gas produced by Underground Coal Gasification will need to demonstrate that it is carbon capture ready before planning permission may be given for the construction of the power station. New power stations that use the gas as a fuel will also be subject to the Emissions Performance Standard. The Standard, introduced through provisions of the Energy Act 2013, recently came into force and places a limit on the amount of carbon dioxide emissions that new fossil fuel power stations can emit.</p>	

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	<p>8.75 8.70 The Coal Authority is responsible for issuing licences granting the right to access the coal, but no UCG operations can take place until the applicant has secured all other necessary rights and permissions. This would include securing the necessary planning permission from Warwickshire County Council as the Mineral Planning Authority. A Conditional Licence application was made to the Coal Authority in May 2013 by Cluff Natural Resources Plc <u>for the Hawkhurst area, but it was later withdrawn.</u> No decision was made by the Coal Authority and the County Council were told that Cluff would let its application lapse as it wished to focus on offshore areas where there were larger reserves.</p> <p>8.76 8.71 There are no national or local targets for the production of syngas and the production of energy, other fuels and/or chemical feedstocks from UCG so each proposal needs to be considered on its own merits. <u>Equally there are no requirements to safeguard the coal mineral resource for future development by UCG.</u></p> <p>8.77 8.72 Developers should avoid developing proposals within influencing distance of <u>major population centres and</u> sites designated as being internationally or nationally important for nature conservation. Heritage assets and their settings should also be avoided. <u>Consideration will need to be given to amongst other issues the impact of proposals on public health (including the submission of a health impact assessment), existing infrastructure and utilities, air quality, the water environment and to the management and disposal of waste products.</u></p> <p>8.78 8.73 Sites will not be encouraged where access is required to transport plant, machinery and materials for drilling wells, producing and utilising syngas to produce energy, other fuels and chemical feedstocks, through residential areas, sensitive land uses or via roads which are minor or considered unsuitable by the Highway Authority for HGV use.</p> <p>8.79 8.74 Normally drilling the wells takes place 24 hours a day, 7 days a week for safety reasons. The erection and operation of plant to recover and utilise the syngas to produce energy, other fuels and chemical feedstocks has the potential to have significant impacts on the residential amenity of properties and communities near to proposed sites. Particular consideration will be given to the close proximity of the proposed wells, gas recovery and utilisation plant to any</p>	

Policy / text references	Possible changes Proposed deletions are strikethrough and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
	<p>residential properties and settlements in the County. Proposals for Underground Coal Gasification, the production of syngas and the erection of plant to utilise the gas to produce energy and/or other fuels and chemical feedstocks will be considered in accordance with the policies in the development plan.</p> <p><u>8.80 Planning applications for any form of UCG will need to address all the key stages of planning, extraction, processing, use, closure and abandonment and be accompanied by a number of competently prepared studies, assessments and proposals. As part of any planning application submitted to carry out UCG a detailed risk assessment will be required to demonstrate that the proposals can be safely operated, and the environment and public health can be protected. Details of restoration/reinstatement, aftercare, and long-term management and monitoring following the closure of any wells and the removal of any plant will also be required. The ability of the proposals to secure net-zero greenhouse gas emissions will be a key determinant if any form of onshore UCG is to take place in Warwickshire during the plan period.</u></p>	
Chapter 9 Policy DM 10	<p>Policy DM 10 - Mineral Safeguarding (see also Policy MCS 5) Non-mineral development, except for those types of development set out in Appendix 3, <u>should not normally be</u> will not be permitted if it would needlessly sterilise important mineral resources or would prejudice or jeopardise the use of existing mineral sites or existing and future mineral infrastructure unless:</p>	<p>To respond to the issues raised by North Warwickshire Borough Council and to ensure consistency in policy wording between this policy and policy MCS 5.</p> <p>NWBC seek text changes from “will not be permitted” to wording similar to the first Reg 19 (2016) such as “shall not normally be permitted” in Policy MCS5 or “should not proceed” in Policy DM10.</p>
Chapter 9 Policy DM 10 Text	<p>9.123 Warwickshire contains many mineral resources including sand and gravel, hard rock, brick-making clay, coal, cement raw materials and building stone. The NPPF states that Mineral Planning Authorities (MPAs) should define Minerals Safeguarding Areas (MSAs) and adopt appropriate policies to ensure that known locations of specific mineral resources of local and national importance are not sterilised by non-mineral development (where this should be avoided) . <u>The key safeguarded mineral resources in Warwickshire are sand and gravel, crushed rock, brick-making clay resources, cement raw materials, shallow coal and building stone. The coal MSA is</u></p>	<p>To respond to the issues raised by the Mineral Products Association and North Warwickshire Borough Council and to ensure that the text equates to the policy and complies with the NPPF February 2019 paragraph 182.</p>

Policy / text references	Possible changes Proposed deletions are strikethrough and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
	<p><u>based on a 2006 study carried out by the British Geological Survey for The Coal Authority. These resources have been identified for long term safeguarding beyond the life of this plan and are designated as MSAs and shown illustrated on the Maps in Appendix 2.</u></p> <p>.....</p> <p>9.130 Proposals for non-mineral development within a MSA except for those types of development described in Appendix 3 in the Plan must demonstrate that the sterilisation of mineral resources of local, regional or national importance will not occur as a result of the development, and that the development would not pose a serious hindrance to future winning and working of minerals. In the case of mineral infrastructure the non-mineral development must demonstrate that it will not constrain or hinder the existing and potential use of the infrastructure site. In order to avoid unnecessary consultations by other local planning authorities, Appendix 3 lists types of applications for proposed non –mineral developments which in the opinion of the Council are unlikely to conflict with the aims of Policy MCS5 and are <u>exempted</u> excepted from its scope.</p> <p>9.131 <u>Where the impact is on the mineral resource the</u> The non- minerals developer should carry out a mineral assessment as part of the preparation of their planning application and submit it to the County Council at the same time as submitting to the local planning authority to minimise any delays. The assessment should include site specific geological survey data to establish the existence or otherwise of a mineral resource of economic importance (such as nature, extent, type, quantity of the reserve and overburden to reserve ratio). When determining the extent of the resource that could be removed the emphasis should be on a sequential approach starting with the full removal of the mineral resource before moving then onto limited or partial removal and finally incidental removal. Consideration should be given to both the use of the resource within the development and release to the wider market. By changing the design of the non-mineral development it may be possible to increase the amount of resources which can be released and not sterilised.</p> <p>9.132 The MPA will consider the mineral assessment report and determine if sterilisation is likely to occur and whether prior extraction is likely to meet the requirements set out in this Policy. The MPA may consult the local minerals industry as part of its assessment work or seek independent</p>	

Policy / text references	Possible changes Proposed deletions are striketrough and additional text is <u>underline and bold</u>	Reasons for possible changes and comments
	<p>expert advice as appropriate. In the case of minerals infrastructure <u>the encroachment of incompatible activities around minerals development sites/facilities may create conflict due to either the more sensitive nature of other forms of development or their on-going occupation or usage. This could potentially impose constraints, reducing the viability of future mineral operations. It is the non-minerals developer's (applicant "agent of change") responsibility to determine site specific potential impacts, as well as the identification and implementation of suitable mitigation measures. The approved mitigation measures shall be carried out and implemented before the non-mineral development is completed. This could be achieved for example by the imposition of suitably worded planning conditions on the non-mineral development consent and/or through a planning obligation. The MPA will determine if the non-mineral development is likely to constrain or hinder the existing and potential use of the infrastructure site.</u> The MPA may consult the operator/landowner of the relevant infrastructure site affected and will take account any comments they may make before finalising and submitting their views to the relevant LPA.</p>	

Both parties agree that the changes are appropriate in addressing NWBC representations, sound and legally compliant.

Signatures

Signed on behalf of North Warwickshire Borough Council:	Signed on behalf of Warwickshire County Council:
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Table 1: Responses to NWBC member comments / issues raised previously that have not been fully addressed

NWBC member comments / issues raised previously that have not been fully addressed	WCC response
<p><i>Members indicated support is given to the use of stand-off distances for the sites (between extraction activity and location of existing properties) for proposals within North Warwickshire to help minimise any impacts from minerals sites, developments and dust generating activities on existing properties.</i></p>	<p>Support for the use of stand-off distances is noted. Planning Practice Guidance on Minerals¹ addresses whether separation distances and buffers are appropriate, stating that:</p> <p><i>Separation distances/buffer zones may be appropriate in specific circumstances where it is clear that, based on site specific assessments and other forms of mitigation measures (such as working scheme design and landscaping) a certain distance is required between the boundary of the minerals extraction area and occupied residential property.</i></p> <p><i>Any proposed separation distance should be established on a site-specific basis and should be effective, properly justified, and reasonable. It should take into account:</i></p> <ul style="list-style-type: none"> • <i>the nature of the mineral extraction activity;</i> • <i>the need to avoid undue sterilisation of mineral resources,</i> • <i>location and topography;</i> • <i>the characteristics of the various environmental effects likely to arise; and</i> • <i>the various mitigation measures that can be applied.</i>² <p>Site specific assessments and other forms of mitigation will need to be addressed at the planning application stage. However, the County Council has incorporated 100m standoffs from individual properties in site allocation policies.</p> <p>Based on consultation responses on the 2018 Regulation 19 version of the Plan, proposed changes have been provided to the Inspector for consideration which clarify other properties within 100m of the site boundary of Site 9 Hams Lane, Lea Marston. The proposed change is outlined below with changes in bold, underline text:</p> <p>Policy S9 Allocation at Site 9 Hams Lane, Lea Marston</p>

¹ <https://www.gov.uk/guidance/minerals>

² Paragraph: 018 Reference ID: 27-018-20140306 Revision date: 06 03 2014

NWBC member comments / issues raised previously that have not been fully addressed	WCC response
	<p>Land at Hams Lane, Lea Marston shown on Figure 1.16 is allocated for sand and gravel working subject to the following requirements:.....</p> <ul style="list-style-type: none"> • a minimum stand-off of 100m from individual properties on Blackgreaves Lane, Haunch Lane and at Reindeer Park, Kingsbury Road;
<p><i>The Council urged the County to only seek prior extraction where there is a clear economic need and demand for the mineral resource and any extraction will not impact adversely on existing built development, (notwithstanding and noting the reduced weight and emphasis given to coal extraction proposals).</i></p>	<p>The NPPF notes that minerals are a finite natural resource and can only be extracted where they are found and “best use needs to be made of them to secure their long-term conservation”³. Prior extraction can ensure that minerals are not needlessly lost.</p> <p>Paragraph 204 of the NPPF goes onto state that planning policies should, amongst other things “adopt appropriate policies so that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked)”; and “encourage the prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place”.</p> <p>The NPPF also states⁴ “when determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy.” It is clear therefore that trying to introduce a “clear economic need and demand” test would be contrary to the NPPF and therefore unsound.</p> <p>Proposed policies DM10 and MCS5 cover mineral safeguarding and prior extraction. Policy DM10 and its justification text addresses NWBC’s concerns. There are various caveats listed where non-mineral development could be permitted where important minerals resources are found. These include:</p> <ul style="list-style-type: none"> • prospective developers of non-mineral development being able to provide evidence the mineral concerned is no longer of any value or potential value; • it would be inappropriate to extract minerals at that location, with regard to other policies in the Plan; or • the merits of the development clearly outweigh the need for safeguarding.

³ Paragraph 203, NPPF

⁴ In paragraph 211, NPPF

NWBC member comments / issues raised previously that have not been fully addressed	WCC response
	<p>Other policies in the Plan include a suite of Development Management (DM) policies that address concerns relating to impacts on existing built development, for example Policy DM4 addresses health, economy and amenity- minimising the impacts of mineral development.</p> <p>Justification text for Policy DM10 also outlines where prior extraction will be supported including where:</p> <ul style="list-style-type: none"> • It is practicable; • It is environmentally feasible; • It can be carried out without unacceptable adverse impact etc. <p>Further changes have also been proposed that address NWBC’s representation on minerals safeguarding provisions. These have been provided to NWBC officers as part of Statement of Common Ground, that addresses representations where possible.</p>
<p><i>The relevant Policy on the Lea Marston site in the Publication version of the Plan, Policy S9, does include a criteria requiring development to take into account any mitigation approved to minimize the impact of HS2 on Lea Marston village. Nevertheless, with the approval of the Hybrid Bill and advancement of both Phase 1 and 2 of HS2 these concerns are gaining increasing concern and prominence. The Plan also, however, notes that “It would appear sensible to try and work the site in conjunction with the construction of HS2 and the Kingsbury Rail Head to the north” (para 7.111). This element of concern could link into the “positivity” of the Plan in seeking to ensure the opportunity of accessing significant sand and gravel resources through that generated by the ground works and landscaping for the HS2 rail</i></p>	<p>At this stage it is not possible to anticipate when a planning application will come forward for the development of Site 9, nor when extraction activities would commence if permitted. Tarmac are the preferred mineral operator, and will no doubt submit a planning application when there is a market demand for the material. Para 7.111 clarifies potential additional benefits of working the site in conjunction with HS2 construction for site restoration and contributing towards the Tame Valley Wetlands Partnership Scheme and the Trent and Tame Valleys Futurescape project.</p> <p>At each stage of the preparation of the plan consideration has been given to the working of Site 9 and the construction of HS2 in this locality. The 2015 consultation envisaged that the site would be worked at the end of the plan period after the construction of HS2. However, there continues to be uncertainty around the HS2 construction programme.</p> <p>There were concerns that this approach would extend the potential level of disturbance within the locality and therefore was not acceptable. The 2018 Plan text does not give a specific reason for trying to work Site 9 in conjunction with HS2 construction other than concurrent working and restoration could provide the opportunity to improve restoration options at Site 9 and contribute to environmental projects along the Tame and Trent valleys. However, the 2015 plan consultation did provide some context for the stance now taken in the 2018 plan and the recognition that the opportunities identified could only occur if timings facilitate this.</p>

NWBC member comments / issues raised previously that have not been fully addressed	WCC response
<p><i>head and maintenance/storage yards, intended to serve both phases of the HS2 project (See Warwickshire County Council's HS2 impact and mitigation concerns on Lea Marston and Kingsbury Park areas, noted in Report "Living with the line" and Appendix A of Transport and Planning Committee Report of 7 December 2018).</i></p>	<p>A restoration scheme for Site 9 will need to be considered at the planning application stage. Currently, restoration of mineral sites is taking place in the county using quantities of inert material; the restoration of Site 9 is not anticipated to be reliant upon the use of excess material arising from HS2 construction.</p> <p>In terms of comments relating to the <i>"opportunity of accessing significant sand and gravel resources through that generated by the ground works and landscaping for the HS2 rail head and maintenance/storage yards"</i>, at this point the extent of potential prior extraction by HS2 contractors is not known. HS2 have yet to engage in consultation with WCC on prior extraction of minerals along the route, as required under the HS2 Phase One Code of Construction Practice. So far HS2 have not provided an overview as to the impact of their scheme on minerals supply in the county. However, HS2's approach to managing excavated material is outlined in the High Speed Two Phase One Information Paper E3: Excavated Material and Waste Management⁵, which clarifies that in the priority of the integrated design approach is:</p> <ul style="list-style-type: none"> • <i>"to use excavated material to satisfy the fill material requirements wherever reasonably practicable"</i>; and then • <i>"for the excavated material which cannot be beneficially reused for the earthworks of the Proposed Scheme, the nominated undertaker will seek timely opportunities for such material to be used in other local construction projects or the restoration of mineral sites, provided that the transportation of that material does not result in significant environmental effects."</i> <p>WCC requested an update from HS2, via email on 10 May 2019, on both their minerals needs in the county and the likelihood of borrow pits and prior extraction. HS2 Ltd have confirmed that they will be responding shortly. Thus far the only clarification that has been received from HS2 Ltd is that there will be no borrow pits in Warwickshire for Phase One. To date this has not been confirmed through various consultations on HS2, despite WCC requesting this information.</p> <p>Other MPAs along the route have also experienced a lack of information. It is likely that procuring aggregate for construction, whether this is through prior extraction or from commercial quarries, will be done by construction sub-contractors rather than HS2. The West Midlands Aggregates Working Party, of which WCC is a member, is also seeking engagement with HS2 to clarify construction aggregate needs.</p>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672372/E3_-_Excavated_Material_and_Waste_Management_Strategy_v1.6.pdf

NWBC member comments / issues raised previously that have not been fully addressed	WCC response								
<p><i>It is noted that the discounted sites 10, 11 and 12 in Appendix 1, Figure 1.1 are all within the HS2 Railhead and Hams Lane Access sidings and rail loop infrastructure. These three sites together with a significant amount of additional land in the immediate locality, which is not illustrated in the consultation but is in the public domain, will be subject of major engineering works under HS2. These sites contain the same 3 meter depth of unexcavated sand and gravel deposits that lie within Site 9. Most or all of these deposits will be excavated during the HS2 Route and Railhead construction works with the consequence that potentially Site 9 and surrounding area will provide far in excess of the 1.2 million tonnes required in the Plan. This impact may negate the need to excavate the deposits within Site 9 with the benefit of a requisite reduction in heavy commercial traffic. The Plan could alternatively seek deferral or safeguarding of the Site Proposal S9 to a time outside of the HS2 works (or current Plan period?) to avoid a significant cumulative impact of heavy commercial traffic on Lea Marston and surrounding rural area, generated by the concurrent works.</i></p>	<p>During the ‘call for sites’ and subsequent consultations on the plan no evidence has been provided to demonstrate proven mineral resources exist at Sites 10, 11 and 12 and therefore whether they can be relied upon to contribute to the tonnage needs for the county outlined in Policy MCS2, on which the proposed site allocations in Policy S0 have been based. Notwithstanding this all, three sites did not progress through the SIAM process for the following reasons:</p> <table border="1" data-bbox="683 459 2130 877"> <thead> <tr> <th data-bbox="683 459 1090 496">Site</th> <th data-bbox="1090 459 2130 496">Reasons site was rejected</th> </tr> </thead> <tbody> <tr> <td data-bbox="683 496 1090 611">10 – Barn Covert Land</td> <td data-bbox="1090 496 2130 611"> <ul style="list-style-type: none"> • directly affected by HS2; • viable resources were not confirmed; • no safe access available. </td> </tr> <tr> <td data-bbox="683 611 1090 726">11 – Land at Marston Fields Farm</td> <td data-bbox="1090 611 2130 726"> <ul style="list-style-type: none"> • directly affected by HS2; • viable resources were not confirmed; • site too small. </td> </tr> <tr> <td data-bbox="683 726 1090 877">12 – Dunton Island</td> <td data-bbox="1090 726 2130 877"> <ul style="list-style-type: none"> • viable resources were not confirmed; • directly affected by HS2; • no safe access available; • impacts on heritage assets. </td> </tr> </tbody> </table> <p>Sites 10 and 11 cover an area required as a railhead for HS2 construction (Kingsbury Road railhead) and the Curdworth railway cutting and the start of the Leeds Spur diveunder run through Site 12.</p> <p>In the absence of confirmation of resource viability with specific borehole data from drilling within the sites, it is not correct to assume that the depth of sand and gravel resources across the three sites would be 3 meters. Sand and gravel deposit depths, their composition and overburden depth can vary significantly even over a short distance within a single site.</p> <p>Following on from HS2’s response to the Minerals Plan - Preferred Option and Policies, which identified that HS2 could be a potential beneficiary of minerals extraction at Site 9, WCC sought further clarification. In December 2015 HS2 confirmed that, at that time, HS2 had no plans for the extraction of sand and gravel and infill of other potential quarries identified in the Minerals Plan - Preferred Option and Policies. However, they would seek to understand opportunities that may assist delivery of the railway scheme as it develops.</p>	Site	Reasons site was rejected	10 – Barn Covert Land	<ul style="list-style-type: none"> • directly affected by HS2; • viable resources were not confirmed; • no safe access available. 	11 – Land at Marston Fields Farm	<ul style="list-style-type: none"> • directly affected by HS2; • viable resources were not confirmed; • site too small. 	12 – Dunton Island	<ul style="list-style-type: none"> • viable resources were not confirmed; • directly affected by HS2; • no safe access available; • impacts on heritage assets.
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NWBC member comments / issues raised previously that have not been fully addressed	WCC response
	<p>In May 2016, further information was requested from HS2, by email, relating to potential minerals extraction at Site 9 and Sites 10, 11 and 12 put forward in the “Call for Sites”. The response clarified that no work had been carried out by the HS2 construction team to clarify minerals resources on site, that given the project’s cut and fill balance it was unlikely that they would wish to sell material on the open market, minerals below the high speed rail structural footprint may need to remain in place to form an adequate foundation, arrangements for dealing with minerals that may arise will need to be discussed with the landowner, the Mineral Planning Authority and other relevant stakeholders, and that HS2 were not able to clarify whether sand and gravel prior extraction would take place at the Kingsbury Road railhead site should not affect any decision the Council has to make on the matter. So far there has been no consultation on this matter.</p> <p>HS2 Phase One Information Paper E3 outlines their approach for managing excavated material through the development of an integrated design approach to satisfy fill requirements. Over 86% of excavated material will be reused within the project for the construction of engineering and environmental mitigation earthworks. It is likely the ratio will increase as there are additional incentives to achieve a greater ratio of reuse, as the HS2 CDEW Strategy includes a stretch target of 95% for the reuse and recycling of inert material. Only if excavated material is not required or is unsuitable for the construction of the Proposed Scheme will it be considered waste. Therefore, it is likely that materials excavated will be used for HS2’s needs rather than being available for other developments, which the Minerals Plan seeks to address. (Given the lack of information on HS2’s aggregate needs the County Council has not been able to account for those needs in the Plan’s tonnage requirement for Sand and Gravel).</p> <p>There are likely to be several potential constraints for prior extraction by HS2, which will need to be considered, including:</p> <ul style="list-style-type: none"> • Avoiding extraction where it may affect the railway trackbed; • Large areas of Site 12 are outside of the limits of the High Speed Rail (London - West Midlands) Act 2017 (‘the HS2 Act’). This significantly reduces the amount of land outside the control of HS2 to extract minerals, without the need for planning permission under the Town and Country Planning Act; • HS2 infrastructure safeguarding; • Works outside of the scope of the HS2 Act - No borrow pits or areas of prior extraction were identified in the ES or scheduled in the HS2 Act. Planning permission granted under s. 20 of the HS2 Act is subject to various tests where works are not scheduled under that Act, including the significance of effects on the environment where development is not covered by the HS2 ES, and is granted subject to conditions under Schedule 17, which require further planning approvals on various matters including borrow pits. Given that specific areas for minerals extraction and the effects

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	<p>in those locations was not covered in the HS2 ES it is likely that (depending on the significance of effects) separate consenting and/or EIA screening will be required.</p> <ul style="list-style-type: none"> • Viability and the practicability of prior extraction - Policy DM10 outlines scenarios where prior extraction will be supported. In the absence of an approved mineral report demonstrating the extent of viable resources on the sites it is not known how much mineral could be extracted, or how much could be extracted within a reasonable timeframe. <p>For HS2 Phase 2a (West Midlands-Crewe) Scheme where borrow pits have been identified in Staffordshire and Cheshire, and addressed in the ES and a specific information paper produced, a shortfall of high-quality material (usually comprising sand and gravel) has been identified to construct railway embankments at some locations. However, no similar borrow pit requirement was identified for Phase One nor any identified shortfall.</p> <p>On the 17 July 2019, HS2's Town Planning team confirmed that they will be responding in more detail to WCC's email request for further clarification on HS2 mineral requirements sent on 30 April 2019. However, in the interim confirmed that HS2 does not propose any borrow pits within the Warwickshire for HS2 Phase One.</p> <p>For the reasons outlined above, and the general uncertainties at this stage with any HS2 requirements Sites 10, 11 and 12 cannot be considered as an alternative to Site 9.</p> <p>The cumulative impact of heavy commercial traffic on Lea Marston and surrounding rural area, generated by the concurrent works, will need to be carefully examined at the planning application stage. Comments have been received from Highways England and WCC Highways relating to potential traffic effects. Neither body objects to the site allocation.</p> <p>The response from WCC Transport Planning team outlines the development pressures context within the vicinity (including HS2 construction, Hams Hall, Peddimore development and Langley development) and outlines potential mitigation measures moving forward, for example Peddimore/Langley applications are likely to identify significant mitigation requirements, potentially requiring dualling of A446 north of M42 J9 to Belfry and south at the A446 Curdworth Bridges. It also clarifies that they will seek to secure a lorry routing agreement to ensure HGVs use appropriate strategic routes in the area and therefore mitigate potential impacts on local villages (e.g. Lea Marston and Kingsbury).</p> <p>A Transport Assessment will be required at the planning application stage, which will need to:</p>

NWBC member comments / issues raised previously that have not been fully addressed	WCC response
	<ul style="list-style-type: none"> • use the County Council's Paramics M42 Junction 9 microsimulation model to assess HGV impacts on network and junction performance as part of the TA, and to help identify any mitigation measures which may be required; and • consider the potential impact of HGV movements on the strategic and local road networks in the context of HS2 activity in the area. This will be extended beyond Phase 1 into Phase 2b which is expected to begin construction in 2023 based on current information. • Highways England's have carried out a high-level desk top analysis. Their response states: <p><i>“in principle Highways England does not object to the positioning of any of the sites, however, detailed assessment will be necessary in order to provide robust evidence of the impact of associated traffic generation on the SRN⁶. Issues regarding boundary and environmental concerns, or potential mitigation and infrastructure changes, as a result of these sites is also of concern to Highways England, and therefore further assessment work would be required to determine if there are boundary issues which may impact on the safe and efficient operation of the SRN.”</i> However, their consultation also notes that <i>“taking account of this preliminary analysis, we consider that four of the six sites listed within the draft plan are likely to have implications for the operation of the SRN”.</i></p> <p>The four of the six sites listed do not include Site 9. However, since Plan submission there are ongoing discussions with Highways England regarding impacts on the Strategic Road Network across all site allocations and potential Plan text changes that would clarify how these will be dealt with at the planning application stage.</p> <p>Throughout the development of the Plan officers have considered how the timing of the potential development of Site 9 should be controlled in relation to HS2 works to avoid/minimise any potential adverse effects on the locality. Para 7.111 clarifies potential additional benefits of working the site in conjunction with HS2 construction for site restoration and contributing towards the Tame Valley Wetlands Partnership Scheme and the Trent and Tame Valleys Futurescape project.</p> <p>As outlined above technical highways consultees have not raised objection to concurrent working. In addition, potential benefits may arise through reduced haulage distances if HS2 construction ultimately requires material from Site 9 and/or</p>

⁶ Strategic Road Network

NWBC member comments / issues raised previously that have not been fully addressed	WCC response
	excess material could be used in the staged restoration of Site 9, consistent with the approach outlined in the HS2 Phase One Environmental Statement ⁷ .
<p><i>Members seek clarification over the extent of Minerals Safeguarded Areas and whether any revision to Area boundaries are considered once the mineral resource has been extracted and is either wholly exhausted or significantly “unviable” where future extraction is physically and financially prohibitive?</i></p>	<p>Mineral Safeguarding Area maps are contained in Appendix 2 of the Plan.</p> <p>Paragraph 8.24 clarifies that: 8.24 <i>The Maps were produced as part of a report produced on behalf of the MPA by the British Geological Survey which mapped the extent of mineral resources in the County and the latest guidance. From time to time the MSAs may be reviewed and updated as mineral resources become exhausted or as the result of exploratory or detailed drilling as part of the preparation of planning application for minerals development or a mineral survey and assessment report submitted with a planning application for non-mineral development.</i></p> <p>Where all the minerals have been finally extracted (permanent cessation) or detailed survey information has confirmed lack of viability both now and in the future on sites in the county, maps can be updated. However, the County Council may be able to confirm the extent of mineral reserves/resources on a particular site through the non-mineral development consultation process outlined in paras 9.129 to 9.136 of the proposed plan consistent with the provisions in para 7, Schedule 1 of the Town and Country Planning Act 1990, i.e. a local planning authority must not determine an application for planning permission without consultation on a development in an area in relation to which the county planning authority have given notice in writing to the district planning authority that development is likely to affect or be affected by the winning and working of minerals, other than coal. An approved mineral report will be required to be submitted for consideration by the Mineral Planning Authority and prior extraction approved as part of the proposed implementation of the non-mineral development or through a site specific planning application for minerals development.</p>

Table 3: Responses to additional comments from NWBC Planning Board 10th December 2018

Additional comments from NWBC Planning Board 10th December 2018	WCC response
<p><i>The Borough Council again seeks clarification and reassurance of the points of concerns noted above</i></p>	<p>See comments above on cumulative impacts of HGV traffic.</p>

⁷ Paragraph 14.1.19, Volume 3 - Route-wide effects:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/259488/Volume_3_Route-wide_effects.pdf

Additional comments from NWBC Planning Board 10th December 2018	WCC response
<p><i>in relation to the allocation of Site Policy S9, particularly on cumulative impact of traffic arising from the Site proposal and HS2 programmed works. The Members seek clarification on the potential implications for additional supply that the works for the HS2 Railhead may generate for sand and gravel resources on the need for Site 9. This is particularly noted in view of the reduced requirements (objectively assessed needs) derived from the Local Aggregates Assessment (LAA) 2017 of 6.525 million tonnes of sand and gravel when compared to the First Regulation 19 Version of the Minerals Plan, which identified a need of 8.02 million tonnes.</i></p>	<p>Site 9 is required to meet the local demand for future sand and gravel and is not required directly to meet the needs of HS2 or any of its associated works. The Local Aggregates Assessment 2017 has identified the plan requirements to be met and the Plan, (through its spatial strategy), has identified the location and number of site allocations to be made to meet those requirements. Whether the HS2 railhead requires more or less material to ensure that it is constructed in accordance with the Phase 1 HS2 ES has no bearing on the whether the site is or is not required to meet the plan requirements.</p> <p>The County Council has considered how best to address the reduced tonnage arising from the preparation of the LAA 2017 and has determined that the most sustainable option is to exclude Sites 5 and 7, through the Sustainable Appraisal assessment using the Site Identification Methodology for allocating sand and gravel sites.</p>
<p><i>Is there a specific reason for the further reduction in the Local Aggregate Assessment between the draft 2016 LAA and the 2017 LAA in the Second Regulation 19 Plan?</i></p> <p><i>Is the reduced requirement as a result of increased recycling of aggregates and is this likely to continue or increase in the future?</i></p>	<p>The NPPF para 207 requires the preparation of an annual LAA based on a rolling average of 10 years sales data and other relevant local information. When rolling forward and comparing the 10 years sales data average from 2016 (years 2006 – 2015) to 2017 (years 2007 -2016) it is clear that the loss of the high producing year of 2006 (0.98 million tonnes) has had a noticeable effect on the figures reducing the requirement for 2017.</p> <p>This is the result of the annual rolling forward of the 10 years sales data (mathematical process) and not an increase in the recycling of aggregates. Depending on the rolling forward each year of past years production figures and the amount of future annual sales the 10-year average will either rise or fall. The recycling of aggregates helps with the overall supply of construction materials in the county and is not directly related to the size of the plan requirements due to the different uses and markets that primary and recycled aggregates supply.</p>
<p><i>Is this need also impacted by the current allocations proposed within the Submission Local Plan for the Borough, other authorities Local Plan</i></p>	<p>Local Aggregate Assessments (LAA) are based on yearly monitoring and published on an annual basis. The Local Aggregates Assessment 2017 considered the future demand for growth based on the information available at the time of the preparation of the document. There is an annual time lag of 12 months in the collection of annual aggregates sales to calculate the rolling 10-year average.</p>

Additional comments from NWBC Planning Board 10th December 2018	WCC response
<p><i>growth proposals in the County and wider Sub-Region?</i></p> <p><i>Does the reduced requirement reflect the potential future demand these proposals may generate?</i></p>	<p>The LAA is also asked to consider the impact of a 3-year average to determine if there is a need to adjust the annual production rate upwards in response to an increase in demand. A further consideration for the LAA is other relevant local information such as specific growth factors in the county and the distribution of growth from around the sub region for example.</p> <p>The Council is also required to monitor planning permissions and landbanks to determine if further planning permissions are required in the county to ensure a steady and adequate supply of aggregates. Equally it takes time for housing sites in a local plan to come forward as a planning application, to get permission and be implemented and for aggregates to be bought to construct the buildings.</p> <p>The 2017 LAA considered how much housing and employment land will be required to be provided over the plan period. The information collated suggested that demand will increase because of the need to build more homes at a greater rate and the need to deliver additional housing from outside the county boundary. At the moment this situation is not sufficiently clear to require uplift in the current 10-year average or the use of an earlier 10 year period as a baseline for calculating future provision or an increase in the 3 year average.</p> <p>The situation will continue to be monitored annually through LAAs. Local Plans, including Minerals Plans, need to be reviewed to assess whether they need to be updated at least every five years.</p>