

Agenda Item No 4

Planning and Development Board

7 August 2017

Planning Applications

Report of the Head of Development Control

1 Subject

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

2 Purpose of Report

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

3 Implications

- 3.1 Should there be any implications in respect of:

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

4 Site Visits

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

5 **Availability**

- 5.1 The report is made available to press and public at least five working days before the meeting is held in accordance with statutory requirements. It is also possible to view the papers on the Council's web site: www.northwarks.gov.uk.
- 5.2 The next meeting at which planning applications will be considered following this meeting, is due to be held on Monday, 4 September 2017 at 6.30pm in the Council Chamber at the Council House.

6 **Public Speaking**

- 6.1 Information relating to public speaking at Planning and Development Board meetings can be found at: www.northwarks.gov.uk/downloads/file/4037/.
- 6.2 If you wish to speak at a meeting of the Planning and Development Board, you may either:
- e-mail democraticservices@northwarks.gov.uk;
 - telephone (01827) 719222; or
 - write to the Democratic Services Section, The Council House, South Street, Atherstone, Warwickshire, CV9 1DE enclosing a completed form.

Planning Applications – Index

Item No	Application No	Page No	Description	General / Significant
1	CON/2017/0009	4	Marston Fields Farm, Kingsbury Road, Lea Marston, Construction of landscaping bund on land to the west of the fishery facility at Marston Fields Farm.	General
2	PAP/2016/0605	9	Land to the rear of 6-20, Spon Lane, Grendon, Outline application for residential development for 9 dwellings and access	General
3	PAP/2016/0679	79	Land South of 1 To 7 The Beeches, Laurel Avenue, Polesworth, Outline application for erection of up to 31 no: dwellings and associated works (with details of point of access)	General
4	PAP/2017/0087	112	Unit 11 Netherwood Industrial Estate, Ratcliffe Road, Atherstone, Change of use from B8 storage to Fitness Centre (Use Class D2)	General
5	PAP/2017/0157	117	Blythways, Blythe Road, Coleshill, Outline application for the erection of up to 40 no: dwellings (class C3) following demolition of existing residential development and outbuildings to include details of layout and access off Church Hill and Blythe Road, and appearance, landscaping and scale to be reserved. □	General
6	PAP/2017/0289	138	Home Farm, Kingsbury Road, Lea Marston, Erection of new tractor/machinery and storage shed	General
7	PAP/2017/0329	147	The Belfry Hotel, Lichfield Road, Wishaw, Outline application for extensions and alterations to the existing buildings to create a new self-contained water entertainment area; enhanced conference and banqueting facilities; a new spa, hotel rooms and conference space	General
8	PAP/2017/0352	165	Land East of, St Lawrence Road, Ansley, Outline application - erection of up to 70 dwellings with details of access, layout, scale, appearance and landscaping as reserved matters	General

General Development Applications

(1) Application No: CON/2017/0009

Marston Fields Farm, Kingsbury Road, Lea Marston, B76 0DP

Construction of landscaping bund on land to the west of the fishery facility at Marston Fields Farm., for

Mr G Baines

Introduction

This is an application submitted to the County Council as Waste Authority and it has invited this Council to submit representations to it as part of the consultation process.

The Site

This is land on the north side of the Kingsbury Road just to the west of the Marston Camping Site and north of the Lea Marston Hotel. The land was mostly formerly agricultural land but has since been replaced by a fishery site following extraction of clay and gravel. Some of the land remains as rough pasture.

Background

The planning permission for the fishery is the approved use after restoration and it is now nearing completion with a series of lakes. All access would be via existing arrangements onto the Kingsbury Road.

The approval for HS2 earlier this year included the provision of substantial rail sidings and an associated yard on land immediately to the west of the fishery such that the remaining agricultural land here would be removed all together. As part of the mitigation measures for this new infrastructure project, a six metre tall landscaped bund is to be provided running north/south along the whole of the western side of the new fishery. It would be some 700 metres long and 45 metres wide.

Plans illustrating the location of the site; the rail yard and the bund are at Appendix A.

The Proposals

It is understood that the fishery is being prepared for opening and that it will start to operate well in advance of the commencement of works associated with the construction of and certainly the completion of the HS2 goods yard. The bund is thus being considered for completion in advance of the HS2 work as it would help in the overall viability of the fishery – construction not interrupting the leisure use of the lakes. The bund would match the one shown in the mitigation measures in all respects. However it would remain permanently.

Its construction would involve the import of material and its associated HGV movements. It is anticipated that over a construction period of nine months, this would require six HGV movements an hour (three in and three out between 0800 and 1700 hours).

The County Council has consulted HS2 on this proposal but at the time of preparing this report there has been no response to relay to Members.

Development Plan

The Core Strategy 2014 – NW1 (Sustainable Development); NW3 (Green Belt), NW10 (Development Considerations) and NW12 (Quality of Development)

Other Material Planning Considerations

The National Planning Policy Framework 2012

Observations

The site is in the Green Belt. The proposal is an engineering operation that is not appropriate development. This is because it will have an adverse impact on the openness of the Green Belt due to its size and shape. The level of harm is considered to be moderate. The applicant has put forward the planning consideration which he believes would outweigh this harm – namely that a bund of the same appearance and dimensions is to be provided in any event under a separate planning permission, that for HS2. All he wishes to do is to bring the implementation forward.

There is clearly some weight to this argument. However it is not overriding. Firstly it would involve HGV movements that are not necessarily required in the construction of the bund. This is unsustainable. Secondly, the HS2 bund is a temporary measure – it is wholly a mitigation measure in association with the rail yard. Whilst this is likely to be present for 16/17 years it is still a temporary arrangement and once the rail yard goes, the mitigation is no longer required. Members will know that the two most important attributes of the Green Belt are its openness and its permanence. The bund now being proposed would not be temporary.

In these circumstances there is a case here for an objection being lodged. Even if HS2 has no objection, that is only in relation to its own interest which here does not equate with that of the Local Planning Authority.

Recommendation

That the Council objects to this proposal for the reasons as set out in this report.

BACKGROUND PAPERS

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

Planning Application No: CON/2017/0009

Background Paper No	Author	Nature of Background Paper	Date
1	Warwickshire County Council	Letter	4/7/17

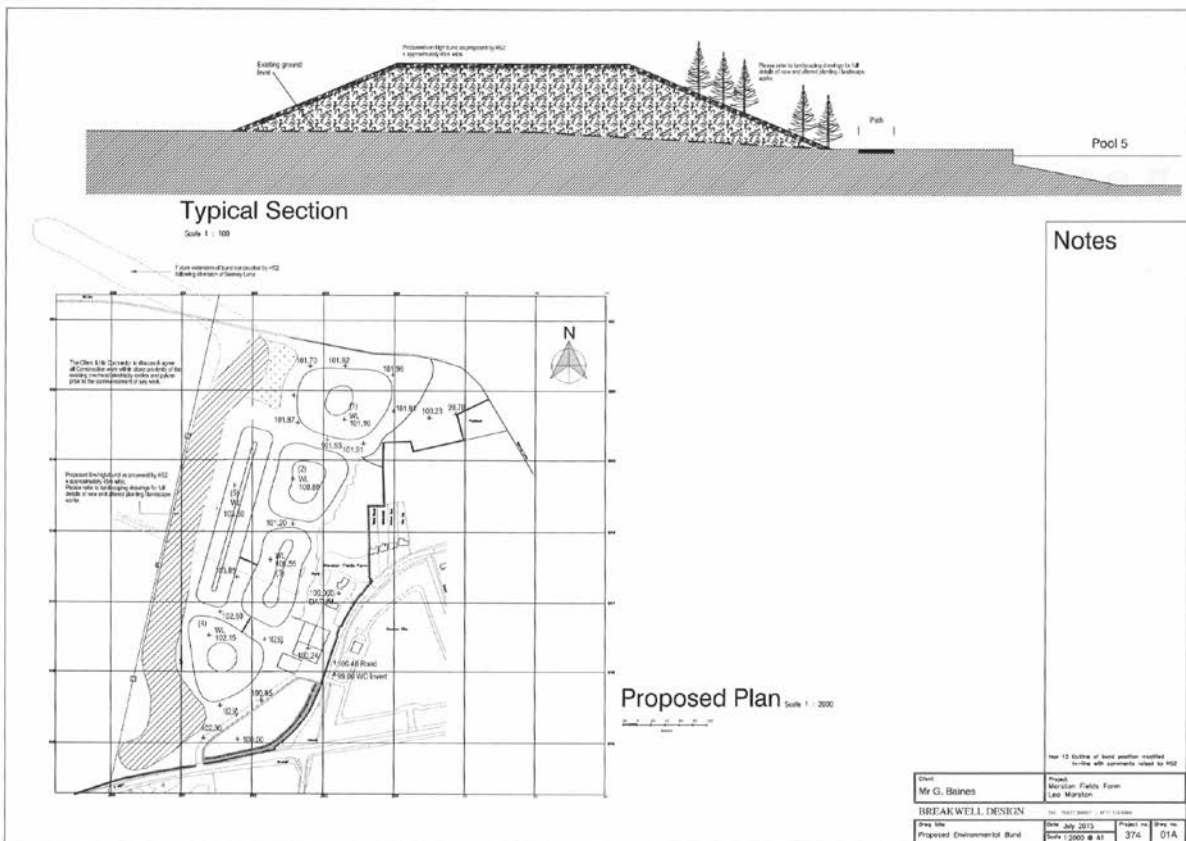
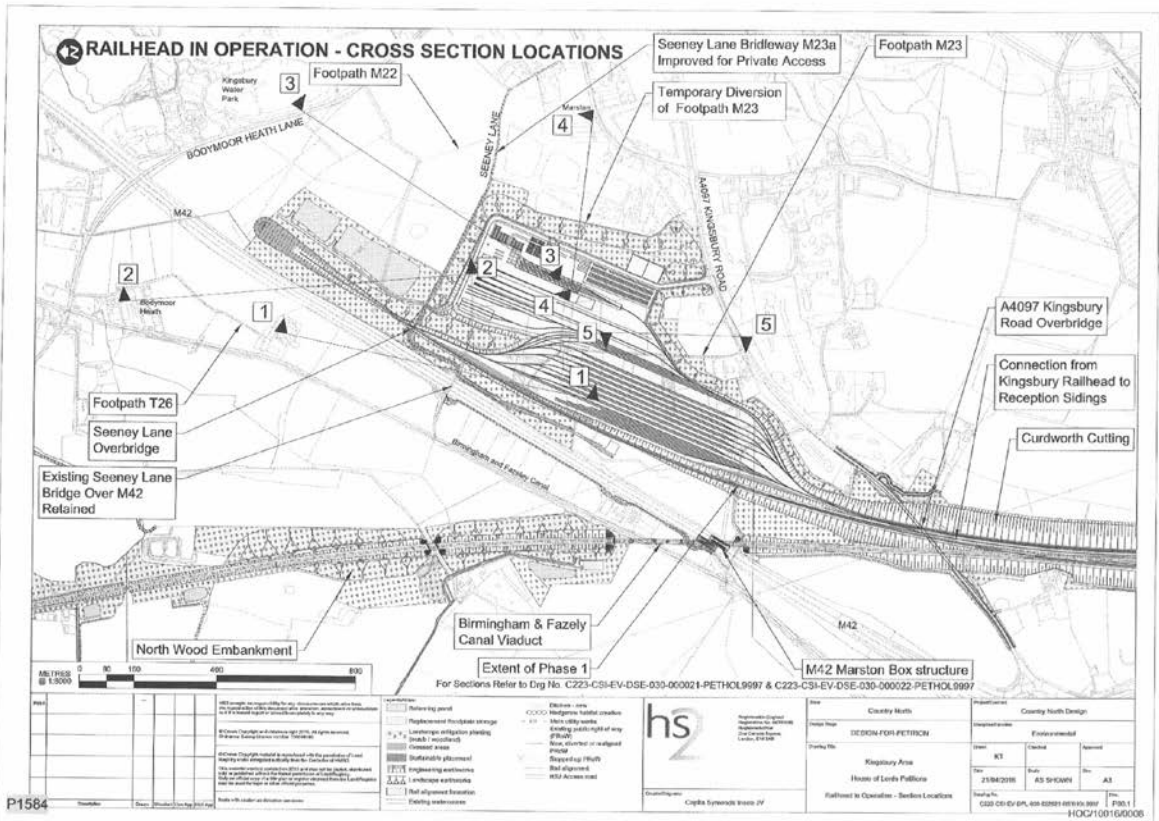
Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.

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.

Marston Fields Farm, Lea Marston



Site Plan (A101917-02)



(2) Application No: PAP/2016/0605

Land to the rear of 6-20, Spon Lane, Grendon,

Outline application for residential development for 9 dwellings and access, for

Mr Stephen Gayton

Introduction

This application was reported to the March 2017 meeting of the Planning and Development Board but was deferred to further explore issues relating to the access proposals. Following developments relating to the access, the application is now reported back for determination. The previous report to Board is attached as Appendix One.

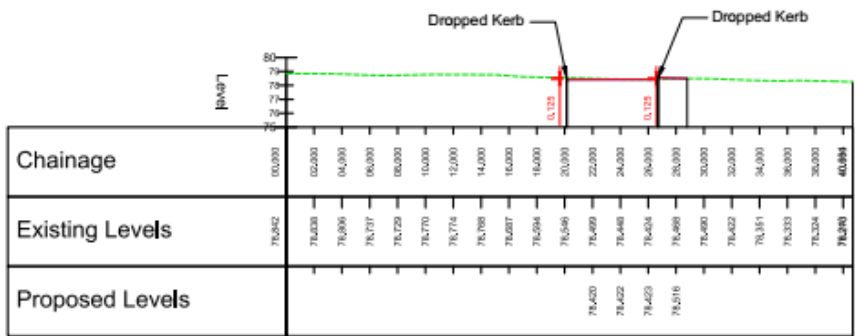
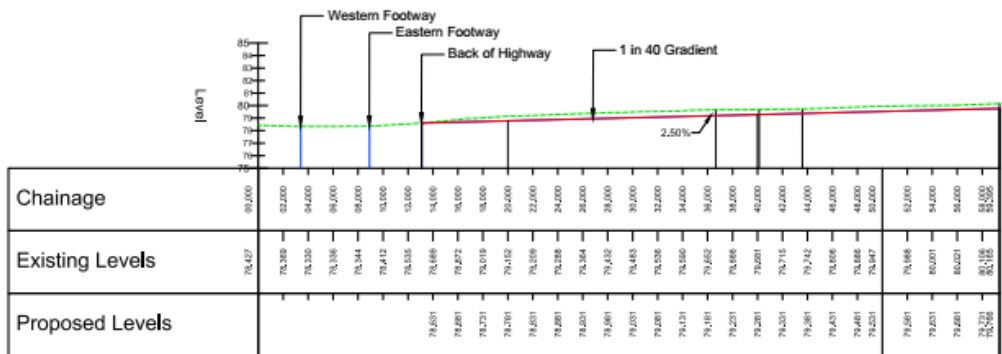
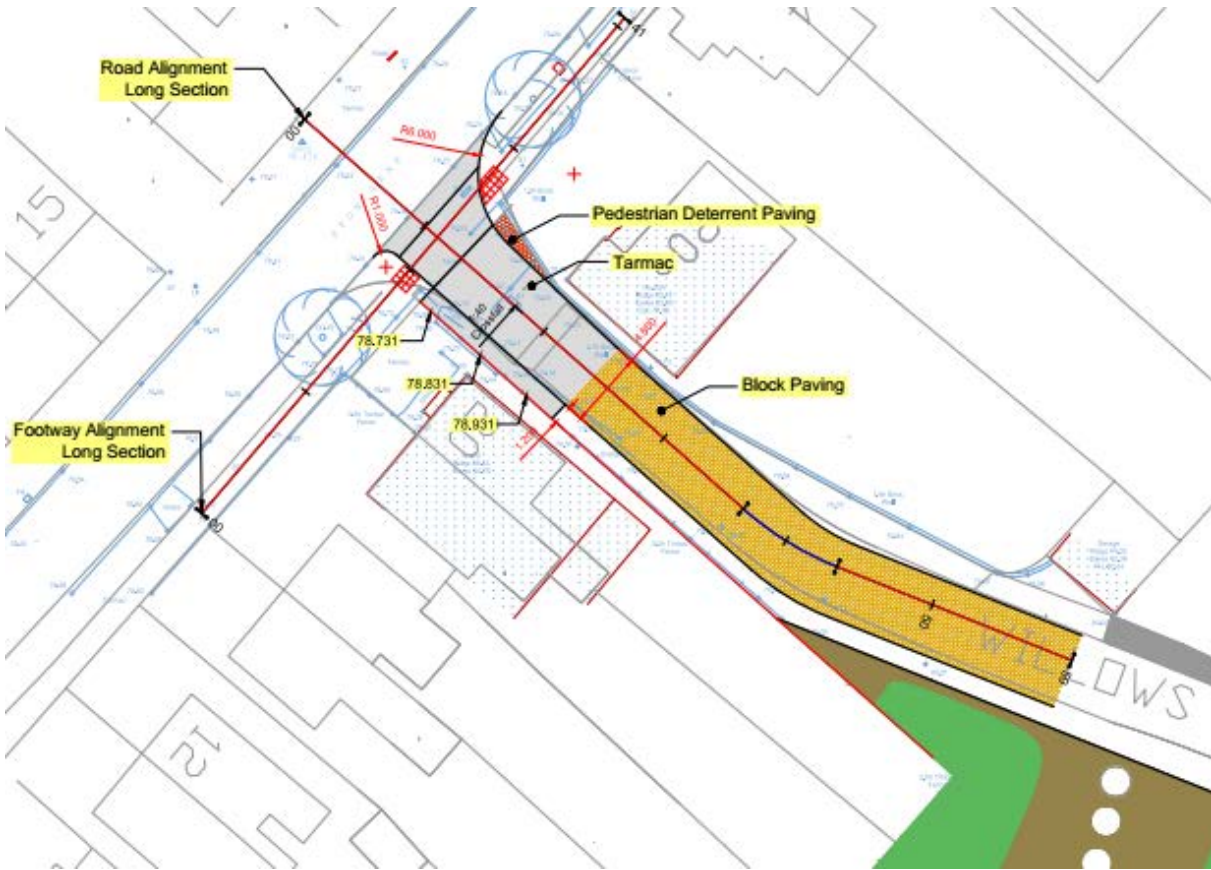
Update

Access Proposals:

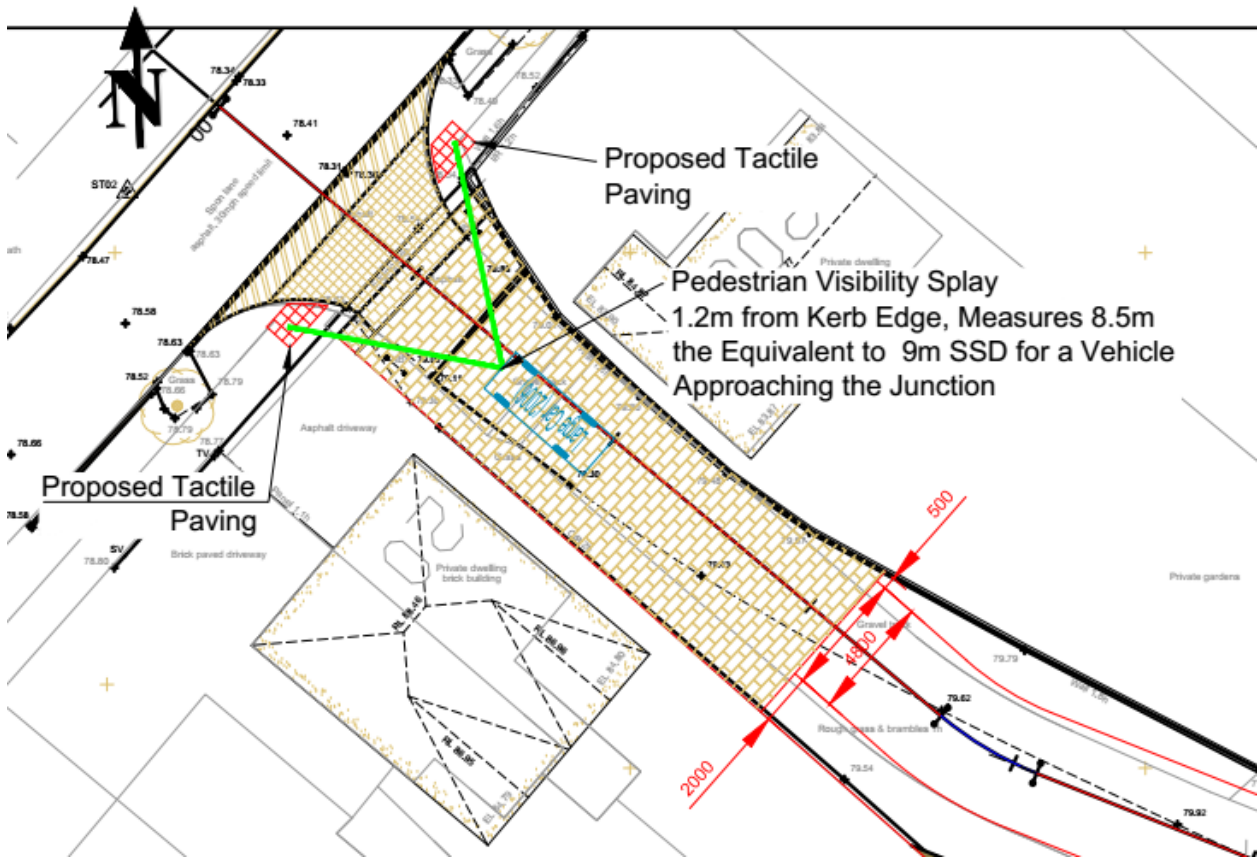
In May 2017, the occupier of 20 Spon Lane advised that Warwickshire County Council had authorised the dropped kerb arrangements to the front of the property. A dropped kerb access now runs concurrently from the Willows Lane access across the front of the property to the right hand side of Willow Lane (20 Spon Lane). The new authorised access arrangements are as shown below.



The applicant has corresponded with the Highway Authority about the implications of this and has subsequently presenting amended plans. The scheme now proposed is shown below:

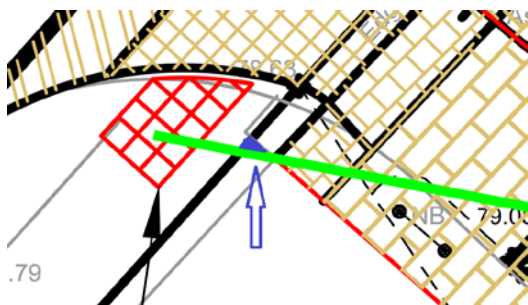


This differs from the scheme presented previously (set out below for comparison purposes only).



Land Ownership Matters:

The owner of the neighbouring property draws attention to the fact that (in the previous proposal) the pedestrian visibility splay relied on a small corner of land in his ownership at the very front of his property (illustrated in blue below). This has been drawn to the applicant's attention, however, the applicant disputes the claim that the access arrangements rely on third party land.



Whilst it appears to officers, from sight of the land registry details for number 20, that the owner of the neighbouring property is correct in his assertion, the matter is far from definitive. The Land Registry plan contains a note: 'This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground'

Additionally, the owner of number 20 Spon Lane also claims that the position of the north eastern boundary of the site is inaccurately shown. However, despite best endeavours Officers have not seen any evidence to definitively substantiate such a claim.

It is known that there is a land ownership dispute between the two parties. In the above circumstances, and without access to all evidence in the land ownership dispute, no definitive conclusions can be drawn by officers.

Notwithstanding this, there has been ample opportunity for the occupiers of adjacent properties to be aware of the planning application and to comment on it. It is not considered that anyone is prejudiced by the remaining disagreement about the service of Certificate B. It remains the case that, if the application proposal relies on land that is not presently in the ownership of the applicant, it does not preclude the Planning Authority from granting a planning permission, it would be a matter for the developer to secure rights to the land before he was able to implement any planning permission granted.

Housing Land Supply:

Since the last report to Board, updated Housing Land Supply figures have been calculated and published as part of its routine annual monitoring, as at 31 March 2017. The up to date assessment of supply evidences an improved picture brought about by a significant increase in net completions in 2016/2017. The current assessed supply is 5.1 years.

Consultations

Warwickshire County Council Highways Authority – Maintains an objection to the development.

Warwickshire County Council states that it is not the County Council's role to carry out Road Safety Audit (RSA) (incorporating Risk Assessment). Its role is to critique RSA prepared by developers. It confirms that the developer in this instance has not submitted a RSA for consideration as part of the application.

The following comment is made in respect of the revised plan:

It confirms that the dropped kerb footway/verge crossing to No.20 Spon Lane has been completed to the satisfaction of the Highway Authority.

So as not to interfere with the dropped kerb access the proposed bellmouth access to the site has been altered. The eastern radius of the bellmouth will be 6 metres and the western radius will be 1 metre.

The alteration to the western side will affect vehicle swept paths. No new analyses have been submitted for consideration. However, the previous swept path showing a refuse vehicle leaving the site westerly required the full width of the carriageway and the radius to turn. As such, it is unlikely that a refuse vehicle could turn left out of the site without over-running the kerb. Left turns out of the site and right turns into the site should be uncommon, but those manoeuvres could affect pedestrian safety and be a maintenance issue.

The proposed access will be adjacent to the dropped kerb vehicle access for No.20 Spon Lane. The number of vehicle movements associated with No.20 may be considered low, but there still could be conflicting movements. Someone waiting to turn out of the application access could see an approaching vehicle travelling westerly with a

left turn indicator on. The waiting person could turn not knowing that the left turn was meant for No.20.

No Road Safety Audit (RSA) appears to have been submitted with the revised access arrangements. An RSA should highlight the conflict between the accesses. There should be clear separation between the accesses.

The levels around the dropped kerb crossing on the western radius to the site for vehicles in relation to the surrounding footway, footway for the site and vehicle access to No.20 are still a concern. Any alterations to accommodate the tactile kerbs will mean that the surrounding highway has to be adjusted. There is less than a metre from the tactile crossing point to the pedestrian access point to the site, and the crossing abuts the vehicle access to No.20. Sections are shown on the submitted drawing, but it still does not appear clear what the gradients will be in that area, or if they are suitable.

Pedestrian visibility splays across the access are still a concern. The pedestrian splay on the western side of the proposed bellmouth is very close to, if not over, the boundary of No.20. The visibility splay should be shown. But, altering the bellmouth could also alter how someone turning left out of the site could approach the junction. People could be drawn to going further over to the right of the access to turn left on to Spon Lane. That could increase the risk of conflict with pedestrians crossing the bellmouth westerly. Pedestrians waiting to cross may encounter vehicles at the centre line or beyond. To achieve a splay of 11 metres to the centreline of the access from the eastern radius crossing point appears to go over the frontage of No.20a.

Therefore, the Highway Authority's response to your amended consultation is one of OBJECTION for the following reasons:

1. It has not been demonstrated that the access to the site is suitable for the largest vehicle most likely to enter the site to enter and leave the site using a forward gear from all directions.
2. The proposed bellmouth access to the site is considered too close to the dropped kerb footway crossing for No.20 Spon Lane, potentially to the detriment of highway safety.
3. It has not been shown that the level changes surrounding the tactile crossing point on the western radius of the vehicular access to the site are suitable for all NMU.
4. It needs to be shown that suitable pedestrian visibility splays from the pedestrian crossing points at the bellmouth access to the site are suitable for the purpose intended.

Representations

An additional representation has been received which addresses matters stated in the previous report to Board, as follows:

- The applicants had not received any formal approach to purchase number 20 Spon Lane at the time of the previous report to Board and the claim was misleading.
- Relief is expressed that it has now been established that health is material in the consideration of this application, however, some of the assumptions made in the legal opinion about health as a material consideration were misleading.
- The last report to Board questioned whether the frontage to 20 Spon Lane was suitable for wheelchair/disabled access. It is stated that the property has one continuous surface from the highway to the front door with only one rise in level

over a very short distance. It has been accessed by people with mobility problems and wheelchairs and is capable of adaptation.

- The land should remain “trapped” and unused if suitable safe access cannot be achieved.

Observations

Highway Safety:

The material change since the last application is the authorisation of the vehicle crossing to the frontage of the neighbouring property. This necessitated a redesign of the access proposals. The reason for deferral of the application in the last report to Board was not pursued pending discussion of an alternative proposal.

An amended access proposal has only just been formally presented (though it was presented informally at an earlier date). Re-consultation has taken place with the highway authority and the resulting observations are set out above. Re-consultation has been carried out with affected local residents, but in light of the late receipt of the revised scheme, any comments received will be given as a verbal update at the Board meeting.

The presence of an authorised vehicular access to the neighbouring dwelling places further limitation on the options for the provision of safe access to the application site. Given the need to avoid conflicting vehicular movements the access is redesigned to place limitations on turns in an easterly direction, further reducing its functionality.

The highway authority objects to the access proposals. It considers a 1 metre radius in a westerly direction to be unacceptable, and anticipates that the swept path would show the refuse vehicle going over the kerb to turn left out of the site. It considers that vehicles, particularly service vehicles, should not be restricted to turning right out of the site only, notwithstanding that Spon Lane is not a through route in a westerly direction.

Further, it considers the bellmouth to be too close to the dropped kerb footway crossing for No.20 Spon Lane for highway safety,

The applicant suggests that if Road Safety Audit is required it could be a condition of a planning approval. The Highway Authority points out that the application is to determine access to the site and advises that any safety concerns should be resolved prior to determination. A Road Safety Audit Stage 1 or 1/2 should have been carried out prior to determination.

The Highway Authority advises that it has not been shown that safe access can be achieved.

Housing Land Supply:

When the application was reported to Board in early March the Council was in recent receipt of an appeal decision relating to Nuthurst Crescent in Ansley. The decision had established that the Council, at that time, could not evidence a five year supply of housing. Since that date, a routine review has established that, as at 31 March 2017, up to date assessment evidences an improved picture. The current assessed supply is 5.1 years.

The previous report concluded that the absence of a five year supply weighed significantly in favour of the proposal. The reassessment of the supply to show a small surplus does not result in a straight forward reversal of position. The surplus is a narrow one and the site remains in a sustainable location in principle for new residential development. The NPPF presumption in favour of sustainable development continues to apply.

Other Matters:

Observations relating to the other considerations – the principle of development, amenity and density, drainage and flooding, affordable housing, the former allotment gardens, open space, archaeology, ecology and the health considerations of the near neighbour - remain as set out in the March report (Appendix One), save for the following corrections, qualifications and additions.

The speculation that number 20 Spon Land may not be able to be adapted to wheelchair access should be discounted.

Mr Reid continues to strongly deny that he has refused a reasonable offer in relation to his property.

The advice contained in the legal opinion stands. Though the health conditions of the near neighbour are a material consideration in this decision, for the reasons set out in the previous report to Board, they are not of significant weight as to form the basis of a reason for refusal in its own right. However, it is clear that the concerns relating to the inadequacies of the proposed access arrangements and the conflict with the access to Mrs Reid's own property will have exacerbated effect in Mrs Reid's case – for example in matters such as ensuring that pedestrian visibility for NMV meets standards and ensuring that the positioning of tactile paving does not conflict with the access arrangements to number 20 Spon Lane. The particular mobility issues of the near neighbour illustrate the importance of ensuring that a good standard access can be achieved.

Conclusion:

Though the site is in a sustainable location, will be capable of achieving good development in terms of effects on amenity and design and will not have an adverse impact on the historic, natural or drainage environments, the prevailing concerns about inability to show that safe vehicular access can be achieved suggest that planning permission should be refused in this instance.

Recommendation

That the application be **REFUSED** for the following reason:

It has not been shown that safe access can be achieved within the limits of the application site and the public highway for all vehicles that will seek to enter and exit the site. The access arrangements would be likely to create conditions detrimental to vehicular and pedestrian safety, including mobility impaired road users, and would thus be contrary to Strategic Objective 6 and Policy NW10 of the North Warwickshire Core Strategy Adopted October 2014.

BACKGROUND PAPERS

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

Planning Application No: PAP/2016/0605

Background Paper No	Author	Nature of Background Paper	Date
1	Warwickshire County Council Highways Authority	Consultation	4/7/17 27/7/17
2	W Reid	Representation	1/5/17
3	Applicant's Agent/Highway Consultant	Correspondence	22/6/17 5/7/17 27/7/17

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 ONE

(5) Application No: PAP/2016/0605

Land to the rear of 6-20, Spon Lane, Grendon,

Outline application for residential development for 9 dwellings and access, for

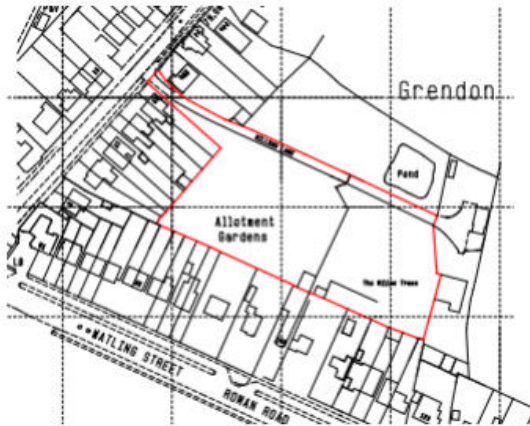
Mr Stephen Gayton

Introduction

The application is reported to Board in light of receipt of representations and the history of the application site.

The Site

The site is bordered to the south by the rear gardens of properties on Watling Street; to the west by the rear gardens of properties on Spon Lane. A recently constructed dwelling and a recently permitted dwelling lie to the east on land that was formerly a builder's yard site. Agricultural land lies further to the east. A site with planning permission for the erection of four dwellings lies to the north on the opposite side of Willows Lane. Development has commenced. A large housing development by Bellway Homes is currently under construction on land lying beyond, further to the north. The site boundary of the site is as shown below.



The photographs below illustrate the site



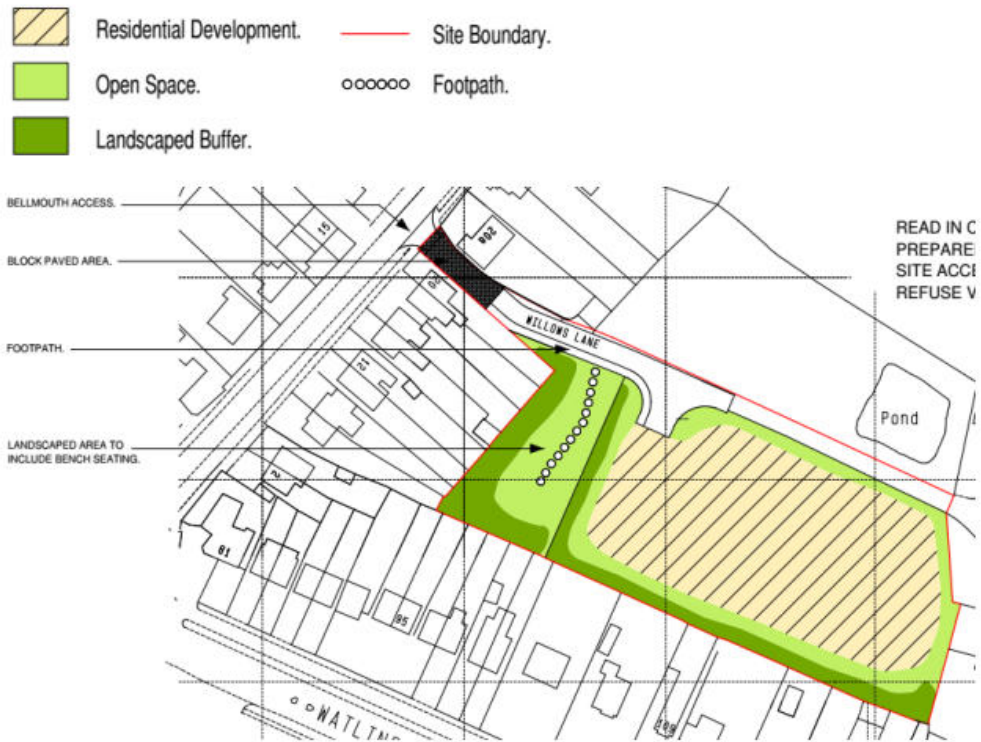


It comprises an allotment site in part (not currently used) and open land described as a paddock which appears to be used for some quasi residential uses associated with surrounding dwellings.

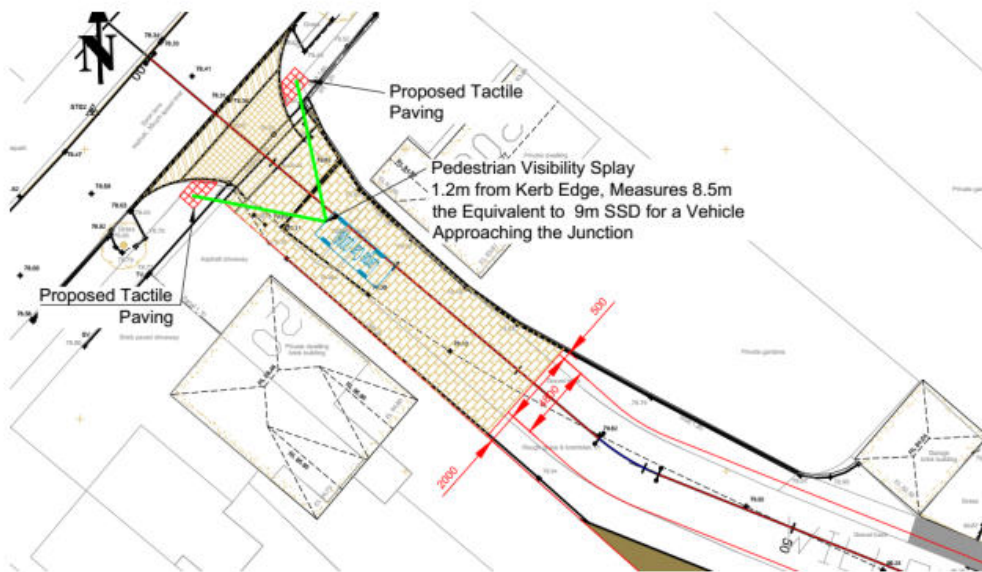
The Proposal

Outline application for residential development for 9 dwellings, with the details of access to be approved, and the matters of scale, layout, appearance and landscaping to be matters reserved for later approval.

The illustrative plan below has been submitted.



The proposed access arrangements at the junction with Spon Lane are shown below:



Background

Planning applications have been submitted at the application site on two previous occasions – 2014 and 2015. On both occasions the applications were withdrawn ahead of any decision being reached.

In July 2014 an outline application was made on this site proposing 21 dwellings and access improvements. Following concerns being raised about the access proposals and the loss of allotment land, the application was withdrawn in November. The applicant indicated that he would seek to address the concerns and re-present the application at a later date.

The application was resubmitted in October 2015. Initially it proposed 20 dwellings but was later revised to reduce the number to 14 and to introduce an area of open space. There were enduring concerns about the access arrangements and just before the Planning and Development Board were scheduled to consider a report on the application it was again withdrawn.

Development Plan

The North Warwickshire Core Strategy 2014 – NW1 (Sustainable Development); NW2 (Settlement Hierarchy), NW5 (Split of Housing Numbers), NW6 (Affordable Housing Provision), NW9 (Employment), NW10 (Development Considerations), NW11 (Renewable Energy and Energy Efficiency), NW12 (Quality of Development), NW13 (Natural Environment), NW14 (Historic Environment) and NW15 (Nature Conservation)

Saved Policies of the North Warwickshire Local Plan 2006 – ENV4 (Trees and Hedgerows); ENV6 (Land Resources); ENV8 (Water Resources), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), ECON1 (Industrial Estates) and TPT6 (Vehicle Parking)

Other Material Planning Considerations

The National Planning Policy Framework 2012 – (the "NPPF")

The National Planning Practice Guidance 2014 – (the "NPPG")

The North Warwickshire Local Plan Draft for Consultation August 2016

The New Homes Bonus (NHB) would apply to these applications.

Consultations

Warwickshire County Council Highways Authority – Objects to the application for the following reasons:

1. The NMU visibility splays from the pedestrian crossing points are not considered to be in accordance with guidance.
2. The level changes from the existing footway, through the pedestrian crossing points and into the site do not appear suitable for all NMU.
3. The proposed pedestrian access point into the site from the northern side of the bellmouth should be removed. Pedestrian movements should be directed across the bellmouth to utilise the apparent segregated footpath on the southern side of the access.

Additionally the Highway Authority comments as follows:

Drawing number DWG-05 Rev A has been submitted for consideration. The access to the site for vehicles and pedestrians will be constructed as a bellmouth. The gradients shown on the drawing have been agreed with the Highway Authority for a private road. The Highway Authority would not adopt the access road as public highway.

At a Non-Motorised User (NMU) crossing point the visibility splays are measured to the nearside (DMRB TA 90/05 Figure 3.3). The proposed visibility splays have been measured to a point approximately 2.2 metres from the apparent kerblines. Where the splay meets the nearside of the apparent kerblines is approximately 4.4 metres. The proposed splays do not appear to provide intervisibility between NMU crossing the bellmouth and those travelling within the access.

Environmental Health Officer – Advises that as health concerns have been raised by a nearby resident he would suggest that a dust management plan is submitted for approval by the local authority prior to development, should permission be granted. He also recommends that construction activity is restricted to the standard hours of 0800 to 1800 during weekdays and 0800 to 1300 on Saturdays.

Environmental Health Officer (Pollution Control) – Due to the former use of the site as an allotment gardens she advises that she would require an intrusive site investigation to be carried out for the proposed development and recommends appropriate conditions for the eventuality that planning permission is granted.

Representations

The Parish Council has written querying the legality of the application in terms of the completion of ownership certificates, raising concerns that previous applications have been turned down for highway safety reasons on the grounds of the exit on to Spon Lane being too narrow, it states that current application shows it to be much narrower. It also indicates that the Parish Council understands that there has been a ruling that Mrs. Reid's chronic illness must be taken into account and it indicates that it backs that the matter should be taken into account.

24 letters have been received with the following format:

FAO: Erica Levy /Jeff Brown
Planning Department, N.W.B.C, Council House
South Street, Atherstone CV9 1DE

RE: PAP/2016/0605- Land to the rear of 6-20 Spon Lane

Dear Erica Levy,

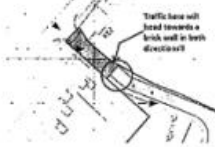
16th November 2016

This does not form part of any petition nor should it be classed as "pro forma". It outlines my further points of objection to the above application as an individual and as such should be treated as an individual letter.

A: All previous applications for this same site have been proven unsupportable on various levels. This latest proposal offers no improvements to alleviate concerns previously expressed. Such as, pedestrian safety, lack of infrastructure and traffic problems.

B: The proposed access to this site remains too narrow to support any further housing and raises serious concerns of this becoming a very dangerous junction & as such, traffic from this site during construction and after. It will be a serious safety issue for children and vulnerable residents on a current "No Through" road.

C: The proposed bellmouth construction and traffic route is once again very clearly dangerous. Traffic flow to & from the site heads directly towards a brick wall at an angle that does not meet with the actual access to the public highway.



D: The red line of the application once again does not include all the land required to form the access. This is a crucial part of National Information Requirements within the government planning guidelines. Once again making this application invalid.

E: In October 2015 WCC Highways objected with 4 clear reasons as to why this access and the development would be unsuitable. This is in addition to all previous objections made by WCC Highways. The Highways issues cannot be overcome by the applicants by simply proposing a lower number of houses.

F: Again information regarding trees on the site are inaccurate in the answers provided in the application. It seems a common thread that information is confused on repeated applications here.

G: The council must consider equality issues in this application. The indicated pedestrian access within the site do not seem to be adequate. In particular, children, the elderly and disabled will have some difficulty navigating a dangerous road with no street lighting or proper pedestrian refuge points. Once more it also proposes a new bellmouth which would remove the ability for a disabled driver to access their property!

H: The proposal will have a seriously negative impact on the character of the local area and offers no benefit to the community being of such low density.

I: This site is not within the proposed future development sites as detailed within the Adopted Local Plan (Core Strategy). Therefore is not required to meet the needs of the area moving forward. This Local Plan is adequate to meet the future housing needs in line with Government guidelines. There are also already many Brownfield sites available for extra housing within the local area. I believe these to be far more suitable than this Greenfield site.

J: _____

Twelve further letters of objection have been received raising the following matters:

- The development would have an adverse impact on the Reid family.
- The increase in traffic using Spon Lane and The Willows would cause harm to safety.
- There is very poor visibility for cars exiting Willows Lane
- Parked cars worsen visibility difficulties.
- There appears to be no path (as there is no room for a path) from Spon Lane along Willows Lane to the site. It is not safe for pedestrians to walk on Willows Lane with the extra car movements.
- The wall adjoining the narrow lane is a side wall to the property at 20A Spon Lane and the owners of that property fear that vehicular movements alongside it would present a danger. There is not even a kerb next to the wall to prevent cars hitting the wall. Any crash into the wall could cause a fatality.
- There is a real threat to the pedestrian who will have to cross this junction and there is a lot more pedestrians who use Spon Lane now they have built additional houses further along Spon Lane. The ability of pedestrians to safely cross this junction with poor visibility is questioned.
- Rear access will need to be maintained to property on Watling Street.
- The site is beyond the current development boundary and is not allocated for development in the emerging plan.
- Is there adequate infrastructure to support the scale of development in the settlement?
- Previous concerns of the highway authority have not been addressed. There is insufficient room between the adjacent houses to design an estate road to serve the proposed number of new dwellings, even those relating to the latest further reduced number.
- It appears from the submitted access plan that no account has been taken of the change in levels across the access from 20 to 20A. Partly as a result of this and partly because of the proposed access works generally, the proposals will inevitably impact on the boundary of 20 Spon Lane the proposals cannot be carried out without the agreement of the owner of that property. Agreement will not be given and the way forward would be for agreement to be reached between the applicant and the owner to purchase the whole plot, demolish no. 20 and form a proper road junction instead of the constant attempts to tinker with a sub-standard access.
- The owner of 20 Spon Lane claims that the submitted plan is incorrect in respect of the representation of the front boundary and north-eastern corner – where it adjoins Willows Lane - of the property at 20 Spon Lane.
- Mrs Reid is a disabled blue badge holder and the proposed (revised) junction design would still make it impossible for the family to park outside their own home. Now that this application proposes to remove any parking from a blue badge holder, the proposal is contrary to the equality policies that the Council should consider in all matters.
- The development offers no benefit to the community being of such low density.
- There are asbestos materials on the site.
- The red line of the application does not include all the land required to form the access and make contact with the side fence of a neighbouring property meaning that notice should have been served, both matters making the application invalid.
- There is no justifiable reason to grant permission on this plot of land. There are sufficient brownfield sites in the Grendon and Baddesley Ensor area to satisfy housing need and the local plan without the need to build on Greenfield.

- The Council has a 5 year supply of housing land, the proposals are not in accord with the Development Plan. The NPPF makes it very clear that applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. There are no material considerations to weigh against the Development Plan in this case and the adverse impacts of, and deficiencies in, the application proposals far outweigh any perceived benefits.
- The reduction in the number of dwellings offers no improvement as it does not alter the fundamental problem they face which is the inevitable effects of dust and dirt on Mrs Reid's health which will be generated by building works in close proximity.
- The proposals amount to a density of only some 13 dwellings per ha. This is approximately half of the proper density even to begin to make efficient residential use of the land. A different approach to gaining access could secure a more efficient use of land.
- The ecology survey is not sufficiently extensive and bat populations have not been investigated.

Specifically in respect of Mrs Reid, the following comments are made:

6. Health Factors and Public Sector Equality Duty

Mrs Reid's personal circumstances have been extensively documented in a variety of correspondence with the LPA including emails and previous letters of objection. The inevitable detrimental effects of the proposed development on Mrs Reid's health are now well known and should be regarded as a material planning consideration in the determination of this application as elaborated below. It was also confirmed by a barrister's response in the report to the June meeting of the Planning Board that he stated it should indeed be a material consideration as quoted below :-

7. I advise that the health needs of Mrs Reid are capable of being a material consideration and that the failure of the Council to have regard to them could give rise to an allegation that it made an error of law (for example by disregarding the public sector equality duty). I therefore advise that the Council have regard to the personal circumstances of Mrs Reid as a material consideration. This should be addressed explicitly on the face of the officer's report to members (or the delegated report).

JACK SMYTH

No 5 Chambers

31 May 2016

In addition, now that this application proposes to remove any parking from a blue badge holder, the proposal is contrary to the equality policies that the Council should consider in all matters.

In specific terms, the Council is presumably aware that Section 2.7.1 of the Disability Discrimination Act 2005 which was incorporated into the 2010 Equality Act requires highway and planning authorities to have due regard to six principles, one of which is particularly important in the present context, that steps must be taken to take account of disabled persons' disabilities even where that involves treating such persons more favourably than other persons. This clearly indicates that Mrs Reid's medical condition must be given significant weight in the assessment of the acceptability or otherwise of further residential development in this immediate area, where from recent experience locally, the construction of which is known to exacerbate her health problem,. The commencement of development of the 4 dwellings recently permitted behind no. 20A initially generated some dust which resulted in Julie Reid being admitted once again to hospital for a short period due to a drop in lung function. Mrs Reid is still undergoing health monitoring at home. This is similar to the situation when the nearby larger site of Bellway Homes began in 2015 at which time Mrs Reid lost over one third of her new donor lung capacity. The family have suffered enough and for their sake, a degree of "positive discrimination" to which they are legally entitled, should be exercised.

Section 149 of the Equality Act 2010 sets out the Public Sector Equality Duty. This states that :

"A public authority must, in the exercise of its functions, have due regard to the need to...eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it".

In the context of the present application, Mrs Reid's situation is one of greater disadvantage compared to other residents also adversely affected by the proposals. In order to equalise her "opportunities" with those other residents and protect her interests, Mrs Reid should be afforded the appropriate degree of "positive discrimination" to which

we have referred earlier to remove this disadvantage and ensure that the proposals do not detrimentally affect her or her family.

Previous suggestions made that Julie Reid could or should wear a protective mask when at home surrounded by development works are not very helpful. The whole point about this legislation is to seek to reduce her disadvantage and put her in some sort of equilibrium with others. Mrs Reid should not have to make concessions such as wearing what is effectively protective clothing even in her own home in order to enable others to benefit.

Observations

a) The Principle of Development

The site lies outside, but adjacent to, the development boundary for Baddesley Ensor and Grendon as defined by the Development Plan. The development boundary adjoins the whole length of the southern and western boundaries of the site and housing development has been approved or is under construction to the north and east. Policy NW2 of the North Warwickshire Core Strategy (Adopted October 2014) indicates that the settlement is a Category 3A settlement. Here, the policy indicates that development will be permitted in "or adjacent to" development boundaries that is considered to be appropriate to its place in the settlement hierarchy. Development comprising 9 dwellings would thus both be appropriate to its place in the settlement hierarchy.

Policy NW5 of the North Warwickshire Core Strategy identifies that a minimum figure of 180 houses will be directed to settlement. The Council's Preferred Options for Site Allocations – Pre-draft Submission 2014 identified sites in excess of this number (216 dwellings). The application site is not amongst the allocations.

The Emerging Local Plan identifies a potential housing requirement of 9070 dwellings in the plan period. The Plan continues to identify the settlement as a Category 3 settlement (a Local Service Centre) and allocates land for 98 new dwellings in the settlement. The application site is not amongst the allocations.

The settlement has a range of services and facilities and is well linked to public transport routes. This was the relatively recent finding of the Planning Inspector who allowed the development of another site off Spon Lane where 85 dwellings were allowed. The overall view is that these proposals do constitute sustainable development and that it aligns with the Development Plan. The presumption is thus in favour of the grant of a planning permission on this site.

It is necessary therefore to assess the specifics of the proposals in terms of their impacts, such as highway, amenity, ecology impacts, to establish whether there are any adverse impacts of, or deficiencies in, the application proposals that outweigh the NPPF objective of "significantly boosting the supply of housing".

b) Housing Land Supply

At very recent appeal (APP/R3705/W/16/3149572) the Planning Inspector found that, on the evidence before her, the Council could not evidence a five year housing supply, she found that it was closer to was close to 3.5 years supply. There is nothing to suggest that the supply has altered to the level that the Council can show a five year supply since that decision.

Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. At that appeal, the Council accepted therefore that in these circumstances Core Strategy policies NW1, NW2, NW4 and NW5 are would be relevant housing policies treated as out-of-date.

The NPPF advises us that local planning authorities should seek to boost significantly the supply of housing and that housing applications should be considered in the context of the presumption in favour of sustainable development. The absence of a five year housing supply weighs significantly in favour of the proposal.

c) Amenity and Density

The site is of an adequate extent to enable the provision of 9 new dwellings with good standards of residential amenity for occupiers of new dwellings. Surrounding dwellings have good sized rear gardens and development on the application site is unlikely to result in such levels of overlooking or loss of privacy that the refusal of planning permission would be justified. Indeed, the site is large and it is likely that the proposed new dwellings would themselves stand in good sized plots. Occupiers of property have no entitlement to views across the property of others. Concerns about loss of views cannot therefore be substantiated as a reason for the refusal of planning permission.

The site is surrounded on all sides by existing dwellings or new dwellings under construction and in the near vicinity of a major road. The loss of this site to development is unlikely to have any significant impact on the darkness of skies in the locality.

Concern is expressed that the development would not be an efficient use of land, achieving a density which is approximately half of the proper density to make efficient residential use of the land. It is recognised that the reduced density is a direct consequence of the constraints presented by the accessibility of the land. It is not considered that it would be reasonable to seek to resist the application on these grounds. Arguably, the lower density development of the land would be of more benefit than leaving the land as a 'trapped' area of land with residential development surrounding it on all sides.

There are no significant amenity based reasons that weigh against the proposal.

d) Drainage and Flooding

Severn Trent Water has offered no objection in principle to the development of this land. It would require the submission of detailed drainage plans for the disposal of surface water and foul sewage as a requirement of a condition of any planning permission.

The LLFA was consulted on a previous application at this site objected to the application on the basis that the proposed surface water strategy fails to incorporate sustainable drainage principles and required the submission of a FRA and sustainable drainage strategy. The applicant has responded by querying whether the matter may be dealt with by condition, on the basis of his confirmation that they intend to incorporate a sustainable drainage scheme within the open space, including attenuation ponds, swales, etc. as well as permeable paving throughout the development and that French drains and water butts will be provided in the residential areas. The observations of the LLFA are awaited. The LLFA confirmed that the matter could be dealt with as a condition. The reduction in house numbers would not change this stance and hence there are no significant flooding or drainage based concerns that weigh against the proposal.

e) Highway Safety

The access arrangements are of significant concern to those who object to the planning application. The route travels between two existing dwellings and the dimensions available for the creation of a two way carriageway with adequate visibility and safe arrangements for pedestrians are very constrained. Furthermore, the properties which border the access route are situated close to the boundary of the application site and have boundary treatments which either currently constrain the access arrangements or could, by exploiting permitted development rights, further constrain the access arrangements.

Because of the present vehicular access arrangement the occupiers of 20 Spon Lane have elected not to erect a boundary fence all along the side boundary of their land. The side fence presently stops approximately two fence panels short of the back edge of the public highway footpath. There would be nothing to stop the occupiers of the property installing a new one metre high boundary wall/fence. This would have the effect of impeding visibility for drivers using Willows Lane, particularly in respect of pedestrians using the footways.

The occupiers of 20A Spon Lane have a wall and railings which are supplemented with bamboo canes (see photo). This wall serves as something of an impediment to sight of pedestrians using Spon Lane for drivers of vehicles using Willows Lane.



In an attempt to address concerns raised previously about access provisions the developer has successively reduced the scale of development sought (primarily in terms of housing units rather than site area).

Though the reduction in number of dwellings enables the access requirements to be adjusted, the Highway Authority does not find the access arrangements yet sufficiently meet necessary standards and it continues to object to the application.

The Highway Authority's concerns primarily relate to pedestrian safety for mobility impaired and those with children in pushchairs. There are essentially four aspects to its concern.

1. Pedestrians walking along Spon Lane and crossing the Willows Lane junction would have inadequate visibility. The Highway Authority deems the visibility splay to be below standard for a Non-Motorised User (NMU). It advises that the preferred 'X' distance (setback) for NMU is 2.0 metres (DMRB TA 90/50), however, in this instance an acceptable 'X' distance would be 1.5 metres (agreed on based on the potential number of vehicles approaching this junction). The real concern here is that the proposal is for a further departure, providing an 'X' distance of only 1.2 metres from both crossing points. The Highway Authority Officer finds this deviation unacceptable, particularly given that there is likely to be a significant footfall across the junction from residents of housing further along Spon Lane seeking to reach shops, education and public transport links, this reduced level of visibility is deemed unsafe.
2. The access design necessitates that pedestrians entering or exiting Willows Lane will have to walk in a shared surface at the junction, albeit only for a short distance. This is of concern particularly for NMU.
3. The change in levels across the access from 20 to 20A, the levels at the frontages of those adjacent properties and the proposed carriageway/footway provisions would result in a contorted manoeuvre for mobility impaired/pushchair users entering or leaving the site. It would highly likely mean navigating across different surfaces and gradients.

The Highway Authority advises that 'changes in horizontal alignment should normally be via simple circular curves, rather than straight sections with occasional sharp curves' and 'At corners and junctions, the internal corners of footways should be splayed to assist the passage of wheelchairs and pushchairs. Surface undulations, steps and gaps may cause problems for people with mobility or sensory impairments' (source: Sections 4.2 and 4.3 of DRMB TA 90/05), and that 'Excessive cross-fall causes problems for people pushing prams and can be particularly difficult to negotiate for people with a mobility impairment, including wheelchair users.' and 'Surfaces used by pedestrians need to be smooth and free from trip hazards.' (source: Manual for Streets (MfS) Sections 6.3.28 and 6.3.31):

The proposed footways into the site appear to be no wider than 1.2 metres, will not be laid out as simple curves and will be located next to the tactile pedestrian crossing points. As such, there could be a multitude of level and surfacing changes over short lengths of the access.

4. Those with mobility issues may find the footways either side of the access difficult to traverse as movement in and out of the site would have to be over the dropped tactile crossing points. This is particularly of relevance here given that the tactile paving would be immediately to the front of a property occupied by a resident known to have mobility impairment. The tactile paving combined with acknowledged changes in levels could cause particular and unusual difficulties.

Planning Practice Guidance identifies that to achieve good design, planning should promote access and inclusion and that an inclusive environment is one that can be accessed and used by everyone. It should promote safe, connected and efficient streets with streets being designed to be functional and accessible for all, to be safe and attractive public spaces and not just respond to engineering considerations. The advice from the Highway Authority suggests that the proposal would contravene this guidance.

The applicant's Highway Consultant expresses the view that the NPPF test has to be whether the cumulative transport impact as a result of a development is "severe". He argues that in his opinion there would be no risk to life or limb as a result of permitting this development. He indicates that he is entirely satisfied with the latest plan and he flags up that if the application is refused solely on highway grounds then there is likely to be an appeal with an application for costs on the grounds of unreasonable behaviour. He argues that the Highway Authority's concerns amount to spurious grounds.

The Highways Authority indicates that since 2015 it has consistently raised concerns about the visibility splays for pedestrians / NMU's crossing the proposed bellmouth access. The issue was discussed in a meeting 01 December 2015, and was seen to be the hardest issue to overcome. It still appears to be the sticking point. It points out that in regard to the NPPF, Section 32 states that plans and decisions should take account of whether safe and suitable access to the site can be achieved for all people'. It does not believe that the current proposals achieve this.

Though the Highway Authority maintains the view that the access works would present a material harm, sufficient to constitute a severe impact, it is apparent that the Highway Authority and the applicant's Highway Advisor have engaged in a debate about what constitutes relevant guidance. It is further understood that no Road Safety Audit or Risk Assessments have yet been undertaken. It would be appropriate to have this level of assessment before reaching a definitive position on the highway safety aspects of the proposed junction. Furthermore, given the specific concerns raised in respect of the

5/102

disabled near neighbour, it would be appropriate to ask the Highway Authority for its assessment of the proposed junction arrangements in relation to its Public Sector Equality Duty and the provisions of the Disability Discrimination Act, it would be appropriate to make this an integral part of the Risk Assessment.

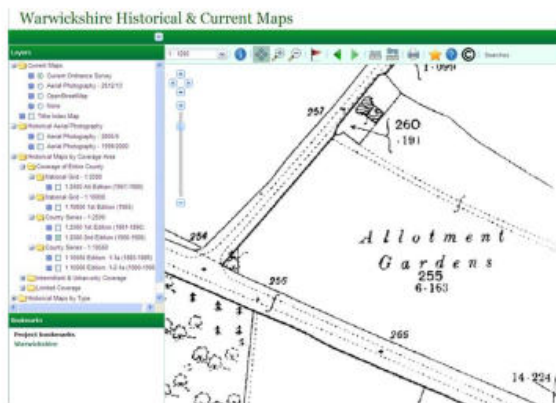
It would be appropriate to defer determination of this application until such time as this level of assessment has been undertaken.

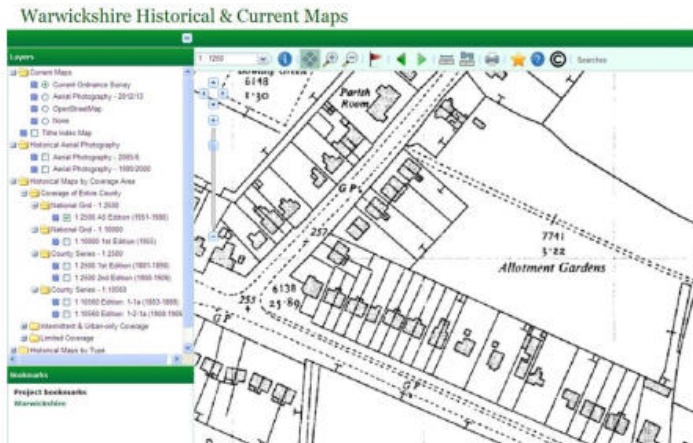
f) Affordable Housing

Policy NW6 of the North Warwickshire Core Strategy Adopted October 2014 sets out policy in respect of affordable housing. It indicates that for schemes of between 1 and 14 inclusive units 20% affordable housing provision will be provided. This will be achieved through on site provision or through a financial contribution in lieu of providing affordable housing on-site (calculated using the methodology outlined in the Affordable Housing Viability report or subsequent updated document and is broadly equivalent to on-site provision). However, since policy adoption, Government Guidance has identified that there are specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale development. This follows the order of the Court of Appeal dated 13 May 2016, which give legal effect to the policy set out in the written ministerial statement of 28 November 2014. It sets out that contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres. Though the application seeks only 9 dwellings, the site area is very large for the number of dwellings. There is a high probability that gross floorspace will exceed 1,000 square metres. This however will not be apparent until the reserved matters stage of the application. If the application is supported it would be appropriate to attach a condition requiring the submission of a scheme for the provision of affordable housing in the eventuality that the scheme proposes gross floorspace of 1,000 square metres or more.

g) Other Matters

The application site is, in part, an allotment garden. It has a very long history of such use. It is shown on the 1900-1906 map and 1951-1980 map as such – see map extracts below.





The Council has undertaken an audit of green spaces which included an audit of allotment land in each settlement. The Audit (dated 2008) established that the settlement of Baddesley Ensor and Grendon had an under supply of allotment land, although there are other allotment sites in the settlement.

The NPPF sets out the following:

73. Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreational facilities in the local area. Information gained from the assessments should be used to determine what open space, sports and recreational provision is required.

74. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

Given the specific needs assessment that has been undertaken and the finding of an existing under provision, as well as the value attributed to the allotments by local people, the applicant was asked to show how the loss of allotments here would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location if the current allotments are to be built on.

The applicant has submitted evidence to show that the allotments are not statutory allotments. That issue has never been in contention. It is agreed that they are not statutory allotments.

The issue is that the development of this land would lead to a loss of allotments/allotment opportunity. The application has been revised in recognition of the loss of the allotment land to provide a fairly substantial area of open space, though not

of an equivalent size to the allotment land, nevertheless are reasonably large area that can be accessed by occupiers of both the proposed dwellings and, potentially, others living in the area. Given the presence of other allotment opportunities in the settlement, the date of the Green Spaces Audit and the provision of compensatory open space, it is deemed unlikely that a reason for refusal based on the loss of allotment land could be sustained.

The Council's Environmental Health Officer advises that the proposed development is on land which comprises turn of the century (last century) allotment gardens. Allotment practices are known to have the potential for contamination of the land with regard to use of asbestos containing materials, heavy metals, PAH contamination and hydrocarbon contamination as a minimum. As a consequence there is a recommendation in the event that permission is granted for the development that a site investigation is carried out on the land. This matter can be addressed by conditions and there are no ground condition matters that would suggest against the grant of planning permission.

The County Archaeologist advises that it is probable that this site has been in agricultural use since at least the medieval period. Whilst there are no known pre-medieval features known from the immediate vicinity of the site (other than the Roman Watling Street which runs to the south), this may be due to a lack of previous archaeological investigations across this area, rather than an absence of activity during the pre-medieval periods. There is the potential for the proposed groundworks to disturb archaeological deposits, including structural remains, boundary features and rubbish pits, associated with the occupation of this area during the medieval and later periods. The archaeologist does not object to the principle of development, but considers that some archaeological work should be required if consent is forthcoming. This should take a phased approach, the first element of which would include a programme of trial trenching. There is no archaeological reason that the site could not be developed for housing.

The agent acting on behalf of the Reid's suggests that, notwithstanding the submitted amendments, the application still refers to access as the only matter applied for at this stage. He argues that the 'new' housing area, along with the landscaped buffer are still technically only "indicative". The application still only relates to access. It does not include landscaping and if permission is granted, it is at least possible that subsequent proposals will be submitted to develop the whole site to maximise its potential. This is a matter which could be clarified by a condition of any outline consent. It would be appropriate to attach a condition defining the developable area and specifying the maximum number of dwellings. Similarly, for reasons relating to the loss of the allotments, it would be appropriate to condition the requirement for the area of open space and defining its extent.

In respect of the ecology of the site, the Warwickshire Wildlife Trust advises that the surveys are adequate to inform decision making for this site. As no Great Crested Newts or reptiles were found, there is a very low risk of an offence resulting from this development. She notes however that the ecologist has recommended some working practises which should be followed as a precaution and she suggests that it would be advisable to include that these be followed as a condition if planning permission is granted.

No matters in respect of the use of the site as an allotment, ground conditions, archaeology or ecology present any issues that weigh against the proposal that could not be addressed by appropriate conditions.

5/105

h) Both Applications – Land Ownership Issues

In the course of determining the application, the owners of 20A and 20 Spon Lane have queried the accuracy of the ownership Certificates served with the applications.

Officers are satisfied that correct notice has been served on those with an ownership interest in the application sites. If the application proposal relies on land that is not presently in the ownership of the applicant it does not preclude the Planning Authority from granting a planning permission, it would be a matter for the developer to secure rights to the land before he was able to implement the planning permission.

An objector takes the view that the submitted plans still do not show all the land necessary to carry out the development in the red line of the application site, ie. - the necessary visibility splays should be included in the red line of the application site. Officers are satisfied that the red line is of an appropriate extent. The land required for visibility is in the public domain and within the control of the highway authority and all 'owners' of any part of the application *in the terms of Article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015* have been served notice.

i) Interim Conclusions

Notwithstanding the presumption in favour of sustainable development and the benefits derived from the provision of needed housing, for the highway safety concerns set out above, it is considered that (subject to confirmation by a Road Safety Audit and Risk Assessment) the proposals on this site are unlikely to be supported.

j) Effect of the Proposed Development on the Health of Mrs Reid

It is however further necessary to address whether the decision should carry an additional reason for refusal based around the health concerns identified in respect of Mrs Reid.

The considerations in respect of the general principle of development here have not changed substantially since the matter was presented to Members last year. The considerations in respect of the current access arrangement will be the subject of later consideration.

Mrs Reid occupies 20 Spon Lane, an extended semi-detached house which lies immediately adjacent to the south western side of Willows Lane where it meets Spon Lane. Mrs Reid has the condition cystic fibrosis and, as a consequence has had a double lung transplant. The lung transplant has left her immune-compromised. Medical evidence has been supplied on a confidential basis to support this.

The family believes that the Council should accept they have a duty of care for a person with a serious health condition and argue that the family health considerations should be a material consideration in the determination of the planning application.

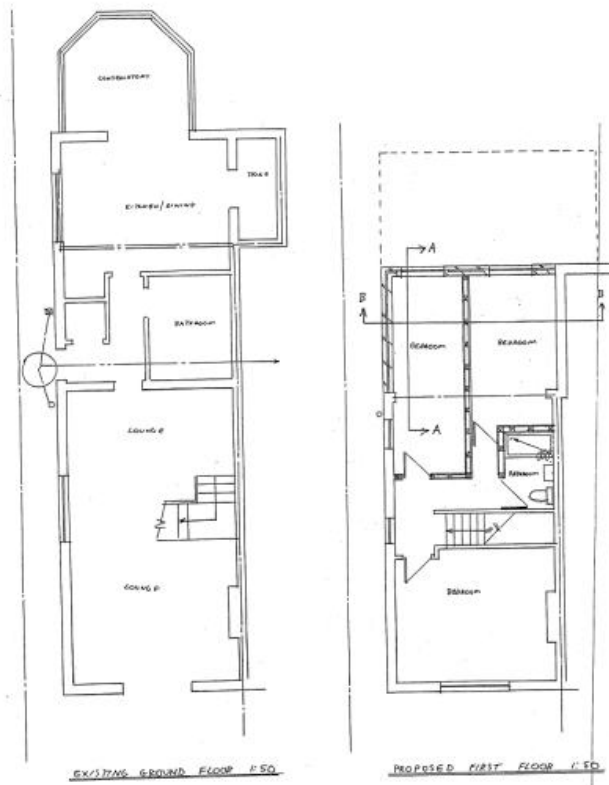
Counsel advice has previously been sought in respect of the extent to which the health considerations of Mrs Reid will be a material consideration in the determination of the planning application. That advice is reproduced in full in the appendix to the previous application, reproduced as Appendix A of this report.

In brief, the advice is that as a matter of principle, personal circumstances are always present in the background to the consideration of the character of land use, but may sometimes be given direct effect in development control as an exceptional or special circumstance, and that the health needs of Mrs Reid are capable of being a material consideration. The weight to be attached to any given material consideration is a matter for the decision maker. Being a relevant material consideration, however, does not necessarily make it a determinative matter. Even if the Council concludes that the construction period upon permission would cause material harm to the health of Mrs Reid, it does not follow that the application should be refused. This is but one matter in the weighing scales and will have to be weighed against the various benefits of the proposal.

The concerns principally relate to the effect of the construction phase on Mrs Reid's health due to the probable increase in airborne particles, but also to disturbance from future use of the land for housing. Concern is also expressed about the effect on the current car parking arrangements enjoyed by the family, the effect that the development may have on Mrs Reid's ability to park her car on the frontage of her property and the effect that changed parking arrangements would have on her health because of increased walking.

Counsel advice indicates that judging the impact on Mrs Reid will require an appraisal of the particular characteristics of her home.

- The internal layout of the property is as shown below:



5/107

- The images below show the rear of Mrs Reid's home. It has been extended with a two storey rear extension (sometime between Sept 2008 and Sept 2011) and has a single storey kitchen extension which extends beyond the two storey element, with a glazed conservatory beyond. The rear garden is fully enclosed with a tall close boarded fence. The rear garden does not contain any trees or tall vegetation that might be a barrier to the movement of dust or particles.



- Though the lounge to the property is at the front, the kitchen/dining/conservatory will be, to a degree, be used as living accommodation. The lounge and kitchen also contain windows facing the access route.
- Construction traffic would pass along the side of the property and the dwellings would be constructed to the rear of it.
- The distance between the edge of the developable area and the rear of the ground floor conservatory would be approximately 45 metres.
- The Council's Environmental Health Officer advises that the prevailing wind direction will generally be from the south west. Therefore the general prevailing wind direction will be away from, rather than towards, Mrs Reid's property.

5/108

- In respect of the proposed development, Mrs Reid's consultant comments as follows:

The newly proposed site is located at the back and side of her property and consists of 20-21 houses within a densely populated area with all construction access needing to utilise only one way in/out which is past Julie's front door (positioned at the side) via a single width road between her and her neighbour's property. Escaping the dust and toxins will be nigh on impossible by either entrance or exit to the house.

Taking away her ability to park close to her house might in fact force her to have to remain in her house which will be detrimental to her health when she needs to be able to be taken out for clinic, hospital and doctors' appointments on a regular basis. Having wheel chair access is also highly likely to be necessary at some point to ensure she can enter and exit her house with minimal discomfort to herself.

- the character of the locality is semi urban, the property fronts a reasonably busy 'D' road and is only 100m distant from the A5 trunk road. The baseline of the locality is site not a quiet rural location.

There is clearly some evidence to support the risk to Mrs Reid's health and enjoyment of her property from the proposed development, primarily in the short term whilst the permissions are implemented. However, advice from Counsel is that this needs to be weighed against the mitigation that may be possible and the benefits of the proposal.

There is plainly a very great public interest in providing much needed housing. Increasing the supply of housing has been at the forefront of the government's planning reforms in recent years. Many people in the borough are disabled and may be aggravated by building work, however, in the normal course of events one would not expect that their sensitivity would be a cogent and defensible ground to prevent development.

It is recognised that Mrs Reid may be obliged to alter her pattern of behaviour by, for example, avoiding relaxing in her garden during busy days of construction work (when the wind is blowing in an unfavourable direction). However, the impact could be mitigated by a sympathetic construction management plan and good communication between the house builders on the ground and Mrs Reid so that she can be warned when particularly "dusty" activity is to be undertaken and planning undertaken so that this activity occurs when it is less likely to affect her. The Council's Environmental Health Officer recommends that a planning condition be attached to any planning permission to make this a formal requirement. He also recommends that construction activity is restricted to the standard hours of 0800 to 1800 during weekdays and 0800 to 1300 on Saturdays.

The consultant does not conclusively state that the development 'will' be meaningfully harmful to her health, he asserts that she could be at risk of contact with dust and toxins whilst entering and exiting the house. He does not assert that risks will extend to life within the dwelling. Furthermore, he indicates that if the ability to park near the house is lost then it could leave her housebound and at risk of being unable to attend medical appointments. For the reasons set out below, it is not definitive that the grant of planning permission would result in the inability to park at the dwelling. The consultant's letter suggests a possible unfamiliarity with the dwelling in that he refers to the future likelihood of requiring wheelchair access to the dwelling. The levels and constrained proportions of the frontage to the property may make the provision of wheelchair access very difficult to achieve.

The Council has been advised that in order to give significant weight to this matter, there would have to be concrete and cogent evidence that the building work would give rise to unacceptable harm to the health of Mrs Reid (after one has taken account of sympathetic management and good consultation). The fact that for a number of days, or indeed weeks, she has to stay in doors with the windows shut to prevent the ingress of dust is unlikely to be sufficient to justify the refusal of permission. Mere inconvenience is not enough. The fact the claimant's convalescence could be aided by living in a peaceful ambience devoid of building work is again not enough.

The Council was advised by the applicant at the time of the previous application that the Reid's had been offered the value of their house plus 10% but that the offer had been refused. The Council was advised that the Reid's were seeking the value of their house plus a 25% uplift. Mr Reid strongly denies this claim.

In dialogue about how to reconcile the proposal with the identified health issue, officers have attempted to broker the idea that the developer could be requested to facilitate a temporary rehousing of Mrs Reid, and her family if appropriate, during the construction phase. Mr Reid has confirmed that this would not be agreeable to him, as there would be uncertainties about the state of Mrs Reid's health at that time and the disruption could be lengthy.

One of the matters that concerns the occupiers of 20 Spon Lane is that the proposed access arrangements would interfere with the current vehicular access arrangements to the frontage of the property. The current arrangement involves driving onto the frontage at an angle, leaving Spon Lane at the position of Willows Lane and parking sideways across the front drive. This is illustrated in the photographs below.



5/110

The occupiers of 20 Spon Lane have argued that the application proposal would interfere with their long established access arrangements and that an inability to park at the front of the property would have adverse health consequences for Mrs Reid. It is correct that the proposed access arrangements would not be compatible with the present access arrangements, however, the position in respect of the current arrangements is that the Highway Authority has confirmed that the current arrangements are not expressly authorised and a decision has been taken that they cannot be supported retrospectively. It is not possible to resist the proposed access arrangements on the basis that they would interfere with the present access arrangements, irrespective of the implications for the occupiers of the existing property.

There remains a possibility that Mr and Mrs Reid could claim a prescriptive right to the access arrangement given that they, and former owners of the property, claim to have enjoyed the same access arrangements for a twenty year period.

Mr and Mrs Reid advise that they have submitted an application for a new vehicle crossing which is at right angles to the public highway. It is understood that an approved contractor has yet to be appointed, a fee has yet to be paid and a prescribed form has yet to be submitted by the contractor. The Highway Authority indicates that, providing that these steps are undertaken, it sees no impediment to the grant of permission for the crossing. The matter is however undetermined at this stage, the works have not been implemented and the potential change in circumstances in this respect is not a material consideration in the determination of this application at this stage.

In conclusion, whilst the health of Mrs Reid is a material consideration, it is not a factor which should be afforded overriding weight in respect of the principle of development on the application site. The matter will however be reviewed in light of the Road Safety Audit and Risk Assessment which is proposed to be sought from the Highway Authority.

Recommendation

That the determination of the application be deferred for the purpose of requesting that the County Council undertake the following:

- A Road Safety Audit
- A Risk Assessment, incorporating an assessment of the proposed junction arrangements in relation to the County Council's Public Sector Equality Duty and the provisions of the Disability Discrimination Act.

BACKGROUND PAPERS

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

Planning Application No: PAP/2016/0605

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	25 10 16 6 12 16
2	Revd R Chamberlain	Representation	17 11 16
3	S Baker	Representation	20 11 16
4	P Baker	Representation	20 11 16
5	J Lees	Representation	21 11 16
6	C Lees	Representation	21 11 16
7	P Swift	Representation	28 11 16
8	P Openshaw	Representation	30 11 16
9	A Bazylińska	Representation	30 11 16
10	C Salmon	Representation	8 12 16
11	W Reid	Representation	13 12 16
12	C Marshall	Representation	6 1 17
13	J Marshall	Representation	6 1 17
14	24 individuals	Pro forma representation	14 12 16

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.

General Development Applications

a) **Application No: PAP/2015/0587**

Land to the rear of 6-20, Spon Lane, Grendon, CV9 2QG

Outline application - residential development 14 dwellings & access, for

Mr Stephen Gayton

b) **Application No: PAP/2015/0691**

Land To The Rear Of 20a Spon Lane, Grendon, CV9 2PD

Residential development of 4 no: 4 bedroom dwellings and attached garages

Mr Daniel Swift

Introduction

The applications are reported to Board at the request of the Local Member and at the discretion of the Head of Development Control, given that they are located on adjoining sites; due to the receipt of representations and given that one of the applications is for major development.

The proposals, because of their proximity and shared issues, are dealt with here in one covering report, but as two separate applications. In these circumstances, Members will be asked to determine each application separately.

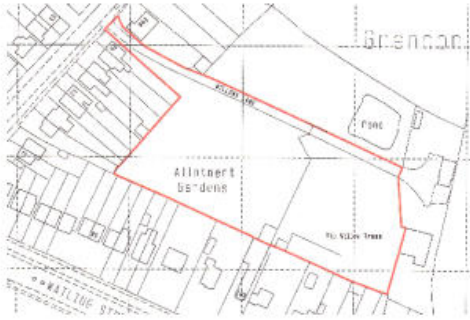
The Sites

In general terms the sites are situated on the east side of Spon Lane, accessed from an unclassified vehicular route, known as Willows Lane, which runs between numbers 20 and 20A Spon Lane.

Site 1 - PAP/2015/0587

The larger site is known as 'land to the rear of 6 to 20 Spon Lane'. It is partly described as a former allotment garden and partly described as paddock. It will be referred to in the report for ease of reference as 'Site 1'.

Site 1 is bordered to the south by the rear gardens of properties on Watling Street; to the west by the rear gardens of properties on Spon Lane. Two recently constructed dwellings lie to the east on land that was formerly a builder's yard site. Agricultural land lies further to the east. A site with planning permission for the erection of two dwellings (to be referred to as 'Site 2') lies to the north on the opposite side of Willows Lane. This land is the subject of a current application for the erection of four dwellings (also considered in this report). A large housing development by Bellway Homes is currently under construction on land lying beyond, further to the north. The site boundary of Site 1 is as shown below.



The photographs below illustrate the site



Site 2 - PAP/2015/0587

The smaller site is also accessed off Willow Lane and will be referred to in the report for ease of reference as 'Site 2'. It is currently vacant land. It was formerly screened with Leylandi and hedgerow boundaries but the screening has been cleared and the site is now open, contained by temporary Herris fencing. The former arable field to the north of the site is under construction as a housing estate. The allotments land which forms part of site 1 is situated to the south on the other side of the lane.

The site area is approximately 0.21 ha and is shown below.



5/114

The interior of the site is rough grass with a pond (taken before the removal of the conifer boundary hedge).



The images below show the adjacent housing under construction.



The aerial image below shows both sites:



The photograph below shows Willows Lane looking towards its junction with Spon Lane.



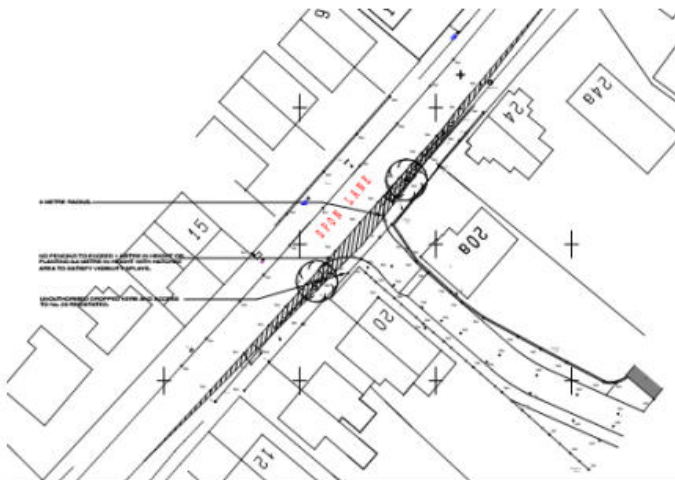
The Proposals

Site 1 - Outline application - residential development 14 dwellings and access

This is an outline application proposing the development of the site with 14 dwellings. All matters are reserved with the exception of access arrangements which are sought in detailed form. There is no illustrative layout but the schematic plan shown below identifies the developable area.



The proposed access arrangements are as shown below



Site 2 - Residential development of 4 no: 4 bedroom dwellings and attached garages

This is a full detailed planning application proposing the erection of four detached dwellings with garages. The site layout is as shown below:

5/116



The illustrations below show the variety of house types proposed. All are substantial two storey dwellings with attached double garages.



The illustration below shows that the site is accessible by a large vehicle, including refuse disposal vehicles.



Background

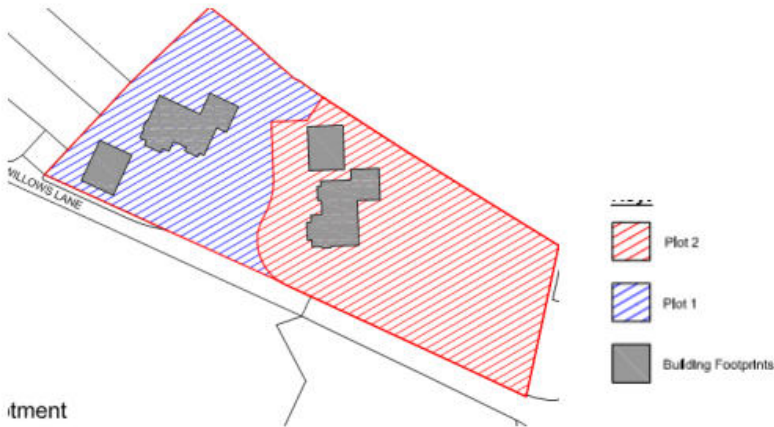
Application No: PAP/2015/0587 – Site 1

In July 2014 an outline application was made on this site proposing 21 dwellings and access improvements. Following concerns being raised about the access proposals and the loss of allotment land, the application was withdrawn in November. The applicant indicated that he would seek to address the concerns and re-present the application at a later date.

The application was resubmitted in October 2015. Initially it proposed 20 dwellings but was later revised to reduce the number to 14 and to introduce an area of open space. It is on this basis that the application is now to be determined.

Application No: PAP/2015/0691 – Site 2

Outline planning permission was granted in 2014 for the erection of two dwellings at the site. Approval of reserved matters then followed in September 2014. The approved details are shown below. The approved scheme included the retention of the on-site pond and its incorporation in the rear garden of Plot 2.



5/118



The current application seeks to increase the number of dwellings from 2 to 4.

Development Plan

The North Warwickshire Core Strategy 2014 – NW1 (Sustainable Development); NW2 (Settlement Hierarchy), NW5 (Split of Housing Numbers), NW6 (Affordable Housing Provision), NW9 (Employment), NW10 (Development Considerations), NW11 (Renewable Energy and Energy Efficiency), NW12 (Quality of Development), NW13 (Natural Environment), NW14 (Historic Environment) and NW15 (Nature Conservation)

Saved Policies of the North Warwickshire Local Plan 2006 – ENV4 (Trees and Hedgerows); ENV6 (Land Resources); ENV8 (Water Resources), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), ECON1 (Industrial Estates) and TPT6 (Vehicle Parking)

Other Material Planning Considerations

The National Planning Policy Framework 2012 – (the "NPPF")

The National Planning Practice Guidance 2014 – (the "NPPG")

The Council's Preferred Options for Site Allocations – Pre-draft Submission 2014.

The New Homes Bonus (NHB) would apply to these applications.

Consultations

Application No: PAP/2015/0587 – Site 1

Environmental Health Officer – No objection subject to conditions.

Warwickshire Museum – No objection subject to conditions.

Severn Trent Water – No objection subject to conditions.

Lead Local Flood Authority – The County Council has indicated that it required a Flood Risk Assessment and Drainage Strategy. This was communicated to the applicant. Following a reduction in the amount of development sought and the introduction of an area of open space, the applicant queried whether the matter could be dealt with by condition, on the basis of his confirmation that he intends to incorporate a sustainable drainage scheme within the open space, including attenuation ponds, swales, etc. as

well as permeable paving throughout the development and French drains and water butts provided in the residential areas. The observations of the LLFA are still awaited.

Warwickshire County Council as Highways Authority – The County objects to the application for the following reasons:

1. It has not been demonstrated that a large refuse vehicle as used by North Warwickshire Borough Council can enter and leave the site using a forward gear.
2. It has not been demonstrated that a large vehicle waiting in the access to the site can be passed by another vehicle entering the site.
3. It has not been demonstrated that the visibility splays from the necessary pedestrian tactile crossing points can be maintained.
4. Pedestrian access into the site is not considered suitable.
5. It has not been demonstrated that the bellmouth can be constructed in accordance with guidance.
6. With the loss of the pedestrian crossing on the A5 the location of the site is considered less sustainable, and potentially contrary to the Warwickshire Local Transport Plan 2011 -2026.

Application No: PAP/2015/0691 – Site 2

Environmental Health Officer – No objection subject to conditions.

Warwickshire Wildlife Trust - The surveys are adequate to inform decision making for this site. As no Great Crested Newts or reptiles were found, there is a very low risk of an offence resulting from this development. Good working practises should be a conditional requirement of any planning permission.

Warwickshire Museum – The proposal is unlikely to have a significant archaeological impact, therefore, no comments.

Representations

Application No: PAP/2015/0587 – Site 1

- a) **Letters of objection have been received from 18 correspondents** which raise the following concerns:
- The development will cause overlooking, loss of privacy and will impact on the peaceful enjoyment of neighbouring homes and gardens.
 - Loss of open views of the countryside
 - Loss of dark skies and light pollution at night.
 - This area is prone to flooding and damp and the development of this green field site would enhance these problems. There has been localised flooding in the general area of Spon Lane as well as problems of sewerage capacity resulting in the backing up of effluent into private gardens. If these issues have not been resolved it is possible that drainage of the site could exacerbate them to the obvious detriment of the locality.
 - The site was used by villagers to grow their own fruit and vegetables, until the previous planning application for this site was submitted and they were told they could no longer plant there.
 - There is no need for additional housing in the village. The development at Dairy Farm is adequate to meet housing need.

5/120

- If there is felt to be an unmet housing need it should be delivered on brownfield sites such as the Sparrowdale School/former waste disposal sites.
- The access serving the site is inadequate in width and overall design to cater for the additional traffic which would be generated by the additional dwellings. The track already serves the residential and commercial traffic generated by 'Willow Trees' and will also serve the 2 new dwellings granted planning permission at the rear of 20a to 24a Spon Lane.
- The objectors concur with the detailed concerns of the Highway Authority; the highway arrangements for servicing the development would be unacceptable.
- The revised access is now skewed at the entrance. Cars/trucks entering Willow Lane would have to dangerously veer to the left towards the brick boundary wall of 20A Spon Lane.
- The additional traffic would cause a hazard on Spon Lane and on the A5.
- Cars parked on Spon Lane will interfere with access to and from Willows Lane and will obstruct visibility.
- Spon Lane and Willows Lane are not suitable for emergency vehicles.
- The application site incorporates land owned by others. The submitted plans still do not show all the land necessary to carry out the development, ie. in this case the visibility splays, outlined in red, and the application should not have been validated. The application does not address or acknowledge the existence of the 2 trees on the Spon Lane frontage within the visibility splays which are technically part of the application site.
- The absence of an up to date ecological and arboriculture assessment was criticised. Even following the submission of some ecology surveys important issues such of trees and ecology have still not been fully addressed. No bat survey appears to have been undertaken. The ecological study is incomplete in that the study area omits the grassed area abutting Willows Lane, most which was also used as allotments.
- Notwithstanding the submitted amendments, the application still refers to access as the only matter applied for at this stage. The 'new' housing area indicated along with the landscaped buffer are still technically indicative and appear to have been introduced to placate residents' concerns about development immediately at the rear of their houses. The application still only relates to access. It does not include landscaping and if permission is granted, it is at least possible that subsequent proposals will be submitted to develop the whole site to maximise its potential.
- The scheme would need to make provision for access to maintain the rear boundaries of adjacent properties.
- The adopted Local Plan Proposals Map, the application site is outside the settlement boundary of Grendon and is identified as countryside.
- More than 50% of the site is private allotments, currently unused. They are not statutory allotments but that does not mean that they have no protection. Policy NW13 'Natural Environment' of the Council's adopted Core Strategy of 2014 refers to the protection from development of 'Green Infrastructure'. This is stated to include non-statutory allotments and private gardens.
- The Council's monitoring report of 31 March 2015, sets out the situation on the Borough Council's 5 years' housing land supply. It is clear that using the Sedgefield method of calculation which in this case includes sites from the Warwickshire Local Investment Plan to achieve the required 20% flexibility, that the Council has a 7.6 year supply of housing land. The application site is not therefore presently required in order to fulfil the Council's housing land requirements.

- The site is not identified as a preferred option in the Draft Site Allocations Plan. Sufficient other land has been identified to meet the housing numbers for the settlement.
- Grendon and Baddesley Ensor are categorised as a 'Local Service Centre' in the Local Plan and land to accommodate a total of 180 dwellings was required to be allocated in the plan period. Consequently, the land to the rear of 12-24 Spon Lane was submitted to the Borough Council as a potential development option site in the request for sites for consideration. However, the land was not included in the final list of preferred options. It has been ascertained that the required number of dwellings can be obtained on other sites in the settlement designated as 'preferred options'.
- The Council has just issued another 'call for sites' letter to ascertain the current availability of potential housing land. This has been prompted largely by the housing shortfall in certain other West Midlands authority areas nearby, ie. Birmingham, Coventry and Tamworth. The extent to which North Warwickshire will have to accommodate a proportion of this shortfall is as yet unknown. Much more work and negotiation has to take place before the numbers can be reconciled and this will take some time. This problem should, however, not be taken as a reason to make any pre-emptive decisions by the applications process on the suitability of a site which has only recently been deemed to be less suitable for development in the monitoring report.
- The recently adopted Core Strategy and 2015 Monitoring report are not absent or silent on the matter of housing numbers and preferred options for sites to accommodate the dwellings which are known to have to be accommodated. Any other housing numbers and appropriate sites are as yet unknown and planning application decisions are not to be made on speculation of what may be needed.
- The development is contrary to planning policy and it is contended that the adverse impacts of, and deficiencies in, the application proposals far outweigh any perceived benefits which such proposals may be deemed to have.

b) Mr and Mrs Reid, 20 Spon Lane

The occupiers of 20 Spon Lane, Mr and Mrs Reid and their daughter, have written several times in respect of the proposed development. Their concerns are set out below:

Mrs Reid has the condition cystic fibrosis and, as a consequence has had a double lung transplant. The lung transplant has left her immune-compromised. Cystic fibrosis, (CF), is a chronic and progressive condition which is both incurable and life shortening. It mainly affects the lungs and digestive system, causing susceptibility to chest infections and difficulty maintaining weight. Medical evidence has been supplied on a confidential basis to support this.

Mr Reid advises that Mrs Reid's condition is such that she will always be in decline. It is also the nature of such transplants and the heavy medication associated with them. Mrs Reid's consultant confirms that dust (construction/poor quality air) has an effect on all people's lungs and environmental factors can influence patient's health and lung function. Given the delicate situation that Mrs Reid is in following her transplant, she will need to be very meticulous about her environment and on-going healthcare. She is being treated for deterioration in lung function which, in 2015, necessitated a period of further hospitalisation and treatment. She will always be immuno-compromised due to the medication needed to prevent fatal organ rejection.

Mr Reid advises that the timing of the organ deterioration coincided with a nearby housing development, the Bellway site, which has also generated a large amount of dust. He argues that she should not be subjected to undue stress or the physical effects of development. The inhaling the smallest amount of dust generated by building works could be harmful to Mrs Reid's condition.

It is suggested by Mr Reid that his wife would be expected to wear a surgical mask if there was any construction/demolition nearby. Given that their house and garden would border the building site on 2 sides there be no escape from it. Having to take these precautions around her own home would be unacceptable.

The reduction from 20 to 14 dwellings and the inclusion of a landscaped buffer between the proposed new houses and those existing properties fronting Spon Lane does not address the Reid's concerns as it does not alter the fundamental problem they face which is the inevitable effects of dust and dirt on Mrs Reid's health which will be generated by building works in close proximity.

Mr and Mrs Reid are concerned that the time taken to determine the application has been lengthy and that this delay is a cause of distress to him and his family.

The Reid's make the following detailed comment respect of the access and parking arrangements:

- The Reid's currently access their drive at an angle of 45 degrees across the "bellmouth" of Willows Lane as the front of the property is not deep enough to accommodate a vehicle at right angles without overhanging the footway. The revised junction design would be likely to make it more difficult for them to park outside their own home, something which they and their predecessors have enjoyed for many years. The plans now offer no parking whatsoever in the vicinity of the house for Mrs Reid, a registered disabled Blue Badge Holder.
- The removal of the ability for her to park close to her property infringes on her rights. Mrs Reid's consultant confirms that she has already lost over 1/3 of her new lung function and has many other associated illnesses that will affect her breathing and mobility in the future with an extremely high probability of the need for wheelchair usage and oxygen, it is now even more important that both the parking area and vehicle crossing in front of the house are retained.
- The revised highway design is more problematical than before given that in order to try to avoid the use of the corner of their front garden, the bell-mouth has been moved across the junction which has the effect of 'skewing' the entrance to the site itself, away from the required 90 degrees. This contrived 'adjustment' of the site entrance adversely affects the trajectory of vehicles – and particularly larger ones - entering the site from Spon Lane to the detriment of proper manoeuvring of the vehicles and will therefore adversely affect highway safety. It also fails to show the back edge of the footway which is still likely to encroach on the Reid's property.
- An early version of the application (when it proposed 20 dwellings) included an illustrative layout which made alternative parking provision for 20 Spon Lane with a new garage situated at the rear of the property's garden. This was in recognition of the conflicting access arrangements. The scheme has since been revised and no longer contains a proposal to erect a garage for use by occupiers of 20 Spon Lane, however, in respect of the proposed garage, Mr and Mrs Reid commented that he did not wish for such a garage in exchange for the ability to park immediately in front of their property given the need to minimise the

distance Mrs Reid has to walk to the car. The garage was indicated at the foot of the garden some 35 metres from the house, too far for Mrs Reid to be able to walk comfortably and safely at one time.

- The Reid's consider that they may exercise their permitted development rights to erect a wall, fence or other means of enclosure on their land adjacent to the proposed highway. This would severely affect visibility for pedestrians, especially small children, a situation exacerbated by the rising gradient of Willows Lane, notwithstanding the height limits imposed by the Order. This reinforces the argument that there is insufficient room between the adjacent houses to design such an access and estate road to serve the proposed number of new dwellings even those relating to the amended plans.

c) Grendon Parish Council - Objects to the application as follows:

- The Agent/Applicant has made no attempt to engage with the Community on this matter, whilst not a statutory requirement it is usual to do so and looks if they have something to hide.
- The Statement that Baddesley/Grendon is planned for a minimum of 180 houses does not ring true. We saw no mention of minimum in our deliberations of the Core Plan. Authorities plan on not only housing requirements, but the facilities and services that go with them. Throwing extra houses in willy-nilly will impact on the balance.
- Grendon already has 85 houses being built by Bellway with minimal facilities. Enough is enough until services are added.
- The statement regarding the Allotments being vacant is invalid. Mr Gayton informed the gardeners he was selling in 2014 and obviously they moved out to pastures new.
- Whilst not a Statutory Registered Allotment, it has been an Allotment since 1935 to our knowledge, and we shall be pursuing this matter.
- On the visibility plan we note the comment "unauthorised dropped kerb and access to No.20" What proof does the applicant have that this is unauthorised. We are aware it has been like this for at least 21 years.
- Spon Lane was laid out well before the general usage of motor vehicles, with a number of houses not having drives. Consequently cars are parked on both sides of the road making general access difficult especially for lorries.
- The addition of 85 houses at Penmire Rise will add to the problem. People from there will not walk to the newsagents but drive, causing even more congestion. We do not need 30+ more cars on this road.
- This is not in the NWBC Development Plan, but perfectly adequate Brownfield Land i.e. the old Sparrowdale School site is available.
- We fully agree with Tony Burrows letter of the 1st October 2014 to E Levy on the unsuitability of Willows Lane as to inadequate width, no passing point, access onto Spon Lane and the visibility for pedestrians while crossing it whilst walking down Spon Lane.
- We now would like to comment on the effect of all this on the owners of No.20, Mr and Mrs Reid. Mrs Reid has had a double lung transplant and parks at the front of their property. The Applicant/Agent is trying to force her to park in a provided garage at the rear and walk. As a registered disabled person does she have any protection in law from this pressure? If she were a bat or a great crested newt, this planning application would be a non-starter.
- the Reid's have spent a considerable amount of money and time adapting the house for her disabilities and should this application be granted, will probably

have to move as she will be unable to cope with the dust generated by the building work.

- We find it unacceptable that such pressure should be put on such a chronically sick person all in the name of financial gain, and for the reasons mentioned, request that you refuse this application.
- Concern regarding volume of traffic leaving and entering the site.
- Visibility splay of entrance may not be adequate.
- Density of site.
- Sewerage and drainage capacity may not be adequate in the area. Properties 46 and 48 Spon Lane were recently flooded after work started on the Bellway site.
- Constant planning applications and wrangles over land access make it impossible for Mr and Mrs Reid to be able to market their property. Materially the application has not changed and is removing the ability for Mr and Mrs Reid to park on their drive.

d) 161 Pro forma letters were received in relation to the original proposal as follows:

A: The proposed access to this site is too narrow to support this scale of housing and will create a very dangerous junction & as such, traffic from this site during construction and after will be a **serious safety issue for children and vulnerable residents on a current "No Through" road. There also is no ability to achieve a suitable footpath along a part of the brick wall boundary for 20A Spon Lane, this is also a serious traffic safety issue.**

B: Last year's highways report for the previous application on this site, namely PAP/2014/0373 stated that the proposal would create around 200 movements of traffic per day to be added to Spon Lane. This figure would have to be added to the considerable existing traffic, both residential and commercial that is using the small lane at present.

C. Previous Highways reports for various sites along Willows Lane, including the one for PAP/2014/0373 (the application used previously for this site) have also indicated that visibility for pedestrians will be an issue. It also stated that cars will possibly stack up along Spon Lane. This will inflict problems on existing users of Spon Lane.

D. The road and access do not meet adoptable standards therefore there are no guarantees of any ongoing up keeping of the infrastructure. This will affect not only existing adjacent properties but also any of proposed new dwellings.

E. The indicated footpaths do not seem to be adequate for pedestrian needs. In particular, children, the elderly and disabled users will experience difficulty by having to enter Willows Lane before knowing if it is safe to cross Spon Lane. Entering Willows Lane also means navigating an uphill gradient, again causing difficulty to pedestrians in wheelchairs or those with pushchairs etc. who may wish to cross the junction. **Road signage will also take up some of the footpath space, making them even narrower.!!**

F: The loss of this allotment ground remains an issue. It is the loss of a very valuable community amenity dating back many decades as indicated by historical maps of the area. It is currently only overgrown due to allotmenters being told verbally in early 2014 that they should not continue as houses are going to be built. This effectively forced allotmenters from the site.

G: The proposal will have a seriously **negative impact** on the character of the local area.

H: There will be serious loss of privacy to the houses adjacent to the planned dwelling. It **will** also affect existing easements and new ones will need to be created. For example the ability to dig up the private road for connecting services and also for 20A Spon Lane should they need to dig the road for the need to repair their wall inside Willows lane should a car damage it. **This is actually once again an issue to address as the information is incorrect on the application form for this proposal.**

I: The traffic calming measures proposed will cause considerable noise and disruption to the adjacent properties. Any added infrastructure such as street lighting will also be an issue for all houses surrounding the site.

J: This site is not within the proposed future development sites as detailed within the Adopted Local Plan (Core Strategy) therefore is not required to meet the needs of the area moving forward. This Local Plan is adequate to meet the future housing needs in line with Government guidelines. There are also already many Brownfield sites available for extra housing within the local area. I believe these to be far more suitable than this Greenfield site.

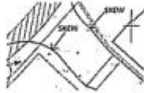
e) **A further 103 pro forma letters** were received in May 2016 in respect of the revised proposal, as follows:

This does not form part of any petition. It outlines my further points of objection to the above application as an individual.

A: All of my and other objectors previous comments should remain valid to this application, regardless of this re consultation. I require them to still be used in the determination process.

B: The latest proposed access to this site remains too narrow to support such scale of housing and does not alleviate concerns of this becoming a very dangerous junction & as such, traffic from this site during construction and after will be a serious safety issue for children and vulnerable residents on a current "No Through" road.

C: The amended proposal of March 2015 shows that the geometry of the bellmouth access to be formed is now skewed at the entrance. This does not alleviate vehicle safety concerns but simply adds to it. Vehicles turning here immediately have to veer to the left towards a brick wall of number 20A! For the council to even consider this seems ludicrous!



D: In October 2015 WCC Highways objected with 4 clear reasons as to why this access would be unsuitable. This is in addition to all previous objections made by WCC Highways. Most, if not all of the issues remain and seemingly cannot be overcome by the applicants.

E: Information provided for this application has been constantly challenged since its first submission for permission in 2014 on PAP/2014/0373. Land ownership certificates, previous/current usage, ecology, statements of trees within the site etc. were all highlighted by objectors yet not addressed by NWBC prior to validating the resubmission as PAP/2015/0587. It appears to be a confusing application with issues regarding its information.

F: The indicated footpaths do not seem to be adequate for pedestrian needs. In particular, children, the elderly and disabled. It also does not show the back line of the footpath! Road signage will also take up some of the footpath space, making them even narrower!!

G: The proposal will have a seriously negative impact on the character of the local area.

H: The submitted Ecology reports indicates that only part of the site was considered in the study. Not ALL land of interest!

I: The council must consider equality issues in this application. It seems there is inadequate infrastructure for all user groups and Mrs Reid of 20 Spon Lane is a blue badge holder and registered disabled. The continued need for parking outside her house is imperative! This proposal removes the existing access route for this disabled driver.

J: This site is not within the proposed future development sites as detailed within the Adopted Local Plan (Core Strategy).

Therefore is not required to meet the needs of the area moving forward. This Local Plan is adequate to meet the future housing needs in line with Government guidelines. There are also already many Brownfield sites available for extra housing within the local area. I believe these to be far more suitable than this Greenfield site.

Application No: PAP/2015/0691 – Site 2

a) **Six letters of objection** have been received raising the following concerns:

- Vegetation which formerly screened the site has been removed.
- Increased traffic using the site would be unsafe.
- Sewage capacity is inadequate.
- The development will exacerbate flooding problems.
- A 1994 application was refused at this site.
- There will be an increased number of pedestrians using Spon Lane as a result of the Bellway homes development. They would come into conflict with vehicles accessing this development.

- The standard of Willows Lane would be unsatisfactory for the number of dwellings now proposed. There will be no separation of vehicles and pedestrians on Willows Lane.
- There is insufficient provision for visitor parking.
- Access for refuse disposal is unsuitable.
- A fire appliance recently experienced difficulty accessing the site.
- Work has already commenced on site clearance. The site clearance could have harmed the ecological value of the site.
- The archaeology of the site should be investigated.
- The owner of adjacent property (20A Spon Lane) indicates that the developer may not rely on any land within his ownership in order to implement any planning permission given.
- The development will cause a loss of privacy.
- Access could cause damage to the adjacent boundary wall.
- Construction activity will cause noise and disturbance.
- The installation of new services could cause damage to an existing wall and garage.
- Significant improvements will need to be made to Willows Lane if more than two extra houses are proposed.

Mr Reid also objects to this application on the grounds that it would have an adverse impact on his wife's health.

b) 17 Pro forma letters were received as follows:

In respect of the above planning application I object to the proposal & hereby highlight, *as an individual*, my main concerns which I believe to be very valid planning points of objection to be considered.

A: The proposed access to this site is too narrow to support this scale of housing and compromises safety at the junction. As such, traffic from this site during construction and after will be a *serious safety issue for children and vulnerable residents on a current "No Through" road. There also is no ability to achieve suitable footpaths to service an increase in dwellings along Willows Lane, this is a serious traffic safety issue. To have a further increase in housing and/or planned housing along Willows Lane should make provisions for proper infrastructure suitable for all types of road users, including the disabled. Traffic here travels at considerably high levels of speeds*. Road safety and pedestrian safety have been highlighted in recent Highways reports for other applications within Willows Lane. Visibility for pedestrians is hindered by the borders at the access with number 20 Spon Lane and the wall of 20A. An increase to 4 houses will only highlight the safety issues further.

B: The new plans show much less room for vehicles within the site than the agreed 2 houses. With 4 houses proposed on this application a larger increase in traffic is expected and this would include delivery vehicles, refuse collection and visitors. No provisions for extra associated parking are indicated. The access and site do not seem adequate to cater for any extra housing. Especially considering the pedestrian safety concerns raised.

C. Work has already begun on the site: In recent weeks the ground has been cleared. They also cleared a large amount of trees which screened this site without any regard and set fire to them. This fire lasted 3 days!! This is surely not a professional approach to a construction site and raises issues regarding monitoring of any agreed or future work here.

D. Fire and Emergency Vehicles: On November 4th 2015 Atherstone Fire and Rescue attended the site when the trees were ripped down and set alight. The Fire Engine had some difficulty navigating Willows Lane due to the tight access and vehicles parked within the lane. This further highlights issues regarding safety and sustainability of this site.

E. **Sustainability:** It is now thought that the allotment site is unsustainable due to Bellway winning their appeal to remove the proposed crossing on the A5. A huge increase in pedestrians is expected with the Pennire Rise development and all facilities are only accessible by crossing a busy main road. These are facilities such as; school, doctors, pharmacy, public house etc.

F: **Two Houses versus 4:** A statement was made when the original application on this site was made. (PAP/2014/0465) It was stated that the applicant did not want the site associated with a larger scheme. This situation has clearly changed given that the applicant on this occasion has now engaged the same agent as for the Allotment site which is still pending.

G: The proposal will have a seriously **negative impact** on the character of the local area.

H: **Flooding:** There are still unanswered questions regarding localised flooding in Spon Lane and issues regarding capacity and backing up of effluent waste. These issues were highlighted recently by Severn Trent. To keep adding more and more houses is only likely to increase the risks to the local area and community.

I: This site is not within the proposed future development sites as detailed within the Adopted Local Plan (Core Strategy) therefore is not required to meet the needs of the area moving forward. This Local Plan is adequate to meet the future housing needs in line with Government guidelines. There are also already many Brownfield sites available for extra housing within the local area. I believe these to be far more suitable and sustainable than this site.

Observations

a) The Principle of Development

The sites lie outside, but adjacent to, the development boundary for Baddesley Ensor and Grendon as defined by the Development Plan. The development boundary adjoins the whole length of its southern and western boundaries of Site 1 and adjoins the western boundary of Site 2. Policy NW2 of the North Warwickshire Core Strategy (Adopted October 2014) indicates that the settlement is a Category 3A settlement. Here, the policy indicates that, development will be permitted in "or adjacent to" development boundaries that is considered to be appropriate to its place in the settlement hierarchy. Developments comprising 14 and 4 dwellings respectively would thus both be appropriate to their place in the settlement hierarchy.

Policy NW5 identifies that a minimum figure of 180 houses will be directed to settlement. The Council's Preferred Options for Site Allocations – Pre-draft Submission 2014 identifies sites in excess of this number (216 dwellings). The application sites are not amongst the allocations.

The settlement has a range of services and facilities and is well linked to public transport routes. This was the relatively recent finding of the Planning Inspector who allowed the development of another site off Spon Lane where 85 dwellings were allowed. The overall view is that these proposals do constitute sustainable development and that it aligns with the Development Plan. The presumption is thus in favour of the grant of a planning permission on both of these sites.

It is necessary therefore to assess the specifics of the proposals in terms of their impacts, such as highway, amenity, ecology impacts, to establish whether there are any adverse impacts of, or deficiencies in, the application proposals that outweigh the NPPF objective of "significantly boosting the supply of housing".

b) Housing Land Supply

Notwithstanding the Core Strategy Policies NW2 and NW5, objectors argue that the development should not be allowed in light of the Council being currently able to demonstrate a five year supply of housing.

The Council's latest figures for Housing Land Supply date from 31 March 2015. A 20% buffer is required to address previous undersupply during the first 5 years of the plan period. The Council can evidence a current 5 year housing land supply of 7.69 years (as of 30 September 2015). This has been tested at appeal and has been found to be sound.

These 5 year housing land supply figures relate to our current Adopted Core Strategy and draft Site Allocations plan (June 2014) housing figures of 3650 (our 3150 Objectively Assessed Need (OAN) figure with an additional 500 from Tamworth).

It is acknowledged that the housing supply position is not static. Through joint Duty to Co-Operate work within the Coventry and Warwickshire Sub-region, there has been agreement made to accommodate some of Coventry City Council's housing requirement due to a shortfall in their capacity to address/deliver their requirement. This is reflected in a recent Memorandum of Understanding (MoU) between the Joint authorities and North Warwickshire which has agreed a figure of 5280, which includes our current OAN, an element of the Coventry shortfall and an element of "economic uplift" to the housing numbers to encourage growth. The Borough's Local Development Scheme (LDS) has been updated to reflect the need to bring forward a revised Local plan to address these increased housing figures.

The updated March 2016 LDS programme includes an Autumn 2016 date (late September/early October) for publication and public consultation of a North Warwickshire Local Plan Submission Draft DPD. This document will include an updated Core Strategy Policy for the new Housing and Employment land requirements/figures, as part of the consultation and document. It will take the 5280 figure as a minimum housing requirement to be addressed by the Plan.

It is likely that, from that point on, the updates for the Five Year Housing Supply will need to reflect the changed housing requirement. However, until the publication of that document, the current Five Year Housing Supply calculations remain based on our current adopted Core Strategy housing requirement and OAN, as noted above, and any other suggestions/assertions would be considered premature.

For further clarification, it should be noted that the MoU noted above deals directly with the housing needs arising from within the Coventry and Warwickshire Housing Market Area (HMA). It does not address any shortfall arising within the Greater Birmingham HMA. Although work to assess the shortfall from the Greater Birmingham HMA is progressing, at this point in time it is not clear to what extent any unmet need will have to be met within Coventry and Warwickshire sub-region and in particular Stratford-on-Avon and North Warwickshire (these two local authorities fall partly within the Birmingham HMA). At this current stage, therefore, the Five Year Housing Supply calculations (for North Warwickshire) will not take into account or reflect any shortfall arising from Birmingham City's situation.

In conclusion, whilst it is true that housing land supply is never a static position, and will change as housing need is re-assessed, the current position is that the Council can demonstrate that it has a five year housing land supply with a 20% uplift, and, in relation to paragraph 49 of the Framework, relevant policies for the supply of housing can be considered up to date.

However, the NPPF advises us that local planning authorities should seek to boost significantly the supply of housing and that housing applications should be considered in the context of the presumption in favour of sustainable development. Notwithstanding

5/129

the current position in respect of the availability of a five year supply of housing land, it is necessary to ask whether the proposal could be regarded as sustainable development such that there would be a presumption in favour of it.

c) Amenity

Application No: PAP/2015/0587 – Site 1

The site is of an adequate extent to enable the provision of 14 new dwellings with adequate standards of residential amenity for occupiers of new dwellings. Surrounding dwellings have good sized rear gardens and development on the application site is unlikely to result in such levels of overlooking or loss of privacy that the refusal of planning permission would be justified. Occupiers of property have no entitlement to views across the property of others. The concern about loss of views cannot therefore be substantiated as a reason for the refusal of planning permission.

The site is surrounded on all sides by existing dwellings or new dwellings under construction and in the near vicinity of a major road. The loss of this site to development is unlikely to have any significant impact on the darkness of skies in the locality.

Application No: PAP/2015/0691 – Site 2

The site is of an adequate extent to enable the provision of four new dwellings with adequate standards of residential amenity for occupiers of new dwellings. Surrounding dwellings have good sized rear gardens and development on the application site is unlikely to result in such levels of overlooking or loss of privacy that the refusal of planning permission would be justified. Occupiers of property have no entitlement to views across the property of others. The concern about loss of views cannot therefore be substantiated as a reason for the refusal of planning permission.

The treatment of the boundary with the properties under construction will need to be a substantial one in order to maintain privacy for occupiers of both sets of dwellings. The side elevations of two proposed dwellings will face the properties currently under construction. It is not envisaged that any loss of privacy will result.

Given that the proposed dwellings will have large footprints and sit on relatively small plots and have near residential neighbours, the exploitation of full residential permitted development could have significant adverse effect on neighbouring properties. To retain control in respect of this potential harm it is proposed that if planning permission is granted, residential permitted development for extensions, roof alterations and garden buildings be removed.

d) Drainage and Flooding

Application No: PAP/2015/0587 – Site 1

Severn Trent Water offers no objection to the application in principle. It would require the submission of detailed drainage plans for the disposal of surface water and foul sewage as a requirement of a condition of any planning permission.

The LLFA has objected to the application on the basis that the proposed surface water strategy fails to incorporate sustainable drainage principles and required the submission of a FRA and sustainable drainage strategy. The applicant has responded by querying

5/130

whether the matter may be dealt with by condition, on the basis of his confirmation that they intend to incorporate a sustainable drainage scheme within the open space, including attenuation ponds, swales, etc. as well as permeable paving throughout the development and that French drains and water butts will be provided in the residential areas. The observations of the LLFA are awaited.

Whilst it appears likely that the site will have sufficient capacity to accommodate a sustainable drainage solution, members will be updated on the stance of the LLFA at the Board. The absence of information in this respect may need to form a reason for refusal if an objection is maintained.

Application No: PAP/2015/0691 – Site 2

The site is below the threshold for consultation with the LLFA. Severn Trent Water offers no objection to the development of the site. In these circumstances there is no evidence to show that the additional two dwellings proposed here would materially impact on any surface or foul water flooding or capacity problems.

e) Highway Safety

Application No: PAP/2015/0587 – Site 1

The access arrangements are of significant concern to those who object to the planning application. The route travels between two existing dwellings and the dimensions available for the creation of a two way carriageway with adequate visibility and safe arrangements for pedestrians are very constrained. Furthermore, the properties which border the access route are situated close to the boundary of the application site and have boundary treatments which either currently constrain the access arrangements or could, by exploiting permitted development rights, further constrain the access arrangements.

Because of the present vehicular access arrangement the occupiers of 20 Spon Lane have elected not to erect a boundary fence all along the side boundary of their land. The side fence presently stops approximately two fence panels short of the back edge of the public highway footpath. There would be nothing to stop the occupiers of the property installing a new one metre high boundary wall/fence. This would have the effect of impeding visibility for drivers using Willows Lane, particularly in respect of pedestrians using the footways.

The occupiers of 20A Spon Lane have a wall and railings which are supplemented with bamboo canes (see photo). This wall serves as an impediment to sight of pedestrians using Spon Lane for drivers of vehicles using Willows Lane.



The Highway Authority objects to the scale of development proposed in this application, indicating the following detailed concerns:

- It has not been demonstrated by way of a swept path analysis that a large refuse vehicle, as used by North Warwickshire Borough Council, can access the site.
- It indicates that the access design has altered. An access width of 5 metres may be maintained but it is not laid out at 90 degrees to the public highway. As such, if a wide and / or long vehicle were waiting in the access another vehicle may not be able to pass.
- The pedestrian visibility splays from the crossing points across the proposed bellmouth access are not shown on the submitted drawings. It needs to be shown that pedestrians can see into the access to safely cross and that drivers leaving the site are able to see pedestrians crossing / waiting to cross.
- The proposed layout does not show where pedestrians entering the site will be able to walk. The desire line into the site for pedestrians could be from both directions along Spon Lane. As a bellmouth access is proposed a footway should be provided both sides of the access, and should extend into the site to a suitable point where pedestrians could share the driveway or a footway should continue. Entering the site from the direction of number 20 the footway narrows to approximately 1 metre, which is not wide enough for two people to walk side by side. From the direction of number 20a the footway would be less than 900mm in width and tapers to less than a width of a pedestrian within 3.5 metres of the near edge of the public highway footway. Neither footway access appears suitable.
- To accord with guidance the gradient of the bellmouth should not exceed 1:50. The proposed levels shown on the submitted do not appear to accord with guidance.
- The signalised crossing on the A5 will no longer be provided. As such, pedestrian access to the school, youth club, park, pharmacy, church and public houses located on the opposite side of the A5 may not be so attractive or practical.

The Highway Authority firmly maintains the belief that a bellmouth access is required for this scale of development, not only for maintenance reasons, but for safety also. The levels within the access do not help vehicle braking on the approach to the highway. The straight line within the site does not help reduce speeds either. A chicane feature would need to be installed close to the highway to slow vehicles down, but this could affect the size of vehicle able to access the site or affect other accesses / potential access points. It contends that pedestrian visibility will be compromised even with a dropped kerbed access, especially for those crossing from the front of 20 to the front of number 20a.

5/132

Despite several attempts to devise an access layout which meets standards, the applicant has failed to address the Highway Authority's concerns. On this basis it recommends that planning permission be refused.

Application No: PAP/2015/0691 – Site 2

The Highway Authority takes a different stance in respect of this proposal given its reduced scale. It finds that the submitted drawings adequately show that a large refuse vehicle can enter Willows Lane using a forward gear, turn around and then re-enter Spon Lane using a forward gear. As such, the site should be able to be serviced in accordance with guidance.

The Highway Authority advises that, as a result of many visits to the site, it is apparent that a lot of material transfer is occurring from the access to the site in to the public highway, despite the access having been re-surfaced. So, it advises that the length of bound surfacing within the driveway should be extended by at least 10 metres to prevent the transfer of material. The Highway Authority's response is one of no objection subject to conditions.

f) Affordable Housing

The Core Strategy Policy NW6 indicates that for schemes of between 1 and 14 inclusive units 20% affordable housing provision will be provided. This will be achieved through on site provision or through a financial contribution in lieu of providing affordable housing on-site. This will be calculated using the methodology outlined in the Affordable Housing Viability report or subsequent updated document and is broadly equivalent to on-site provision.

However, following a recent Appeal Court decision, paragraph 031 of the NPPG has been revised. The revision exempts small sites from affordable housing and play open space contributions where developments of 10-units or less and which have a maximum combined gross floor space of no more than 1000sqm. The updated guidance indicates that the approach in Policy NW6 is now partly out of date.

Application No: PAP/2015/0587 – Site 1

This application proposes 14 dwellings and will therefore be above the threshold identified in the recent revision to Planning Guidance. The provisions of Policy NW6 will therefore apply. The applicant recognises this and has indicated an acceptance of a condition relating to the need to agree affordable housing measures equating to a 20% provision and the proposal would be policy compliant in this respect.

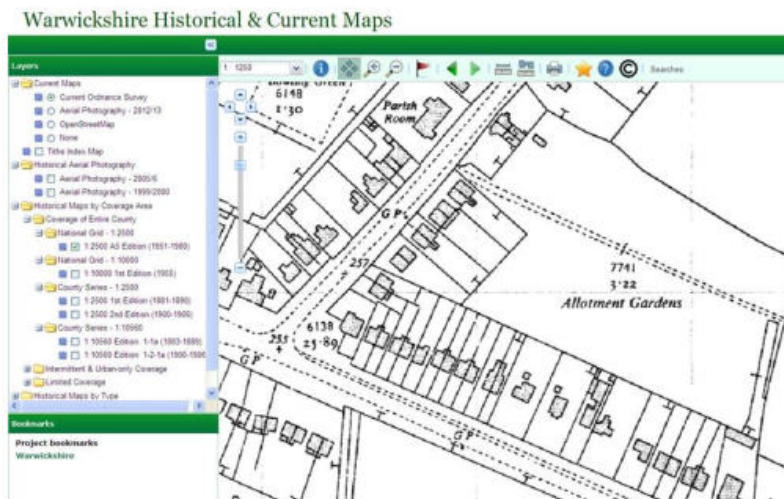
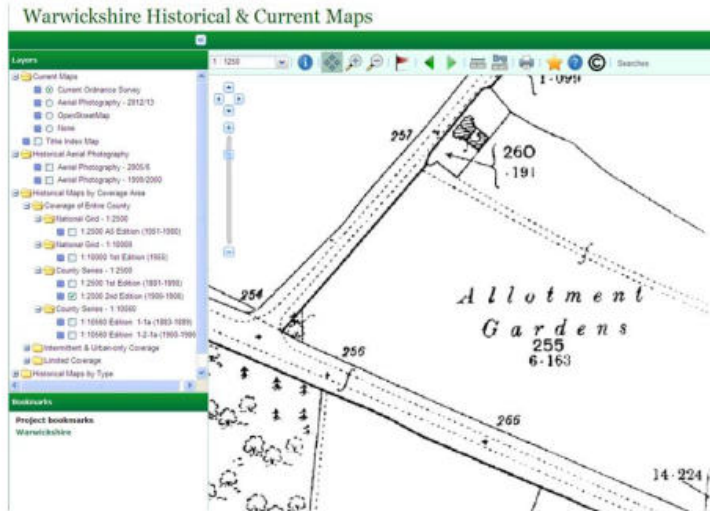
Application No: PAP/2015/0691 – Site 2

This application proposes 4 dwellings. It is therefore below the 10 dwellings threshold in the new NPPG. The combined gross combined floor area for the four dwellings does not exceed 1,000sqm. The scheme is therefore exempt from the need to provide affordable housing, in accordance with up to date planning guidance. The proposal would be policy compliant in this respect.

g) Other Matters

Application No: PAP/2015/0587 – Site 1

The application site is, in part, an allotment garden. It has a very long history of such use. It is shown on the 1900-1906 map and 1951-1980 map as such – see map extracts below.



The Council has undertaken an audit of green spaces which included an audit of allotment land in each settlement. The Audit (dated 2008) established that the settlement of Baddesley Ensor and Grendon had an under supply of allotment land, although there are other allotment sites in the settlement.

The NPPF sets out the following:

73. Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Planning

policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreational facilities in the local area. Information gained from the assessments should be used to determine what open space, sports and recreational provision is required.

74. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

Given the specific needs assessment that has been undertaken and the finding of an existing under provision, as well as the value attributed to the allotments by local people, the applicant was asked to show how the loss of allotments here would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location if the current allotments are to be built on.

The applicant has submitted evidence to show that the allotments are not statutory allotments. That issue has never been in contention. It is agreed that they are not statutory allotments.

The issue is that the development of this land would lead to a loss of allotments/allotment opportunity. The application has been revised in recognition of the loss of the allotment land to provide a fairly substantial area of open space, though not of an equivalent size to the allotment land, nevertheless are reasonably large area that can be accessed by occupiers of both the proposed dwellings and, potentially, others living in the area. Given the presence of other allotment opportunities in the settlement, the date of the Green Spaces Audit and the provision of compensatory open space, it is deemed unlikely that a reason for refusal based on the loss of allotment land could be sustained.

The Council's Environmental Health Officer advises that the proposed development is on land which comprises turn of the century (last century) allotment gardens. Allotment practices are known to have the potential for contamination of the land with regard to use of asbestos containing materials, heavy metals, PAH contamination and hydrocarbon contamination as a minimum. As a consequence there is a recommendation in the event that permission is granted for the development that a site investigation is carried out on the land. This matter can be addressed by conditions and there are no ground condition matters that would suggest against the grant of planning permission.

The County Archaeologist advises that it is probable that this site has been in agricultural use since at least the medieval period. Whilst there are no known pre-medieval features known from the immediate vicinity of the site (other than the Roman Watling Street which runs to the south), this may be due to a lack of previous archaeological investigations across this area, rather than an absence of activity during the pre-medieval periods. There is the potential for the proposed groundworks to disturb archaeological deposits, including structural remains, boundary features and rubbish pits, associated with the occupation of this area during the medieval and later periods. The archaeologist does not object to the principle of development, but

5/135

considers that some archaeological work should be required if consent is forthcoming. This should take a phased approach, the first element of which would include a programme of trial trenching. There is no archaeological reason that the site could not be developed for housing.

The agent acting on behalf of the Reid's suggests that, notwithstanding the submitted amendments, the application still refers to access as the only matter applied for at this stage. He argues that the 'new' housing area, along with the landscaped buffer are still technically only "indicative". The application still only relates to access. It does not include landscaping and if permission is granted, it is at least possible that subsequent proposals will be submitted to develop the whole site to maximise its potential. This is a matter which could be clarified by a condition of any outline consent. It would be appropriate to attach a condition defining the developable area and specifying the maximum number of dwellings. Similarly, for reasons relating to the loss of the allotments, it would be appropriate to condition the requirement for the area of open space and defining its extent.

h) Both Applications – Land Ownership Issues

In the course of determining the application, the owners of 20A and 20 Spon Lane have queried the accuracy of the ownership Certificates served with the applications.

Investigations with Land Registry found that incorrect ownership certificates were submitted originally in respect of Site 2. When the errors were identified in respect of Site 2 the application was treated as being invalid and placed temporarily on hold. When the correct certificates were received the application was restarted with a new timeframe for determination.

In respect of Site 1, two submitted plans contained an inconsistency, with one showing that the proposed access would, for a small part, encroach onto land owned by Mr and Mrs Reid. The plans were subsequently revised to show no reliance on land in the Reid's ownership. There was therefore no requirement for revised ownership certificates to be completed in respect of Site 1.

Officers are now satisfied that correct notice has been served on those with an ownership interest in the application sites. If the application proposal relies on land that is not presently in the ownership of the applicant it does not preclude the Planning Authority from granting a planning permission, it would be a matter for the developer to secure rights to the land before he was able to implement the planning permission.

An objector takes the view that the submitted plans still do not show all the land necessary to carry out the development in the red line of the application site, ie. - the necessary visibility splays should be included in the red line of the application site. Officers are satisfied that the red line is of an appropriate extent. The land required for visibility is in the public domain and within the control of the highway authority.

i) Interim Conclusions

For the reasons set out above, it is considered that the proposals on Site 1 should not be supported because of concerns about highway safety, but that the development proposed at Site 2 represents sustainable development and may be supported subject to conditions.

j) Both Applications - Effect of the Proposed Developments on the Health of Mrs Reid

It is now necessary to address whether, despite the interim conclusions above there are any circumstances that indicate that the application at Site 2 should be refused and whether the application at Site 1 should carry an additional reason for refusal based around the health concerns identified in respect of Mrs Reid.

Mrs Reid occupies 20 Spon Lane, an extended semi-detached house which lies immediately adjacent to the south western side of Willows Lane where it meets Spon Lane. Mrs Reid has the condition cystic fibrosis and, as a consequence has had a double lung transplant. The lung transplant has left her immune-compromised. Medical evidence has been supplied on a confidential basis to support this.

The family believes that the Council should accept they have a duty of care for a person with a serious health condition and argue that the family health considerations should be a material consideration in the determination of the planning application.

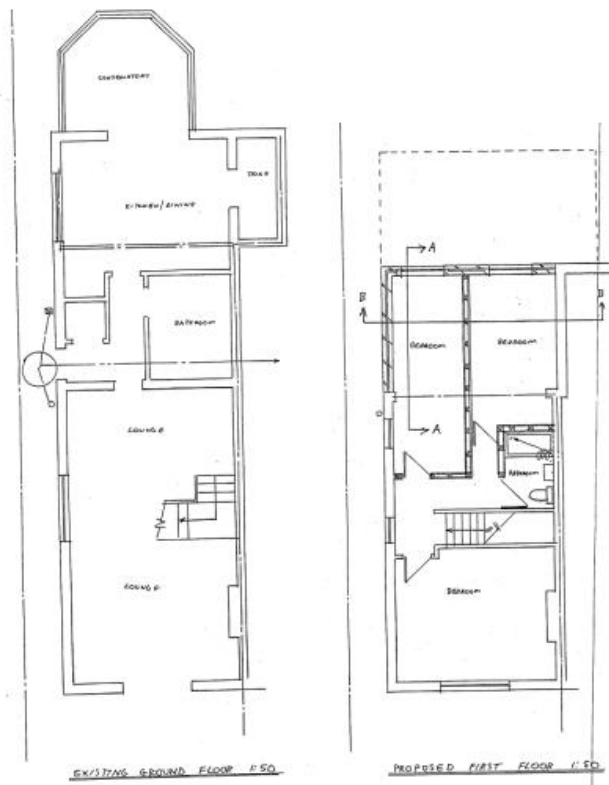
Counsel advice has been sought in respect of the extent to which the health considerations of Mrs Reid will be a material consideration in the determination of the planning application. That advice is reproduced in full in Appendix One of this report.

In brief, the advice is that as a matter of principle, personal circumstances are always present in the background to the consideration of the character of land use, but may sometimes be given direct effect in development control as an exceptional or special circumstance, and that the health needs of Mrs Reid are capable of being a material consideration. The weight to be attached to any given material consideration is a matter for the decision maker. Being a relevant material consideration, however, does not necessarily make it a determinative matter. Even if the Council concludes that the construction period upon permission would cause material harm to the health of Mrs Reid, it does not follow that the application should be refused. This is but one matter in the weighing scales and will have to be weighed against the various benefits of the proposal.

The concerns principally relate to the effect of the construction phase on Mrs Reid's health due to the probable increase in airborne particles, but also to disturbance from future use of the land for housing. Concern is also expressed about the effect on the current car parking arrangements enjoyed by the family, the effect that the development may have on Mrs Reid's ability to park her car on the frontage of her property and the effect that changed parking arrangements would have on her health because of increased walking.

Counsel advice indicates that judging the impact on Mrs Reid will require an appraisal of the particular characteristics of her home.

- The internal layout of the property is as shown below:



- The images below show the rear of Mrs Reid's home. It has been extended with a two storey rear extension (sometime between Sept 2008 and Sept 2011) and has a single storey kitchen extension which extends beyond the two storey element, with a glazed conservatory beyond. The rear garden is fully enclosed with a tall close boarded fence. The rear garden does not contain any trees or tall vegetation that might be a barrier to the movement of dust or particles.



- Though the lounge to the property is at the front, the kitchen/dining/conservatory will be, to a degree, be used as living accommodation. The lounge and kitchen also contain windows facing the access route.
- Construction traffic would pass along the side of the property and the dwellings would be constructed to the rear of it.
- The distance between the edge of the developable area and the rear of the ground floor conservatory would be approximately 45 metres.
- The Council's Environmental Health Officer advises that the prevailing wind direction will generally be from the south west. Therefore the general prevailing wind direction will be away from, rather than towards, Mrs Reid's property.
- In respect of the proposed development, Mrs Reid's consultant comments as follows:

The newly proposed site is located at the back and side of her property and consists of 20-21 houses within a densely populated area with all construction access needing to utilise only one way in/out which is past Julie's front door (positioned at the side) via a single width road between her and her neighbour's property. Escaping the dust and toxins will be nigh on impossible by either entrance or exit to the house.

Taking away her ability to park close to her house might in fact force her to have to remain in her house which will be detrimental to her health when she needs to be able to be taken out for clinic, hospital and doctors' appointments on a regular basis. Having wheel chair access is also highly likely to be necessary at some point to ensure she can enter and exit her house with minimal discomfort to herself.

- the character of the locality is semi urban, the property fronts a reasonably busy 'D' road and is only 100m distant from the A5 trunk road. The baseline of the locality is site not a quiet rural location.

There is clearly some evidence to support the risk to Mrs Reid's health and enjoyment of her property from the proposed development, primarily in the short term whilst the permissions are implemented. However, advice from Counsel is that this needs to be weighed against the mitigation that may be possible and the benefits of the proposal.

There is plainly a very great public interest in providing much needed housing. Increasing the supply of housing has been at the forefront of the government's planning reforms in recent years. Many people in the borough are disabled and may be aggravated by building work, however, in the normal course of events one would not expect that their sensitivity would be a cogent and defensible ground to prevent development.

It is recognised that Mrs Reid may be obliged to alter her pattern of behaviour by, for example, avoiding relaxing in her garden during busy days of construction work (when the wind is blowing in an unfavourable direction). However, the impact could be mitigated by a sympathetic construction management plan and good communication between the house builders on the ground and Mrs Reid so that she can be warned when particularly "dusty" activity is to be undertaken and planning undertaken so that this activity occurs when it is less likely to affect her. The Council's Environmental Health Officer recommends that a planning condition be attached to any planning permission to make this a formal requirement. He also recommends that construction activity is restricted to the standard hours of 0800 to 1800 during weekdays and 0800 to 1300 on Saturdays.

The consultant does not conclusively state that the development 'will' be meaningfully harmful to her health, he asserts that she could be at risk of contact with dust and toxins whilst entering and exiting the house. He does not assert that risks will extend to life within the dwelling. Furthermore, he indicates that if the ability to park near the house is lost then it could leave her housebound and at risk of being unable to attend medical appointments. For the reasons set out below, it is not definitive that the grant of planning permission would result in the inability to park at the dwelling. The consultant's letter suggests a possible unfamiliarity with the dwelling in that he refers to the future likelihood of requiring wheelchair access to the dwelling. The levels and constrained proportions of the frontage to the property may make the provision of wheelchair access very difficult to achieve.

The Council has been advised that in order to give significant weight to this matter, there would have to be concrete and cogent evidence that the building work would give rise to unacceptable harm to the health of Mrs Reid (after one has taken account of

5/140

sympathetic management and good consultation). The fact that for a number of days, or indeed weeks, she has to stay in doors with the windows shut to prevent the ingress of dust is unlikely to be sufficient to justify the refusal of permission. Mere inconvenience is not enough. The fact the claimant's convalescence could be aided by living in a peaceful ambience devoid of building work is again not enough.

The Council is advised by the applicant that the Reid's have been offered the value of their house plus 10% but that this offer has been refused. The Council is further advised that they are seeking the value of their house plus a 25% uplift. There may be a good reason why the Reid's turned down the offer. However, the Council would be entitled when reaching its overall view to afford weight to the fact that the Reid's have refused what could be characterised as a reasonable offer to purchase their property.

Furthermore, in dialogue about how to reconcile the proposal with the identified health issue, officers have attempted to broker the idea that the developer could be requested to facilitate a temporary rehousing of Mrs Reid, and her family if appropriate, during the construction phase. Mr Reid has confirmed that this would not be agreeable to him, as there would be uncertainties about the state of Mrs Reid's health at that time and the disruption could be lengthy.

One of the matters that concerns the occupiers of 20 Spon Lane is that the proposed access arrangements would interfere with the current vehicular access arrangements to the frontage of the property. The current arrangement involves driving onto the frontage at an angle, leaving Spon Lane at the position of Willows Lane and parking sideways across the front drive. This is illustrated in the photographs below.



The occupiers of 20 Spon Lane argue that the application proposal would interfere with their long established access arrangements and that an inability to park at the front of the property would have adverse health consequences for Mrs Reid. It is correct that

the proposed access arrangements would not be compatible with the present access arrangements, however, the position in respect of the current arrangements are not clear. The Highway Authority has confirmed that the current arrangements are not expressly authorised and that if they were sought retrospectively they would not be supported because it could not support the angular crossing of the footpath. In these circumstances it is not possible to resist the proposed access arrangements on the basis that they would interfere with the present access arrangements, irrespective of the implications for the occupiers of the existing property. There is however, the possibility that Mr and Mrs Reid could claim a prescriptive right to the access arrangement given that they, and former owners of the property, claim to have enjoyed the same access arrangements for a twenty year period.

By way of completeness, the Highway Authority has indicated that, with some works to increase the depth of the hard surfaced frontage (taking back a small retaining structure at the foot of the front bay window to the property) there is a prospect that there might be support for dropping the kerb across the front of 20 Spon Lane to create frontage parking at the regular 90 degree angle to the highway. It would be for the occupier of that property to present an application for the alternative parking solution.

In conclusion, whilst the health of Mrs Reid is a material consideration, it is not a factor which should be afforded overriding weight and for the reasons set out in this report would not be a robust and defensible reason for refusal.

k) Overall Conclusions

Application No: PAP/2015/0587 – Site 1

The highway safety problems associated with the proposed development are of such weight that they demonstrably outweigh the benefits of the development. It is considered that the proposal may not be supported.

Application No: PAP/2015/0691 – Site 2

Though the health circumstances of Mrs Reid a material consideration in the determination of this application, they are of insufficient weight, in light of possible mitigation, to override the National Planning Policy Framework presumption in favour of sustainable development. There are no identified adverse impacts that would significantly and demonstrably outweigh the benefits of the development. It is considered that the proposal may be supported subject to conditions.

Recommendations

a) Application No: PAP/2015/0587 – Site 1

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

1. It has not been shown that safe and convenient vehicular and pedestrian access can be formed to service the proposed development. The development would be contrary to Policy NW10 of the North Warwickshire Core Strategy 2014 and to Paragraph 32 of the National Planning Policy Framework, March 2012
2. Dependent on the outcome of consultation with the Lead Local Flood Authority, a second reason for refusal relating to the absence of Flood Risk Assessment may be an appropriate further reason for refusal.

5/142

b) Application No: PAP/2015/0691 – Site 2

That planning permission be **GRANTED** subject to the following conditions:

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

REASON

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

2. The development hereby approved shall not be carried out otherwise than in accordance with the plan numbered 9312.10, 9312.12 and 9312.13 received by the Local Planning Authority on 9 November 2015 and the plan numbered DWG-01 Refuse Vehicle Swept Path Analysis, incorporating site layout, received by the Local Planning Authority on 11 February 2016.

REASON

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

3. No dwelling shall be occupied until the existing access to the site for vehicles has been surfaced with a bound material for a distance of 10.0 metres in to Willows Lane, as measured from the near edge of the existing bound surface, in accordance with details to be approved in writing by the Local Planning Authority in consultation with the Highway Authority. The vehicular access to the site shall not be constructed in such a manner as to reduce the effective capacity of any highway drain or permit surface water to run off the site onto the public highway.

REASON

In the interests of safety on the public highway.

4. No building shall be occupied until the parking and manoeuvring areas have been laid out in accordance with the approved details. Such areas shall be permanently retained for the purpose of parking and manoeuvring of vehicles, as the case may be.

REASON

In the interests of safety on the public highway.

5. The development hereby permitted shall not commence or continue unless measures are in place to prevent/minimise the spread of extraneous material onto the public highway by the wheels of vehicles using the site and to clean the public highway of such material.

REASON

In the interests of safety on the public highway.

6. The development shall not be commenced until parking and turning areas have been provided within the site so as to enable general site traffic and construction vehicles to park off the public highway and to leave and re-enter the public highway in a forward gear. No vehicle associated with the development shall park on the public highway fronting the site.

REASON

In the interests of safety on the public highway.

7. The development shall be carried out in full accord with the provisions of the Construction Environmental Management Plan received by the Local Planning Authority on 24 March 2016.

REASON

To protect the amenities of occupiers of nearby residential property.

8. No development whatsoever within Class A, B, C and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 shall commence on site without details first having been submitted to and approved by the Local Planning Authority, in writing.

REASON

In the interests of the amenities of the area.

9. Before the commencement of the development, a landscaping scheme shall be submitted to the Local Planning Authority for approval.

REASON

In the interests of the amenities of the area.

10. The scheme referred to in Condition No 10 shall be implemented within six calendar months of the date of occupation of the first house approved under reference 9 for domestic purposes. In the event of any tree or plant failing to become established within five years thereafter, each individual tree or plant shall be replaced within the next available planting season, to the satisfaction of the Local Planning Authority.

REASON

In the interests of the amenities of the area.

11. No development shall be commenced before details of the facing bricks and roofing tiles and surfacing materials to be used have been submitted to and approved by the Local Planning Authority in writing. The approved materials shall then be used.

REASON

In the interests of the amenities of the area.

12. Before the development commences a scheme for the construction of the foul and surface water drainage system shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON

To prevent pollution of the water environment and to minimise the risk of flooding on or off the site.

13. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of screen walls/fences/hedges to be erected. The approved screen walls/fences shall be erected before the building(s)/dwelling(s) hereby approved is/are first occupied and shall subsequently be maintained. Any trees or plants which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

REASON

In the interests of the amenities of the area.

14. The development shall be carried out in full accord with the precautionary construction practices and recommendations contained within the Newt and Reptile Surveys received by the Local Planning Authority on 4 May 2016.

REASON

In the interests of the protection of protected species.

Notes

1. The submitted plans indicate that the proposed works come very close to, or abut neighbouring property. This permission does not convey any legal or civil right to undertake works that affect land or premises outside of the applicant's control. Care should be taken upon commencement and during the course of building operations to ensure that no part of the development, including the foundations, eaves and roof overhang will encroach on, under or over adjoining land without the consent of the adjoining land owner. This planning permission does not authorise the carrying out of any works on neighbouring land, or access onto it, without the consent of the owners of that land. You would be advised to contact them prior to the commencement of work.
2. You are recommended to seek independent advice on the provisions of the Party Wall etc. Act 1996, which is separate from planning or building regulation controls, and concerns giving notice of your proposals to a neighbour in relation to party walls, boundary walls and excavations near neighbouring buildings. An explanatory booklet can be downloaded at <https://www.gov.uk/guidance/party-wall-etc-act-1996-guidance>

3. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions; seeking to resolve planning objections and issues, suggesting amendments to improve the quality of the proposal and through meetings and negotiations. As such it is considered that the Council has implemented the requirement set out in paragraphs 186 and 187 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/2015/0587 (Site 1)

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	14 9 15 12 10 15
2	Environmental Health Officer	Consultation Response	7 10 15
3	Milan and Michelle Gugleta	Representation	12 10 15
4	W Reid	Representation	9 10 15 23 10 15 12 11 15 16 2 1 23 5 16 25 5 16
5	Serena Baker	Representation	20 10 15
6	Sebastian Wisniewski	Representation	19 10 15
7	Grendon Parish Council	Representation	20 10 15 12 1 16 11 5 16
8	V Lees	Representation	20 10 15
9	J Lees	Representation	20 10 15
10	C Haynes	Representation	26 10 15 16 5 16
11	P Baker	Representation	26 10 15 21 5 16 27 10 15 23 5 16
12	S Baker	Representation	26 10 15 21 5 16 23 5 16
13	P Openshaw	Representation	27 10 15
14	C Marshall	Representation	26 10 15 25 5 16
15	J Marshall	Representation	26 10 15 25 5 16
16	Various	161 Pro forma representations	16 10 15
17	J Carbutt	Representation	22 10 15
18	Rev Chamberlain	Representation	28 10 15 18 5 10
19	L Moss	Representation	2 11 15
20	Miss Reid	Representation	2 11 15 24 5 16
21	J Nicholson	Representation	19 5 16
22	Various	103 Pro forma representations	24 5 16

5/147

23	S Hawken	Representation	26 5 16

Planning Application No: PAP/2015/0691 (Site 2)

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	
2	Environmental Health Officer	Consultation Response	7 1 16 24 3 16
3	Warwickshire Wildlife Trust	Consultation Response	1 2 16 4 5 16
4	Warwickshire County Council Highways Authority	Consultation Response	20 1 16 17 2 16
5	Planning Archaeologist, Warwickshire Museum	Consultation Response	11 1 16
6	Various	17 Pro forma representations	Various
7	W Reid	Representation	29 12 15
8	J Reid	Representation	29 12 15
9	S Baker	Representation	4 1 16
10	P Baker	Representation	4 1 16
11	C & J Marshall	Representation	5 1 16
12	J Lees	Representation	6 1 16

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 1
IN THE MATTER OF LAND AT THE REAR OF 6-20 SPON LANE, GRENDON

ADVICE

Introduction

1. I am asked to advise North Warwickshire Borough Council ("the Council") in respect of a planning application for 14 dwellings and associated open space on Spon Lane. The site has previously been used for allotments and quasi domestic paddock/garden use.
2. I am asked to advise on a single aspect of the application: how the Council ought to approach the issue of the interests of Mrs Reid.
3. She lives in close proximity to the application site at 20 Spon Lane. She is in very bad health. I am instructed that she is disabled within the meaning of the Equality Act 2010. The nature of her ill-health is not straightforward but, put simply, she has had a double lung transplant and is susceptible to increased particles in the air which could harm her breathing. Advice has been received from the Council's Environmental Health Department that the construction of the proposed development will result in an increase in air particles notwithstanding that the applicant can be required to agree a construction management plan to reduce the emission and extent of dust. The Environmental Health Officer is of the view that once completed the development may represent an improvement with regard to air particles.
4. In determining the planning application, I am asked whether, and to what extent, the adverse health impact the development may have on Mrs Reid is a material consideration.

Advice

5. As a matter of principle, personal circumstances are always present in the background to the consideration of the character of land use, but may sometimes be given direct effect in development control as an exceptional or special circumstance ([Great Portland Estates plc v Westminster City Council \[1985\] A.C. 661](#)). The relevance of personal circumstances has arisen as an issue in particular in cases involving gypsies. The proposition that personal circumstances may be a relevant consideration in planning decisions was confirmed as well established in [South Bucks District Council v Porter \(No 2\) \[2004\] 1 W.L.R. 1953](#).
6. It is trite and long-established law that the range of potentially relevant planning issues is very wide and that, absent irrationality or illegality, the weight to be given to such issues in any case is a matter for the decision maker.
7. I advise that the health needs of Mrs Reid are capable of being a material consideration and that the failure of the Council to have regard to them **could** give rise to an allegation that it made an error of law (for example by disregarding the public sector equality duty). I therefore advise that the Council have regard to the personal circumstances of Mrs Reid as a material consideration. This should

be addressed explicitly on the face of the officer's report to members (or the delegated report).

8. The weight to be attached to any given material consideration is a matter for the decision maker. It is not for me to judge what weight the Council should give to this one issue. I simply observe that the issue, whilst relevant, may not be determinative. Even if the Council concludes that the construction period upon permission would cause material harm to the health of Mrs Reid, it does not follow that the application should be refused. This is but one matter in the weighing scales and will have to be weighed against the various benefits of the proposal.
9. I am not told whether the Council can demonstrate a 5 year supply of housing sites. This will have a bearing on how determinative this particular consideration is in the final planning balance. If the Council cannot demonstrate a 5 year supply of housing, by operation of para 14 of the Framework those policies for the supply of housing would be out of date and the application should be approved unless the adverse effects of doing so would demonstrably and significantly outweigh the benefits ("the tilted planning balance"). If the Council can demonstrate a 5 year supply of housing, a conventional planning balance should be adopted.
10. I recognise that the impacts on the health of Mrs Reid could be significant, in the short term, whilst the permission is implemented. She may be obliged to alter her pattern of behaviour by, for example, avoiding relaxing in her garden during busy days of construction work (when the wind is blowing in an unfavourable direction). However, the impact could be mitigated by a sympathetic construction management plan and good communication between the house builders on the ground and Mrs Reid so that she can be warned when particularly "dusty" activity is to be undertaken and planning undertaken so that this activity occurs when it is less likely to affect her.
11. Judging the impact on Mrs Reid will require an appraisal of the particular characteristics of her home. The Council will have to have a clear idea of the proximity and relationship of Mrs Reid's property to the application site. Is there any intervening vegetation? What is the predominant wind direction? Does Mrs Reid's garden and living quarters of the house face the application site?
12. There is plainly a very great public interest in providing much needed housing. Increasing the supply of housing has been at the forefront of the government's planning reforms in recent years. Many people in the borough are disabled and may be aggravated by building work. Many people with tinnitus or serious mental health problems may find their symptoms exacerbated by repetitive and invasive construction noise. In the normal course of events one would not expect that their sensitivity would be a cogent and defensible ground to prevent development.
13. It seems to me that in order to give significant weight to this matter, there would have to be concrete and cogent evidence that the building work would give rise to unacceptable harm to the health of Mrs Reid (after one has taken account of sympathetic management and good consultation). The fact that for a number of days, or indeed weeks, she has to stay in doors with the windows shut to prevent the ingress of dust is unlikely to be sufficient to justify the refusal of permission. Mere inconvenience is not enough. The fact the claimant's convalescence could be aided by living in a peaceful ambience devoid of building work is not enough.

5/150

Assertion is insufficient: detailed medical evidence from Mrs Reid' treating clinicians will be needed. The Council would have to have good evidence that the building work is likely to meaningfully harm her health. In the absence of this, it seems to me that only limited weight can be afforded to this consideration. If the Council cannot demonstrate a 5 year supply of housing sites, it makes it even more difficult for it to sustain a reason for refusal upon this basis.

14. I am not expert in the area of respiratory medicine, but it seems to me unlikely that the building work envisaged would cause an unacceptable risk to the health of Mrs Reid. Every day of the year, hundreds if not thousands of people with respiratory problems live and work in towns and cities with dust particles (of differing identities and concentrations). I would be surprised if straightforward mitigation could not be adopted by Mrs Reid (for example, *in extremis* the use of a face mask when relaxing in the garden) to mitigate the impact to an acceptable level. Frankly, if Mrs Reid's was so precarious I would not have expected her to have been discharged from hospital.
15. I am instructed that the Reids have been offered the value of their house plus 10% but that this has been refused. They are seeking the value of their house plus a 25% uplift. There may be a good reason why the Reids turned down the offer. However, the Council would be entitled when reaching its overall view to afford weight to the fact that the Reids have refused what could be characterised as a reasonable offer to purchase their property. Further, the character of the locality is plainly relevant. The area is semi urban and (I am told) their property fronts a reasonably busy 'D' road and only 100m distant from the A5 trunk road. This is not a case where the application site is found in a quiet rural idyll.
16. In addressing this issue of Mrs Reid's health, it would be open to the Council to consider alternative sites.
17. In [R. \(Mount Cook Land Ltd\) v Westminster City Council \[2004\] 2 P. & C. R. 405](#), the Court of Appeal summarised the case law in the following way:
 - a) In the context of planning control, a person may do what he wants with his land, provided his use of it is acceptable in planning terms.
 - b) There may be a number of alternative uses from which he could choose, each of which would be acceptable in planning terms.
 - c) Whether any proposed use is acceptable in planning terms depends on whether it would cause planning harm judged according to relevant planning policies where there are any.
 - d) In the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant in planning terms.
 - e) Where an application proposal does not conflict with policy, otherwise involves no planning harm, and, as it happens, includes some enhancement, any alternative proposals would normally be irrelevant.
 - f) Even in exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight.

5/151

18. In [R. \(Langley Park School for Girls Governing Body\) v Bromley London Borough Council \[2010\] 1 P. & C. R. 10](#), Sullivan L.J. observed that where there are no clear planning objections to a proposal development, alternative proposals, whether for an alternative site or a different siting within the same site, will normally be irrelevant. However, where there are clear planning objections to a proposed development, the more likely it is that it will be relevant, and may in some cases be necessary, to consider whether that objection could be overcome by an alternative proposal.
19. In [South Cambridgeshire District Council v Secretary of State for Communities and Local Government \[2009\] P.T.S.R. 37](#) the Court of Appeal ruled that the burden was not on the applicants to show that they had done all that reasonably could be done to find a site that catered for their needs but that no such site was available. Rather, as indicated above, the relevance of alternative sites would depend on all the circumstances.
20. In short, it would be open to the Council to consider alternative sites if that is considered relevant as a matter of planning judgment. However, there is no requirement to. The applicant is not obliged to demonstrate that there is no other site available in the vicinity. This does not appear to be a case where one could reasonably expect the applicant to "go the extra mile" to demonstrate the absence of alternative sites.

Conclusion

21. In short I advise that the health of Mrs Reid is a material consideration and should form part of the determination of the application. However, it is unlikely to be a factor which should be afforded significant weight. From what is before me, I am doubtful that a reason for refusal on this basis would be robust and defensible. It seems to me that this is an issue which could be dealt with properly and robustly by communication between Mrs Reid and the applicant to agree a condition which mitigates the impact and gives Mrs Reid the legally binding reassurance that the site will not be built out in a haphazard or disruptive manner, but can be done sympathetically and with restraint. Mrs Reid should be reassured that house builders are familiar with building out sites with care that have sensitive environmental restraints including archaeological remains and species which are protected under the Habitat Regulations (such that it is a criminal offence to disturb them). I see no reason why a similar approach cannot be adopted here.
22. If I can be of any further assistance, please do not hesitate to contact me in Chambers.

JACK SMYTH
No 5 Chambers
31 May 2016