

Agenda Item No 9

Planning and Development Board

6 March 2017

**Report of the Assistant Chief Executive
and Solicitor to the Council**

**Nuneaton and Bedworth BC -
Borough Plan 2011 - 2031:
Publication (2017)**

1 Summary

- 1.1 This report relates to this Council's proposed response to the Nuneaton and Bedworth Borough Plan publication consultation.

Recommendation to the Board	
a	That the Assistant Chief Executive and Solicitor to the Council be delegated to send a response to Nuneaton and Bedworth Borough Council's consultation on their Borough Local Plan; and
b	That discussions continue with Nuneaton and Bedworth Borough Council to look at possible changes that could be presented to the Local Plan Examination to overcome this Council's concerns.

2 Background

- 2.1 Nuneaton and Bedworth Borough Council (NBBC) has been preparing its Borough Plan for a number of years. There was consultation on Issues and Options in 2009, Preferred Options in 2013; Submission version in 2015 and now a Publication version. This latest version is the one which will be sent to the Secretary of State and be examined by an independent Inspector. Any comments at this stage will not result in a change being proposed by NBBC but will be forwarded on to the Inspector as part of the examination process. If the Inspector considers changes are required then these will be modifications to the Plan.
- 2.2 Comments at this stage must be related to the legal compliance, duty to cooperate and soundness of the Borough Plan. The Inspector will first check that the Plan has been prepared legally. This means the Inspector will check that it is in accordance with the Local Development Scheme and there is a Sustainability Appraisal. Nuneaton and Bedworth will provide evidence to the Inspector on how it has complied with the duty to cooperate. Finally there are then matters of soundness which relate to whether the Plan has been positively prepared, justified, effective and consistent with national policy.

3 Nuneaton and Bedworth Borough Plan – Publication 2017

- 3.1 The previous NBBC submission version indicated the delivery of 10,900 dwellings and 52 hectares of employment land. Since then further work has been carried out including the updating of the Strategic Housing Land Availability Assessment and Employment Land Review. Revisions have been made to the numbers that can be achieved on specific sites. Some site capacity has been reduced as detailed evidence has increased for the sites.
- 3.2 The Borough Local Plan (the Plan), covering the period from 2011 until 2031, now seeks to deliver 13,374 dwellings, 103.6 hectares of employment land and 39 residential and 5 transit pitches for Gypsies and Travellers. It can be viewed at https://www.nuneatonandbedworth.gov.uk/info/21016/consultations/146/borough_plan_information.

4 Observations

- 4.1 There are three main areas of concern. These relate to the amount of development being delivered for the wider Coventry & Warwickshire Housing Market Area, growth impacting on the A5 and the exploration of the provision of a Nuneaton Northern Relief Road.

1. Development for the wider Coventry and Workshare Housing Market Area (HMA)

- 4.2 Members will recall that work has been carried out under the Duty to Cooperate to look at both housing and employment throughout the Coventry and Warwickshire area. This resulted in two Memoranda of Understanding (MoU) being agreed by the Coventry and Warwickshire Joint Committee – these are attached as Appendix A and B of this report.

...

- 4.3 NBBC agreed to sign the MoU relating to employment land but not the MoU referring to the provision of housing land. NBBC felt they did not have the evidence to indicate if they could deliver the redistribution from the Coventry and Warwickshire HMA.
- 4.4 The Council is pleased to see that NBBC have increased the amount of housing and employment land that they are providing. As a result they are dealing with their objectively assessed needs. However NBBC are presenting a Plan which does not deliver for the full redistributed housing and employment land. There are Member meetings in the coming days and it is recommended that as these discussions are ongoing that the Assistant Chief Executive and Solicitor to the Council in consultation with the Chairman of this Board, the Leader of the Council and the opposition spokesperson agree a response following these meetings.
- 4.5 Policy DS4 deals with “Overall Development Needs”. The policy presents the housing, employment and Gypsy and Traveller pitches in absolute terms. The

Plan makes allowance for only 11 units to be delivered per annum as windfalls. These are sites that are not allocated within the Plan. It is suggested that this policy should be written so it seeks a “minimum of” instead of being an absolute figure. This would allow for other sites to be delivered and ensure that the land requirements are not seen as a maximum.

2 & 3 Transport including the A5 and the Nuneaton Northern Relief Road

4.6 As part of the Nuneaton and Bedworth Plan a Strategic Transport Assessment has been prepared by Warwickshire County Council. As Members will recall a Strategic Transport Assessment has been drafted for our authority too but this has not yet been published. Discussions have taken place with NBBC officers to talk through the proposals that are close to Nuneaton and in particular the area around Hartshill and Ansley Common.

4.7 In paragraph 8.57 of the STA it states the following:

“The focussed impact from specific sites will still require detailed assessment to determine whether their site has a discernible impact on the A5 junctions, and the decision as to whether mitigation is required will be subject to Highways England and WCC review, as with all the sites when they reach planning stages. Additionally, there is also the potential for revised conclusions once neighbouring authorities adopt their Local Plans (e.g. North Warwickshire and Tamworth) as this may impact the level of growth and the trip patterns along the A5 corridor. It is therefore suggested that a cumulative impact assessment may be necessary at specific junctions once these Local Plans are adopted.”

4.8 It is understood that NBBC can not be expected to take full account of the development being proposed in North Warwickshire as the NW Draft Local Plan is still at an early stage. In addition, the Strategic Transport Assessment for this Borough is still being completed and so not yet published. WCC are carrying out both assessments and the modelling does overlap. However as the Strategic Transport Assessment says above identified there are potential issues that may still need to be addressed.

4.9 Objective 5 of the NBBC Borough Plan relates to infrastructure and states that:

“d) New development that integrates the required infrastructure and service provision to support it and where appropriate includes improvements to existing infrastructure and services. This includes:

- *a northern relief road”*

The Plan however talks about the Nuneaton Northern Relief Road only going between Weddington Lane / Road and The Long Shoot. Further development would be needed in northern Nuneaton to assist in funding this road.

4.10 It is understood that WCC have advised NBBC that there is a limit of development that could be delivered within the existing highway infrastructure within the northern part of Nuneaton. The Borough Council would like to

explore with NBBC and WCC an extension to this route so that it travels further around the north of Nuneaton.

- 4.11 In relation to the current consultation it is considered that the most appropriate way forward is to seek a policy which would require this work to be undertaken. This may allow for future development in the northern Nuneaton area to be considered either within or beyond the current Plan period. This is also likely to assist in bringing forward the development being proposed in this Council's Draft Local Plan especially around the Hartshill and Ansley Common area. It could be carried out jointly and in a holistic way.

Duty to Cooperate

- 4.12 The issues raised in this report are mainly issues of soundness and will be discussed at the Examination. They do not appear to raise an objection under the Duty to Cooperate. However officers would like to reserve the Borough Council's position on this matter at the present time. .

5 Report Implications

5.1 Environment and Sustainability Implications

- 5.1.1 A Sustainability Appraisal accompanies the Borough Plan in which it considers matters of sustainability.

5.2 Human Resources Implications

- 5.2.1 As a result of raising issues with the Borough Plan this will result in officers and members being involved in future discussions and negotiations with Nuneaton and Bedworth and possible attendance at the examination hearing sessions.

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



Memorandum of Understanding relating to the planned distribution of housing within the Coventry & Warwickshire Housing Market Area (HMA)

PARTIES TO THE MEMORANDUM

The Memorandum is agreed by the following Councils:

- Coventry City Council
- North Warwickshire Borough Council
- Nuneaton & Bedworth Borough Council
- Rugby Borough Council
- Warwick District Council
- Stratford-on-Avon District Council
- Warwickshire CC

PURPOSE

This memorandum of understanding seeks to ensure that the housing needs of the C&W HMA are met in full.

This memorandum of understanding establishes a framework for co-operation between the constituent authorities with respect to the delivery of housing across the Coventry and Warwickshire HMA. It is framed within the Localism Act 2011 and the duty to cooperate set out in Section 110. This sets out the way in which the Councils will consult one another and work together on matters which affect more than one local authority area.

There is clear evidence that Coventry City Council is unable to meet its full objectively assessed housing needs within the city boundary and thus is unable to meet the requirements of paragraph 47 of the NPPF. It is agreed that for plan making purposes there is a primary housing market area comprising Coventry and the whole of Warwickshire. As a result the City Council and the five Borough/District Councils within Warwickshire have collaborated to assess the full housing needs of the market area and to establish realistic assumptions about the availability, suitability and viability of land to meet that need, in accordance with paragraphs 159 and 160 of the NPPF.

The focus of this memorandum is to ensure that housing needs arising from the growth of the city's population but not capable of being met within Coventry itself will be met within the HMA as a whole. Each local authority will make best endeavours to deliver the housing as set out in this MoU.

POINTS OF AGREEMENT

The Memorandum has the following broad objective:

The Warwickshire authorities accept that Coventry City Council is unable to accommodate its full housing need. Each Council will therefore cooperate to establish a revised distribution of housing which ensures that the overall needs across the housing market area will be met.

To achieve this objective, it is agreed that:

1. The OAN for the HMA is 85,540 (2011-2031).
2. The table below contains the OAN of each authority within it.

	Average annualised total	Total OAN* (2011-2031)
Coventry	2,120	42,400
North Warwickshire	237	4,740
Nuneaton & Bedworth	502	10,040
Rugby	480	9,600
Stratford-on-Avon	659	13,180
Warwick	600	12,000

Source: Updated assessment of housing need for the C&W HMA, September 2015.

*OAN for NWBC and SDC contains need external to the HMA (2,620 gross dwellings). There is also an element of economic uplift in SDC, NWBC and NBBC which will support redistribution of housing from Coventry (3,800 gross dwellings).

3. As of September 2015, the table below reflects an appropriate and robust distribution of housing across Coventry and Warwickshire

	TOTAL (2011-2031)
COVENTRY	Minimum of 24600 *
NORTH WARWICKSHIRE	5280
NUNEATON AND BEDWORTH	14060
RUGBY	12400
STRATFORD-ON-AVON	13180
WARWICK	18640
TOTALS	88160

* Should Coventry's capacity increase then the number redistributed to Warwickshire authorities will be considered against the methodology underpinning this report.

4. In the event that, as a result of the completion of Strategic Housing Land Availability Assessment's (to the agreed C&W methodology) it is shown that

the distribution in the Table above cannot be delivered, this MOU will be reviewed so that the overall housing requirement is met within the HMA.

5. In the event that, as a result of co-operation with a local authority outside the housing market area, additional development is to be accommodated within the CWHMA at a level that materially affects the distribution set out in this document, the MoU will be reviewed.
6. Each local planning authority will prepare a Local Plan that reflects the agreed distribution.
7. Each local authority will ensure the most efficient use of land is promoted when delivering housing sites across their area. In doing so density assumptions should be appropriate, justified and deliverable.
8. The plan making process will ultimately establish the capacity of each area and quantities of housing that can be delivered. Through the plan making process, the Councils will continue to monitor the capacity of the HMA and in particular any authority that is unable to meet its OAN or redistributed housing requirement. In this instance, the Councils will seek to maximise the quantity of housing delivered in these authorities.
9. Each local authority is committed to ongoing cooperation and engagement by both officers and members in relation to delivery of housing for the C&W HMA.

LIMITATIONS

For the avoidance of doubt, this Memorandum shall not fetter the discretion of any of the Councils in the determination of any planning application, or in the exercise of any of their statutory powers and duties, or in their response to consultations, and is not intended to be legally binding but shows clear commitment and intent to meeting the full housing needs of the market area.

LIAISON

Member level representatives of the Local Authorities through the Shadow Economic Prosperity Board (EPB) will meet as a minimum yearly or more frequently when appropriate, in order to;

- Maintain and update the memorandum, as necessary.
- Monitor the preparation of Local Plans across the six authorities and discuss strategic issues emerging from them

TIMESCALE

The Memorandum of Understanding is intended to run up to 2031 to align with the timescale of the evidence.

MONITORING

Annual monitoring will be carried out to ensure that housing delivery is maintained throughout the HMA. This will be overseen by the C&W monitoring group which will agree monitoring targets to include permissions, completions and densities. However, due to fluctuations in the market and sites coming on stream a review trigger will come into force if there is a persistent under delivery of housing (against the HMA annualised target) over a consecutive 3 year period.

REVIEW

The document will be reviewed no less than every three years but will be reviewed when new evidence, that renders this MOU out of date, emerges

**Signed on behalf of Coventry City Council
Councillor Ann Lucas**

**Signed on behalf of Warwick District Council
Councillor Andrew Mobbs**

Date:

Date:

**Signed on behalf of North Warwickshire Borough Council
Councillor David Humphreys**

**Signed on behalf of Stratford-on-Avon District Council
Councillor Chris Saint**

Date:

Date:

**Signed on behalf of Nuneaton & Bedworth Borough Council
Councillor Dennis Harvey**

Date:

**Signed on behalf of Warwickshire County Council
Councillor Isobel Seccombe**

Date:

**Signed on behalf of Rugby Borough Council
Councillor Michael Stokes**

Date:

Coventry, Warwickshire and Hinckley & Bosworth Joint Committee

21st July 2016

**Coventry and Warwickshire
Employment Land Memorandum of Understanding**

1 Summary and Recommendations

1.1 This report seeks agreement to an Employment Land Memorandum of Understanding. Specifically it seeks to ensure that the employment land needs of Coventry and Warwickshire are met in full including addressing an identified shortfall of employment land provision arising in Coventry

1.2 The Joint Committee is recommended to:

- a) Agree the Employment Land Memorandum of Understanding (ELMOU) set out in Appendix 1.
- b) Agree that each of the six Local Plan Authorities within Coventry and Warwickshire will seek to formally endorse the ELMOU by end of October 2016
- c) Note the position update with regard to the Housing Memorandum of Understanding as set out in paragraphs 6.1 and 6.2 below

2 Introduction

2.1 This report explains the C&W Employment Land MOU and the process undertaken to arrive at the agreed distribution. Broadly, that process has the following three parts:

- Review of evidence;
- Assessment of redistribution options;
- Develop redistribution method.

3 Conclusions from review of evidence

3.1 Local and sub-regional level evidence has informed the MOU. Each of these documents are available for review. The main findings are briefly summarised below:

- a) **Coventry and Warwickshire Employment Land Requirement:** The sum of each District's most recent employment land study suggests the overall quantum of employment land required in Coventry and Warwickshire between 2011 and 2031 is 714 (gross) hectares. This broadly aligns with the Coventry

and Warwickshire Employment Land Use Study (CBRE 2015) which suggested up to 660 hectares for Coventry and Warwickshire.

b) Evidence regarding the Distribution of the Requirement: The employment land studies undertaken by each District provide the basis for how this requirement should be distributed between the six local authorities. Details of this are set out in Table 1 of the Points of Agreement within the draft MOU.

c) Availability of Employment Land to meet the Requirement: Assessments of land availability indicate that the five Warwickshire authorities can meet their local employment land requirements within their areas. However, the evidence indicates that Coventry is unable to meet its employment land requirement in full within the City boundary and that the shortfall is 241 hectares.

4 Approach to redistributing the shortfall in requirement:

4.1 To support the Points of Agreement, the resulting shortfall of 241 gross hectares needs to be redistributed from Coventry to the Warwickshire authorities in a justified and appropriate way. The approach taken is as described below.

4.2 Stage 1: Assessment of Redistribution Options:

4.2.1 In preparing the Housing MOU in 2015, the Coventry and Warwickshire authorities undertook a high level assessment of the sustainability impacts of six broad options for the redistribution of Coventry's Housing shortfall. This work concluded that locations close to, or with good accessibility to, the City should be preferred to other options (such as dispersal or new settlements).

4.2.2 In line with the NPPF (for instance paragraphs 17 and 34), it is suggested that the assessment undertaken for the Housing MOU also applies to the redistribution of employment land.

4.2.3 In addition, an employment land redistribution approach which aligns with the approach taken to housing land redistribution will help to support sustainable communities, minimisation of the need to travel and sustainable modes of transport. It is therefore proposed that the employment land redistribution from Coventry to Warwickshire should in the first instance, be based on evidence relating to:

- Commuting flows; and
- The redistribution of housing as set out in the Housing MOU

4.2.4 However, the NPPF also requires that unemployment and regeneration is addressed and that market signals are taken in to account. Evidence regarding these, therefore needs to be used to make appropriate adjustments.

4.2.5 It should also be remembered that the plan period during which the evidence referred to above applied commenced in 2011. It is therefore necessary to consider any relevant employment completions, commitments and proposed allocations since that date before a final redistribution can be agreed.

4.3 Stage 2: Applying Commuting Flows

4.3.1 The starting point for considering the redistribution should reflect commuting flows between Coventry and each of the Warwickshire Districts. These commuting flows informed the housing distribution agreed in 2015 but are considered to be more relevant when considering employment distribution given the movements they report.

4.3.2 The 2011 census indicates that the two-way commuting flows between Coventry and Warwickshire occur according to the following percentages:

- North Warwickshire BC: 6%
- Nuneaton and Bedworth BC: 33%
- Rugby BC: 18%
- Stratford-on-Avon DC: 8%
- Warwick DC: 35%

4.3.3 Table A below shows the indicative quantum of employment land redistributed to each District if commuting patterns are applied to a shortfall of 241 gross hectares:

Table A

Authority	Percentage of Coventry to Warwickshire Commuting (two way)	Indicative employment land redistribution
North Warwickshire	6%	15 ha
Nuneaton and Bedworth	33%	80 ha
Rugby	18%	43 ha
Stratford	8%	19 ha
Warwick	35%	84 ha
Total	100%	241

4.4 Stage 3: Cross reference with the Housing MOU

4.4.1 The approach set out in stage 2 applies a redistribution based on existing commuting patterns. It does not therefore take account of the proposed redistribution of housing from Coventry to Warwickshire as set out the 2015 Housing MOU. This redistribution may well alter commuting flows in future.

4.4.2 Appendix 1 sets out a methodology that aligns employment land redistribution with the proposed housing redistribution set out in the 2015 MOU. The appendix also sets out the outcomes of that methodology.

4.4.3 Table B below shows the indicative quantum of employment land redistributed to each District if alignment with the Housing MOU is applied to a shortfall of 241 hectares:

Table B

Authority	Indicative employment land
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	redistribution
North Warwickshire	10 ha
Nuneaton and Bedworth	71 ha
Rugby	45 ha
Stratford	10 ha
Warwick	105 ha
Total	241 ha

4.4.4 It can be noted that the indicative redistribution above is similar to that resulting from stage 2. That is in part because commuting data informed the distribution applied to housing as part of the MOU. Both stage 2 and stage 3 indicate a distribution that would see the majority of the shortfall accommodated in Warwick District, Rugby Borough and Nuneaton and Bedworth Borough.

4.5 Stage 4: Taking account of further considerations

4.5.1 The indicative quantum set out in Tables A and B above needs to be adjusted to take account of market signals and unemployment and urban regeneration as required by Planning Practice Guidance.

4.5.2 Market Signals: The Local Enterprise Partnership collates evidence regarding market signals. Whilst the signals provide a constantly evolving picture, the evidence from market signals currently points towards a number of key factors which could impact on the redistribution. These factors are:

- Pressures for B8 uses close to the trunk road network and particularly the motorway network to the north and east of the sub-region;
- Pressures for B2 uses, particularly associated with the automotive sector, in the central and southern parts of the sub-region;
- Concerns about a lack of “oven ready” sites for expansion and relocation of businesses across the sub-region.
- Importance of close links to both universities
- A lack of high quality office space which is being combatted by Friargate proposals
- The draw of JLR and demand for sites to support close supply chain location etc

4.5.3 However, the signatories of the Employment Land MOU recognise that more work needs to be done to collate data and monitoring market signals on an ongoing basis. The MOU therefore includes a clause to ensure that processes and responsibilities are put in place to strengthen this part of the evidence base. Processes to collate this information are already in place though through the Coventry and Warwickshire Monitoring group, supported by the LEP and Warwickshire Observatory.

4.5.4 Unemployment and Urban Regeneration: The Atkins Report (2014) analyses which parts of the sub-region have the greatest needs for employment and suggests that the areas of greatest need should be those meeting the following criteria:

- Areas that have seen significant population growth over the past 10 years and are projected to see further growth in the future;

- Areas with high levels of unemployment; and
- Areas with high levels of deprivation.

4.5.5 In terms of population, Coventry is the sub-region's main urban centre accounting for approximately 37% of the sub-region's total population. Its population grew by 22,400 people between 2003 and 2012 (latest available data), accounting for 40% of the sub-region's population growth over that period. Coventry is expected to continue to be the focus of population growth, with CWLEP's Strategic Economic Plan stating that half of the sub-region's 80,000 population increase will take place in Coventry.

4.5.6 In terms of unemployment, the latest available data for the period April 2013 to March 2014 show that Nuneaton and Bedworth had the highest unemployment rate in the sub-region but all other local authorities had unemployment rates below the England average of 7.3%. Examining the unemployment rate trends over the period 2006-2014 though, Coventry had the highest average unemployment rate in the sub-region (8.1%), followed by Nuneaton and Bedworth (7.7%) and North Warwickshire (6.9%).

4.5.7 According to the English Indices of Deprivation, Coventry and Nuneaton and Bedworth are the only local authorities in Coventry and Warwickshire that are ranked among the 50% most deprived in England. Coventry in particular is ranked 53rd out of 326 local authorities in England and is therefore in the 20% most deprived.

4.5.8 The Atkins Report therefore concludes that the consideration of population growth, unemployment rates and deprivation levels suggests that the greatest areas of need in Coventry and Warwickshire are Coventry, Nuneaton and Bedworth and North Warwickshire. Coventry in particular has a rapidly growing population, and relatively high levels of deprivation, making it an area that would clearly benefit from further employment creation and regeneration.

4.5.9 Based on the above and in line with CWLEP's Strategic Economic Plan it is considered that the areas around Coventry and to the north of the LEP area would particularly benefit from the provision of new employment opportunities and developments that would contribute to local regeneration objectives. These local economic needs should be considered in the event of strategic employment sites being formally adopted as part of the Local Plan process.

4.6 Stage 5: Drawing conclusions on redistribution

4.6.1 Drawing together data from stages 2, 3 and 4 the following table sets out the conclusions on the redistribution of Coventry's Employment Land shortfall:

- Warwick, Nuneaton and Bedworth and Rugby have the strongest commuting relationships with Coventry;
- The redistribution of housing from Coventry is focused strongly in Warwick, Nuneaton and Bedworth and Rugby;
- Warwick, Nuneaton and Bedworth and Rugby provide locations which are consistent with the emerging market signals;
- Locations close to the City within Warwick, Rugby and in particular locations towards the northern edge of the City and around Nuneaton

and Bedworth will help to support the regeneration and address unemployment

- Stratford and North Warwickshire have weaker commuting relationships with Coventry and are less well placed to support regeneration of deprived areas.
- Although market signal suggests the North Warwickshire is well placed to support B8 uses and Stratford District is well placed to support growth in B2 uses, their relative remoteness from the City means they are not the preferred locations for these uses when considering a redistribution of Coventry's need. Further the three authorities immediately adjacent to the urban area of the City also have the potential to provide suitable locations for these uses.

4.6.2 Table C below summarises a redistribution resulting from stages 1-5:

Table C

Authority	Indicative Redistribution – Commuting Flows	Indicative Redistribution – Housing MOU	Market Signals	Regeneration and Unemployment	Conclusion
North Warwickshire	15 ha	10 ha	No adjustment	Low impact – downward adjustment	0
Nuneaton and Bedworth	80 ha	71 ha	No adjustment	High impact – upwards adjustment	91 ha
Rugby	43 ha	45 ha	No adjustment	Medium impact - No adjustment	45 ha
Stratford	19 ha	10 ha	No adjustment	Low impact – downward adjustment	0
Warwick	84 ha	105 ha	No adjustment	Medium impact - No adjustment	105 ha
Total	241 ha	241 ha			241

4.7 Stage 6: Existing completions, commitments and proposed allocations

4.7.1 As stated, completions since the commencement of the plan period in 2011 need to be considered as do current commitments, proposed allocations and associated live applications as these help to evidence market interest and site deliverability.

4.7.2 Two sites of sub-regional significance in Rugby Borough have been brought forward since 2011, with substantial completions already recorded. These sites at Ansty Park and ProLogis Ryton were always intended to meet employment land needs beyond that required specifically for Rugby Borough. Given the close proximity of both sites to Coventry there has been an informal agreement that these sites can contribute to the City's employment land requirements. This is referenced within the adopted planning policy of Rugby Borough Council, the Employment Land Reviews for Coventry and Rugby and was also recognised in the RSS revision prior to its abolition. Monitoring has been carried out with this in mind. These two sites should therefore be considered to be providing for Coventry's Employment Land requirements.

4.7.3 A further site of sub-regional significance in the vicinity of Coventry Airport is proposed for an employment allocation within the Warwick District Local Plan. Except for a small proportion, this site provides for sub-regional employment land needs rather than the needs of Warwick District. Subject to the adoption of the Warwick's Local Plan, this site will also contribute to Coventry's employment land requirements.

4.7.4 These three sites therefore have the potential to contribute to the redistribution of Coventry's employment shortfall as follows:

Table D

Site	Area
Ansty Park	41 ha
ProLogis Ryton	57 ha
Land in the vicinity of Coventry Airport	117 ha
Total	215 ha

4.7.5 Table E below contains adjustments to table C above that reflect these completions and commitments.

Table E: Adjustments for Existing completions, commitments and proposed allocations

Authority	Proposed Redistribution	Existing completions, commitments and proposed allocations	Balance
North Warwickshire	0	0	0
Nuneaton and Bedworth	91 ha	0	-91ha
Rugby	45ha	98ha	+43ha
Stratford	0	0	0
Warwick	105ha	117ha	+12 ha
Total	241ha	215ha	-26 ha

4.7.6 Taking existing completions, commitments and proposed allocations in to account suggests an under-provision in Nuneaton and Bedworth and an over-provision in Rugby Borough. However, given that Ansty Park lies close to the boundary with Nuneaton and Bedworth and ProLogis Ryton, is well connected via the trunk road network, this imbalance is not considered significant, particularly when administrative boundaries are removed from the picture.

4.7.7 It is therefore proposed that previous agreements about the role of these sites in making provision over and above local need, is now formalised in the ELMOU as being an important part of the redistribution of employment land to meet Coventry's needs. This approach is consistent with the emerging evidence.

4.7.8 There remains a balance of 26 hectares of Coventry’s shortfall, which needs to be accommodated within Warwickshire. The evidence presented above suggests that this should be met within Nuneaton and Bedworth Borough.

4.8 Stage 7: Testing proposed redistribution against availability of suitable employment land sites

4.8.1 The final stage is to test whether there is capacity within Nuneaton and Bedworth to meet the remaining shortfall. In assessing potential capacity, it is also important to consider whether any potential sites will meet market demands and are deliverable and viable.

4.8.2 NBBC have completed an Employment Land Review which has identified potential capacity within the Borough to meet both the local employment land need and the additional requirement of 26 hectares. However, further assessment work is still being undertaken before this can be confirmed. This will be completed in the Autumn. The ELMOU recognises this uncertainty by including a review clause (8.2) in the event that it is demonstrated through the Plan making process that the proposed distribution cannot be delivered.

5 Proposed distribution of employment land across Coventry and Warwickshire

	Employment Land Requirement (gross hectares)	Redistribution from Coventry (gross hectares)	Minimum Local Plan Employment Provision (gross hectares)
Coventry	369	-	128
North Warwickshire	58	0	58
Nuneaton & Bedworth	87	26	113
Rugby	99	98	197
Stratford-on-Avon	35	0	35
Warwick	66	117	183
Total	714	241	714

6. Housing Memorandum of Understanding Update

6.1 Nuneaton and Bedworth BC were unable to sign the Housing MOU at the end of 2015 as the Council’s evidence base did not indicate that there was sufficient capacity to accommodate the level of growth identified through the redistribution methodology. The Council did however commit to reviewing the evidence. This work is ongoing and Nuneaton and Bedworth BC will be able to review their position on the MOU in the Autumn once the work is complete.

6.2 With regard to the other Councils in the HMA, all have formally endorsed the agreement and all are committed to delivering Local Plans that align with it.

The contact officer for this report is Dave Barber (01926 456065)

Agenda Item No 10

Planning and Development Board

6 March 2017

**Report of the
Head of Development Control**

Appeals Update

1 Summary

1.1 This is a progress report in respect of outstanding appeals.

Recommendation to the Board

That the report be noted.

2 Report

2.1 Update Planning Appeals

2.1.1 Since the December Board meeting, there have been seven appeal decisions received at the time of writing this report.

a) St Modwen's – South East of Junction 10 of the M42

Members have already been made aware of this important decision. It will be a material consideration in dealing with future applications both in respect of new employment proposals and for proposals located in the Meaningful Gap. With regard to the former then the new evidence base is considered to carry significant weight whereas in respect of the latter, then the geographic definition of the Gap in the draft Local Plan is considered to carry limited weight.

... The Decision is at Appendix A

b) Land off Nuthurst Crescent, Ansley

Members too will have been notified of the outcome of this appeal. It too will be a material consideration in dealing with future housing applications. The key outcome from the appeal was the conclusion that we do not have a five year housing supply. In these circumstances the Core Strategy housing figures would be considered to be out of date and thus there would have to be "significant and demonstrable" harm caused by a new housing development if a refusal was to be upheld in a future appeal.

... The decision letter is at Appendix B

c) Chapel End Church, Hartshill

This decision is welcome and fully supports the Council's position in refusing an application which would cause substantial harm to a Listed Building.

... The letter is at Appendix C

d) Spring Hill, Arley

This decision shows how significant the Green Belt is as a policy as the proposal was for one house within a gap between other houses.

... Appendix D refers

e) Fir Tree Paddock, Mancetter

This is an important decision as it takes a view on what might or should be appropriate ancillary accommodation when dealing with Gypsy and Traveller proposals

... Appendix E refers

f) Duncroft, No Mans Heath

This appeal adds weight to the identified settlement hierarchy in the Core Strategy as No Mans Heath was confirmed as an unsustainable location. The added weight of the highway objection was important too

... Appendix F refers

g) Moor Farm Stables

This appeal dealt with the retention of an indoor riding arena which was constructed larger than that approved. The appeal was dismissed very largely on the grounds of the significant impact of the larger building on the openness of the Green Belt. The matter will now be referred back to the Board in order for it to consider the expediency of enforcement action

... Appendix G refers

2.2 Update – Outstanding Appeals

2.2.1 At the time of writing this report we are waiting for a further six decisions.

a) Eastlang Road, Fillongley

This relates to a residential proposal of 27 affordable homes in the Green Belt approved.

b) Stanley Road, Atherstone

There are two appeals here, each for a single house gaining access from Stanley Road

c) The Lake House at Nether Whitacre

The Inquiry into this appeal concerning the lawfulness of a building was held at the end of January.

d) The Mancetter Broiler Unit

The Hearing into the refusal of this application was held in mid-February.

e) Daw Mill

The Public Inquiry into the refusal for the commercial redevelopment of this site was held at the end of February.

3 Appeal Performance

3.1 Members will recall a previous report which outlined the Government's criteria for the possible "designation" of an Authority because of poor performance. One of these criteria related to the percentage of appeals that are allowed following a refusal. Concern was expressed about the very "tight" target of 10% or more allowed at appeal.

3.2 Clarification has been sought as to the base-line that is to be used in this calculation. The wording suggested that more than 10% of refusals overturned at appeal would lead to designation. This has now been clarified. The Government says that the measure is actually calculated "as the percentage of the total number of decisions made by local authorities that are subsequently overturned at appeal". This means that the calculation is not just against refusals, but against all determinations - refusals and approvals.

3.3 This certainly "eases" the position in North Warwickshire and at present we would satisfy the measure because of the number of approvals – both for majors and other applications. However the concern will still be ever present in respect of major applications. At present we do not receive a large number of major applications and thus we will always be in "danger" of failing to meet the target if majors are refused and then overturned at appeal. The St Modwen and Ansley decisions described above show just how difficult this is going to be. In the next few months and years the Council will be receiving far more major applications and thus potential refusals do need to have a strong evidence base to show that there is "significant and demonstrable harm" as otherwise the new housing and employment growth evidence will probably outweigh a refusal.

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

Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date
1	DCLG	Explanatory Memorandum	Nov 2016



Appeal Decision

Inquiry held on 20-22 September 2022

Site visit made on 23 September 2016

by **Matthew Birkinshaw BA(Hons) Msc MRTPI**

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

Decision date: 28 November 2016

Appeal Ref: APP/R3705/W/15/3136495

Land south east of the M42 Junction 10, Tamworth, Warwickshire, B78 2EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by St Modwen Developments Ltd against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2014/0648, dated 17 December 2014, was refused by notice dated 11 August 2015.
 - The development proposed is the development of land within Use Class B1(c) (light industry), Use Class B2 (general industry), and Use Class B8 (storage and distribution), demolition and removal of existing structures and associated works. Details of access submitted for approval, all other matters reserved.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the development of land within Use Class B1(c) (light industry), Use Class B2 (general industry), and Use Class B8 (storage and distribution) and demolition and removal of existing structures and associated works on land south east of the M42 Junction 10, Tamworth, Warwickshire, B78 2EY in accordance with the terms of the application, Ref PAP/2014/0648, dated 17 December 2014, subject to the conditions in the schedule at the end of this decision.

Procedural Matters

2. The application was submitted in outline with all matters reserved except for access. I have therefore determined the appeal on the same basis, treating the layout, landscaping, scale and appearance of the scheme as indicative.
 3. After the deadline for submissions the appellant provided a Supplementary Proof of Evidence on behalf of Peter Leaver. Although this introduced new information it responded to the Council's *Addendum to the 2013 Employment Land Review* which had only become available in late July 2016. It was therefore not possible for the appellant to address its content any sooner. The addendum also represents the most up-to-date evidence concerning employment land in the area and is directly relevant to the appeal. For these reasons, and considering that the Proof responded to the issues in dispute, was made available to the Council prior to the Inquiry, and discussed throughout, taking it into account would not prejudice the interests of other parties.
-

4. The appellant also provided a copy of a Council Board Report concerning new commercial development under consideration at Hams Hall, Coleshill (Ref PAP/2016/0399). As the report was dated 5 September 2016 it was not possible to include this information either. The report is also a public document, raises issues relevant to the appeal proposal and was discussed at the Inquiry. I have therefore taken it into account in my decision.
5. In response to the appellant's late submissions the Council provided additional material of their own. As this evidence relates directly to the points raised by the appellant, in the interests of fairness I have considered it as part of the appeal. Furthermore, appeal decision APP/R3705/W/16/3150719 is dated 9 September 2016, and could not have been submitted any sooner.
6. On the final day of the Inquiry a signed and dated Section 106 Agreement and a signed and dated Unilateral Undertaking were submitted. Both documents had previously been provided in draft and did not introduce any substantive new information that had not already been available. On this basis, and because it would not prejudice the interests of any party, I have considered both documents in reaching my decision.
7. Finally, following the Inquiry the Council confirmed that it had reached a unanimous decision to support the approval of planning permission at Hams Hall subject to referral to the Secretary of State (Ref PAP/2016/0399). In the interests of fairness additional comments have been sought from the appellant in response to this latest position, which I have taken into account.

Background and Main Issues

8. The appeal site comprises an area of agricultural land located to the south-east of the M42 at Junction 10. Bisected by Trinity Road it extends to roughly 25.4ha and falls outside the settlement boundaries of Tamworth to the west and Polesworth and Dordon to the east. In such areas Policy NW2 of the *North Warwickshire Local Plan Core Strategy* states that development will be limited to proposals necessary for agriculture, forestry or other uses which require a countryside location.
9. The Council's reasons for refusing planning permission are twofold. Firstly, it is claimed that the proposal would harm the separate identity of Dordon and undermine the meaningful gap between Polesworth and Dordon and Tamworth. The second reason for refusal states that the need for additional employment land is not evidenced, and that the scheme would compromise the objectives of the development plan contrary to one of the Core Planning Principles of the National Planning Policy Framework ('the Framework') which advocates that planning should be genuinely plan-led.
10. However, on the first day of the Inquiry the Council accepted that there are not currently enough allocated sites, or sites with planning permission to meet employment needs and that more land is required¹. It was also confirmed that the proposal would not prejudice the local plan-making process. Instead, the second reason for refusal was presented on the grounds that allocations in the emerging *North Warwickshire Local Plan* would provide sufficient land to meet the identified need, and subsequently, the weight which can be attributed to this factor in the planning balance is reduced².

¹ ID10

² *Trusthouse Forte (1987) 53 P&CR 293*

11. Taking this into account, and after having heard the Council's case in full at the Inquiry, the main issues are:

- The effect of the proposal on the separate identity of Dordon, and whether or not it would maintain a meaningful gap between Polesworth and Dordon and Tamworth; and
- Whether or not there is a requirement for additional employment land in the area, having particular regard to the emerging *North Warwickshire Local Plan*.

Reasons

The Separate Identity of Dordon and the Maintenance of a Meaningful Gap

12. The development boundary for Dordon is identified on the policies map carried forward from the *North Warwickshire Local Plan*. It defines an urban area focused primarily to the north of the A5. Dordon is a broadly linear settlement and is separated from the M42 by open fields and Birchmoor. This swathe of countryside, which continues south to encompass the appeal site and Freasley, divides Dordon to the east, from Tamworth to the west.
13. The maintenance of a strategic gap between Polesworth and Dordon and Tamworth has been a longstanding planning policy objective for the Council, and is very important locally. This is undisputed and is referred to in Core Strategy Policy NW19. It states that proposals "*...to the west of Polesworth and Dordon must respect the separate identities of Polesworth and Dordon and Tamworth and maintain a meaningful gap between them.*"

Separate Identity of Dordon

14. Dordon and Tamworth are two clearly separate towns. Tamworth is located predominantly to the west of the M42 and is a considerably larger urban area. Dordon is approximately 1–1.7km to the east and is situated on higher ground rising up from the motorway. It is physically and visually divorced from Tamworth. This relationship is particularly evident from the A5 looking north-east, and from the public open space off Kitwood Avenue facing west/south-west. From both locations the expanse of farmland between the M42 and the main body of the settlement north of the A5 differentiates each settlement. This area of open land would be unaffected by the appeal scheme.
15. The Council argues that the proposal would erode an area of undeveloped land to the south of the A5 which also contributes to the separation of the two settlements. Combined with new sites proposed and under construction around the Birch Coppice Business Park it is suggested that the appeal scheme would result in an almost continuous form of development that would dilute the separate identity of Dordon.
16. However, Dordon and Birch Coppice vary in their role, form, function, layout, scale and appearance. Dordon is a small town characterised by a mix of predominantly terraced and semi-detached housing focused to the north of the A5. In contrast, Birch Coppice is situated south of the dual-carriageway and comprises a large business park with substantial commercial buildings accessed from a series of roundabouts. The settlement of 'Dordon', the separate identity of which Policy NW19 seeks to protect, is therefore materially different to Birch

Coppice, and is not currently read in the same context as the industrial development to the south.

17. Furthermore, the indicative design does not seek to act as an extension of the existing employment area. On the contrary, to the east of the appeal site (and on land controlled by the current owners) would be a substantial area of planting around the easement of a gas pipeline. Combined with the siting of the former spoil heap this would provide a physical and visual separation between the nearest proposed buildings and Birch Coppice. The plans also illustrate how a substantial landscape buffer measuring roughly 20-50m would run along the site frontage. Whilst not intended to screen the proposal, this would nonetheless limit its visual impact from the A5 and provide some relief to the built form along this side of the road.
18. In summary therefore, I consider that by reason of the large area of farmland that would remain to the north of the A5, the location of Dordon on higher ground to the east, and its materially different character and appearance to Birch Coppice, subject to an appropriate final design the proposal would respect the separate identity of Dordon. As a result, there is no conflict with the first requirement of Core Strategy Policy NW19.

Maintenance of a 'Meaningful Gap'

19. At the Inquiry the Council confirmed that there is no definition of what constitutes a 'meaningful gap' within the Core Strategy, or any other adopted development plan document. Instead, it was put to me that a judgement is required based on the evidence available, which includes the Council's 2015 *Meaningful Gap Assessment* ('MGA').
20. The MGA identifies the appeal site within Area 9. It establishes that the area is part of a significant gap between Dordon and the M42, forms part of the rural gateway to the Borough and that significant development would effectively merge the settlements of Tamworth and Dordon from Wilnecote to Birch Coppice. The Council asserts that because it would no longer be possible to ascertain where Tamworth ends and Dordon begins, there would no longer be a meaningful gap between them.
21. However, in response to suggestions that the scheme would be a logical extension of Tamworth Mrs Barratt took a different view at the Inquiry, describing how it would be read as a free-standing, separate development due to the intervening motorway. Given the size of the M42, which runs through a tree-lined cutting in this location, I agree that it provides a definitive boundary and clear separation to Tamworth beyond. On this basis the tree-lined motorway would limit the perception of any harmful coalescence from Wilnecote to Birch Coppice.
22. Furthermore, although the MGA has been subject to consultation and is a material consideration used to support the emerging Local Plan, the starting point is the adopted Core Strategy. Policy NW19 is entitled "Polesworth and Dordon". It states that development must maintain a meaningful gap between Polesworth and Dordon on one side, and Tamworth on the other.

23. With the exception of a single row of houses on the southern side of the A5 Polesworth and Dordon are concentrated to the north of the dual-carriageway. This is illustrated on the Council's policies map. In contrast, Birch Coppice is a large free-standing employment allocation to the south. Although recent expansion has brought development close to the existing row of houses accessed from the pedestrian footbridge, for the purposes of the Core Strategy it does not form part of either settlement.
24. Thus, the relevant test is whether or not a meaningful gap would be maintained to the west of Polesworth and Dordon, excluding Birch Coppice. Without encroaching on the land north of the A5 there would continue to be a large, central area of open space separating the two towns. This area and the role that it plays in separating Dordon from Tamworth are evident on the aerial photographs provided by the Council³. The photographs demonstrate that in quantitative terms, a substantial gap would be maintained.
25. That being the case, given its size, scale and proximity to Birch Coppice I have also considered the qualitative effects of the proposal. As guidance⁴ referred to by Mr Williams' points out, relying solely on a 'scale rule' approach to maintaining separation between settlements should be avoided, and the character of a place, and the land in between needs to be taken into account.
26. The only landscape/visual assessment relied upon by the Council is the MGA. This uses a traffic-light scoring system and concludes that development of the appeal site and its immediate surroundings would undermine the gap. Although the traffic-light system is easy for members of the public to follow, there is no indication how the scores have been reached in a transparent and consistent manner. The MGA also relies on the 'geographic proximity/narrowness of the gap' in each sub-area without any detailed qualitative assessment of how the character of the area would change, or how it would be perceived from any locally important viewpoints.
27. On the other hand the appellant has provided a qualitative and quantitative assessment, in addition to the Landscape and Visual Impact Assessment (LVIA) submitted with the planning application. This evidence identifies that the appreciation of the gap between Dordon and Tamworth is not only based on cartographic geometry, but how it is perceived from the A5, surrounding public footpaths and from the respective settlements.
28. One of the main viewpoints of the site is from the A5 travelling east after leaving the roundabout at Junction 10. At present the open fields in front of the spoil heap are clearly visible to drivers and passengers. At the Inquiry it was argued that eroding this part of 'the gap' would change the approach into North Warwickshire and undermine the concept of leaving an urban area and travelling into a rural one, contrary to the spatial vision of the Core Strategy.
29. However, after a very short distance, and just beyond the 'Welcome to Warwickshire' sign referred to by the parties the fields north of the A5 come into view. Because the farmland drops down below the road before rising up, combined with its open character and proximity to the east-bound carriageway this area of countryside dominates the foreground. Dordon becomes visible at a higher level and there is an unequivocal gap in between. The undulating,

³ ID11

⁴ Planning on the Doorstep: The Big Issues – Green Belt

open character of the farmland to the north of the A5 would therefore ensure that drivers entering the Borough and heading east would still be faced with a predominantly rural setting to Dordon. Based on the evidence provided the scheme would not conflict with the spatial vision of the Core Strategy.

30. Travelling further east the main public viewpoint from Dordon is taken from the sports pitch beyond Kitwood Avenue. From this elevated position views of Birch Coppice and the large commercial buildings beyond the M42 are possible. Due to the size and scale of the appeal proposal it would introduce a highly visible form of development into the swathe of countryside which follows the M42 to the south, especially at night from street lights, buildings and vehicles.
31. Nevertheless, the expanse of farmland between the M42 and Dordon would extend beyond the sports pitch for some considerable distance down to the motorway. Due to the openness of this area, its lack of significant built form and the change in level, residents on the western edge of Dordon would continue to experience an unequivocal sense of separation from Tamworth.
32. Elsewhere clear views of the appeal site are possible from the public right of way to the north of the A5. In this location the scheme would result in one of the greatest changes to the countryside separating Dordon and Tamworth. Although the scale of development would erode the open fields between the spoil heap and Trinity Road, members of the public looking towards the site would do so from open agricultural land, with Dordon above and Tamworth on the other side of the M42. Walkers would therefore still be able to easily ascertain that there was a large, clear gap between the two settlements.
33. Similarly, from land south of the A5 there would be a demonstrable change to the local environment viewed from Trinity Road and/or public footpaths AE55 and AE52. Despite the foreground becoming dominated by development, when looking north-east from footpath AE52 views of the open land beyond the A5 would continue to be possible along the landscaped eastern site boundary with the majority of Birch Coppice screened behind the spoil heap. When passing through the site along footpath AE55 the open area of farmland north of the A5 would come into view and the appreciation of a strategic gap between Dordon and the motorway would remain.
34. In reaching this view I have taken into account that other developments have been granted planning permission in the area, and that additional sites are proposed for allocation in the emerging Local Plan. Nevertheless, there is nothing to suggest that the open land north of the A5 would be eroded. Even in the event that proposed allocation DOR22 is completed, this area would continue to provide a clear separation between the two towns. As identified above, the indicative layout also illustrates that buildings would be set-back from the A5 behind a formal area of planting, in addition to a generous landscape buffer along the eastern site boundary. Combined with the partial screening of Birch Coppice afforded by the spoil heap from the south and west this would prevent the creation of a continuous line of built development along the road frontage.

Summary

35. Based on the evidence provided I therefore conclude that due to the open farmland to the north of the A5, combined with the location of Dordon on higher ground, it's different character and appearance to Birch Coppice and the

inclusion of a landscaped buffer along the eastern site boundary, the proposal would respect the separate identity of Dordon, and, maintain a meaningful gap between Polesworth and Dordon and Tamworth. As a result, there is no conflict with Core Strategy Policy NW19. Subject to a high quality design at the reserved matters stage the proposal would also accord with Core Strategy Policy NW12 which, amongst other things, requires developments to demonstrate a high quality design that positively improves the character, appearance and environmental quality of an area.

36. Draft Policy LP5 in the emerging *North Warwickshire Local Plan* includes a third criterion that all new development in the 'gap' should be small in scale, not intrude visually into the gap, or physically reduce its size. However, the plan is only at the draft stage and consultation is still on-going. Bearing in mind that they may be subject to change, I have not given Policies LP5 and LP2 any significant weight in reaching my decision.

The Need for Employment Land

37. The Core Strategy was adopted in 2014 and states that between 2011 and 2029 a minimum of 60ha of 'local employment land' will be provided. It also seeks to direct employment towards settlements appropriate to their size and position in the hierarchy.
38. The Inspector's Report into the Examination of the Core Strategy made clear that it only relates to 'local' employment land. Although the September 2013 Employment Land Review (ELR) identified a requirement for regional logistics sites, the Core Strategy does not seek to meet this need. The Inspector found insufficient evidence to set a requirement for North Warwickshire when sub-regional work was still on-going. Rather than increase the number of allocated sites it was therefore considered more appropriate to adopt the Core Strategy and include a mechanism for an early review.
39. Since adoption of the Core Strategy various studies concerning employment land have been published, both regionally and locally. Some of the most up-to-date include the *West Midlands Strategic Employment Sites Study* (WMSESS, September 2015) and the *Addendum to the 2013 Employment Land Review* (ELR Addendum, April 2016). Evidence relating to the scale of unmet housing and employment needs from neighbouring authorities has also emerged. Prompted by this change in circumstances the Council has committed to an early review of the Core Strategy and produced a new draft Local Plan reflecting the higher housing and employment land requirements.
40. The Council has not stood back and by committing to the preparation of a new local plan has clearly 'grasped the nettle' when it comes to positively planning for growth. It is accepted that there is a need for additional employment land and this is what the emerging Local Plan seeks to achieve⁵. A considerable amount of Inquiry time was therefore spent assessing the draft allocations in the emerging Local Plan against the requirement to provide up to 97ha of employment land. In summary, the Council identifies a supply of between roughly 88.38ha and 111.98ha, whereas the appellant suggests that around 63.58ha is more accurate⁶.

⁵ ID29

⁶ ID8

41. However, assessing proposed allocations in the emerging Local Plan is not a matter for me. With the exception of a letter⁷ received on the final day of the Inquiry from Hodgetts Estates the submitted evidence has been predominantly provided by the two main parties. Testing whether or not the allocation of particular sites is justified, effective and consistent with national policy is for the examination process to consider when all of the relevant factors, including representations from all relevant parties, can be taken into account.
42. Instead, paragraph 216 of the Framework advocates that the weight decision-takers should give to relevant policies in emerging plans depends on their stage of preparation and the extent to which there are unresolved objections. In this case the emerging Local Plan is only at draft stage and the consultation period is on-going. The plan may be subject to change, and assessment of the appeal scheme has already identified an increase in employment land arising from discrepancies in the methodology used. The weight which can be attributed to potential employment allocations is therefore only limited.
43. In reaching this view I have taken into account that the proposed allocations include land at Centurion Park (which has planning permission) and Birch Coppice (which is an established business park). Such sites have a greater degree of certainty than others given their existing/permitted uses. The Council has also identified an additional 24.8ha in reserve at 'MIRA'.
44. Nonetheless, some of the other proposed allocations include sites which are within the Green Belt, have not been considered before and involve the relocation of allotments. Although the Council supports the release of Green Belt land at Hams Hall, permission has not yet been granted. Discussions with allotment holders in respect of land adjacent to the A5 are also at a relatively early stage. There are also other factors which need to be resolved through the consultation and examination processes. For example, the figures in ID8 include roughly 8.5ha of land allocated at Centurion Park, yet this has been considered in the supply as an extant planning permission.

Tamworth's Needs

45. In addition to the Council's needs it is also necessary to consider the requirements for additional employment land arising from Tamworth. In January 2015 the Head of Planning and Regeneration confirmed that only roughly 18ha of employment land was available, leaving a shortfall of some 14ha to be met elsewhere. Representations confirmed that;
- "...To date there has been no progression on preparing any joint work between the three local authorities, specifically with consideration of meeting the 14ha of unmet employment need arising from Tamworth. As there has been no wider, strategic work which considers a range of potential sites in North Warwickshire or Lichfield, this site currently presents the only option of meeting this need."*
46. The position has moved-on since January 2015 and a draft Memorandum of Understanding (MoU)⁸ has been provided between Tamworth Borough Council, Lichfield District Council and North Warwickshire Borough Council. It confirms that North Warwickshire has identified 8.5ha to the south-west of Junction 10 (at Centurion Park) to deliver part of the 14ha which cannot be accommodated

⁷ ID24

⁸ ID12

in Tamworth. Correspondence from Lichfield District Council⁹ also states that it will 'investigate' providing the remaining 6.5ha¹⁰ through its local plan process.

47. However, whilst this confirms that the three Councils have been actively working together on a cooperative basis, the MoU has not been signed. Furthermore, a Statement of Common Ground between the appellant and Tamworth Borough Council was produced for the Examination of the *Tamworth Local Plan*. This was dated May 2015, after planning permission was granted at Centurion Park, and confirmed that:

"The planning permission for 8.5 hectares gross (5.3 hectares net) has been allocated by North Warwickshire Borough Council in its draft Site Allocations Plan (DOR24) and forms part of the employment supply to meet its own local employment needs, as justified by NWBC in its report of the application to Planning Committee."

48. There also remains approximately a further 5.5ha to find with no concrete commitment from Lichfield to provide this anytime soon. Given the appeal site's proximity to Tamworth, the proposal would therefore be ideally placed to satisfy this requirement.

Wider than Local Needs for Large Sites

49. Paragraph 7.48 of the emerging Local Plan confirms that since the preparation of the Core Strategy studies have identified a wider than local need for large sites. Despite this, because such sites coming forward elsewhere it is not an issue that the Local Plan seeks to address. The Council adopted a similar argument at the Inquiry, namely, that the emergence of Peddimore, Magna Park and the East Midlands Gateway, combined with extensions to Birch Coppice and the 20ha of land proposed at Hams Hall point to a healthy supply of strategic sites.
50. It is appreciated that there are other large sites across the region which *could* contribute to the need cited in paragraph 7.48 of the draft Plan. Nevertheless, no site specific assessment has been undertaken to consider where this need should be met, and the Council confirms that this work has not yet been commissioned.
51. On the other hand the WMSESS identifies 'functional market areas' throughout the West Midlands based on factors such as proximity to motorways and the workforce. When considering past annual take-up against immediately available floorspace it confirms that along the M42 corridor the supply of large sites is the tightest, amounting to only roughly 3.7 years. One of the reasons for this is due to the length of time sites such as Peddimore are likely to take coming forward.
52. It is appreciated that there is no policy requirement to provide 5 years' worth of employment land. This is reflected in the appeal decisions referred to by the Council¹¹. The assessment in the WMSESS is also based on annual take-up and "immediately" available supply, which is different to Footnote 11 of the Framework which the parties referred to throughout the Inquiry.

⁹ ID20

¹⁰ Inspector's Note: Notwithstanding 14ha – 8.5ha in North Warwickshire leaves only 5.5ha to find in Lichfield

¹¹ Appeal Refs APP/U2235/A/14/2224036 and APP/U2235/A/14/2229271

53. Nevertheless, the WMSESS represents one of the most up-to-date studies available and points to a demonstrable need for additional strategic sites in the area. I am also mindful that the Coventry and Warwickshire Chamber of Commerce advise¹² that a fundamental barrier to business expansion and growth in the sub-region is the shortage of premises for offices, industry and warehousing. Although the Chamber of Commerce has not assessed the different type of land requirements in the same way as the main parties, the current situation is described as *"...particularly acute and, if not addressed in the very near future, will mean that plans for growth, change and investment by SMEs and major employers will be severely hampered."*
54. Furthermore, the lack of available strategic sites was identified as one of the material considerations in the Council's decision to support the principle of development in the Green Belt at Hams Hall (Ref PAP/2016/0399). Whilst it was put to me that the 20ha proposed for allocation at Hams Hall would satisfy this requirement, the draft Local Plan makes it clear that it does not consider regional needs for large sites (paragraph 7.48).

Summary

55. New evidence has emerged which points to the need for additional employment land in North Warwickshire over and above the adopted Core Strategy. The Council's November 2016 Board Report concerning proposed development in the Green Belt at Hams Hall describes this evidence as up-to-date, relevant and carries 'significant weight'. Although the Council has sought to argue that this need would be met by allocations in the emerging Local Plan, this is only at a draft stage and may be subject to change. I also find no persuasive evidence that either Tamworth's requirements, or the need for strategic sites has been adequately met (or if it has, that additional land has been identified). In this context the contribution that the scheme would make towards the provision of employment land weighs heavily in its favour.

Other Material Planning Considerations

Heritage Assets

56. Situated approximately 40-150m to the south-west of the appeal site are four Grade II listed buildings and structures. They include Freasley Hall, the garden walls and gate piers south of Freasley Hall, Sycamore Cottage and Yew House. In considering the proposal I have therefore had special regard to the desirability of preserving their setting.
57. The gardens and private curtilages of the properties are important attributes which form part of their setting. So does the wider settlement of Freasley and its surrounding fields and woodland, which contribute positively to their significance as designated heritage assets.
58. Although the proposal would result in the loss of agricultural land around Freasley, the indicative layout illustrates significant areas of parkland to the south-west corner of the site. Landscaped buffers measuring a minimum of 6m deep are also shown around the southern edge of the site, whilst wildflower grassland would retain the views of open fields from Freasley Hall. Combined with the degree of separation that would be maintained between Freasley and the nearest built development, I agree with the main parties that the setting of

¹² ID1

Freasley Hall, the garden walls and gate piers south of Freasley Hall, Sycamore Cottage and Yew House would be preserved.

Traffic Generation and Highway Safety

59. On the final day of the Inquiry it was put to me that the data contained in the Highways Statement of Common Ground was flawed. It was also claimed that the data had not been made available, and that the scheme would significantly increase traffic on Trinity Road, the roundabout at Junction 10 and on the A5. At the planning application stage local residents identified similar issues with traffic volumes, congestion and highway safety on Trinity Road in particular.
60. In terms of the reliability and availability of data the planning application was accompanied by a Transport Assessment and Framework Travel Plan which formed part of the appellant's submission. In response to this the County Council Highways Officer and Highways England concluded that the scheme would be acceptable subject to certain mitigation measures. This is reflected in the submitted Highways Statement of Common Ground.
61. Whilst I empathise with local residents and appreciate the difficulties in assimilating large technical documents, no contradictory evidence or objective analysis has been submitted to suggest that these conclusions are incorrect. Consequently, there is no robust information before me to reach a different view. Although traffic would undoubtedly increase on Trinity Road, the A5 and around Junction 10, the parties agree that that this would not be hazardous to road safety, or significantly undermine network capacity.
62. Concerns have also been raised that the lay-by on the west-bound side of the A5 would become used as a drop-off point for potential future employees causing traffic to back-up to the detriment of safety, that the footpath on this stretch of the A5 is too narrow, and that there is no bus stop.
63. In terms of the lay-by and its relationship to the site entrance and/or public right of way this would be a matter for the final detailed design to consider. Given the space available I am satisfied that the internal layout and landscaping could be configured in a way that would prevent the lay-by becoming used as a popular drop-off area for employees. Aside from the upgrades to the A5 proposed as part of the scheme there is also no request from the relevant Highways Authority to make any further changes to the footpath on the A5. Based on the evidence provided and observations at my site visit I find no reasons to disagree.
64. With regard to public transport provision there is currently a bus-stop on the east-bound side of the A5. As set out in the Highways Statement of Common Ground, it has been agreed that the appellant would either provide a new bus-stop on the southern, west-bound side of the road, or, fund the diversion of a service into the site with a suitable bus-stop and turning area in the design. Both options are included in the signed Section 106 Agreement and would negate the need for potential future employees to cross the A5 in order to access public transport provision.
65. In summary therefore, I find no conflict with the Framework which advocates that development should only be refused on transport grounds where the residual cumulative impacts are severe.

Character and Appearance of Freasley

66. Freasley is a small hamlet accessed from Trinity Road to the south-west of the appeal site. Given the scale of development proposed the approach to the hamlet from the M42 would change. Upon leaving the roundabout at Junction 10 and travelling south-west residents would be faced with new industrial development on either side of Trinity Road, rather than open fields.
67. However, this would only be for a relatively short distance. The indicative layout illustrates new parkland adjacent to Trinity Road around the south-west corner of the site providing a landscaped buffer to the hamlet. Generous separation between built development and Freasley would therefore remain.
68. Furthermore, there is no vehicular access through Freasley to the appeal site or Birch Coppice. As such, it has a materially different character to Trinity Road. When driving through the hamlet the combination of traditional buildings, mature trees and open spaces create an attractive, rural feel to the area. Due to the degree of separation from the appeal site and the indicative use of landscaping proposed this would be unaffected. The distinction between the character and appearance of Freasley and the industrial and commercial development around Junction 10 would be maintained.
69. Although some local residents fear that allowing the appeal would set a precedent for more development around Freasley, which in turn would affect its character and setting, each proposal must be considered on its own merits. Further development to the south of the site would require planning permission, and the cumulative effects would therefore be considered as part of any potential future planning application process.

Living Conditions of Neighbouring Resident

70. Nos. 17 and 18 Watling Street are situated to the north-east of the appeal site. Despite being the nearest residential properties to the proposal they would be separated from the nearest development by the landscaped buffer along the eastern boundary and the easement for the gas pipeline. An even larger area of open space would separate the nearest houses in Freasley. Subject to an appropriate lighting strategy, consideration of the site layout and controls over finished floor levels, the intervening landscaped areas would ensure that no unacceptable harm would occur to residents' outlook, privacy or levels of available sunlight. For the same reasons no harmful disturbance would occur from the headlights of HGVs within the site. Bearing in mind the amount of traffic already using the A5 and the change in vehicle numbers that would be perceptible to residents, headlights from additional vehicles on the highway network would not give rise to a noticeable, harmful level of disturbance either.
71. With regard to noise and vibration the appellant has conducted surveys at various locations across the site, including to the north-east corner nearest the A5 and the south-west corner closest to houses in Freasley. In summary the report found that the predicted noise levels from activities on the site would be below a level likely to cause sleep disturbance. It also concluded that the effects on nearby properties from plant noise would be negligible, and that traffic increases would generate "*barely perceptible changes in noise level on the surrounding network...*" As this is the only site specific assessment that has been carried out, I find no reasons to reach a different conclusion.

Human Rights

72. Representations at the planning application stage claim that the rights of the occupiers of Hall End Cottages, under the Human Rights Act 1998 (Article 8), would be violated should planning permission be granted. The claims are made on the grounds that occupiers would be affected by disturbed coal seams, from radon and argon gases, air pollution and illumination from security lights, vehicles and street lighting.
73. For the reasons given above I have already concluded that the proposed development would not cause unacceptable harm to the living conditions of the occupiers of neighbouring residential properties having regard to their outlook, privacy, available levels of sunlight, or from illumination, noise and vibration. Thus, the degree of interference would be insufficient to give rise to a violation of rights under Article 8.
74. With regard to coal seams the appellant has provided a Preliminary Geo-environmental Interpretative Report which confirms that the site is in a zone of influence from 6 seams at depths of between 170m and 320m, last worked in 1973. However, reference is made to confirmation from the Coal Authority that any ground movement from coal mining should have stopped, and that there is no record of gas emissions requiring action on site. The report also deals specifically with radon and confirms that protective measures are not considered necessary as the site is located in a lower-intermediate probability radon area. In addition, no evidence has been provided to indicate a harmful presence of argon, and given the degree of separation between the nearest buildings and residential properties, there is nothing to suggest that any structural damage would occur as a result of building works.
75. The potential for air pollution and dust has also been considered by the appellant. The submitted assessment establishes that air quality in the area is currently acceptable based on objectives in *The Air Quality Strategy for England, Scotland, Wales and Northern Ireland* (DEFRA, 2007). Against this baseline consideration has been given to pollutants associated with traffic (nitrogen dioxide and fine particulate matter) and the construction process. In summary the report concludes that air quality at existing properties nearby would be affected, but that the changes would represent imperceptible increases in the concentrations of nitrogen dioxide and fine particulate matter. The impacts would therefore be negligible.
76. The Environmental Statement submitted with the planning application also recognises that construction works would have the potential to create dust. The local community may therefore experience occasional, short-term adverse impacts. Nevertheless, this could be mitigated by adhering to a management plan which would limit the short-term effects of construction. Such measures could be controlled and enforced through the use of a suitably worded planning condition.
77. Based on the information provided I therefore find no evidence to suggest that there would be any significant harm caused from structural damage, the presence of coal seams, gases or from air pollution. Consequently, the Human Rights of the occupiers of 15 and 17 Hall End Cottages would not be violated.

Biodiversity and Protected Species

78. The appeal site does not contain any statutory designated sites of nature conservation interest. The nearest is the Kettle Brook Local Nature Reserve (LNR), approximately 0.3km away.
79. As the LNR is on the opposite side of the motorway the proposal would have no direct impact on its wetland habitat, wild flower meadows and woodland. The use of measures to stop any petrochemical contamination of surface water from machinery or stored fuels could also be controlled and enforced by a suitably worded planning condition. This would prevent contaminated surface water discharging into Kettle Brook and reaching the LNR.
80. With regard to protected species the appellant's surveys found no evidence of bats or great crested newts (GCN) on the site. Although a GCN breeding pond was identified approximately 200m to the south-west it would be unaffected by the development. Based on the illustrative plans the nearest built development would also be roughly 550m from the pond, and the arable habitat of the site is only of very limited value to GCN in their terrestrial phase. Thus, no offence would be likely to occur.
81. In terms of other species three badger setts were recorded within the site boundary. Despite seeking to retain the setts, the Environmental Statement found that it would be necessary to temporarily close Sett 3 given its proximity to new buildings. Whilst the report does not suggest that such practices would be inappropriate, I am mindful that the application was submitted in outline. Given the size of the site there are no reasons to indicate that development could not come forward without damaging the sett. Subject to an appropriate landscaping scheme the proposal would provide enhanced foraging resources for Badgers and result in a net gain to their habitat.

Use of Agricultural Land

82. The appeal site comprises Grades 2 and 3a agricultural land, defined as 'the best and most versatile'. I have therefore borne in mind paragraph 112 of the Framework. It states that consideration must be given to the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, decision-makers should seek to use areas of poorer quality land in preference to that of a higher quality.
83. In reaching a balanced view this harm must be considered in the context of local area and the other benefits that the scheme would deliver. In this case the Council acknowledges that there is a need for additional employment, and the draft allocations in the emerging Local Plan include the use of agricultural, and even some Green Belt land. A substantial swathe of agricultural land would also be retained to the north of the site providing a meaningful gap between Dordon and Tamworth. Furthermore, no evidence has been provided to suggest that the scheme would have any adverse impact on the wider availability of the best and most versatile agricultural land in the area. The loss of the appeal site to agricultural uses must therefore be considered in this context, and the wider socio-economic benefits that it would provide.

Public Right of Way Network and Other Considerations

84. Public footpaths AE55 and AE52 cross the appeal site. Although the indicative layout shows the diversion of AE55, the County Council's Rights of Way Officer has not objected to the scheme. Based on the evidence provided I agree that an adequate route could be maintained through the appeal site which would not prejudice users of the local public right of way network.
85. Finally, I have also taken into account concerns that the proposal would devalue properties and lead to vandalism, crime and anti-social behaviour. However, no evidence has been provided to substantiate these comments. As a result, I have not given them any significant weight in reaching my decision.

Planning Obligations

86. The submitted Section 106 Agreement includes a commitment to either provide a new bus-stop on the A5, or, include a stop within the site and contribute to the diversion of the 766/767 services as required. A training and skills contribution of £60,000 is also included. Alongside this is a Unilateral Undertaking which makes provision for landscaping works to the east of the site, a commitment to comply with the Considerate Constructors Scheme, and to promote training for employees in the construction phase.
87. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations states that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind.
88. Policy TPT3 of the *North Warwickshire Local Plan* states that development will not be permitted unless it maximises practicable opportunities for the use of sustainable modes of transport, including travel by bus. One of the Framework's Core Planning Principles also advocates that planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable. The provision of an additional bus stop on the A5, or contributions to divert existing services to a new stop within the site are therefore necessary to make the development acceptable in planning terms, and are directly related. They are also fairly and reasonably related in scale and kind to the size and scale of development proposed.
89. Core Strategy Policy NW22 also states that planning obligations will be used to secure four key priorities, one of which is the provision of training and up-skilling opportunities. The inclusion of a contribution in the Section 106 Agreement towards a programme of careers advice and engagement aimed at people not in education, employment or training is therefore necessary to make the development acceptable in planning terms. It is also directly related to the development proposed and is fairly and reasonably related in scale and kind.
90. In terms of the Unilateral Undertaking landscaping to the east is necessary to make the development acceptable in planning terms by maintaining separation to Birch Coppice. The promotion of localised training opportunities is also necessary in accordance with Core Strategy Policy NW22, and to mitigate the effects of building work on local residents' living conditions adhering to a considerate constructors' scheme is required. Moreover, all the provisions are directly related, and fairly and reasonably related in scale and kind.

91. In summary therefore, the provisions in both the Section 106 Agreement and Unilateral Undertaking meet the requirements of the CIL Regulations, and I have taken them into account in reaching my decision.

Conclusion and Balancing Exercise

92. The proposal conflicts with Core Strategy Policy NW2 which limits development outside Category 1-4 settlements. It is also contrary to Core Strategy Policy NW9 which directs employment uses to settlements appropriate to their size and position in the hierarchy, and would result in the loss of an area of best and most versatile agricultural land.

93. However, the Framework confirms that decisions must be taken in accordance with the development plan unless material considerations indicate otherwise. In this case there are several material considerations which justify departing from Core Strategy Policies NW2 and NW19.

94. Firstly, new evidence has emerged since adoption of the Core Strategy which points to a need for additional employment land. Although it is suggested that there are other, more suitable sites available to meet this need, consultation on the draft allocations is still on-going. Moreover, the emerging plan does not intend to meet wider than local needs for large sites, and neighbouring Tamworth has a requirement of 14ha which it cannot provide. This was identified after planning permission was granted at Centurion Park and the MoU has not been signed, with Lichfield District Council only committing to investigate providing their 'share'.

95. In resolving to support the approval of planning permission for new development in the Green Belt at Hams Hall the Council described the latest evidence concerning employment land as up-to-date, relevant and carrying significant weight. This need exists now and is described by the local Chamber of Commerce as 'particularly acute'. Situated close to Tamworth and the Birmingham Intermodal Freight Terminal (BIFT) the appeal scheme would be ideally placed to make a significant contribution to meeting this need, and the indicative mix of building sizes would offer employment space for a range of local and regional operators.

96. Secondly, the principal reason why the appeal site has not been included as an option to help meet this need is due to its location within a strategic gap separating Polesworth and Dordon from Tamworth. However, in response to the Council's concerns the appellant has provided a qualitative and quantitative assessment on the effect of development within this gap, in addition to a LVIA submitted as part of an Environmental Statement.

97. Based on the evidence provided I agree that the retention of the farmland to the north of the A5 is critical, and by reason of its topography and open character this area of land would continue to provide a meaningful gap between Polesworth and Dordon and Tamworth. Because Dordon is a town characterised by twentieth century housing and is located on higher land predominantly to the north of the A5, subject to an appropriate design at the reserved matters stage its separate identity would also be respected. As a result, there is no conflict with Core Strategy Policy NW19, which is the only adopted development plan policy relating to the 'gap'.

98. Thirdly, paragraphs 18 and 19 of the Framework confirm that the Government is committed to securing economic growth in order to create jobs and prosperity, and ensuring that the planning system does everything it can to support sustainable economic growth. With this in mind the proposal would generate between roughly 1,170 and approximately 1,550 FTE jobs, with around 290 temporary roles provided in the construction process. These jobs would be created in an area where within 5km of the appeal site 9 Lower Super Output Areas are ranked in the lowest 20% nationally against the Index of Multiple Deprivation. Additional jobs would also be created as a result of the positive knock-on effect from the proposal, estimated to peak at around 1,650. In total the net impact on the local economy would be in the region of £70m-£90m, and the socio-economic benefits of the scheme would be substantial.
99. When considered against the Framework taken as a whole the proposal would therefore resonate with the principles of sustainable development. It would contribute towards building a strong, responsive and competitive economy whilst supporting growth and innovation in an area where demand is high. Although there would be some loss of countryside that separates Polesworth and Dordon from Tamworth, the evidence provided demonstrates how the scheme has taken account of the different roles and character of the different areas, and would maintain a meaningful gap between the two towns. In environmental terms it would also be consistent with one of the Framework's Core Planning Principles which seeks to ensure that planning actively manages patterns of growth to make the fullest possible use of public transport, walking and cycling, and focuses significant development in locations which are or can be made sustainable.
100. When taking all these factors into account I consider that the other material considerations are of such significance that they warrant a decision not in accordance with Core Strategy Policies NW2 and NW9. The proposal would represent a sustainable form of development as defined by the Framework, and combined the benefits of allowing the appeal would be substantial. Based on the evidence provided in this particular case these factors justify granting planning permission.

Overall Conclusion and Conditions

101. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.
102. In order to define the permission, and because the application was submitted in outline it is necessary to list the reserved matters for which approval must be sought, and define any relevant phases. Considering the scale of the development, and the fact that the design of individual plots may progress at different rates, I agree that it is necessary to require submission of the first reserved matters within 2 years, and all reserved matters within 5 years. A condition is also required to ensure that development takes place within 3 years of the approval of the final reserved matters.
103. To ensure that the development is carried out as approved it is necessary to list the relevant plans. However, this is only necessary in relation to the access as the remaining details are indicative. In the interests of highway safety, and because there are other openings along Trinity Road a condition is also required to specify that access for motor vehicle must only be taken from the locations identified on plan Ref 1148-12/H.

104. In the interests of highway safety and the efficient operation of the highway network conditions are necessary to restrict the total amount of floorspace permitted as part of the final design, and the amount of floorspace in Use Classes B1(c) and B2 (industrial processes). To define the permission it is also necessary to refer to the parameters plan for subsequent reserved matters submissions to follow.
105. The interests of preserving any potential archaeological remains necessitate a condition requiring the submission, approval and implementation of a written scheme of investigation (WSI), and any fieldwork as necessary. As discussed at the Inquiry, in order to be precise I have amended the proposed wording to require the WSI to be submitted and approved in writing prior to the commencement of development. To avoid any uncertainty it is also necessary to refer to fieldwork 'as required', and specify that the written report is submitted in accordance with the agreed programme.
106. The same reasons also necessitate a condition requiring the approval of a mitigation strategy as required. Given the nature of buried remains the written scheme of investigation and mitigation strategy would both be required prior to the commencement of development. Ensuring that the investigations and mitigation strategies are adequately completed, along with any post-excavation analysis also necessitates the imposition of condition no.11.
107. Although the parties suggest that a condition is required to restrict work starting until details of landscaping, boundary treatments and drainage along the M42 and A5 frontages are approved, landscaping is a reserved matter. Issues relating to drainage are also addressed by proposed condition no.26.
108. To protect the living conditions of neighbouring residents and in the interests of highway safety a construction management plan is required. However, as discussed at the Inquiry protecting features of 'ecological interest' is unclear and is unnecessary given the need to adhere to mitigation measures referred to in Condition 16. Defining 'extraneous material' is also imprecise and I have therefore reworded the condition to require the construction management plan to include wheel washing facilities. This is more precise and allows the local planning authority to ensure that appropriate practices are still put in place.
109. In the in interests of the character and appearance of the site and surrounding area a condition is required relating to the approval of site levels. To be more precise I have reworded the suggested condition by referring to the finished floor levels of the proposed buildings, and not just 'ground levels'. For the same reasons a condition relating to the approval of external lighting is also necessary. Given that site levels and lighting are directly related to the construction of buildings, roads and public areas their approval is required before any development starts on site.
110. The interests of protecting biodiversity and ecology require the approval and implementation of a Habitat Creation, Enhancement and Management Plan and Programme. In order to provide adequate drainage and reduce the risk of flooding the approval of details relating to foul and surface water management are also necessary, along with their implementation. Because both requirements relate to the construction of the development their approval is necessary prior to the commencement of development.

111. For reasons of highway safety and providing adequate access it is necessary to ensure that the proposed signalised junction, Non-Motorised User Link connection, pedestrian and cycle paths, and means of accessing individual plots are provided prior to the occupation of the development. The interests of promoting more sustainable modes of transport also require approval of a travel plan. However, in the absence of any details relating to the current 'Highway Authority specifications' I have reworded proposed condition no.12 to require the details to be first submitted to and approved in writing by the local planning authority. This is more precise and still allows for relevant standards to be met. I have also reworded proposed condition no.20 to remove the ability to amend the proposed link through submission of subsequent designs, which would not have been subject to the same consultation as the details accompanying the appeal scheme.
112. In the interests of the living conditions of neighbouring residents it is necessary to restrict the use of external sound amplification equipment unless the details have been first submitted to and approved in writing by the local planning authority.
113. In the interests of the character and appearance of the site and surrounding area it is necessary to ensure that all landscaped areas are appropriately managed. For the same reasons a condition is required to ensure that any trees or plants which, within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise approved in writing by the local planning authority. This flexibility allows for other suitable alternative species to be used in the event that one fails.
114. Condition no.26 is necessary in the interests preventing the spread of unexpected contamination during construction. In order to be more effective, precise and enforceable I have reworded the suggested condition by requiring the suspension of development on the part of the site affected, and, specifying that remediation and verification schemes are carried out before the development or relevant phase of development is resumed or continued.
115. Finally, in the interests of safety a condition is required to ensure that adequate facilities for fire fighting are made available, although I find no reasons why the details should be provided prior to the commencement of development. I have therefore reworded the suggested condition by requiring water supplies and fire hydrants for fire fighting purposes to be in place for each phase prior to first occupation.

Matthew Birkinshaw

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Isabella Tafur of Counsel
She called

Dorothy Barratt BA(Hons), DUPI, MRTPI
Forward Planning & Economic Strategy Manager,
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FOR THE APPELLANT:

Paul G Tucker of
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He called

Andrew Williams BA(Hons), DipLA, DipUD, CMLI
Director, Define
Peter Leaver BA MRICS
Director, JLL
Robert Barnes MA BA(Hons) MRTPI
Director, Planning Prospects Ltd.

INTERESTED PERSONS:

Mr Pritchard

Local Resident

INQUIRY DOCUMENTS

- ID1 Representation from Coventry and Warwickshire Chamber of Commerce
- ID2 Plan of Manor Park, Coleshill, Warwickshire
- ID3 Representation to planning application PAP/2016/0399 on behalf of St Modwen Developments Ltd
- ID4 Plan Ref CT-06-133 – Proposed HS2 route at Coleshill Manor Office Campus
- ID5 Plan Title – Coleshill Manor Consent – Impact by HS2
- ID6 Plan Title – Additional Area owned by IM and unaffected by HS2
- ID7 GL Hearn's Rebuttal Note to 'Note on GL Hearn Addendum Report to 2013 ELR' by Regeneris, September 2016
- ID8 Statement of Common Ground concerning Figures for Employment Land Need and Supply
- ID9 Opening Submissions on behalf of the Appellant
- ID10 Opening Statement on behalf of North Warwickshire Borough Council
- ID11 Aerial Photographs of the M42 Junction 10 and area around Dordon
- ID12 Unsigned Memorandum of Understanding relating to the delivery of housing and Employment arising from Tamworth Borough Council
- ID13 Unsigned Memorandum of Understanding relating to the delivery of a Proportion of the projected unmet housing need arising from the Greater Birmingham & Black Country Housing Market Area in Birmingham City Council and North Warwickshire Borough Council
- ID14 Letter from Jeff Brown regarding Rush Lane, Dosthill, dated 19 March 2013
- ID15 Undated email from Nick Ireland, GL Hearn
- ID16 Site Visit Itinerary
- ID17 Response to Rebuttal Note, Regeneris

- ID18 Media Release
- ID19 Signed Memorandum of Understanding relating to the delivery of a Proportion of the projected unmet housing need arising from the Greater Birmingham & Black Country Housing Market Area in Birmingham City Council and North Warwickshire Borough Council
- ID20 Email from Patrick Jervis, Lichfield District Council
- ID21 Letter from Brandon Lewis MP, dated 18 March 2015
- ID22 Allotment disposal guidance: Safeguards and alternatives, DCLG, January 2014
- ID23 Meeting Minutes and email correspondence between Tamworth Borough Council, North Warwickshire Borough Council and Lichfield District Council
- ID24 Letter and enclosures on behalf of Hodgetts Estates, dated 21 September 2016
- ID25 Composite plan showing land in IM ownership around Coleshill Manor
- ID26 Email from Peter Leaver to Dorothy Barratt concerning the supply of employment land
- ID27 Signed and dated Section 106 Agreement
- ID28 Signed and dated Unilateral Undertaking
- ID29 Closing Submissions on behalf of North Warwickshire Borough Council
- ID30 List of Abbreviations
- ID31 Closing Submissions on behalf of the Appellant

Conditions Schedule

General Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) If the development hereby permitted is to be constructed in more than one phase, details of the proposed phases of construction shall be submitted to the local planning authority for approval prior to, or at the same time as the first application for approval of the reserved matters. Development shall be carried out in accordance with the approved phasing details, or such other phasing details as shall subsequently be submitted to and approved in writing by the local planning authority.
- 3) The first application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission. All applications for approval of the reserved matters shall be made to the local planning authority not later than 5 years from the date of this permission.
- 4) The development hereby permitted shall take place not later than 3 years from the date of approval of the last of the reserved matters to be approved.
- 5) Insofar as it relates to the access, the development hereby permitted shall be carried out in accordance with the following approved plans: Ref DE128A/007, 1148-12/H and 1148-13/A.
- 6) Access for motor vehicles to the development hereby permitted from the public highway on Trinity Road shall not be made other than at the positions identified on approved drawing Ref 1148-12/H.
- 7) The development hereby permitted shall provide no more than 80,000m² of floorspace (GIA) for use within Use Class B1(c), Use Class B2 or Use Class B8 of the Town and Country Planning (Use Classes) Order (as amended).
- 8) No more than 20,000m² of floorspace (GIA) within the development hereby permitted shall be used for uses falling within Use Class B1 (c) or Use Class B2 of the Town and Country Planning (Use Classes) Order (as amended).
- 9) The reserved matters shall be designed within the parameters contained in plan Ref DE128A_006.

Pre-Commencement Conditions

- 10) No development shall take place until a Written Scheme of Investigation (WSI) for a programme of archaeological evaluative work across the site, including phasing where appropriate, has been submitted to and approved in writing by the local planning authority. The programme of archaeological evaluative work and any associated post-excavation analysis, report production and archive deposition detailed within the approved WSI shall be carried out as required in accordance with a programme specified in the WSI. A written report with details of the

results of the fieldwork undertaken shall also be submitted to the local planning authority in accordance with the agreed programme. The findings from the archaeological evaluative work shall inform each reserved matters submission.

- 11) Where necessary, and as informed by the archaeological evaluative work undertaken in the WSI, no development shall take place until an Archaeological Mitigation Strategy (AMS) has been submitted to and approved in writing by the local planning authority. This shall detail the strategy devised, including phasing where appropriate, to mitigate the archaeological impact of the proposed development; either through further archaeological fieldwork, for which a further WSI may be required, and/or through the preservation in situ of any archaeological deposits. The AMS shall inform each reserved matters submission.
- 12) No development within any phase shall take place until the fieldwork relevant to that phase detailed in the WSI and AMS has been completed in accordance with the programme(s) specified therein. Any post-excavation analysis, publication of results and archive deposition shall be undertaken in accordance with the approved WSI and AMS.
- 13) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan has been submitted to, and approved in writing by the local planning authority for the relevant phase. The Plan shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) the routing for vehicles accessing the site associated with the construction of the development and signage to identify the route;
 - iii) the manoeuvring of vehicles within the site;
 - iv) loading and unloading of plant and materials used in constructing the development, including top soil;
 - v) the location of site compounds;
 - vi) storage of plant and materials;
 - vii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - viii) wheel washing facilities;
 - ix) measures to control the emission of dust and dirt during construction;
 - x) measures to control and mitigate disturbance from noise;
 - xi) a scheme for recycling/disposing of waste resulting from construction works;
 - xii) any on-site lighting as required during construction; and
 - xiii) measures to protect existing trees and hedgerows proposed for retention;
 - xiv) delivery, demolition and construction working hours; and
 - xv) means by which the terms will be monitored, details of a contact person and the procedure for reporting and resolving complaints.

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

- 14) No development within any phase shall take place until full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 15) No development within any phase shall take place until details of all external lighting relevant to that phase has been submitted to and approved in writing by the local planning authority. The lighting shall be installed, operated and maintained in accordance with the approved details.
- 16) No development within any phase shall take place until a Habitat Creation, Enhancement and Management Plan and Programme for that phase has been submitted to and approved in writing by the local planning authority. This should be informed by the mitigation measures set out in Chapter 9 ("Ecology and Nature Conservation") of the Environmental Statement (Ref 23809/A5/ES2014, dated December 2014) submitted with the planning application. The approved Plan shall be implemented in full in accordance with the approved Programme.
- 17) No development within any phase shall take place until drainage plans for the disposal of surface water and foul sewage for that phase have been submitted to and approved in writing by the local planning authority. The plans shall incorporate principles of Sustainable Urban Drainage Systems (SUDS) and include details of surface water run-off attenuation measures and management. The plans shall be implemented as approved before the relevant phase of development is first brought into use.

Pre-Occupation Conditions

- 18) No phase of the development hereby permitted shall be occupied until the proposed signalised junction shown on plan Ref 1148-12/H has been constructed in accordance with details first submitted to and approved in writing by the local planning authority.
- 19) No phase of the development hereby permitted to the east of Trinity Road shall be occupied until the proposed Non-Motorised User Link connection from the site to the A5 trunk road has been constructed in accordance with details first submitted to and approved in writing by the local planning authority in consultation with the highway authority for the strategic road network. The detailed design shall be based on submitted plan Ref 1148-20 Revision C. Thereafter it shall be retained in its approved form.
- 20) No phase of the development hereby permitted shall be occupied until the pedestrian and cycleway works shown on plan Ref 1148-13/A and 1148-12/H have been constructed in accordance with details first submitted to and approved in writing by the local planning authority.
- 21) No phase of the development hereby permitted shall be occupied until the roads serving that phase, including footways, private drives, means of accessing plots, car parking and manoeuvring areas have been laid out and substantially constructed in accordance with details first submitted to and approved in writing by the local planning authority. Areas for the parking and manoeuvring of vehicles shall be retained for their intended use at all times thereafter.

- 22) None of the buildings hereby permitted shall be occupied until a Sustainable Travel Plan (STP) relevant to the occupier of that building has been submitted to and approved in writing by the local planning authority. The STP shall be based on the Framework Travel Plan (Phil Jones Associates, Project Code 1148, dated December 2014). The STP shall then be implemented as approved.
- 23) No external sound amplification equipment shall be installed as part of the development hereby permitted unless in accordance with details first submitted to and approved in writing by the local planning authority.
- 24) No phase of the development hereby permitted shall be occupied until a Landscape and Open Space Management Plan for that phase, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped and open space areas, has been submitted to and approved in writing by the local planning authority. The Plan shall include details of the mechanisms to secure its implementation and shall be carried out as approved.
- 25) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with a programme first submitted to and approved in writing by the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise approved in writing by the local planning authority.
- 26) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued.
- 27) No phase of the development hereby permitted shall be occupied until adequate water supplies and fire hydrants necessary for fire fighting purposes relevant to each phase have been provided in accordance with details first submitted to and approved in writing by the local planning authority.

Appeal Decision

Inquiry held on 8, 9 and 10 November 2016

Site visit made on 10 November 2016

by **R W Allen B.Sc PGDip MRTPI**

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

Decision date: 6 January 2017

Appeal Ref: APP/R3705/W/16/3149572

Land North of Nuthurst Crescent, Ansley, Warwickshire CV10 9PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr C R Muller (Muller Property Group) against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2015/0370, dated 16 June 2015, was refused by notice dated 10 November 2015.
 - The proposal is development of up to 79 residential units and associated access.
-

Decision

1. The appeal is allowed and outline planning permission is granted for development of up to 79 residential units and associated access at Land North of Nuthurst Crescent, Ansley, Warwickshire CV10 9PJ in accordance with the terms of the application, Ref PAP/2015/0370, dated 16 June 2015, subject to the conditions set out in the Schedule of Conditions at the end of this decision.

Application for Costs

2. At the Inquiry an application for costs was made by Mr C R Muller (Muller Property Group) against North Warwickshire Borough Council. This application is the subject of a separate decision.

Procedural Matter

3. The appeal proposal is in outline form, with all matters reserved for subsequent approval with the exception of access. Any other details shown which would be a reserved matter, such as the layout, I shall treat as being indicative only. An obligation under Section 106 of the Planning Act is before me dated 7 November 2016 which makes provisions for local facilities and infrastructure, which I discuss further below.

Main Issues

4. As the Statement of Common Ground deals with all other matters, the main issues are:
 - The effect of the proposed development on the character and appearance of the village of Ansley; and
 - Whether the Council is able to demonstrate that it has a five year supply of deliverable housing sites.
-

Reasons

Character and appearance

5. The appeal site is an enclosed field located adjacent to the northern settlement edge of the village of Ansley. From Tunnel Road the site itself is obscured by boundary trees and hedges but it is visible from Nuthurst Crescent and the Public Right of Way (PRoW) which runs alongside the southern boundary of the site, and from here I find it to be an attractive field which positively contributes to the overall rural character and appearance of the area. The appeal site is surrounded by expansive open countryside to the north and east.
6. The proposed development would, in relative terms, amount to a significant increase in the quantum of dwellings for Ansley. However because of its reasonably enclosed nature, the proposed development would not have any significant effects on the Church End to Corley-Arden Hills and Valleys Landscape Character Area (LCA), in which the appeal site lies. From what I observed at my site visit, the substantial visual effects from the scheme would be experienced only when seen by receptors adjacent to the unenclosed southern boundary and the PRoW, so the visual harm would be localised and limited. Contrary to the Council's assertion, I did not observe any particular noteworthy facet of the allotment gardens when seen from Tunnel Road. As such I am satisfied that all medium and long-range views of the development would not have significantly harmful visual effects.
7. The Council's main concerns however centre on the fact that the proposed development would fail to respect the settlement morphology of Ansley which it says is defined by a historic pattern of linear growth along Birmingham Road, and its resultant staggered and irregular eastern village edge. The morphology of the settlement is not disputed by the appellant. I observed this to be particularly perceptible and understood on the western side of Birmingham Road, where a single row of road frontage exists with few buildings behind, and where views of the open countryside are apparent and visible through the gaps between the properties.
8. The eastern side of Ansley is notably different in character, as much but not all of the defined linear urban grain has been enclosed at the rear by extensions to the village with residential development in Nuthurst Crescent, Croft Mead, Malthouse Close, Ludford Close and St Lawrence Road. Although the two are easily identifiable and distinguishable from one another, the newer dwellings nonetheless now form an integral part Ansley's overall character, and have changed the original linear pattern of the village.
9. The proposed development would not be visible or apparent when travelling along Birmingham Road, such that the original linear pattern would remain unaffected and the origins of the village morphology would not be lost. Because of the current layout of Ansley, there would to some extent be a concentration of housing at the south eastern end of the village as a result of the proposed development. However, the existing residential development in St Lawrence Road, and the forthcoming units to be constructed on a plot of land identified at the Inquiry as 'ANS4', both of which lie at the northern end, would ensure Ansley would not be notably or unduly unbalanced.
10. The proposed development would not extend the built form of the village any further into open countryside beyond the existing development in St Lawrence

Road. While the eastern settlement edge would effectively be redrawn as a result of the scheme, the irregular and staggered edge would evidently remain albeit in a different form. Thus one of the key characteristics of the village would not be compromised.

11. The loss of open countryside land and what I have found to be an attractive field would amount to harm to the character of the area. Policy NW12 of the North Warwickshire Core Strategy (Core Strategy) is predominately a design policy and such matters are not before me. Nevertheless the policy states that all development proposals must demonstrate a high quality of sustainable design that positively improves the individual settlement's character, appearance and quality of an area. The policy is relevant to the determination of the appeal and there would be some conflict with it for this reason.
12. However, its enclosed nature is such that the loss would not be widely felt. I am satisfied for the reasons set out above that the proposed development itself would not cause a significant level harm to the character and appearance of the village overall, or the landscape character or visual receptors. The overall harm would be moderate to which I attach some weight to in my decision.

Five year housing land supply

13. Paragraph 47 of the Framework requires local planning authorities to ensure that their local plans meet in full the objectively assessed needs (OAN) in their housing market area, and to identify and update sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer of 5 or 20%.
14. Core Strategy policy NW4 states that within the plan period (2011-2029) a net amount of 3650 dwellings will be built, equating to 203 dwellings per annum (dpa). This requirement is underpinned by the Strategic Housing Market Assessment (SHMA) from 2013, and which also includes a provision of 500 additional dwellings to meet the needs arising from the neighbouring authority of Tamworth. However, the Council's five year housing calculations for the appeal do not include the Tamworth provision, and I find no evidence before me, particularly having regard to the Inspector's report into the Core Strategy, which supports this approach. I find the Council's argument that it can accordingly demonstrate a 9.4 years housing supply is accordingly unsound. That said, the Council maintains that, even adopting the 203 dpa requirement, it can still demonstrate a very healthy housing supply.
15. The main parties dispute the appropriate housing requirement. This is because a more recent SHMA from 2015 for the Coventry and Warwickshire housing market area (CWHMA) 2011-2031 shows that the Council's OAN has increased to 4740, which includes allowance for an economic uplift in both the CWHMA as well as the neighbouring Greater Birmingham, Solihull and Black Country housing market area (GBS&BCHMA). Furthermore, the Council has agreed to accept an additional 540 dwellings redistributed from the CWHMA, thus its total housing requirement is 5280. This new requirement is set out in policy LP6 of the emerging North Warwickshire Local Plan (emerging Local Plan), and the Council cites no impediment to meeting this requirement in full.
16. The Council says that because the 2015 SHMA, and indeed the emerging Local Plan, have not yet been subjected to external examination, it should be afforded little weight. I understand why the Council has formed this view, as

indeed it is entirely plausible that the evidence underpinning the 2015 SHMA will be tested when it is subjected to the development plan examination. However, I find nothing before me which doubts the inevitability that the Council's housing need will increase from that advocated in Core Strategy policy NW4. What remains to be tested is the amount of this increase. However on the evidence before me, I find it likely that the increase would be considerable. While the Core Strategy is just two years into adoption, and I acknowledge the Framework's requirement in paragraph 17 that planning should be genuinely plan-led, I nevertheless find that the 2015 SHMA is significant new evidence irrespective of the age of the development plan, and that it should form the basis of calculating the housing requirement.

17. Emerging Local Plan policy LP6 also makes an additional provision for 3790 dwellings from the GBS&BCHMA. Combined, the policy states that 9070 dwellings will be required in the emerging Local Plan period. However as the emerging policy states, this element of housing provision is only an aspiration, and the Council states that this is predicated on the need for infrastructure provisions being delivered. No evidence is before me as to what additional or new infrastructure would be needed or indeed whether it would be realistic to consider that it could be delivered. Whether the Council can accommodate these additional dwellings is therefore unproven and considerably doubtful at this stage and prior to the development plan examination, and I do not find it appropriate to consider 9070 dwellings as the housing requirement. The impending adoption of the Birmingham Development Plan does not alter my findings on this matter.
18. It was established at the Inquiry that, basing the housing requirement on 5280, the Council's five year housing requirement including the addition of shortfall in line with the Sedgefield approach, and a 20% buffer, is 2358 dwellings to the year 2020/21, equating to 472 dpa. The main parties agree that assessed against such a requirement, the Council can only demonstrate a 4.9 years housing supply assuming all of its projected and forecasts sites, amounting to 2331 were to come forward in the next five years. However, the appellant disputes some of these sites which he says reduces housing supply to 2.8 years.
19. I find that the majority of the questioned sites would, individually, not deliver large numbers of dwellings on them. Even accounting for the issues which are currently preventing those sites from coming forward now, I heard little persuasive evidence to suggest that their delivery would be unlikely or insurmountable in the next five years. As such I am prepared to give the benefit of the doubt to the Council. However, I heard at the Inquiry that two sites where considerable numbers of housing are forecast in the next five years, identified as '*Holly Lane, Atherstone*' and '*Orchard Colliery*' for 300 and 385 units respectively, either do not benefit from all necessary planning permissions; do not have developers on board; or require the delivery of improved or new infrastructure. The Council was unable to confirm whether both sites are at a stage where their delivery would be imminent and at the rate necessary to achieve the forecasts set in the five year supply. I must therefore cast some doubt that these sites will deliver at the rate the Council suggests, and I have accepted the appellant's likely and considerably reduced forecasts for the said sites.

20. I therefore find, on the evidence before me and deducting the above sites from the forecast, that the Council's five year housing supply figure is closer to 3.5 years supply. I have not included a lapse or non-implementation rate in this calculation. While many local authorities do apply such a figure, there is no policy or guidance which requires it and the evidence before me is not sufficient to persuade me that one should be applied. In any event, I note the Council has not made any provision for windfall sites in its five year housing figures. If I applied both, it would have little overall bearing on my findings on the absence of a five year housing supply.
21. In reaching my conclusion on this matter, I acknowledge the chain of events prior to the Inquiry and the late questioning of supply sites by the appellant and its reasons for doing so, and the Council's decision to respond orally to this at the Inquiry in order to 'keep the show on the road'. However, on the two sites I have found doubtful to be delivered in the coming five years, the Council did not indicate a need for additional time to produce rebuttal evidence or that written submissions on these sites would have added anything further over the oral evidence the Council gave. Even if I were to accept the written explanations from the Council, it would not alter the agreed position between the parties that a five year housing supply could not be demonstrated.
22. I have also had regard to the two appeal decisions advanced by the Council as relevant to the appeal before me (*Ref: APP/R3705/W/16/3150188 for Delves Farm, Boulters Lane, Wood End, and APP/R3705/W/16/3150719 at 78 Tamworth Road, Polesworth*). In both cases, the Inspectors were tasked with examining the effect of the proposed development on the character and appearance of their respective areas. Neither Inspector was asked to determine the Council's five year housing land supply position nor the balancing exercise required thereafter. I can draw little direct comparisons from these decisions. In any event, I have made my decision on the evidence before me.
23. 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. The Council accepts that in the event that a five year supply of housing cannot be demonstrated, Core Strategy policies NW1, NW2, NW4 and NW5 are relevant housing policies and in such circumstances are out-of-date.
24. I have nonetheless afforded moderate weight to them in my decision particularly Core Strategy policies NW2 and NW5, which seek to promote sustainable growth via a settlement hierarchy, which I find consistent with Framework's approach to sustainable development. Core Strategy policy NW2 states that Ansley is a 'Category 4' settlement, and Core Strategy policy NW5 identifies a minimum of 40 dwellings for the village which I am told has already been exceeded and on sites of no more than 10 units. As I have set out above, the proposal would result in a sizeable increase in residential dwellings in the village, and significantly more than envisaged in Core Strategy policy NW5. However, these figures are a minimum requirement, and should be viewed in the context of my findings that the council cannot demonstrate a five year supply of housing land and by the level of harm it would cause, which I have already identified as being moderate.

Other Matters

25. Concerns have been raised in respect of the effect of the proposed development on the local highway network particularly from the location of the access point onto the busy Tunnel Road, and whether this would undermine highway safety for oncoming traffic. I observed at my site visit that Tunnel Road was moderately busy and there was a steady stream of fast travelling cars in both directions. As I discuss below, the appellant will be obligated to pay for the extension of the 30 mph zone to include the access to the appeal site. With that in mind, no evidence is before me to demonstrate that any material harm would occur from the proposed development and its access, or that the junction could not be adequately designed to ensure sight lines would be effective to ensure adequate egress. Neither the Council nor Warwickshire County Council as the highway authority has raised this as an issue.
26. Concerns have also been raised as to the effect of the proposed development on existing infrastructure, and that there is little in the way of shops or services to meet additional dwellings. My attention has been drawn to additional development in the neighbouring borough, the boundary of which adjoins the eastern and northern edges of the appeal site. However, insufficient evidence is before me to suggest that the proposed development would place an undue burden on services so I can afford little weight to this in my decision.

Planning Obligations

27. The Council seeks a financial contribution of £6000 towards a traffic regulation order to extend the 30 mph speed limit further along Tunnel Road to include the access from the proposed development. The Council also seeks a provision for 40% affordable housing from the scheme.
28. Paragraph 204 of the Framework says requests for planning obligations must meet three tests, which are: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably relate in scale and kind to the development. Paragraph 50 of the Framework seeks that development provides a wider choice of housing. The appellant has not advanced any objections to the content of the obligation. In light of the evidence before me, including the responses from the Council, I am satisfied that obligation would be consistent with the tests of Framework and with the provisions contained within the Community Infrastructure Levy Regulations 2010 in respect of pooled contributions.
29. The Council also seeks monitoring costs totalling £1250. However, no written justification for this requirement is before me, particularly given that the obligation is in the form of a unilateral undertaking and as such it is not obvious what monitoring would be required. Therefore I have not taken the monitoring contribution into account in my decision.

Conditions

30. I have considered the conditions suggested by the Council against paragraph 206 of the Framework, and made changes necessary to comply with those requirements.
31. A condition specifying the numbers of dwellings that can be developed on the appeal site is necessary for the avoidance of doubt. Because of the proximity of the railway line to the site, I am satisfied that a condition restricting pile

driving is necessary to ensure such works would cause no harm to the rail infrastructure. A condition requiring the details of surface water drainage is necessary in the interests of sustainable construction. While no specific evidence of the presence of bats is before me, a condition requiring a survey prior to removal of any trees on site is necessary as a precautionary measure and in the interests of habitat preservation. A condition requiring details of pedestrian and cycle routes through the site is necessary to promote sustainable access and movement. A condition for the submission and approval of a construction management plan is necessary in the interests of the living conditions of occupiers of surrounding properties.

32. The Council has suggested a condition requiring compliance with the two approved plans. However, one relates only to the red line plan and as such it is not necessary. A condition is required to ensure the vehicular access is taken from Tunnel Road as shown on the second drawing. But because there is insufficient detail of it on the submitted drawing, I find that a further condition is necessary requiring details of the access from Tunnel Road, and I incorporate details on visibility splays within the wording to be submitted to the Council.
33. Matters relating to foul sewage are controlled under other legislation. Insufficient evidence has been advanced by the Council for the need for a scheme for the provision of adequate water supplies and fire hydrants on the site. These conditions I find are unnecessary and I have not imposed them.

Planning Balance and Conclusions

34. Bullet point 4(1) of paragraph 14 of the Framework is engaged because I have found that the Council cannot demonstrate that it has a five year supply of housing. This is reinforced by the fact that the Council is not progressing its Draft Site Allocations Plan and Draft Development Management Plan such that there have been delays in bringing forward housing sites through a Local Plan to meet the housing requirement. Paragraph 14 of the Framework states that a presumption in favour of sustainable development exists and should be seen as a golden thread running through decision-taking. Where the development plan is absent, silent, or relevant policies for the supply of housing are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
35. I agree with the main parties that the proposed development would have social and economic benefits in providing new dwellings to meet the needs of present and future generations, would provide local construction employment opportunities and support accessible local services. The proposed development would also make worthwhile contributions to the supply of housing and affordable housing in the borough and help contribute to the five year supply. I attach considerable weight to these benefits. As I have stated above, developing an open and attractive field would inevitably result in harm to the character and appearance of the area but for the reasons I have already outlined above, this harm would be moderate.
36. In applying the tilted balancing exercise required by bullet point 4(1) of paragraph 14 of the Framework, I find that the moderate level of environmental harm I have identified would not significantly and demonstrably outweigh the benefits of the scheme. I therefore find the proposal would

amount to sustainable development in accordance with the Framework when taken as a whole, and that a presumption lies in its favour. The proposed development would conflict with Core Strategy policies NW1, NW2, NW4 and NW5, which seek to direct growth towards a settlement hierarchy. However for the reasons given above, these policies are out-of-date and only moderate weight can be attached to them. I find that the presumption in favour of sustainable development outweighs this conflict and that with Core Strategy policy NW12, details of which I have outlined above.

37. For the reasons given above I conclude that the appeal should be allowed.

R Allen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to the Local Planning Authority for approval in writing before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No more than 79 dwellings shall be constructed on the site.
- 5) No vibro-impact or piling works shall be undertaken on the site unless in accordance with a scheme which has first been submitted to the Local Planning Authority for approval in writing.
- 6) No development shall commence on site until a detailed surface water drainage scheme for the development based on sustainable drainage principles and an assessment of the hydrological and geo-hydrological context of the site has been submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details.
- 7) The means of vehicular access shall be carried out as illustrated on the approved drawing Sketch Layout 2 MP5002 SK02.1.
- 8) No development shall take place until a details of the site's vehicular access and visibility splays on to Tunnel Road has first been submitted the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details prior to occupation of the dwellings. There shall be no obstruction of any kind within the approved visibility splays.
- 9) No development shall take place until a scheme to provide for both pedestrian and cycle access into the development hereby approved from Nuthurst Crescent has first been submitted the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details prior to occupation of the dwellings.
- 10) No development shall take place on site until a Construction Management Plan has been submitted to the Local Planning Authority for approval in writing, which shall remain in force throughout the construction period. The Plan shall provide details of the arrangements for:
 - Details of the location of storage compounds, haul roads and car parking for site operatives and visitors;
 - Details of the hours of working and the hours of delivery of goods, plant and materials;
 - Wheel washing facilities and any dust suppression measures;
 - Noise control during construction;
 - Site lighting details;
 - Measures for the protection of trees that are to be retained;

- Details of household refuse from occupied dwellings during construction; and
 - Details of the contact for any local concerns with the construction activities of the site.
- 11) No development shall take place until a bat survey has been undertaken in respect of all of the trees to be removed and the findings together with any mitigation measures have first been submitted to the Local Planning Authority for approval in writing.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth of Counsel Instructed by Mr Steve Maxey

He called:

Mrs Dorothy Barratt Planning Officer
BA (Hons) DUPI MRTPI

FOR THE APPELLANT:

Mr Killian Garvey of Counsel Instructed by Mr Charles Robinson

He called:

Mr Carl Taylor TPM Landscape
BA (Hons) DipLA CMLI

Mr Charles Robinson DLP Planning
B Tech (Hons) MPhil MRTPI

Mr Alex Roberts DLP Planning
BA (Hons) MRTPI

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Document entitled 'Select Committee on National Policy for the Built Environment Building better places' by www.parliament.uk
2. Strategic Housing Land Availability Assessment 2015
3. Table of housing completions and expired permissions 2006/07 to 2015/16
4. Updated Unilateral Undertaking dated 7 November 2016
5. Folder of Core Documents of Legal Submissions
6. Extract of the South Oxfordshire Local Plan 2032 Preferred Options dated June 2016
7. Table on the agreed position between the parties on the five year housing position assuming different scenarios

Costs Decision

Inquiry held on 8, 9 and 10 November 2016

Site visit made on 10 November 2016

by **R W Allen B.Sc PGDip MRTPI**

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

Decision date: 6 January 2017

Costs application in relation to Appeal Ref: APP/R3705/W/16/3149572 Land North of Nuthurst Crescent, Ansley, Warwickshire CV10 9PJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C R Muller (Muller Property Group) for a full award of costs against North Warwickshire Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development proposed of up to 79 residential units and associated access.
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Decision

1. The application for an award of costs is refused.

The submissions for Mr C R Muller (Muller Property Group)

2. The appellant made an application for costs verbally at the inquiry, which I summarise below. The Council has adopted a dogged approach by refusing to accept substantial new evidence in the form of its 2015 Strategic Housing Market Assessment (SHMA), which directs an increase in housing requirement over that set out in policy NW4 of the North Warwickshire Local Plan Core Strategy 2014 (Core Strategy). Had they had done so, and also acknowledged that the Draft Site Allocations Plan and the Draft Development Management Plan had been abandoned, it would have led the Council to conclude that it could not demonstrate a five year supply of housing and paragraph 14 of the National Planning Policy Framework (the Framework) would have needed to have been engaged. It follows that a discussion on housing supply at the Inquiry would not have been necessary.
 3. The appellant also says that frequent requests were made for the Council to provide its housing supply figures. The appellant states that some weeks later, the Council had relied on radically different and unpublished housing supply figures which required at short notice, and at great expense, the appellant to undertake a rebuttal statement.
 4. The Council made vague, generalised and inaccurate assertions on the effect of the proposed development on the landscape character matters, citing a design policy to support this assertion where design is a reserved matter. While the Council is entitled to form a view on the effects in this regard, they have done so without producing any substantive evidence contrary to the landscape and visual assessment undertaken by the appellant. The Council's case is further flawed by the grant of planning permission on two other sites in the village with similar landscape characteristics to the appeal site. The Council failed to
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adequately engage with the appellant on this matter to try to resolve any difference of opinion between them.

5. Therefore the Council would not have arrived at its decision that landscape and visual harm significantly and demonstrably outweighed the benefits of the scheme. In not applying the balance required by paragraph 14 of the Framework, which it ought to have done, the Council wrongly refused the scheme. A full award of costs is justified. In the event that the landscape argument advanced by the Council is justified, a partial award of costs is justified on the housing land supply position.

The response by North Warwickshire Borough Council

6. The Council responded verbally at the inquiry that assessment of harm on landscape and visual effects are matters of professional judgement, and it was open to the Council to consider that the proposal gave rise to unacceptable impacts. The Council did engage proactively with the appellant on such matters. That it failed to agree with him is not an unreasonable position.
7. The Council's approach to rely on relatively recently adopted Core Strategy policy NW4 as the appropriate housing requirement was not an unreasonable position to take, as agreed by the appellant under cross-examination at the Inquiry. Furthermore, housing supply was never raised as an issue by the appellant until it was tabled in his rebuttal proof shortly before the opening of the Inquiry. The Council could have asked for an adjournment to properly respond, however opted to deal with matters orally in order not to delay the Inquiry. It is therefore 'a bit rich' of the appellant to accuse the Council of acting unreasonably in this regard. In any event, if the Council should have provided pre-exchange of proofs on this matter, the Council finds it doubtful that this gave rise to unnecessary expense, as the work would have had to be undertaken.
8. For these reasons, the Council has not acted unreasonably, and no award of costs should be made.

Reasons

9. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. As I set out in my decision, policy LP6 of the Council emerging North Warwickshire Local Plan (emerging Local Plan), underpinned by the 2015 SHMA, seeks to provide for a much higher housing requirement over that set out in Core Strategy policy NW4, and the Council confirmed at the Inquiry that no impediment exists for this higher requirement to be met in full. While the emerging Local Plan has not been subjected to external examination, I found it nonetheless inevitable that housing requirement will increase. It is only the level of increase that remains in question, but my judgement found that this increase will be significant. Having regard to the Framework's requirement to significantly boost the supply of housing, I found in my decision that the more up-to-date 2015 SHMA more accurately reflected housing need. Had the Council also had reached a similar conclusion as I did, it would have accepted

that it could not have demonstrated a five year supply of housing and the Inquiry could have avoided discussion on housing need.

11. In saying that, the evidence underpinning the 2015 SHMA will still need to be tested when it is subjected to the development plan examination; and ramifications for the emerging Local Plan policy LP6 may occur including, although very unlikely, a decrease in housing requirement. Furthermore, the Core Strategy is only two years old, and the SHMA underpinning its housing requirement policies only dates from 2013. Although I have made my decision on the evidence before me, I find that it was not unreasonable of the Council to rely on its recently adopted Core Strategy in justifying refusal of the scheme. The appellant acknowledged this much under cross examination.
12. As I set out in my decision, the Council's attribution of harm with the scheme lay less to do with its effect on the landscape character or visual receptors, and more to do with perceived harm to the character and appearance, and the settlement morphology of the village of Ansley itself. The Council therefore had no conflict with the findings in the appellant's landscape and visual assessment on such matters. Because of the size of the settlement of Ansley and the Council approach to sustainable development advocated by policies NW2 and NW5 of the Core Strategy, I find that the Council did not act unreasonably in concluding that the scale and location of the proposed scheme would be harmful in its effects. Ultimately, perception on effects to an area's character and appearance are matters of judgement. I am satisfied that the Council's reasons for mounting an objection in this regard were expressed clearly and logically in the officer's report and in its proof of evidence.
13. The Council stated at the Inquiry that even if it had applied the tilted balance required by bullet point 4(1) of paragraph 14 of the Framework, it would have concluded that the identified harm would significantly and demonstrably outweigh the mutually agreed benefits of the scheme. While I have found the level of harm would be considerably less than the Council finds, and thus not sufficient to outweigh the benefits, the sensitive nature of the site and the quantum of development involved relative to the size of Ansley justified the Council's consideration of the existence of substantial harm. While I note the appellant's assertions on the matter, no evidence is before me which suggests that the Council would obviously have arrived at a different conclusion had bullet point 4(1) of paragraph 14 been engaged.
14. Therefore, while I find the Council should have placed a greater reliance on the 2015 SHMA to determine its housing requirement more accurately, I am satisfied that the decision would unlikely to have changed, and pursuance of the appeal would have not been obviously avoided.
15. I do not have sufficient details of the discussion between the parties, or the site identified as 'ANS4' at the Inquiry to conclude with any degree of certainty whether the different approach taken on character and appearance and to approve development on this site amounts to unreasonable behaviour. Because I have already found that the tilted balance of paragraph 14 ought to have been engaged because of the absence of a five year housing supply, I do not need to find on the matter of the status of the development plan. The Council appeared to amend its housing data in its statement at a late stage in the Inquiry process and no sufficient reasons were advanced for it doing so. Nevertheless, whether the Council could demonstrate a housing supply was

pivotal to the appellant's case, such that I am not persuaded that these changes would have amounted to a significant issue and thus wasted costs for the appellant, who would likely have accumulated significant evidence to support their case in any event.

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

R Allen

INSPECTOR



Appeal Decision

Site visit made on 8 November 2016

by **Nicholas Taylor BA(Hons) MRTPI**

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

Decision date: 30 November 2016

Appeal Ref: APP/R3705/Y/16/3150828

Chapel End Church, Coleshill Road, Chapel End, Warwickshire CV10 0NZ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Warwickshire Partnership against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2015/0657, dated 25 October 2015, was refused by notice dated 11 February 2016.
 - The works proposed are conversion of Chapel End Church and rear buildings into 8 residential units with parking at rear and side of church. Demolition of rear lean-to kitchen block garage.
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Decision

1. The appeal is dismissed.

Procedural Matter and Main Issue

2. The appeal property is a Grade II listed building. A parallel application for planning permission (Council ref. PAP/2015/0656) was determined by the Council on 11 February 2016. However, the appeal before me concerns an application for listed building consent. Consequently, the main issue in this appeal is whether the proposal would preserve the listed building or its setting or any features of special architectural or historic interest it possesses (i.e. its significance).

Reasons

3. The appeal property is a large former non-conformist chapel, fronting Coleshill Road and with a side boundary onto School Hill. The surrounding area is predominantly residential with a number of nearby shops on Coleshill Road.
 4. The property comprises several elements. The chapel dates originally from 1840 and is prominent on Coleshill Road. It was substantially altered and extended by the construction to its rear of an attached Sunday school in 1853. At that time, the internal gallery which runs around three sides of the main auditorium was also extended. Further single storey lean-to service extensions were added later. There is limited external space around the front and sides of the building but the plot is more extensive to the rear, where there is a small graveyard and a small free-standing garage. The property has been vacant for several years.
 5. In considering whether to grant listed building consent, Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990
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require decision makers to have special regard to the desirability of preserving the building or its setting. The *National Planning Policy Framework* (the Framework) requires¹ applicants to describe, and the decision maker to identify and assess, the significance of heritage assets affected by a proposal. From the listing description, the parties' evidence and my own observations, it is apparent that the building's significance as a heritage asset derives largely from its overall architectural form, both external and internal, its fittings and its historical associations with the social fabric of the local community. Notable architectural features include the external appearance of the church part of the building, with its neo-classical façade and tall, narrow round arch windows, which is distinctive and prominent on the Coleshill Road frontage. Also of importance is the spacious, galleried interior, with galleries supported on slender columns.

6. At the time of my site visit, many interior features, such as pulpit, pews and plaques, had been removed either off the site or stored within the building. Submitted photographs show that, when use for worship ceased in 2013, the interior remained fairly complete, with its still extant organ and sliding entrance doors, so that some of these internal features would, and still do, also make a considerable contribution to significance through, aesthetic, evidential and associative value.
7. Both parties acknowledge that the externally plain Sunday school part of the building is of lesser architectural value but it contains a number of attractive features of interest, including columns on the ground floor, doorways to the gallery and some windows. It too contributes through more modest, aesthetic, evidential and associative value to the overall significance of the building. I see no reason to disagree with the parties that the rear service lean-to has little historic or architectural merit. Finally, the currently overgrown graveyard contributes to the setting and historic significance of the property.
8. I turn next to the impact on the heritage asset of the proposed works, which would be intended to bring about the conversion of the property to residential use in the form of eight apartments. Demolition of the rear service lean-to and the garage would, as agreed by the parties, have a positive effect by better revealing the asset's significance. Proposed external alterations to the main building, mainly involving window and door openings to the Sunday school element, would, again as agreed by both parties, preserve that part of the building. The graveyard would remain, with a small number of parking spaces inserted at the rear of the building and a vehicular access reinstated from Church Hill. The Council raises concerns about the visual intrusion of "mass parking" at the rear of the building but I consider that, with sympathetic surfacing materials, insertion of a few spaces in a reasonably limited hard-surfaced area would have negligible adverse impact on the setting and thereby heritage significance of both building and graveyard.
9. Internally, sub-division into apartments would entail construction of a structural wall down the middle of the auditorium, supporting a new first floor just above the level of the galleries. Both the auditorium and Sunday school elements would be sub-divided by stud partitions into numerous rooms and staircases. Paragraph 017 of *Planning Practice Guidance* (PPG) states that substantial harm is a high test, which indicates that a key element of an asset's

¹ Paragraphs 128 and 129

special architectural or historic interest is affected. In this case, I agree with both parties that the sub-division of the auditorium into many small spaces on two floors, bearing very limited relationship to the existing layout, would amount to substantial harm. Retention of the church's entrance lobby, side staircases (albeit blocked off) and sliding doors, together with tall window openings, limits the harm to some extent. The fact that the columns would remain visible within apartments and that the galleries would be boxed in, remaining in situ but hidden, also offers some limited mitigation. Loss of internal fittings and features, notwithstanding that the appellants maintain that much of the removal of these items was carried out before they acquired the building, would add to the harm. Although theoretically reversible, the harm from loss of almost any sense of the internal spatial qualities and completeness of the church element in particular would remain substantial.

10. The subdivision of the Sunday school, particularly of its first floor space, uncertain incorporation of ground floor columns into the room layout and loss of connecting doorways to the gallery along with remaining fittings, would also be harmful but, in isolation, less than substantial.
11. The preservation of the building envelope, with its exterior largely intact, and the removal of detrimental parts, are important considerations. But, although some aspects of the works would individually constitute less than substantial or negligible harm, overall, the impact of the proposed scheme would represent substantial harm.
12. Listed buildings are all nationally important and possess special interest. Paragraph 132 of the Framework states that when considering the impact of a proposal on a designated heritage asset, great weight should be given to the asset's conservation. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to a grade II listed building should be exceptional.
13. Paragraph 133 of the Framework goes on to say that substantial harm to a designated heritage asset should be refused, unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh the harm or that four further tests are all passed.
14. The preservation of the building envelope is a public benefit but I have already assessed that it would not prevent my finding of substantial harm to the asset's significance. Provision of eight apartments, adding to the area's housing stock, would amount to a significant public benefit. The appellants' very brief *Affordable Housing Viability Report* states that the apartments would be let at rents similar to social housing levels in the area but I have been given no indication that that would be anything other than a market rent for the type of accommodation or that appropriate mechanisms are in place to ensure that the accommodation would meet the Framework's definition² of "affordable". Consequently, I attach limited additional weight to the assertion that the housing would be low cost or affordable. In summary, I am not convinced that the public benefits of the particular scheme put forward would outweigh the substantial harm to the heritage asset.
15. Moving on to the four tests in paragraph 133, the first is whether the nature of the asset prevents all reasonable uses of the site. I accept that the property

² See Annex 2: Glossary

presents a number of constraints, including its age, size and attendant maintenance burden, internal configuration and tight external space incorporating a graveyard and proximity to neighbouring dwellings, which restrict the range of functions for which the property would be ideally suited.

16. The appellants assert that sub-division of the auditorium is inevitable to enable the building's continued use and that no other building layout than that proposed is economically viable. Taking into account marketing, on which I comment further below, together with the lack of evidence of serious investigation of alternative conversion scenarios, I am not convinced that a viable use, which would enable the auditorium space to be largely retained, is unlikely to be found. Nor, even if the auditorium was to be sub-divided, is it clear that there is no potentially viable scheme which would enable a greater preservation and appreciation of its spatial qualities.
17. Moreover, the Sunday school element provides greater scope for conversion and sub-division which would expand the potential range of uses, possibly in combination with each other. For the avoidance of doubt, I consider that sensitive sub-division of both existing floors of the former Sunday school could be acceptable in principle if part of an otherwise acceptable scheme for the building as a whole. I note the Council's concerns regarding access and parking but, all in all, there is no strong evidence that all reasonable use of the building is prevented by the very nature of the asset.
18. The second test is that no viable use of the asset itself can be found in the medium term through appropriate marketing that will enable its conservation. Paragraph 016 of PPG advises that the aim of marketing is to reach all potential buyers. In this case, the report by the appellants' letting agent was written after just 9 months marketing, although the appellants state that marketing has continued thereafter without success. This is a fairly modest period in the context of such an unusual property, although I accept that the agents may have worked hard to generate the level of interest achieved. Moreover, it appears to have been marketed only for rent on set terms and it is not clear that alternative models of disposal, financial arrangements or uses were seriously sought or considered. Although interest was limited, it was clearly not absent, including from potential religious users. All in all, despite the property's physical and locational constraints, it is not clear that potential interest from viable users in the medium term has been exhausted.
19. Regarding the third test, I accept that, in the current climate, grant funding, with or without public or charitable ownership, would be likely to be very difficult if not impossible to access for the appeal property. Whilst I have been given no evidence of any serious effort to investigate such options, the Council has not suggested a possible source of funding or ownership.
20. The final test is whether the harm to the heritage asset is outweighed by the benefit of bringing the site back into use. I note the advice from Historic England³, referred to by the Council, that sensitive conversion of former places of worship should be appropriate to the building's historic character whilst being economically viable in the particular location. It advises that internal fittings, and I would include in this case also internal space, constitute a large part of such buildings' historic character and that some degree of compromise over use may be required. The Council says that it is prepared to countenance

³ *New Uses For Former Places of Worship*, Historic England, updated 2012

a mixed use and I do not demur. It has not been demonstrated here that a residential conversion of the kind and intensity proposed is the only viable way of bringing the site back into use.

21. PPG paragraph 014 confirms that disrepair and damage to a listed building and its effect on viability can be material considerations but should be disregarded where deliberate. Although, leaving aside the deliberate removal of some features, fittings and materials, some deterioration of the appeal property was evident at my site visit, I have not been provided with any detailed, structural or other evidence to support the contention that significant works are required to secure the structure. Whilst the appellants argue that the fabric of the building has deteriorated since falling vacant, with maintenance of the roof a particular concern, I give that limited weight, as basic on-going maintenance should be a normal expectation of a responsible owner. The condition of the building has not been shown to pose an existential threat to the building as a whole and the cost of repair has not been clearly shown to be prohibitive. Overall, therefore, I am not convinced that the benefit of bringing the site back into use would outweigh the harm in this case.
22. I conclude that the building is of strong historic and architectural value, contributing to its significance as a designated heritage asset. The proposed works would amount to substantial harm to the designated heritage asset. It has not been demonstrated that the required tests set out in the Framework have all been passed or that strong public benefits would ensue which would be sufficient to outweigh the harm.
23. Accordingly, the proposal conflicts with the overarching statutory duty, which must be given considerable importance and weight, and with the Framework. Although not determinative in a s20 appeal, the scheme would conflict with the development plan, taken as a whole. In particular, there would, overall, be conflict with the requirement of Policies NW10, NW12 and NW14 of the *North Warwickshire Local Plan Core Strategy (CS)* and saved Policy ENV16 of the *North Warwickshire Local Plan 2006* to conserve the historic environment. The proposal would partly comply with CS Policy NW10 to the extent that it would focus development on brownfield land and re-use of a redundant building.

Other Matters

24. The main parties dispute the outcome of the parallel application for planning permission. Similarly, a number of issues and concerns of third parties relevant to the planning application but not the application for listed building consent are raised in the Council's decision report. I confirm that these matters have little bearing on my conclusions in this appeal case.

Conclusion

25. For the reasons set out above, the appeal should be dismissed.

Nicholas Taylor

INSPECTOR



Appeal Decision

Site visit made on 21 November 2016

by **Andrew Owen BA(Hons) MA MRTPI**

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

Decision date: 7 December 2016

Appeal Ref: APP/R3705/W/16/3157782

Part of field OS 8623, Spring Hill, New Arley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Anne Hall against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0364, dated 16 June 2016, was refused by notice dated 23 August 2016.
 - The development proposed is the erection of a bungalow.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application subject of the appeal was made in outline form with all matters reserved. I have determined the appeal on this basis.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the 'Framework') and development plan policy;
 - the effect of the proposal on the openness of the Green Belt;
 - if the development would be inappropriate, whether the harm to the Green Belt by way of inappropriateness and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Inappropriate development

4. The site is within the Green Belt. Paragraph 89 of the Framework is clear that the construction of new buildings in the Green Belt is inappropriate. However, it adds that an exception to this is limited infilling in villages. The explanatory text to Policy NW3 of the North Warwickshire Core Strategy (NWCS) sets out the general presumption against inappropriate development in the Green Belt and confirms that infill boundaries will be identified to indicate where limited infilling would be permitted.
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5. The Council have prepared a draft Site Allocations Plan which, in Policy GB1, identifies the villages washed over by the Green Belt where limited infilling would be considered not inappropriate. All other settlements in the Green Belt are not considered suitable for infilling, mostly because of their small size or dispersed nature.
6. These policies are broadly in accordance with the Framework. As such I give Policy NW3 significant weight, however in light of the fact that the Site Allocations Plan has yet to be adopted or examined I can only give Policy GB1 limited weight.
7. New Arley is identified in Policy NW2 of the NWCS as a Local Service Centre, excluded from the Green Belt. The appeal site is outside and around 95 metres from the boundary of New Arley. Accordingly, on the basis of the development plan, the site is outside the village and therefore the proposal cannot constitute an infill development within a village. However I must also have regard to whether the site could be considered to be part of the village notwithstanding the boundaries identified in the development plan.
8. The site is sandwiched between two other residential plots and is located within a row of properties on the south side of Spring Hill. As such it would appear as an infill site. Directly opposite the site is a church which is also in a row of properties. The houses nearby are mostly set in spacious and verdant plots. Behind the site there is undeveloped land and there are views into this open countryside from within the site and vice versa. There is a pavement outside the property, street lights and a bus stop within walking distance. As such the site and its immediate surroundings have a semi-rural character.
9. However the site and its neighbouring dwellings are separated from the defined settlement of New Arley by sections of open and undeveloped fields on both sides of the road. Furthermore on the north side of the road there is an electricity substation which is screened by trees, bushes and a thick hedge on the boundary with the adjacent dwelling which acts as a visual barrier. Additionally, the dwellings on the north side of Spring Hill, within the identified boundary of New Arley, are generally closer to the road, in narrower plots and have a less verdant character than those near the appeal site. These factors all contribute to the perception that the cluster of dwellings in proximity of the appeal site is detached from New Arley in terms of its visual appearance and character.
10. I acknowledge the houses at Teagles Gardens have a different character to the houses near the appeal site, as they built at a comparatively high density. Nonetheless I do not consider this means they must be considered to be within New Arley. Indeed the sharp contrast between them and the adjacent field means they appear to form a hard edge to the collection of buildings within which the appeal site sits, which further distinguishes it from the identified village of New Arley. Notwithstanding the comment in the committee report for the planning application¹ for the development of Teagles Gardens, which states that "*the site is already part of the built up area of Arley*" (sic), I remain of the view that there is distinct separation between New Arley and the other houses in proximity of the appeal site including those in Teagles Gardens. Furthermore the planning permissions granted² for the redevelopment of the

¹ PAP/2012/008

² PAP/2012/0314 & PAP/2015/0505

former Spring Hill Medical Centre, west of the site, also do not affect my view that the group of buildings surrounding the appeal site are detached from the village New Arley.

11. I have considered the appeal at Chadwick End³. Although the Inspector considered a break in the line of development was not sufficient to divorce that line of dwellings from the rest of the settlement, the Inspector also stated it is matter of judgement as to whether a site lies within a settlement or not. In this case, for the reasons given above, I consider the break between New Arley and the dwellings around the appeal site results in the site being divorced from New Arley. It is also relevant that in that appeal there was no identified village boundary, whereas there is in the appeal before me.
12. Accordingly whilst I consider the site is an infill plot, I do not consider the site is within the village of New Arley. Nor is the group of buildings within which it sits large enough to be considered a village in its own right. As such the proposal would not constitute infill in an existing village and it therefore is inappropriate development.
13. Paragraph 87 of the Framework says inappropriate development is, by definition, harmful to the Green Belt and shall not be approved except in very special circumstances. It is therefore necessary for me to consider whether any other harm would be caused by the proposal and then balance the other considerations against the totality of that harm.

Openness

14. Openness is an essential characteristic of the Green Belt as set out in paragraph 79 of the Framework. The proposed dwelling would introduce built form into an area which is currently undeveloped and as such would inevitably affect the spatial openness of the site. Furthermore, though there are some bushes on the frontage, views are possible through the site to the open countryside beyond. As such the proposal would interrupt these views and the visual impact on openness would be significant. These impacts on openness weigh against the development, and are in addition to the inappropriateness of the proposal in principle.

Other considerations

15. The appellant points to the consents granted for the development of the former Spring Hill Medical Centre as development with a greater impact on the Green Belt than the proposal before me. However that site is a previously developed site, which is not the case in the appeal before me, and therefore it is fundamentally different. As such it carries little weight in my considerations.
16. The site does appear to be a sole example of a vacant plot in a row of other dwellings, and as such the development might not provide a precedent locally. Nonetheless I do not consider this justifies a proposal which is contrary to Green Belt policy. As such I give this matter limited weight.
17. I note the development boundaries for Fillongley and Ansley are fragmented. However this only demonstrates that the Council consider those settlements are fragmented whereas they consider New Arley is not. For the reasons given

³ APP/Q4625/W/16/3143166

above, I agree with this and therefore I give very minimal weight to this consideration.

18. As the scheme is in outline, I can give little consideration to the effect of a dwelling on the character and appearance of the area. I note that the dwellings either side of the site are bungalows and in that respect a bungalow would generally be in keeping with this characteristic. Also the screening along the front boundary would most likely reduce the prominence of any development in the street scene. However, at this outline stage and without drawings of the development, I can give only neutral weight to these matters. Similarly with regard to any impact on neighbouring properties, without any further details I cannot give any positive weight to this consideration.
19. Whilst the Framework has been adopted, and PPG2 rescinded, since the previous appeal decision on this site, the protection of the Green Belt remains strong and I do not consider this represents a change in policy which now justifies the proposal. Similarly the development of Teagles Gardens does not materially affect the relationship between the identified village of New Arley and the dwellings in proximity of the appeal site. I therefore give very limited weight to this consideration.
20. Also whilst the Framework supports the provision of housing, it also seeks to maintain the openness of the Green Belt. Hence I give only neutral weight to the provision of an extra dwelling.

Planning Balance and Overall Conclusion

21. The Framework advises that the Government attaches great importance to Green Belts and that substantial weight should be given to any harm to the Green Belt. I consider that the development would cause harm to the Green Belt by way of inappropriateness and to its openness. Balanced against that are the other considerations identified above. For the reasons given, I conclude that they do not clearly outweigh the harm to the Green Belt and therefore there are no very special circumstances to justify the proposal.
22. As such, the development would conflict with Policies NW2 and NW3 of the NWCS, Policy GB1 of the draft Site Allocations Plan and the Framework which aim to protect the Green Belt from inappropriate development. The proposal would also be contrary to Policy ANP1 of the Arley Neighbourhood Plan which aims to maintain the rural character of the parish by defending the Green Belt.
23. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be dismissed.

Andrew Owen

INSPECTOR

Appeal Decision

Hearing held on 18 October 2016

Site visit made on 18 October 2016

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 03 February 2017

Appeal Ref: APP/R3705/W/16/3150813

Fir Tree Paddock, Quarry Lane, Mancetter, Warwickshire CV9 2RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Timothy Gough against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2015/0611, dated 23 September 2015, was refused by notice dated 8 December 2015.
 - The development proposed is the replacement of existing buildings to utility/day room to serve existing gypsy pitch approved in Appeal Decision APP/R3705/A/08/2066891.
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Decision

1. I dismiss the appeal.

Application for Costs

2. At the Hearing an application for costs was made by Mr Timothy Gough against North Warwickshire Borough Council. This application is the subject of a separate Decision.

Main Issues

3. These are;
 - The effect of the proposal on the character and appearance of the area.
 - Whether the proposal is sustainable development and should benefit from the presumption stated in the National Planning Policy Framework.

Reasons

Background

4. Permission for *'the change of use of land to a residential gypsy caravan site for one gypsy/traveller family including the stationing of a caravan'* was granted on Appeal on 30 June 2008 (Ref; APP/R3705/A/08/2066891). The Inspector found that there were no Development Plan policies specific to gypsy site provision at that time, that the location was suitable and sustainable and that the impact on the surrounding countryside would be minimal. In addition the Inspector found an unmet need with the likelihood of sites being identified being some way in the future, and the permission granted was neither temporary nor personal, only being restricted to gypsies and travellers. There is however no mention of a dayroom, as none was requested as part of the
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application, and no mention of any other structures on the site, although it appears likely, as will be explored further in the current Decision, that the structures now proposed to be replaced were in place at that time.

5. The policy situation has changed since that previous Decision, with the adoption of the Core Strategy in October 2014. Policy NW1 on sustainable development makes clear the relationship with the National Planning Policy Framework as a material consideration and states the presumption in favour of sustainable development. Policy NW2 sets out the settlement hierarchy and the site falls within '*Category 5 – Outside of the Above Settlements*' where unless other policies expressly provide, development will be limited to that necessary for agriculture, forestry or other uses that can be shown to require a rural location. Gypsy and traveller sites are the subject of Policy NW8 which sets criteria for their location, size, access to services and the effect on the surroundings. Policy NW13 seeks the protection and enhancement of the quality, character, diversity and local distinctiveness of the natural environment.
6. The Council and appellant do not consider any of the saved policies of the 2006 Local Plan relevant, and having mind to the findings of the previous Inspector, and the content of the Core Strategy policies cited, that appears to be so. The Council is working on a new Local Plan which does not seek to change the settlement hierarchy of Policy NW2. It was also explained at the Hearing that the Mancetter Neighbourhood Plan is well advanced, maintaining the same settlement boundary, and is presently with the Council prior to the referendum being held.

Character and Appearance

7. Whilst it is the case that '*Designing Gypsy and Traveller Sites; Good Practice Guide*' which contained advice on the design of dayrooms has been revoked, and that neither the Development Plan nor the Planning Policy for Traveller Sites makes reference to dayrooms, their provision is quite usual on gypsy sites, often for cultural reasons to do with men not using the washing and sanitary facilities in the caravan, and to provide for some secure storage external to the home. It is also the case that the recently granted permission next door to the appeal site includes a dayroom, in that case of approximately 40m² shared between the two pitches (Ref; PAP/2015/0607) and which building appeared substantially complete at the time of the site inspection. The Council made clear at the Hearing that there is no in-principle objection to a dayroom at the appeal site.
8. As set out in Planning Policy for Traveller Sites and in the Development Plan policies, a gypsy site in the countryside can be permissible, and the grant of permission for the use of this land in 2008 was in line with the then guidance in Circular 01/2006. However, that provision is not a reason to permit any number or any size of ancillary buildings such as dayrooms. In this case, where a previous Inspector found only minimal impact on the surrounding countryside through the stationing of the caravan and the use of the land, there is nothing in that previous Decision to indicate that the Inspector was addressing any more than a single caravan. The resulting permission has conditions attached limiting the residential use to only a single caravan with no touring van being referred to, and no commercial activities are to be carried out.

9. The proposed building is large at over 70m², and would contain the expected washing, clothes washing and sanitary facilities, along with some space for daytime use and storage, but the latter two areas appear significantly out-of-scale with the accommodation on the site of a single caravan. The Council liken it to a stand-alone dwelling in the reason for refusal. The use of those terms will be considered in the accompanying Costs Decision, but whilst express permission would be needed to put the building to such a use, and the Council even suggested a condition to that end, the appearance of the building being similar to a separate dwelling is pertinent, along with its size, when considering the effect on the character and appearance of the area.
10. Quarry Lane runs east-west and roughly parallel with the Coventry Canal to the north. Whilst the land to the south of the lane is clearly agricultural in character and use, and includes a newly constructed and sizeable dwelling built under the provisions for agricultural workers, the land between the lane and the canal appears a varied collection of what the Council describe as 'leisure agriculture' and some canal-based enterprises. The Council refer to pressure to permit permanent residential use of canal moorings, but have accepted the residential gypsy and traveller use of the adjoining land to the east of the appeal site. Further east there is the framework of an agricultural barn before the lane stops at gates to private land.
11. This stretch of land between the lane and the canal appears vulnerable to piecemeal change away from an open, truly agricultural, character and appearance, with high gates beginning to be erected, and is a stretch of land that is highly visible to users of the public right of way that runs along the lane before turning south towards higher ground only a little way short of the appeal site. The caravan on the appeal site, with the dayroom now erected on the adjoining site, and allowing for the siting of the proposed caravans and landscaping as pointed out at the site inspection, would maintain open space and a rural appearance to the lane.
12. The erection as proposed of a large, domestic style of building would be at odds with that rural appearance and the siting would intrude into the view from the lane and from the public right of way, introducing the appearance of a residential frontage, and not relating well in its location with the already erected day room next door which is set back from the lane. Notwithstanding the intended use and the control exercisable through the planning regime, the building would appear akin to a bungalow and as such would not sit acceptably within the rural character and appearance of the area. The proposal would be contrary to Core Strategy Policy NW13 on the protection of the countryside and would introduce a level of harm that Policies NW2 and NW8 seek to avoid through a settlement hierarchy and the criteria based gypsy and traveller policy.
13. There are two possible areas of justification that were discussed at the Hearing, the first being the existence of structures in a similar position and of a similar height and footprint that would be replaced. These consist of a corrugated metal-clad shed, linked to a former shipping container, this latter being placed parallel with and close to the lane, and a former lorry body that is accessible separately. The three structures appear to have been in place for some considerable time, the appellant stating in excess of 25 years, notwithstanding the lack of reference to them in the 2008 Appeal Decision. The shed is clearly a building constructed *in-situ* and is used for the storage of tools in connection

with the appellant's business activities, some household goods including a motorbike, and it also contains the electric generator and fuel. The other two structures appear to have been brought to the site and placed on the land.

14. Their use is clearly permanent, they are not now capable of being readily removed in one piece due to their deteriorated condition, and whilst not connected to services in that there are no mains services on the site, the access arrangements have been adapted to be used along with the shed. On the information available it is concluded that they should be considered as buildings, although their lawfulness remains a matter to be tested by separate application. Their existence in the landscape, their poor condition and the intention to replace them with a modern purpose-built structure is of weight in this Decision.
15. However, whatever their permanence and status in planning terms, the appearance of the shipping container and the lorry body is of temporary structures more akin to vehicles parked on the land when seen from the lane. It is noted that the 2008 permission did not limit the number of commercial vehicles that may be parked on the land in any event. The shed does have a more permanent character and appearance but very much as an ancillary building, sharing much of its characteristics with agricultural buildings commonly seen in the countryside. The proposed replacement, as previously stated, would be a significant and harmful departure from that appearance. As a result, limited weight can be attached to the fact of this being a replacement of a similar height and floor area.
16. Secondly, it is claimed that the proposed amount of accommodation is required for Mr Gough's storage, but the original grant of permission in 2008 was not restricted to a particular person, and hence not necessarily the appellant in this case. The dayroom would not be similarly restricted if permitted. As a result, and as discussed at the Hearing, limited weight can be attached to the needs of the appellant in relation to the significant weight attached to harm to the countryside character and appearance.

Sustainable Development

17. The previous Inspector found the site to be in a sustainable location, in the context of a gypsy site. Sustainable development is more than just accessibility to services and the like and paragraph 6 of the Framework states that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system, and that includes the protection of the countryside in one of the core planning principles.
18. The three dimensions of such development are set out at paragraph 7. With regard to the economic role, the occupiers of the site would be in a location to take advantage of work opportunities, although much would be expected to be gained as a result of a nomadic lifestyle with the site as a base from which to travel. Some storage for tools would be expected, but no more than might be accommodated in, say, a 40m² dayroom. The social role is already being furthered in the provision of gypsy and traveller accommodation on the site and next door, and there is limited evidence of the proposed dayroom being essential to this continuing. The environmental role would not be well served at all due to the failings identified in the first main issue.

19. The appellant refers to the presumption in favour of sustainable development stated in paragraph 14 of the Framework. However, the proposal has been found to be contrary to the Development Plan, so that the first bullet point under 'decision-taking' does not apply. The Development Plan is up-to-date, as it post-dates the publication of the Framework, making reference to that statement of Government planning policy, and emerging policy does not intend altering the basis of the settlement hierarchy; the site would remain outside any development boundary.
20. For the avoidance of doubt, the Council confirmed at the Hearing that they are able to demonstrate an 11 year supply of gypsy and traveller sites as required in paragraph 10 of Planning Policy for Traveller Sites, and in excess of 7 years supply of general housing sites as sought in paragraph 47 of the Framework. On any reasonable measure, the Development Plan cannot be considered out-of-date so that the second bullet point in paragraph 14 does not apply either.
21. In conclusion on this issue, the proposal cannot take advantage of the presumption in favour of sustainable development, set out in paragraph 14, and it performs badly with regard to the three dimensions of sustainable development and the policies of the Framework which constitute the Government's view of what constitutes such development. It does not therefore accord with Policy NW1 of the Core Strategy. With regard to the Human Rights Act, although there would be an interference with home life, Article 8 is not engaged owing to the nature of the proposal. Due regard has been had to protected characteristics, but that as there is scope for a smaller building the Public Sector Equality Duty would not be breached.

Conclusions

22. The proposed development would cause harm to the character and appearance of the countryside contrary to Core Strategy Policy NW13, and should not be regarded as sustainable development in line with Policy NW1, notwithstanding the previously accepted accessibility and suitability of the site for gypsy and traveller use. The harm caused through the domestic appearance, size and location of the proposed building would significantly outweigh the benefits, and only limited weight can be accorded the particular stated needs of the appellant in what is an unrestricted use of the land. Other material considerations therefore do not indicate that the proposal should be decided other than in accordance with the Development Plan. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

S Wilkinson Principal Planning Officer
North Warwickshire Borough Council

FOR THE APPELLANT:

I Leighton BA BArch RIBA Senior Architect
Green Planning Studio

T Gough Appellant

INTERESTED PERSON:

E Higgins Assistant Clerk
Mancetter Parish Council

DOCUMENTS

Document 1 Professional details I Leighton submitted by appellant
Document 2 Statement of Common Ground signed and submitted jointly
Document 3 Costs Application submitted by appellant



Costs Decision

Hearing held on 18 October 2016

Site visit made on 18 October 2016

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 03 February 2017

Costs application in relation to Appeal Ref: APP/R3705/W/16/3150813 Fir Tree Paddock, Quarry Lane, Mancetter, Warwickshire CV9 2RD

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Timothy Gough for a full award of costs against North Warwickshire Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the replacement of existing buildings to utility/day room to serve existing gypsy pitch approved in Appeal Decision APP/R3705/A/08/2066891.
-

Decision

1. I refuse the application for an award of costs.

The Submissions for Mr Timothy Gough

2. These were as Document 3 of the accompanying Appeal Decision.
3. The application was for a full award of costs, or a partial award in the alternative. It was agreed at the Hearing that the partial aspects of the claim were firstly, the Council's assertion in the reason for refusal that the size of the dayroom was not necessary in principle, and secondly regarding the effect on the character and appearance of the area.

The Response by North Warwickshire Borough Council

4. These were made orally at the Hearing as follows;
 5. The Council consider that an award of costs would be unreasonable and draw attention to the correspondence between the Council and the appellant during the application process. The letter of 5 October 2015 gave the appellant the opportunity to amend the scheme for essential welfare facilities. The appellant's response of 8 October stated that although the guidance '*Designing Gypsy and Traveller Sites; Good Practice Guide*' had been revoked, there is no indication that standards should now be lower than the 40m² for a dayroom. But, in fact the proposal is 76m².
 6. The Council wrote again on 17 November 2015 stating the view that a dayroom of about 75% of the size of the caravan was excessive when the permitted floor area of the caravan would provide many essential facilities. This letter did not say that a dayroom would not be permitted only that one of the size proposed could not be supported in this location. The day room next door is 40m² shared between the two pitches. The letter stated that the proposal
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would be unlikely to be approved and the reason for refusal is not on the principle of a dayroom on the site, but objects to its size and scale.

7. The 2088 planning permission has been granted and been in use for over 8 years without a dayroom and the proposal is out of proportion to the site accommodation.
8. The policies of the Development Plan are up-to-date with a settlement hierarchy set out and Policy NW8 on gypsy and travellers does not mention dayrooms. The good practice guide has been withdrawn and it is not a given that each pitch would have a dayroom. The Council's concerns over the effect on the character and appearance of the area are shared by others in representation to the application, in view of the size of the building proposed. The Council did not consider a Hearing necessary, having preferred written representations.

Reasons

9. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. Looking first at the principle of development and of the necessity for the size sought, whilst the Council rightly state that neither the Planning Policy for Traveller Sites nor the Development Plan specifically require dayrooms to be provided, it is clear that the Council have no in-principle objection to them being provided, as shown by the grant of permission next door for a 40m² dayroom for two pitches. The Officer's Report refers to the revoked guidance '*Designing Gypsy and Traveller Sites; Good Practice Guide*' and how the proposed building is in excess of the sizes put forward in that document.
11. The first part of the reason for refusal refers to the proposal being 74.6m² and 224m³, and how it is considered that the amenity building proposed for this single pitch would provide facilities far in excess of those required in addition to the facilities already being provided in the approved mobile home. In that the provision of gypsy and traveller sites in the open countryside, as here, is an exception to general policies of restraint, it is reasonable to seek development that is not unnecessarily large, and although now revoked, in the absence of other guidance, the sizes and arrangements show in the previous guidance are a good indication of how the likely need can be accommodated. The permission next door is in line with those dimensions.
12. The Council's references in the Report and in the Reason for Refusal to the appearance of the building and its dimensions being more akin to a bungalow capable of being a stand-alone dwelling, and to the traditional aversion to bricks and mortar appear somewhat gratuitous, as the proposal is not for a residential bungalow, or for stand-alone residential occupation. A further and separate application and permission would be required to secure that, and it is then that comments about aversion and facilitating the traditional and nomadic way of life of travellers would be appropriate, as well as any assessment of conflict with the Development Plan and actual harm. At the Hearing the Council suggested a condition to safeguard against this change of use, which even if not necessary, indicates that control may be exercised.

13. Turning to the effect on the character and appearance of the area, this is covered in the Report and Reason for Refusal as a reference to Policy NW13, but there is little actual analysis of the harm, only the perceived risks of allowing a bungalow capable of stand-alone use and how this is contrary to the settlement hierarchy. There is, as asserted by the appellant, no mention or analysis of the structure to be replaced, other than a statement in the Report that an outbuilding would be demolished.
14. However, those omissions were made-good in the Council's Appeal Statement under the heading '*Impact on the Setting of the Countryside*' where the existing building was commented upon. The appellant was given every opportunity to answer these further comments at the Hearing and at the site visit during which the Hearing remained open.
15. The web-based Planning Practice Guidance gives examples of behaviour that may lead to an award of costs against a local planning authority at reference ID: 16-047-20140306 that include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and prolonging the proceedings by introducing a new reason for refusal.
16. The explicit details of the objection on the grounds of harm to the countryside were provided at the Appeal Statement stage, being only implicit in the Officer's Report and the Reason for Refusal, through reference to the Development Plan policies on the protection of the countryside. It is clear at that later stage what weight the Council placed on the intended demolition of the existing structures. It would certainly have been preferable had the Council made this concern explicit at an earlier stage, and not made the early references to a stand-alone dwelling, which was not what was being applied for.
17. Clearly the Council has been under pressure for new homes on Quarry Lane and may have considered that the grant of permission for a structure that looked like a bungalow may have weakened their case in the future. However, in the same way as the recent grant of permission for a substantial agricultural worker's dwelling to the south of the lane does not imply a loosening of the policies of restraint, neither would this have done.
18. In conclusion, whilst there was a failing, it is not possible to conclude that this directly caused the appellant to incur unnecessary or wasted expense in the appeal process as the reason for refusal is clear as to there being conflict with up-to-date Development Plan policies on a settlement hierarchy and those aimed at protecting the countryside.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S J Papworth

INSPECTOR



Appeal Decision

Site visit made on 28 December 2016

by **J C Clarke BSc(Hons) BTP MRTPI**

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

Decision date: 31 January 2017

Appeal Ref: APP/R3705/W/16/3159366

Duncroft, Ash Lane, No Mans Heath B79 0PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Barney against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0351, dated 15 June 2016, was refused by notice dated 27 July 2016.
 - The development proposed is the construction of a single dwelling and associated infrastructure on a parcel of land to the east of Duncroft.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council refused permission for 4 reasons. However, it has indicated that following the removal of trees within the site there are now three main issues, which relate to the first 3 reasons for refusal. The main issues in the appeal are based on these. The Appellant's proof referred to Saved Policy HSG3 of the North Warwickshire Local Plan (NWLPL) 2006, which was not mentioned in the Council's reasons for refusal. I have taken this and other relevant Policies into account in my decision.

Main Issues

3. The main issues are:
 - (a) Whether, having particular regard to its level of accessibility to jobs and services, the proposal would be a suitable form of development in this rural area;
 - (b) The effect of the proposal on highway safety; and
 - (c) The effect of the proposal on the living conditions of occupiers of Duncroft.

Reasons

Would the proposal be a suitable form of development in this rural area?

4. The appeal site is located in the small rural settlement of No Mans Heath, about 7 miles from Tamworth.
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5. Due to its central location in No Mans Heath, the proposed dwelling would not be isolated from the rest of the settlement. It would also not have any material effect on the character or appearance of the surrounding countryside. However, this does not mean that the proposed dwelling would not be isolated in terms of its accessibility to a sufficient range of jobs and services. In this regard the range of services and job opportunities which has been brought to my attention in No Mans Heath itself is very limited, lacking for example any substantial convenience shopping provision and many other day to day services.
6. Paragraph 55 of the National Planning Policy Framework (the 'Framework') acknowledges that in some cases development in one village may support services in a village nearby. The Planning Practice Guidance (PPG) confirms that all settlements can play a role in delivering sustainable development in rural areas¹. However, little substantive information has been provided by the Appellant about the pattern and location of services and employment in the surrounding area. Public transport provision serving No Mans Heath also appears to be limited.
7. Given the distance between No Mans Heath and other settlements occupiers of the proposed development are likely to rely heavily on the private car to access many types of jobs and day-to-day services. As stated by the Appellant, the Framework allows there to be some flexibility for journeys to be made by car in rural areas. However, this must be balanced against the core planning principles of the Framework which include to '*...actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling...*'².
8. Furthermore, Policy NW2 of the North Warwickshire Local Plan: Core Strategy (NWLPCS) and Saved Policy HSG3 of the NWLP set strict limitations on the type of development which may be permitted in settlements such as No Mans Heath. As the proposal would not be for agriculture or forestry, and there is no convincing evidence that it would require a rural location or provide affordable housing to meet local needs, it would conflict with these Policies. Given its status as part of a recent development plan, adopted since the publication of the Framework, Policy NW2 carries substantial weight in my decision.
9. I note that the site in Willoughby on the Wolds, subject to the appeal decision referred to by Appellant, is outside the central area of a village. In this respect it contrasts to the appeal site. However, it is not clear from the evidence before me that the circumstances concerning that proposal otherwise replicated those relating to the current appeal. I have in any event considered the appeal proposal as I must on its own merits in the light of the relevant policies and other circumstances which apply to it.
10. I conclude that, having regard to its limited level of accessibility to jobs and services, the proposal would not be a suitable form of development in this rural area.

Highway safety

11. Ash Lane is an informal and mostly narrow access road used by vehicular traffic and pedestrians which serves several dwellings between the B5493 and Church

¹ Paragraph: 001 Reference ID: 50-001-20160519

² Paragraph 17 of the Framework, bullet point 11

Lane. Whilst part of the Lane is hard surfaced, other areas have a mixture of concrete, chippings and soft surfacing.

12. At the point that Ash Lane enters onto it, the B5493 has a 40 mile per hour speed limit. Warwickshire County Council, in its role as highway authority, has advised that to comply with nationally published standards³ it would be necessary, from a point which is 2.4 metres back from the carriageway of the main road, to see on-coming traffic for 120 metres in both directions. It has also identified that the actual visibility splays are about 18 metres (looking left when moving out of the junction) and 13 metres (looking right). Whilst on the basis of my site visit I consider the leftward splay to be slightly more than 18 metres, it is not substantially so. Although the standards referred to by the highway authority relate to trunk and other major roads, I consider that the visibility at the junction of Ash Lane and the B5493 is materially deficient.
13. At the access of Ash Lane onto Church Lane, the highway authority has identified that the visibility splays from 2.4 metres from the carriageway are less than 8 metres looking left and less than 13 metres looking right. These figures appear to me to be broadly accurate and fall substantially short of the nationally recommended guideline of 43 metres for an access onto a road such as Church Lane with a 30 mile per hour speed limit⁴.
14. Ash Lane is fairly wide towards its northern end and contains some space for vehicles to pass each other. However, it is not formally laid out or marked out to modern engineering standards. As a result, and having regard to the limited visibility which exists, there is a risk of conflict between vehicles moving out of Ash Lane onto the B5493 and those entering it from that road. A similar risk exists at the 'bell-end' access onto Church Lane, near to which Ash lane rapidly narrows.
15. As stated by the Appellant the increase in the numbers of vehicles using Ash Lane that would result from the appeal proposal would be small in proportion to the numbers which are likely to currently use the Lane. It would, however, be material. It is also not clear that any condition on a planning permission could reasonably address the issues outlined above, particularly as the restrictions to visibility at both ends of Ash Lane are within neighbouring properties.
16. Due to the width of the appeal site fronting onto Ash Lane, it would be possible to design a driveway and access which would allow for vehicles to safely manoeuvre into and out of it from the Lane. Sufficient parking provision could also be laid out within the site. However, these points and the maintenance arrangements for Ash Lane do not outweigh the matters set out above.
17. For the reasons identified above the appeal proposal would cause substantial harm to highway safety, and would conflict with relevant provisions of Policy NW10 of the NWLPCS, Policies TPT3 and ENV14 of the NWLP and the Framework.

Living conditions

18. The Council has identified, and the Appellant has not refuted, that the proposed dwelling would be about 8.5 metres from the side elevation of the existing house at 'Duncroft', the ground floor of which has several windows facing

³ Design Manual for Roads and Bridges (DMRB) TD 9/93 – table 3

⁴ 'Manual for Streets', Communities and Local Government and Department for Transport, 2007 Table 7.1

towards the appeal site. Whilst not all of these serve habitable rooms those which are close to the rear of the existing dwelling serve a dining/kitchen area. Due to limitations on the outlook which is available to the rear, caused by the proximity of the property boundary, this area relies to some extent on the appeal site to provide an adequate outlook.

19. The proposed dwelling could be designed to avoid any windows being located in its side elevation facing towards Duncroft, and landscaping could be provided along the boundary of the area which would be retained as garden for the existing house. As a result, the proposal need not affect the privacy of occupiers of Duncroft. The proposed dwelling would also not affect the good outlook which is available from ground and first floor windows at the front of Duncroft, and its effects on outlook and lighting within 'Duncroft' could also be reduced by limiting its height.
20. The proposed dwelling would, however, even if designed as a low lying bungalow, be likely to restrict the outlook and at times sunlight to some extent from the side facing windows in Duncroft. As a result, it would cause limited harm to the living conditions of the occupiers of Duncroft and a degree of conflict with Policy NW10 (bullet point 9) of the NWLPCS. Whilst some nearby dwellings have been extended and the side garden of Duncroft is larger than that of many nearby dwellings, these points would not neutralise this harm.

Other Considerations

21. The proposal would contribute one dwelling to the supply of housing in the area. Given the Government's aim of boosting significantly the supply of housing, this would constitute a notable benefit. However, there is little evidence before me to suggest that the housing land supply situation in the area justifies allowing the appeal proposal having regard to my earlier findings.

Conclusions

22. I have found that, having regard to its limited level of accessibility to jobs and services, the proposal would not be a suitable form of development in this rural area. I have also found that the proposal would cause substantial harm to highway safety and limited harm to the living conditions of the occupiers of Duncroft.
23. Whilst the proposal would deliver the benefit of providing one additional dwelling, no other substantive benefits have been identified. I consider that the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits of doing so. Whilst the proposed new dwelling would contribute to the economic and social dimensions of sustainable development, due to its high level of reliance on the private car to access jobs and services the proposal would not constitute sustainable development as a whole.
24. For these reasons, I dismiss the appeal.

Jonathan Clarke

INSPECTOR



Appeal Decision

Site visit made on 24 January 2017

by **Andrew Owen BA(Hons) MA MRTPI**

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

Decision date: 13 February 2017

Appeal Ref: APP/R3705/W/16/3163176

Moor Farm Stables, Wall Hill Road, Corley Moor, Corley CV7 8AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Liz White against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0091, dated 12 February 2016, was refused by notice dated 18 May 2016.
 - The development proposed is the erection of an equestrian indoor practice arena.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The development was described originally as retrospective and from my site visit it was clear that the indoor practise area had already been erected, completed and was in use.
3. Planning permission was granted for the erection of an indoor practise arena in 2014¹. That arena was to be positioned roughly in the same position as that now built, but was to be shorter in length and height than that now built and partly set into the ground.

Main Issues

4. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the 'Framework') and development plan policy;
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties in respect of their outlook;
 - if the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

¹ PAP/2014/0533

Reasons

Inappropriate development

5. The site is within the Green Belt. The explanatory text to Policy NW3 of the North Warwickshire Core Strategy (NWCS) advises that there is a general presumption against inappropriate development in the Green Belt. Paragraph 87 of the Framework is clear that inappropriate development is harmful to the Green Belt. I can therefore give substantial weight to Policy NW3 as it accords generally with the advice in paragraph 87 of the Framework.
6. Paragraph 89 of the Framework states that the construction of new buildings in the Green Belt is inappropriate. However, it adds that an exception to this is the provision of appropriate facilities for outdoor sport or outdoor recreation as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
7. It is not disputed by the parties that the development is a facility for outdoor sport or recreation, but the Council consider that it is not an appropriate facility as the building is around 1.5 metres taller than that granted planning permission. I do not consider the extra height means the building is necessarily not an appropriate facility, as it provides the same function as the arena previously permitted.
8. It is agreed between the parties that the five purposes of the Green Belt as listed in paragraph 80 of the Framework are not affected by the proposal, and I have no reason to come to a different view. The remaining consideration as to whether the development is not inappropriate is whether the building preserves the openness of the Green Belt.
9. There is a row of trees that runs along the boundary of the site with Wall Hill Road. Supplementary planting has been provided to help thicken up this vegetation and provide a better screen. However, during the winter months as was the case at the time of my site visit, the building does appear prominently from Wall Hill Road and I do not consider the additional planting, even when fully grown, would be likely to mitigate its prominence completely.
10. Moreover I saw that the building is visible from a number of longer distance viewpoints, such as from along the footpath which flanks the south side of the M6 motorway and from points to the north along the B4102 which runs between Fillongley and Meriden. From these locations the building is set against the backdrop of trees and seen in the context of the other farm buildings, and I note some planting has been provided just in front of the building which may help to lessen the visual effect in time. Nonetheless the size and height of the arena make it visually conspicuous.
11. I recognise the Landscape and Visual Impact Assessment assesses the impact of the development as low. However this assessment is not directly comparable to an assessment of the effect on openness as required by the Framework. Overall, taking account of short and long distance views, I consider the building does not preserve openness visually.
12. Furthermore, the effect of the development on openness includes a spatial impact as well as its visual impact. Due to its scale, height and partly elevated position, the building dominates the site. Therefore the spatial openness of the site, and the Green Belt, is compromised.

13. As such, I consider the development, visually and spatially, does not preserve the openness of the Green Belt and, furthermore, that the degree of harm is significant. The proposal is inappropriate development. Paragraph 87 of the Framework says inappropriate development is, by definition, harmful to the Green Belt and shall not be approved except in very special circumstances. It is therefore necessary for me to consider whether any other harm is caused by the proposal and then balance the other considerations against the totality of that harm.

Living conditions

14. There are a small number of properties opposite the site on Wall Hill Road which directly face the development. Although the building does appear prominently from these properties it is separated from them by the width of the road and the vegetation on the site and on the highway verge. As such its impact on these properties is softened. Whilst, as set out above, I consider the building does not preserve visual openness in this vicinity, I do not consider it harms the living conditions of these neighbouring residents. Therefore the development accords with Policy NW10 of the NWCS which seeks to ensure development avoids unacceptable impacts on neighbouring properties.

Other considerations

15. I note the Council considered the building granted planning permission would not have been inappropriate in the Green Belt. However the building on site is materially larger in terms of its length and its height and, because it is partly elevated, appears significantly higher. As such I give little weight to the extant permission. Similarly although the building has no windows facing the neighbouring properties, I do not consider this is necessarily an advantage of the development as the previous proposal was considered acceptable by the Council.

16. The timber walls do appear striking as they are new, but they will weather over time and this would help the building to blend in with its context. Also the building does appear to be well constructed and generally has an agricultural design. However these factors do not address the size of the building which is the main source of its effect on openness. As such I give limited weight to this consideration.

17. The evidence presented does suggest that the erection of the building different from that granted permission was a genuine mistake by the appellant. Furthermore, substantial evidence has been provided to demonstrate that the cost of removing the existing building and constructing the building which has planning permission would be such that the business would no longer be viable, and would lead to its closure.

18. It is clear from the level of support for the scheme, that the stables provide a valuable facility for many sections of the community including children, the disabled and elite equestrians. I also accept that paragraph 28 of the Framework does lend support to the growth of businesses in rural areas. However I have no evidence to suggest that the removal of the existing structure alone and the subsequent absence of any indoor arena, which may be the consequence of my decision, would necessarily result in the closure of the business. As such, after careful consideration of this matter, I give it only moderate weight.

19. Furthermore whilst I recognise the advantages to the business of the indoor arena over the other outdoor arenas on site, there is little evidence to demonstrate that the building is required to be the size it is and that a smaller building such as that already consented, would not suffice. As such I give limited weight to this matter.

Planning Balance and Overall Conclusion

20. The Framework advises that the Government attaches great importance to Green Belts and that substantial weight should be given to any harm to the Green Belt. I consider that the development causes significant harm to the Green Belt by way of its inappropriateness and substantial weight should be given to this harm. Balanced against that are the other considerations identified above.

21. For the appeal to succeed the combined weight of the other considerations must clearly outweigh the harm arising. Whilst the combined weight of the other considerations is considerable, I conclude that it does not clearly outweigh the harm to the Green Belt and therefore there are no very special circumstances to justify the proposal.

22. Consequently, the development conflicts with Policy NW3 of the NWCS and the Framework which aim to protect the Green Belt from inappropriate development, and Policy NW12 and NW13 of the NWCS which require development to protect the character and quality of the environment.

23. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be dismissed.

Andrew Owen

INSPECTOR

Agenda Item No 11

Planning and Development Board

6 March 2017

Report of the
Head of Development Control

Moor Farm Stables, Wall Hill Road,
Corley Moor

1 Summary

- 1.1 The report brings Members up to date following a recent appeal decision by looking at the consequences of that decision to refuse planning permission.

Recommendation to the Board

That the Solicitor to the Council be authorised to issue an Enforcement Notice, requiring the demolition of the existing indoor riding arena; the removal of the resultant materials from the site and the re-instatement of the land for the reasons set out in the report below. A compliance period of six months is required.

2 Background

- 2.1 Members will be familiar with the background to this case. Planning permission was granted for an indoor riding arena at Moor Farm Stables in Corley Moor. The finished building however was not in accordance with the approved plans – it being much taller; longer and with other changes. A planning application to retain the newly built structure was refused permission and an appeal lodged. That appeal was recently dismissed – see an item elsewhere on the agenda – and thus the building as built is now unauthorised. In refusing the application the Planning Board also considered that it would be expedient to commence enforcement action. However the issue of the Notice was postponed until the outcome of the planning appeal. The matter is therefore reported back to the Board.

- ... 2.2 A copy of the appeal letter is attached as Appendix A.

3 Report

3.1 The Appeal Decision

- 3.1.1 The reasoning behind the dismissal of the appeal is clearly set out in the letter. There are two important conclusions.
- 3.1.2 The first is that the building is inappropriate development in the Green Belt causing significant harm. There is limited other harm. The cumulative weight of the harm caused is not outweighed by the matters raised by the appellants.

In other words there is a very strong planning case here to defend in the event of an appeal against the issue of an Enforcement Notice.

- 3.1.3 The second are the comments made by the Inspector in respect of the appellant's argument – namely the impact on the business and the need for the larger building. He only gave moderate weight to the potential impact of the loss of the building on the business. In other words this helps too in the event of an Enforcement appeal.

3.2 Enforcement Action

- 3.2.1 The Council can serve an Enforcement Notice if it is expedient to do so. The appeal decision is a material planning consideration of substantial weight in that assessment of expediency.
- 3.2.2 The other matter affecting that assessment is the potential impact of such action on the appellant's business. This issue has been discussed by Members previously and it was looking to see the evidence from the owner in this regard. That evidence was contained in the appellant's case arguing against the refusal in the appeal. As can be seen above, the Inspector gave this only moderate weight. As such this should not carry any more weight in the assessment of expediency.
- 3.2.3 The Council therefore has a strong case here for pursuing enforcement action.
- 3.2.4 The requirements of such a Notice would be the demolition of the unauthorised building; the removal of the ensuing materials and the reinstatement of the land. This is because the development considered under the appeal was the retention of the existing building on site. As it is materially different to that approved earlier, it is treated as a new building and has to be considered as such. A reasonable compliance period would be six months.
- 3.2.5 Members do need to consider the possible grounds of appeal against such a Notice should the owner exercise her right to appeal against its service. Clearly the planning ground of appeal is weakened by the recent appeal decision; the building is not immune from enforcement action by virtue of the passage of time and the requirements are commensurate with the refusal in order to remedy the breach. The arguments about the impact on the viability of the business have only moderate weight.
- 3.2.6 In all of these circumstances it is therefore considered that it would be expedient to issue an Enforcement Notice.
- 3.2.7 The reasons for the Notice are that the development is not appropriate in the Green Belt and that it causes significant harm to the openness of the Green Belt. The considerations put forward by the owner are not of such weight to clearly outweigh this harm. The retention of the building is thus not in accord with Policy NW3 of the North Warwickshire Core Strategy 2014 and the National Planning Policy Framework 2012.

4 Report Implications

4.1 Finance and Value for Money Implications

4.1.1 The costs of issuing the Notice would fall within existing budgets. If an appeal is lodged there may be additional costs involved in defending the Notice.

4.2 Legal and Human Rights Implications

4.2.1 The owner has the right of appeal against the service of the Notice.

4.3 Environment and Sustainability Implications

4.3.1 The reasons for the issue of the Notice are wholly to support the Green Belt and to retain the purposes of including land within it.

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

Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date
1	Planning Inspectorate	Appeal Decision	13.2.17

Appeal Decision

Site visit made on 24 January 2017

by **Andrew Owen BA(Hons) MA MRTPI**

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

Decision date: 13 February 2017

Appeal Ref: APP/R3705/W/16/3163176

Moor Farm Stables, Wall Hill Road, Corley Moor, Corley CV7 8AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Liz White against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0091, dated 12 February 2016, was refused by notice dated 18 May 2016.
 - The development proposed is the erection of an equestrian indoor practice arena.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The development was described originally as retrospective and from my site visit it was clear that the indoor practise area had already been erected, completed and was in use.
3. Planning permission was granted for the erection of an indoor practise arena in 2014¹. That arena was to be positioned roughly in the same position as that now built, but was to be shorter in length and height than that now built and partly set into the ground.

Main Issues

4. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the 'Framework') and development plan policy;
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties in respect of their outlook;
 - if the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

¹ PAP/2014/0533

Reasons

Inappropriate development

5. The site is within the Green Belt. The explanatory text to Policy NW3 of the North Warwickshire Core Strategy (NWCS) advises that there is a general presumption against inappropriate development in the Green Belt. Paragraph 87 of the Framework is clear that inappropriate development is harmful to the Green Belt. I can therefore give substantial weight to Policy NW3 as it accords generally with the advice in paragraph 87 of the Framework.
6. Paragraph 89 of the Framework states that the construction of new buildings in the Green Belt is inappropriate. However, it adds that an exception to this is the provision of appropriate facilities for outdoor sport or outdoor recreation as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
7. It is not disputed by the parties that the development is a facility for outdoor sport or recreation, but the Council consider that it is not an appropriate facility as the building is around 1.5 metres taller than that granted planning permission. I do not consider the extra height means the building is necessarily not an appropriate facility, as it provides the same function as the arena previously permitted.
8. It is agreed between the parties that the five purposes of the Green Belt as listed in paragraph 80 of the Framework are not affected by the proposal, and I have no reason to come to a different view. The remaining consideration as to whether the development is not inappropriate is whether the building preserves the openness of the Green Belt.
9. There is a row of trees that runs along the boundary of the site with Wall Hill Road. Supplementary planting has been provided to help thicken up this vegetation and provide a better screen. However, during the winter months as was the case at the time of my site visit, the building does appear prominently from Wall Hill Road and I do not consider the additional planting, even when fully grown, would be likely to mitigate its prominence completely.
10. Moreover I saw that the building is visible from a number of longer distance viewpoints, such as from along the footpath which flanks the south side of the M6 motorway and from points to the north along the B4102 which runs between Fillongley and Meriden. From these locations the building is set against the backdrop of trees and seen in the context of the other farm buildings, and I note some planting has been provided just in front of the building which may help to lessen the visual effect in time. Nonetheless the size and height of the arena make it visually conspicuous.
11. I recognise the Landscape and Visual Impact Assessment assesses the impact of the development as low. However this assessment is not directly comparable to an assessment of the effect on openness as required by the Framework. Overall, taking account of short and long distance views, I consider the building does not preserve openness visually.
12. Furthermore, the effect of the development on openness includes a spatial impact as well as its visual impact. Due to its scale, height and partly elevated position, the building dominates the site. Therefore the spatial openness of the site, and the Green Belt, is compromised.

13. As such, I consider the development, visually and spatially, does not preserve the openness of the Green Belt and, furthermore, that the degree of harm is significant. The proposal is inappropriate development. Paragraph 87 of the Framework says inappropriate development is, by definition, harmful to the Green Belt and shall not be approved except in very special circumstances. It is therefore necessary for me to consider whether any other harm is caused by the proposal and then balance the other considerations against the totality of that harm.

Living conditions

14. There are a small number of properties opposite the site on Wall Hill Road which directly face the development. Although the building does appear prominently from these properties it is separated from them by the width of the road and the vegetation on the site and on the highway verge. As such its impact on these properties is softened. Whilst, as set out above, I consider the building does not preserve visual openness in this vicinity, I do not consider it harms the living conditions of these neighbouring residents. Therefore the development accords with Policy NW10 of the NWCS which seeks to ensure development avoids unacceptable impacts on neighbouring properties.

Other considerations

15. I note the Council considered the building granted planning permission would not have been inappropriate in the Green Belt. However the building on site is materially larger in terms of its length and its height and, because it is partly elevated, appears significantly higher. As such I give little weight to the extant permission. Similarly although the building has no windows facing the neighbouring properties, I do not consider this is necessarily an advantage of the development as the previous proposal was considered acceptable by the Council.
16. The timber walls do appear striking as they are new, but they will weather over time and this would help the building to blend in with its context. Also the building does appear to be well constructed and generally has an agricultural design. However these factors do not address the size of the building which is the main source of its effect on openness. As such I give limited weight to this consideration.
17. The evidence presented does suggest that the erection of the building different from that granted permission was a genuine mistake by the appellant. Furthermore, substantial evidence has been provided to demonstrate that the cost of removing the existing building and constructing the building which has planning permission would be such that the business would no longer be viable, and would lead to its closure.
18. It is clear from the level of support for the scheme, that the stables provide a valuable facility for many sections of the community including children, the disabled and elite equestrians. I also accept that paragraph 28 of the Framework does lend support to the growth of businesses in rural areas. However I have no evidence to suggest that the removal of the existing structure alone and the subsequent absence of any indoor arena, which may be the consequence of my decision, would necessarily result in the closure of the business. As such, after careful consideration of this matter, I give it only moderate weight.

19. Furthermore whilst I recognise the advantages to the business of the indoor arena over the other outdoor arenas on site, there is little evidence to demonstrate that the building is required to be the size it is and that a smaller building such as that already consented, would not suffice. As such I give limited weight to this matter.

Planning Balance and Overall Conclusion

20. The Framework advises that the Government attaches great importance to Green Belts and that substantial weight should be given to any harm to the Green Belt. I consider that the development causes significant harm to the Green Belt by way of its inappropriateness and substantial weight should be given to this harm. Balanced against that are the other considerations identified above.
21. For the appeal to succeed the combined weight of the other considerations must clearly outweigh the harm arising. Whilst the combined weight of the other considerations is considerable, I conclude that it does not clearly outweigh the harm to the Green Belt and therefore there are no very special circumstances to justify the proposal.
22. Consequently, the development conflicts with Policy NW3 of the NWCS and the Framework which aim to protect the Green Belt from inappropriate development, and Policy NW12 and NW13 of the NWCS which require development to protect the character and quality of the environment.
23. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be dismissed.

Andrew Owen

INSPECTOR

Agenda Item No 12

Planning and Development Board

6 March 2017

**Report of the
Head of Development Control**

**Tree Preservation Order
109 Tamworth Road
Wood End**

1 Summary

1.1 The Council's Tree Officer was consulted in respect of an outline planning application for four houses at 109 Tamworth Road, Wood End, following the submission of a landscape plan as part of a planning application. The Tree Officer identified six mature Oak trees within the site that offer potential for significant amenity value in the future as well as offering habitat value (as indicated on the plan at Appendix A) and are considered worthy of a Tree Preservation Order.

...

1.2 A report was presented to the Board on 10 October 2016 that a Tree Preservation Order be made, in respect of six mature Oak trees and that any representations received be referred to the Board for it to consider whether to make the Order permanent. The provisional Order was made on 7 November 2016.

1.3 The required minimum period for representations by interested parties in respect of this Tree Preservation Order expired on 14th December 2016.

Recommendation to the Board

That the Tree Preservation Order be made permanent in respect of six mature Oak trees.

2 Observations

2.1 The Council's solicitor is satisfied that the Council has complied with the legislative requirements with regards to notifying adjoining owners/occupiers.

2.2 No representations have been received from owners or occupiers.

3 Report Implications

3.1 Legal and Human Rights Implications

3.1.1 The owners of the land have been given the opportunity to make representations to the Council before the Order is confirmed as being permanent.

3.1.2 The trees to be protected exhibit significant amenity value for both the present and the future use of the land.

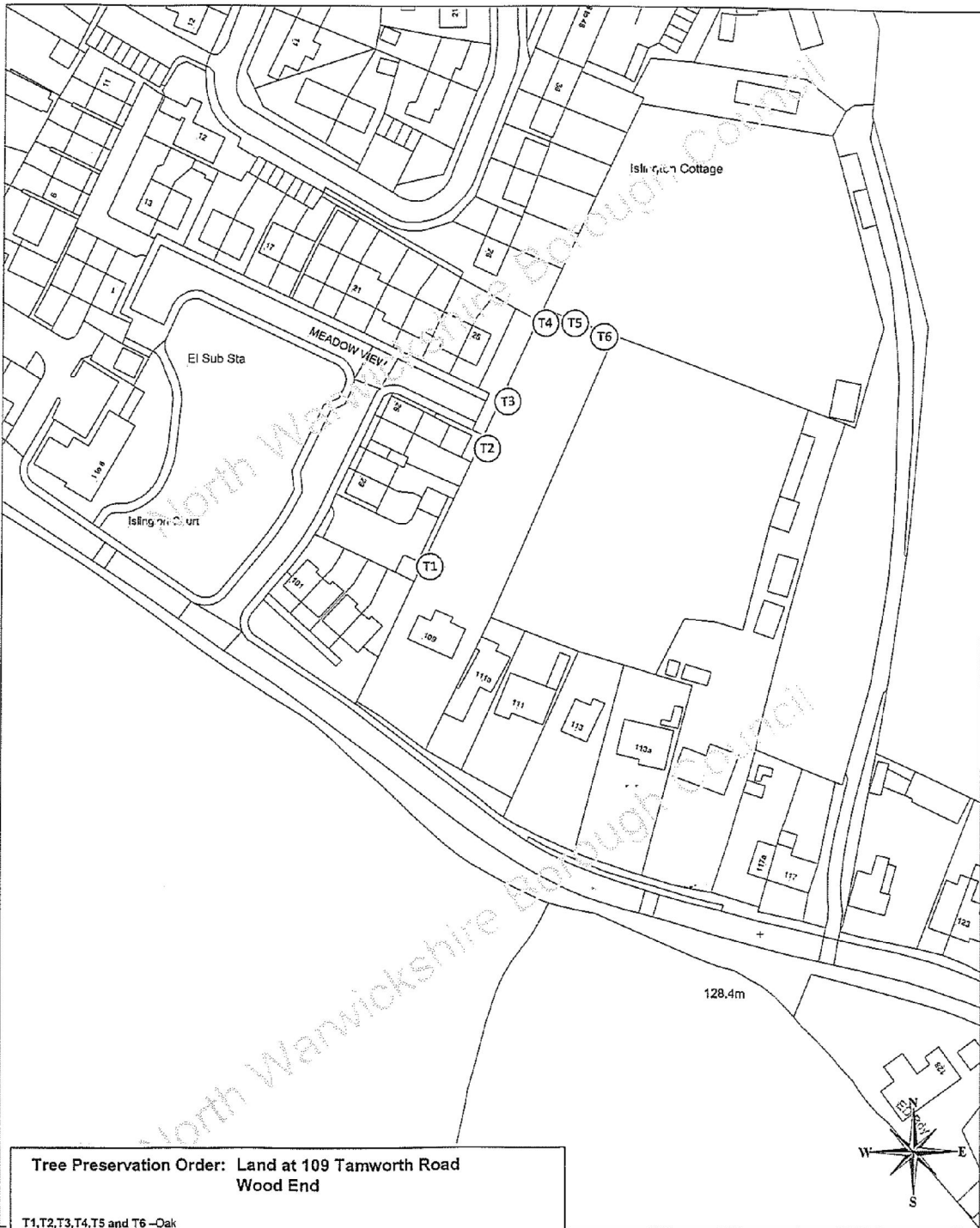
The Contact Officer for this report is Fiona Wallace (719475)

Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date
Memo	NWBC Principal Solicitor	Memo with the Tree Preservation Order, plan and notice sent to owners and adjoining occupiers.	7.11.16

Appendix A



**Tree Preservation Order: Land at 109 Tamworth Road
Wood End**

T1,T2,T3,T4,T5 and T6 –Oak

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Agenda Item No 13

Planning and Development Board

6 March 2017

**Report of the
Head of Development Control**

**Tree Preservation Order
Land at The Homestead,
Main Road, Austrey**

1 **Summary**

- 1.1 The purpose of this report is to confirm or otherwise a Tree Preservation Order made in respect of 44 individual trees all located at Land at The Homestead, Main Road, Austrey.

Recommendation to the Board

That the Tree Preservation Order be confirmed.

2 **Background**

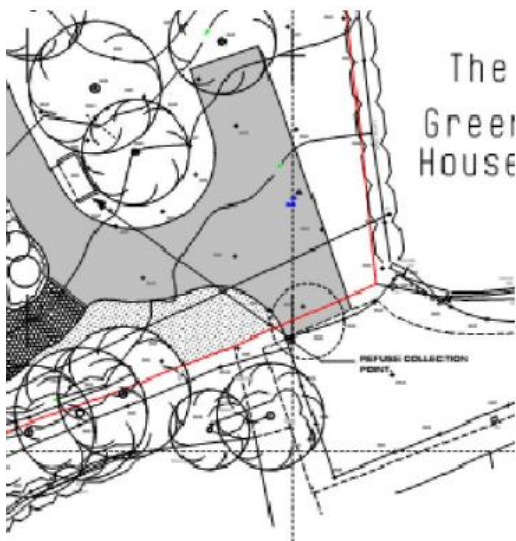
- 2.1 The Council made a Tree Preservation Order (TPO) in respect four groups of trees and 33 individual trees. The TPO came into force, on a temporary basis, on 10 June 2016. It provisionally remained in force for six months. The owners/occupiers of the property and the adjoining owners/occupiers had opportunity to make representations/objections.
- 2.2 A representation was received on behalf of the site owner. The representation took issue at the timing of the order and suggested that some of the protected trees were of doubtful character or unworthy of retention. At least one tree was claimed to be dead.
- 2.3 An appeal against the refusal of outline planning permission for housing at the site was allowed on 5 October 2016.
- 2.4 The site was visited again by the Council's Tree Officer, the Planning Case Officer and the prospective site owner (at the wish of the current site owner) and his agent. The visit was very constructive and the prospective new owner was not opposed to the order providing that it didn't adversely impact on his ability to build out the development that he now had outline planning permission for. The visit confirmed that there were indeed some inaccuracies in the original order. It soon became apparent that the order was not an accurate reflection of the trees on site. The consequence was that the TPO needed to be varied, rather than modified.
- 2.5 The Board authorised the varied TPO at the December 2016 meeting of the Planning and Development Board. The varied order took effect on 13 December 2016 and parties with an interest in the affected land were

afforded an opportunity to make representations/objections until 24 January 2017.

... 2.6 The previous reports to Board in respect of this Tree Preservation Order are attached as **Appendix A**.

2.7 Though the Tree Officer noted that a Norway Maple tree at the site entrance was worthy of protection from a tree quality, condition and visual amenity perspective, the consequence of the grant of outline planning permission, with approval of access arrangements in detail, indicated that it would not be appropriate to confirm it within a varied order.

2.8 The approved access arrangements (extract below) showed the tree as being removed (dotted outline notation is used to trees that would be removed as a consequence of the development)



2.9 In approving access in detail the Planning Inspector has given default permission for the felling of this tree. It was suggested that it would be perverse to argue otherwise and Members were advised that a legal opinion obtained by the prospective new owner also reached this conclusion. The Norway Maple was therefore omitted from the varied order.

3 **Representations**

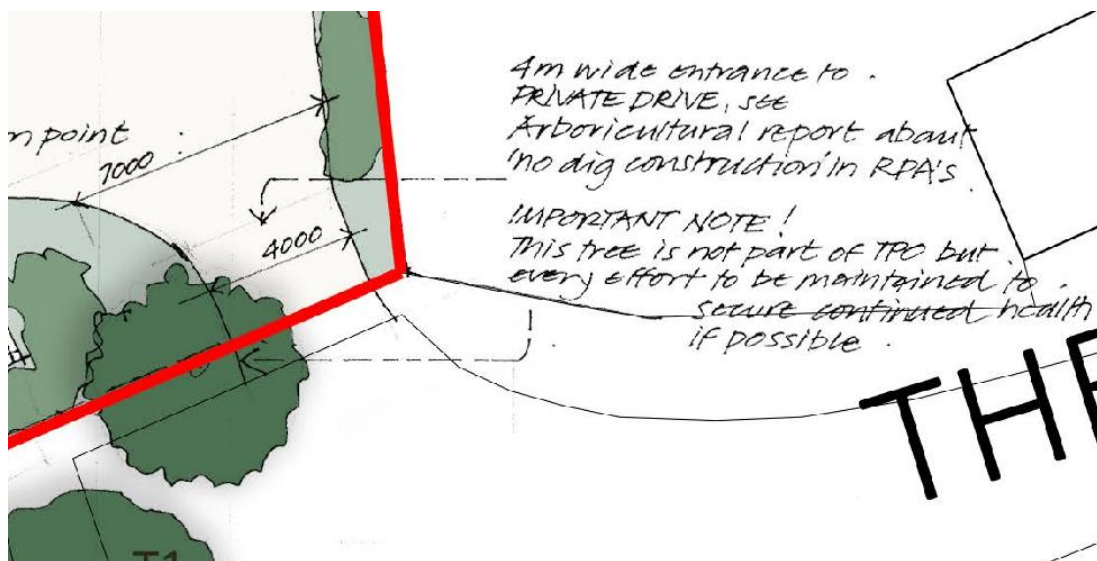
3.1 No letters of objection have been received from any party with an ownership interest in the trees affected by the order.

... 3.2 A representation has been received from a third party. The representation is attached for information in full as **Appendix B**.

3.3 The principal concern expressed relates to the Boards decision to remove protection from the Norway Maple tree which sits at the proposed vehicular access to the site, but it also presents concerns about the judgements made surrounding the decision to allow the development of the associated land and the decision to allow access from The Green. The latter concerns are not matters for consideration here.

4 Observations

- 4.1 The advice to Members about the appropriateness of protecting the Norway Maple tree has not altered, Officer's continue to take the view that in granting permission for access to the site, the Inspector has consented the felling of the tree and that it would therefore be inappropriate to revert back to including the tree within the Preservation Order.
- 4.2 Notwithstanding this, the new site owner has indicated that he intends shortly to submit an application for the approval of reserved matters for the housing development. In recognition of the concerns expressed by local people about the loss of the Maple tree he has tried to design the access in such a manner that he will be able to retain the tree. The extract below is from a plan that he has presented for information which shows how he would seek to achieve the retention of the tree.



- 4.3 Though this arrangement will be the subject of consultation with the Highway Authority and may not be found agreeable in due course, it provides an indication from the developer that he recognises the strength of desire to retain the tree and that he is willing to go to some lengths with 'no dig construction' within the root protection area to seek to minimise any effects on the health of the tree if it is able to be retained.
- 4.4 Tree Preservation Orders are made under Section 198 of the Town and Country Planning Act 1990. The Council may make a Tree Preservation Order if it appears to them that it is "...expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area". The Act does not define "amenity", nor does it prescribe the circumstances in which it may be in the interests of amenity to make a Tree Preservation Order. It is normally recognised, however, that the tree or trees should have a reasonable degree of public visibility, and be protected for the public's benefit.

4.5 In this instance, the trees are visible from public land and make an important contribution to the amenity of the area. It is considered that the Order should be confirmed.

4.6 It is for the Board to decide whether or not to confirm the Order.

5 Report Implications

5.1 Financial Implications

5.1.1 The confirmation of the Order has no implications, but in certain limited circumstances, claims for compensation can be made.

5.2 Crime and Disorder Implications

5.2.1 The felling of a tree protected by an Order is an offence.

5.3 Legal and Human Rights Implications

5.3.1 There is a balance here between the importance to public amenity in retaining the trees and controlling works to them. In the future, should consent be refused for works to the trees, appeals can be lodged with the Secretary of State.

5.4 Sustainability Implications

5.4.1 The value of the trees as a living resource would be retained if the Order is confirmed.

The Contact Officer for this report is Erica Levy (719294).

Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date
1	North Warwickshire Borough Council	Tree Preservation Order dated	13.12.16

Agenda Item No 11a

Planning and Development Board

12 December 2016

**Report of the
Head of Development Control**

Proposed Tree Preservation Order

**Land Adjacent The Homestead,
Main Road, Austrey**

1 Summary

- 1.1 The purpose of this report is to confirm or otherwise a Tree Preservation Order made in respect of four groups of trees and 33 individual trees situated at The Homestead, Main Road, Austrey. The trees lie on land to the rear of The Homestead, on land north of The Green.

Recommendation to the Board

That the Tree Preservation Order be varied, as follows:

**A Tree Preservation Order in respect of 44 individual trees –
American Elm (T1), Blue Atlas Cedar (T2), Whitebeam (T3), Deodar Cedar (T4), Scots Pine (T5), Whitebeam (T6), Norway Maple (T7), Cherry (T8), Apple (T9), Willow (T10), Norway Maple (T11), Cherry (T12), Apple (T13), Brewers Spruce (T14), Apple (T15), Cherry (T16), Beech (T17), Apple (T18), Apple (T19), Pear (T20), Pear (T21), Hemlock-Spruce (T22), Apple (T23), Silver Birch (T24), Silver Birch (T25), Monkey Puzzle (T26), Horse Chestnut (T27), Weeping Ash (T28), Silver Birch (T29), Willow (T30), Walnut (T31), Cherry Plum (T32), Willow (T33), Tibetan Cherry (T34), Mountain Ash (T35), Mountain Ash (T36), Whitebeam (T37), Whitebeam (T38), Pear (T39), Apple (T40), Apple (T41), Horse Chestnut (T42), Silver Birch (T43), Horse Chestnut (T44)**

all located at Land At The Homestead, Main Road, Austrey.

2 Background

- 2.1 The Council made a Tree Preservation Order (TPO) in respect four groups of trees and 33 individual trees. The TPO, came into force, on a temporary basis, on 10 June 2016, and will remain in force for six months. The Council has this time to decide whether the order should be given permanent status. The owners/occupiers of the property and the adjoining owners/occupiers had until 15 July 2016 to make representations/objections.

- 2.2 The report which was considered at the time that Board resolved to make the Order is attached as Appendix A for information.
- 2.3 In addition to the protection of trees recommended by the Planning Officer, the Board resolved to protect an additional tree, a maple tree described as (T1). The extract from the minutes below, confirms this.

31 **Tree Preservation Order - Austrey**

The Board was invited to consider the making of a Tree Preservation Order in respect of a number of trees on land at The Homestead, Main Road, Austrey.

Resolved:

That a Tree Preservation Order be made with immediate effect, in respect of the groups of trees containing horse chestnut and silver birch (G1), cherry and apple (G3), blue spruce and grand fir (G4) and deodar cedar and spruce (G5), and individual trees – maple (T1), weeping ash (T2), horse chestnut (T3), silver birch (T4), goat willow (T4a), walnut (T5), purple plum (T6), weeping willow (T7), Tibetan cherry (T8), whitebeam (T9), whitebeam (T10), rowan (T11), rowan (T12), Brewer's spruce (T13), beech (T14), hawthorn (T15), Norway maple (T16), pear (T18), apple (T19), cherry (T20), Norway maple (T21), Scots pine (T22), whitebeam (T23), deodar cedar (T24), corkscrew willow (T25), silver birch (T26), whitebeam (T27), eucalyptus (T29), apple (T30), fir (T31), silver birch (T32), silver birch (T33) and monkey puzzle (T34), all located at Land At The Homestead, Main Road, Austrey, for the reasons given in this report, and that any representations received be referred to the Board for it to consider whether to make the Order permanent.

NB. In making the order the numbers allocated to the trees were re-numbered the groups of trees so that the run inclusively G1 to G4 (previously they excluded G2 because the numbering was based on a survey presented with the planning application and G2 were found not to be worthy of protection).

It was resolved to make the order at the same time as the Board was considering an outline planning application for the construction of four dwellings at the site. The Board resolved at the same meeting to visit the site and at the subsequent meeting to refuse planning permission.

The development proposed was based on the red line and illustrative layout shown in the plan below.



- 2.4 An appeal was lodged against the refusal of planning permission. The appeal was allowed on 5 October 2016. A copy of the appeal decision is attached as Appendix B.
- 2.5 In allowing the appeal the Inspector approved the development in outline and reserved matters of scale, layout, appearance and landscaping, however she approved the means of access in detail.
- 2.6 The Inspector commented on the effect of the Tree Preservation Order as follows:

8. Concerns have been raised for the loss of a tree protected by a Tree Preservation Order (TPO) as a result of the new access proposed. It was apparent from my observations on site that the tree contributes positively to the verdant character of the area. The Tree Report suggests that no works are proposed to this tree, however, in light of the application being in outline and the plans being indicative, I cannot be certain about the future of this tree; details of landscaping are earmarked for consideration at the reserved matters stage. It is reasonable, however, to impose a condition on any outline consent to ensure that the existence of the

TPO'd tree is considered appropriately at the reserved matters stage, alongside more detailed landscape proposals.

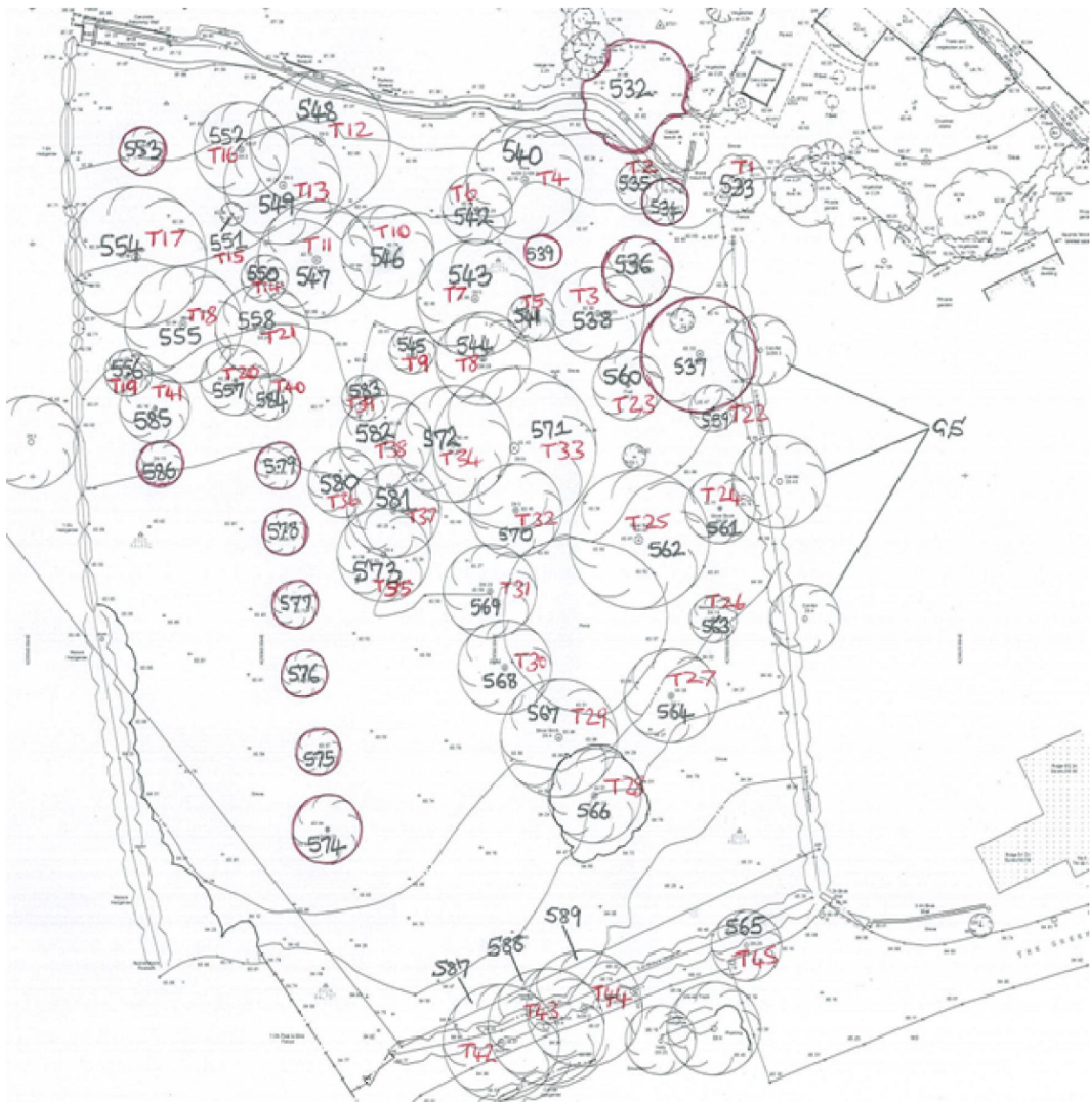
- 2.7 The prospective developer has obtained legal opinion about the effect of the TPO in respect of the tree at the site access and the effect of the appeal decision. A copy of that legal opinion has been supplied and is attached as Appendix C.

3 Representations

- 3.1 A representation was received on behalf of the site owner, albeit they were received after the date for the receipt of objections or comments. The representation takes issue at the timing of the order in relation to the decision to refuse planning and the submission of a planning appeal and suggests that some of the protected trees are of doubtful character or unworthy of retention. At least one tree is completely dead.

4 Observations

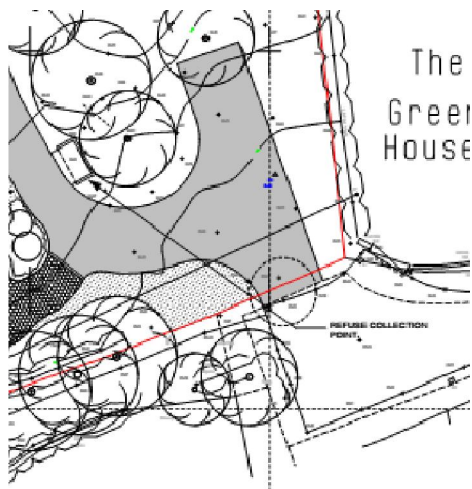
- 4.1 Given that the planning appeal was material to the future of this site, officers awaited receipt of the appeal decision ahead of considering the representation and ahead of considering whether the Order should be confirmed.
- 4.2 Additionally, given the site owners representation about the accuracy of the character and condition of some of the protected trees the site was visited again by the Council's recently appointed Tree Officer, the Planning Case Officer and the prospective site owner (at the wish of the current site owner) and his agent.
- 4.3 The visit was very constructive and the prospective new owner was not opposed to the order providing that it didn't adversely impact on his ability to build out the development that he now has outline planning permission for.
- 4.4 The visit confirmed that there were indeed some inaccuracies in the original order. It soon became apparent that the order was not an accurate reflection of the trees on site. The plotting of the order was complicated by the fact that two versions of a tree survey existed (one commissioned by the current owner and another commissioned by the prospective owner) and both contained inaccuracies, including some errors in the identification of tree species/varieties and some trees that were not plotted. The consequence is that the TPO will need to be varied, rather than modified.
- 4.5 In the spirit of working together constructively the Tree Officer offered that he would tag all of the trees on site to identify their status, based on their condition. The prospective owner welcomed the clarity that would be achieved in such an exercise. This has now been done.
- 4.6 The Tree Officer has created a new plan based on a more accurate survey and it is proposed that this should form the basis for a variation of the TPO. The Tree Officers report and Plan are shown at Appendix D. Additionally, the plan is shown below for ease of reference:



4.7 The Council's Tree Officer broadly concurs with the opinions expressed by the Officer from the County Council at the time of the making of the order. He finds that the varying species of trees upon this site collectively form a diverse and desirable collection that is of a benefit to the local community and area, both at this present time and in future generations of the local community. He found evidence of a caring, determined, well executed and sympathetic approach to the planting of the trees on the site, with the majority of the collection of trees remaining of a high standard of condition with very few defects noted at the time of the survey. He considers that the loss of trees noted for retention within the schedule would have a devastating impact on the surrounding land and a detrimental effect on the overall amenity value of the area. The collection of trees is bio-diverse and mature by nature and as such fully worthy of protection from removal.

Note: Several trees have been noted within the schedule for removal and as such these trees would not be worthy of protection.

- 4.8 Though the Tree Officer notes T45, a Norway Maple tree to be worthy of protection from a tree quality, condition and visual amenity perspective, because of the consequence of the grant of outline planning permission, with approval of access arrangements in detail, it is not proposed to confirm the order in respect of T45.
- 4.9 The plan extract below shows the approved access arrangements. T45 is the tree shown with a dotted outline at the position where the new access meets the highway carriageway of The Green. The dotted outline notation is used to depict trees that would be removed as a consequence of the development. In approving access in detail the Planning Inspector has given default permission for the felling of this tree. It would be perverse to argue otherwise.



- 4.10 The legal opinion obtained by the prospective new owner also reaches this conclusion.

2.4 Whatever the Inspector meant, therefore, in DL paragraph 8 and in imposing Condition 8, it simply could not have been to create a situation whereby the local planning authority either in dealing with reserved matters, or approving details submitted under Conditions, could prevent the development being carried out in accordance with the planning permission that she herself had granted. Furthermore, whatever the Inspector's intention, it would in any event be unlawful, in my view, for the Council to seek to prevent the use of the approved access by continuing to protect tree T1 and refusing consent for its removal – see e.g. *Kent CC v Kingsway Investments* [1971] A.C. 72 at 96A-B where Lord Morris of Borthy-y-Gest stated that in respect of a permission granted subject to a condition of later approval of specified reserved matters,

"...It must, of course, be assumed that the authority will act in good faith. They must not misuse their functions so as indirectly and without paying compensation to achieve what would amount to a revocation or modification of the permission already given" (my underlining)

- 2.5 In the light of the above, the detailed approval of the access by the Inspector in my view should leave the future of tree T1 in no doubt at all – it has to come down in order to enable the approved access to be implemented and put to its intended use. Axiomatically, the Council's officer is right to indicate that in the light of the Appeal decision members should be recommended to remove tree T1 from the TPO before confirming the Order, but whether the tree were to be removed from the Order or not, as stated above any refusal by the Council to approve the removal of the tree pursuant to details submitted pursuant to Condition 8 of the OPP would in any event derogate from the grant of the planning permission. In these circumstances I doubt that delaying the submission of details until the TPO has been confirmed (with or without T1) would serve any useful purpose.

5 Conclusion

- 5.1 Tree Preservation Orders are made under Section 198 of the Town and Country Planning Act 1990. The Council may make a Tree Preservation Order if it appears to them that it is "...expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area". The Act does not define "amenity", nor does it prescribe the circumstances in which it may be in the interests of amenity to make a Tree Preservation Order. It is normally recognised, however, that the tree or trees should have a reasonable degree of public visibility, and be protected for the public's benefit.
- 5.2 In this instance, the trees are visible from public land and make an important contribution to the amenity of the area. It is considered that the Order should be varied as set out in the recommendation above.
- 5.3 It is for the Board to decide whether or not to vary the Order.

6 Report Implications

6.1 Financial Implications

- 6.1.1 The confirmation of the Order has no implications, but in certain limited circumstances, claims for compensation can be made.

6.2 Crime and Disorder Implications

- 6.2.1 The felling of a tree protected by an Order is an offence.

6.3 Legal and Human Rights Implications

- 6.3.1 There is a balance here between the importance to public amenity in retaining the trees and controlling works to them. In the future, should consent be refused for works to the trees, appeals can be lodged with the Secretary of State.

6.4 Sustainability Implications

- 6.4.1 The value of the trees as a living resource would be retained if the Order is confirmed.

The Contact Officer for this report is Erica Levy (719294).

Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date
1	North Warwickshire Borough Council	Tree Preservation Order dated	10 6 16
2	M Humby	Representation	28 7 16

APPENDIX A

Tree Preservation Order

**Planning and Development Board
12 October 2015**

**Report of the
Head of Development Control**

**Land At The Homestead, Main
Road, Austrey**

1 Summary

- 1.1 The rear garden/land to the rear of The Homestead, Main Road, Austrey is the subject of a current outline planning application proposing the development of the land with 4 dwellings (PAP/2015/0149). The development site has been revised to mostly exclude the part of the garden containing the most significant trees.
- 1.2 Given the number and significance of the trees on the land associated with the property the County Tree Officer has inspected them and identified that some, but not others, are worthy of a Tree Preservation Order. The trees are visible from surrounding public land.

Recommendation to the Board

That a Tree Preservation Order be made with immediate effect, in respect of the groups of trees containing horse chestnut and silver birch (G1), cherry and apple (G3), blue spruce and grand fir (G4) and deodar cedar and spruce (G5), and individual trees - weeping ash (T2), horse chestnut (T3), silver birch (T4), goat willow (T4a), walnut (T5), purple plum (T6), weeping willow (T7), Tibetan cherry (T8), whitebeam (T9), whitebeam (T10), rowan (T11), rowan (T12), Brewer's spruce (T13), beech (T14), hawthorn (T15), Norway maple (T16), pear (T18), apple (T19), cherry (T20), Norway maple (T21), Scots pine (T22), whitebeam (T23), deodar cedar (T24), corkscrew willow (T25), silver birch (T26), whitebeam (T27), eucalyptus (T29), apple (T30), fir (T31), silver birch (T32), silver birch (T33) and monkey puzzle (T34), all located at Land At The Homestead, Main Road, Austrey, for the reasons given in this report, and that any representations received be referred to the Board for it to consider whether to make the Order permanent.

2 Background and Statement of Reasons

- 2.1 The planning application (PAP/2015/0149) is an outline application for 4 dwellings on an L-shaped area of land to the rear of The Homestead, Main Road. The plot has a boundary with The Green. The application seeks approval of details of means of access.
- 2.2 An indicative site layout is as shown below. With this layout the majority of the trees are shown as to be retained but the smaller number of trees that would be lost are shown with a dashed circular notation. There would be some scope for a revised design at the approval of reserved matters stage to address the siting of any dwellings in relation to any protected trees, however, the proposed access arrangements are to be determined in detail at this stage and the tree at the proposed entrance position, adjacent to The Green, would be lost by necessity.

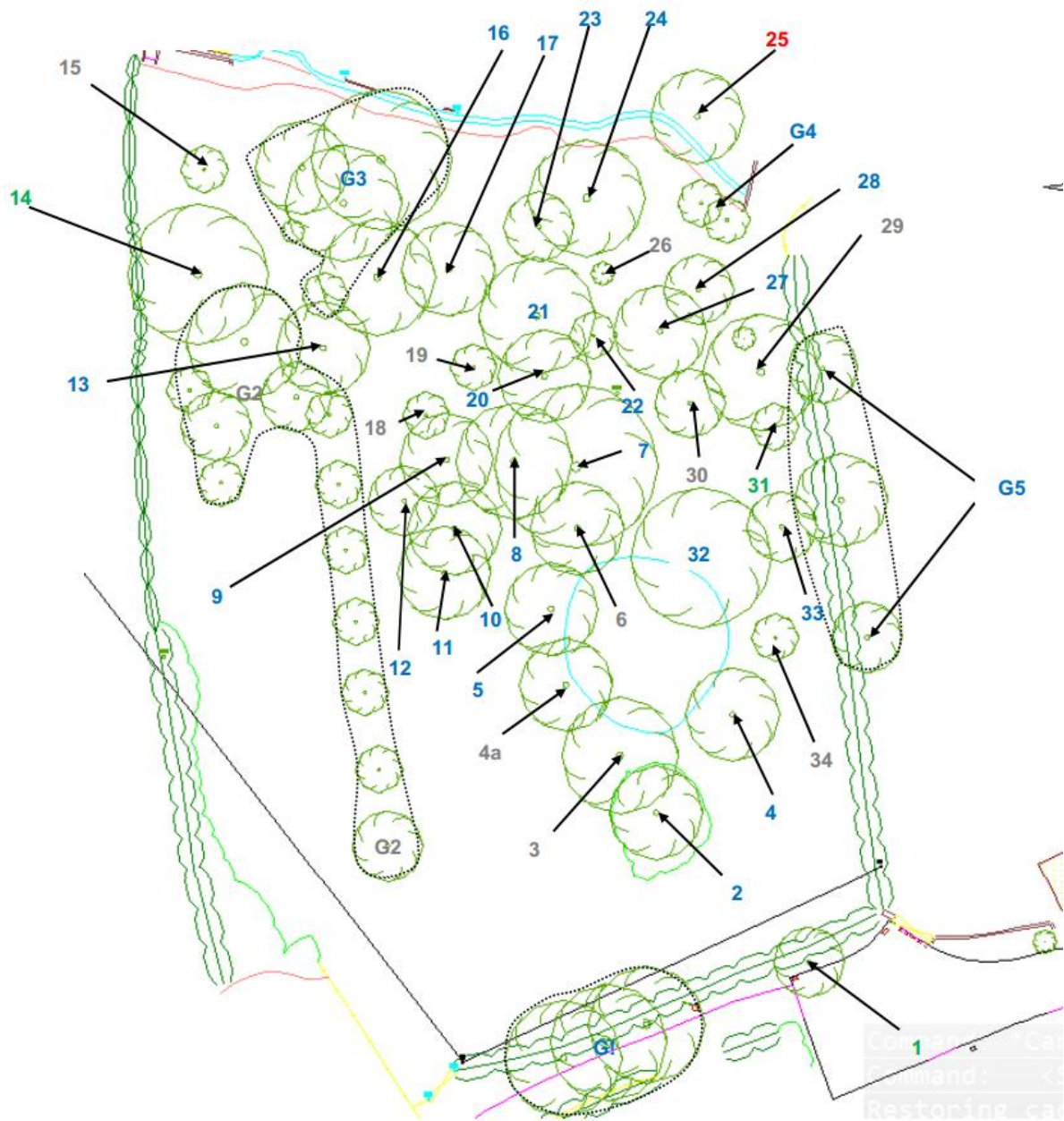


2.3 The existing tree cover is shown on the aerial photograph below.



2.4 The applicant has submitted an Arboricultural Survey Report & Method Statement with the application which utilises the plan below to identify and assess all trees on the site. This

plan has been used by the County Tree Officer for the identification of the trees in the TEMPO assessments that have been completed.



2.5 The photographs below show a selection of the trees at the site, referencing the above tree survey.



Looking towards the grouping of T4a, T5, T10, T11, T8, T10 and T12



T1 - Norway maple



Horse Chestnut (Part of G2)

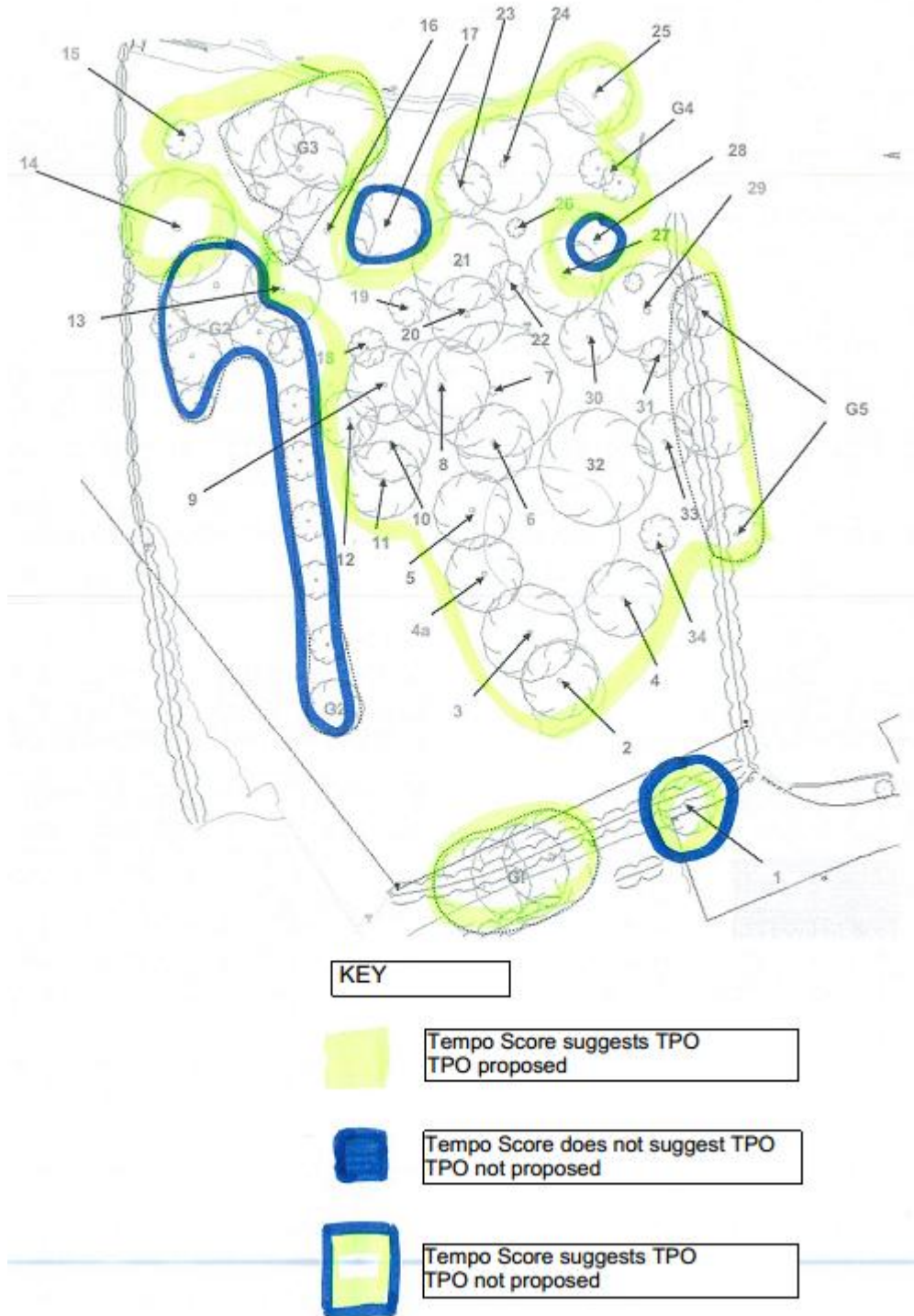


Looking towards the group of fruit trees (T2)

- 2.6 TEMPO assessments completed by the County Tree Officer are attached to this report as Appendix 1.
- 2.7 The TEMPO assessments conclude that the group of fruit trees identified as G2 would not merit protection from a TPO and that a further two trees (T17 and T28) are unsuitable due to poor health. The TEMPO assessments indicate that all other trees merit protection.
- 2.8 The Norway Maple (T1) which is situated on the part of the site that would be used to take access to the proposed development site achieves a score of 19. Such a score suggests merit for a TPO. The retention of this tree would make vehicular access from The Green unachievable and would be likely to render the land undevelopable. It is therefore necessary, in the context of the planning proposal, to balance whether the tree should be protected or whether there is a case to allow for its loss.
- 2.9 The Norway Maple (T1) score includes 5 marks because of the immediate threat presented by the development proposal, it does not score highly as a primary result of the inherent merit of the tree itself. It scores only 1 mark in respect of 'other factors', not having any group importance, historic or habitat importance or rarity. It is a relatively young tree and not an uncommon species.

2.10 It is considered that the tree (T1) can be lost to facilitate access to the site because, in the context of the protection to be afforded to a very large number of trees in the near vicinity there would be no significant detriment to the character and appearance of the area and because there is ample opportunity within the development site to make provisions for a replacement tree. The relatively young age of T1 lends itself to effective replacement in a short period of time.

2.11 The assessment of the area and the recommendations for tree protection are therefore shown in the illustration below.



- 2.4 Given the above, a Tree Preservation Order is recommended. The owners/occupiers of the property and the adjoining owners/occupiers will be served with copies of the TPO and will have an opportunity to make representations/objections.
- 2.5 A further report will be presented to the Planning and Development Board for Members to consider whether the TPO should be confirmed and made permanent.

3 Report Implications

3.1 Legal and Human Rights Implications

- 3.1.1 The owners of the land and those with an interest in it have the opportunity to make representations to the Council before any Order is confirmed.
- 3.1.2 The tree to be protected exhibits an amenity value for both the present and the future amenities of the area, given its appearance and prominence in the street scene.

Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date
1	County Forestry Officer	TEMPO Evaluations	7/8/15

The Contact Officer for this report is Erica Levy (01827 719294)

Appendix 1

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: <u>07/08/15</u>	Surveyor: <u>LEE CARVER</u>
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Tree details TPO Ref (if applicable): Owner (if known):	TREE NUMBER AS PER <u>PAP/2015/0149</u> Tree/Group No: <u>T14</u> Species: <u>Beech spp</u> Location: <u>THE HOMESTEAD, AUSTREY</u>
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REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

5) Good	Highly suitable	Score & Notes <div style="border: 1px solid black; padding: 5px; font-size: 24px; margin: 10px auto;">5</div>
3) Fair	Suitable	
1) Poor	Unlikely to be suitable	
0) Dead/dying/dangerous*	Unsuitable	
* Refers to existing consent and is intended to apply to severe/irremediable defects only.		

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

5) 100+	Highly suitable	Score & Notes <div style="border: 1px solid black; padding: 5px; font-size: 24px; margin: 10px auto;">4</div>
4) 40-100	Very suitable	
2) 20-40	Suitable	
1) 10-20	Just suitable	
0) <10*	Unsuitable	

* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality.

c) Relative public visibility & suitability for TPO
Consider realistic potential for future visibility with changed land use

5) Very large trees with some visibility, or prominent large trees	Highly suitable	Score & Notes <div style="border: 1px solid black; padding: 5px; font-size: 24px; margin: 10px auto;">3</div>
4) Large trees, or medium trees clearly visible to the public	Suitable	
3) Medium trees, or large trees with limited view only	Suitable	
2) Young, small, or medium/large trees visible only with difficulty	Barely suitable	
1) Trees not visible to the public, regardless of size	Probably unsuitable	

d) Other factors
Trees must have accrued 7 or more points (with no zero scores) to qualify

5) Principal components of arboricultural features, or veteran trees	Score & Notes <div style="border: 1px solid black; padding: 5px; font-size: 24px; margin: 10px auto;">1</div>
4) Tree groups, or members of groups important for their cohesion	
3) Trees with identifiable historic, commemorative or habitat importance	
2) Trees of particularly good form, especially if rare or unusual	
1) Trees with none of the above additional redeeming features (inc. those of indifferent form)	

Part 2: Expediency assessment
Trees must have accrued 9 or more points to qualify

5) Immediate threat to tree	Score & Notes <div style="border: 1px solid black; padding: 5px; font-size: 24px; margin: 10px auto;">5</div>
3) Foreseeable threat to tree	
2) Perceived threat to tree	
1) Precautionary only	

Part 3: Decision guide

Any 0	Do not apply TPO	Add Scores for Total: <div style="border: 1px solid black; padding: 5px; font-size: 24px; margin: 10px auto;">18</div>	Decision: <div style="border: 1px solid black; padding: 5px; font-size: 24px; margin: 10px auto;">YES</div>
1-6	TPO indefensible		
7-11	Does not merit TPO		
12-15	TPO defensible		
16+	Definitely merits TPO		

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 07/08/15 Surveyor: LEE CARNER

Tree details: CROWN NUMBER AS PER PAP/2015/0149
 TPO Ref (if applicable): Tree/Group No: G1 Species: HORSE CHESTNUT - SILVER BIRCH
 Owner (if known): Location: THE HOMESTEAD, AUSTREY

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

5) Good	Highly suitable	Score & Notes 3
3) Fair	Suitable	
1) Poor	Unlikely to be suitable	
0) Dead/dying/dangerous*	Unsuitable	
* Relates to existing context and is intended to apply to severe irreparable defects only		

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

5) 100+	Highly suitable	Score & Notes 2
4) 40-100	Very suitable	
2) 20-40	Suitable	
1) 10-20	Just suitable	
0) <10*	Unsuitable	
* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality		

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

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

d) Other factors

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

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

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

5) Immediate threat to tree	Score & Notes 5
3) Foreseeable threat to tree	
2) Perceived threat to tree	
1) Precautionary only	

Part 3: Decision guide

Any 0	Do not apply TPO	Add Scores for Total: 10	Decision: YES
1-6	TPO indefensible		
7-11	Does not merit TPO		
12-15	TPO defensible		
16+	Definitely merits TPO		

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 07/08/15	Surveyor: LEE GARNER
Tree details	GROUP REF AS PER PAD/2015/0149/PEARL SPP
TPO Ref (if applicable):	Tree/Group No: G2 Species: APPLE SPP
Owner (if known):	Location: THE HOMESHOW, AUSTRALY

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

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

* Relates to existing context and it intended to apply to severe irreparable defects only

Score & Notes

3

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

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

* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

Score & Notes

2

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

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

Score & Notes

2

d) Other factors

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

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

1

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- | | |
|-------------------------------|---------------|
| 5) Immediate threat to tree | Score & Notes |
| 3) Foreseeable threat to tree | |
| 2) Perceived threat to tree | |
| 1) Precautionary only | |

Score & Notes

5

Part 3: Decision guide

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

Add Scores for Total:

13

Decision:

NOT ADVISED

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 07/08/15	Surveyor: LEE GARNER
Tree details	TREE NUMBER AS PER PAP/2015/0149
TPO Ref (if applicable)	Tree/Group No: T1 Species: NORWAY MAPLE VAR.
Owner (if known)	Location: THE HOME, 15-20, AUSTREY

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

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

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

Score & Notes
5

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

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

* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

Score & Notes
4

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

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

- | |
|---------------------|
| Highly suitable |
| Suitable |
| Suitable |
| Barely suitable |
| Probably unsuitable |

Score & Notes
4

d) Other factors

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

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

Score & Notes

Score & Notes
1

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- | |
|-------------------------------|
| 5) Immediate threat to tree |
| 3) Foreseeable threat to tree |
| 2) Perceived threat to tree |
| 1) Precautionary only |

Score & Notes

Score & Notes
5

Part 3: Decision guide

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

Add Scores for Total:

Add Scores for Total:
19

Decision:

Decision:
YES

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 07/08/15 Surveyor: LEE GARNER

Tree details
 TPO Ref (if applicable):
 Owner (if known):
 Tree/Group No: TBC Species: REMAINING TREES MINUS
 Location: THE HOBBS STEWS T28 + T17 OUE TO POOR HEALTH
 AUSTRALIA

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

5) Good	Highly suitable	Score & Notes 3
4) Fair	Suitable	
3) Poor	Unlikely to be suitable	
2) Dead/dying/dangerous*	Unsuitable	
* Relates to existing context and is intended to apply to severe irreparable defects only		

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

5) 100+	Highly suitable	Score & Notes 4
4) 40-100	Very suitable	
3) 20-40	Suitable	
2) 10-20	Just suitable	
1) <10*	Unsuitable	
* Includes trees which are an existing or near future nuisance, including those clearly overgrowing their context, or which are significantly negating the potential of other trees of better quality		

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

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

d) Other factors

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

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

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

5) Immediate threat to tree	Score & Notes 5
3) Foreseeable threat to tree	
2) Perceived threat to tree	
1) Precautionary only	

Part 3: Decision guide

Any 0	Do not apply TPO	Add Scores for Total: 18	Decision: YES
1-6	TPO indefensible		
7-11	Does not merit TPO		
12-15	TPO defensible		
16+	Definitely merits TPO		

Appeal Decision

Site visit made on 30 August 2016

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 5th October 2016

Appeal Ref: APP/R3705/W/16/3149979

The Homestead, Main Road, Austrey, Atherstone, Warwickshire CV9 3EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Sue Bell against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2015/0149, dated 20 February 2015, was refused by notice dated 10 November 2015.
 - The development proposed is a residential development.
-

Decision

1. The appeal is allowed and outline planning permission is granted for a residential development at The Homestead, Main Road, Austrey, Atherstone, Warwickshire CV9 3EG in accordance with the terms of the application, PAP/2015/0149, dated 20 February 2015, subject to the 21 conditions set out in the attached schedule.

Procedural matter

2. This is an outline application with access as the only detailed matter. Issues of layout, scale, appearance and landscaping are for consideration at the reserved matters stage. On this basis, and with the exception of details regarding access, I have considered the drawings as indicative and dealt with the appeal on this basis.

Main Issues

3. These are:
 - i) the effect of the proposal on the character and appearance of the area; and,
 - ii) whether the proposed development would preserve or enhance the setting of nearby listed buildings.

Reasons

Character and appearance

4. As indicated within the Council's statement, the appeal site is outside the settlement boundary and is referred to by the Council as a green space. It is not evident that this green space has any status in planning policy terms; from my observations on site, it is clear that the appeal site is part of the rear garden of The Homestead, a Grade II listed building.
-

5. The proposal intends to develop only part of the rear garden to The Homestead; the land immediately adjoining the existing house and many of the existing trees would be retained and outside the appeal site. The appeal site is land separated from the open countryside by a strip of land currently in use as allotments. On the other three sides of the site is the domestic garden to The Homestead, the gardens to the properties fronting Main Road and land off The Green that has connections to the village. In all, therefore, the site has a closer affinity with the village than it does the countryside. Furthermore, being largely secluded, the site makes a limited contribution to the character of the village overall, although it is noted that the trees surrounding the site contribute to the verdant character of the immediate area.
6. Given the existing use of the site as a domestic garden and the limited contribution the site makes to the overall character of the village, the development would not result in the loss of an important open space. Furthermore, as the development would be east of the existing allotments, the development would not encroach physically onto the open countryside.
7. With many of the trees to the north of the appeal site retained and sufficient space on the site's boundaries for landscaping, the verdant character of the area would be preserved. Whilst landscaping has been reserved for consideration at the reserved matters stage, the indicative plans suggest that there would be sufficient space on the southern boundary of the site for the dwellings, particularly plot 1, to be screened by vegetation, lessening any visual impact the development may have on its surroundings. I have also considered the impact of the development on the character and appearance of the area within views from the west. Whilst, with the exception of St Nicholas Church, buildings are not currently visible, the new dwellings, which may be seen through or above the trees, would not be out-of-keeping with the verdant character of the village to be considered harmful.
8. Concerns have been raised for the loss of a tree protected by a Tree Preservation Order (TPO) as a result of the new access proposed. It was apparent from my observations on site that the tree contributes positively to the verdant character of the area. The Tree Report suggests that no works are proposed to this tree, however, in light of the application being in outline and the plans being indicative, I cannot be certain about the future of this tree; details of landscaping are earmarked for consideration at the reserved matters stage. It is reasonable, however, to impose a condition on any outline consent to ensure that the existence of the TPO'd tree is considered appropriately at the reserved matters stage, alongside more detailed landscape proposals.
9. I appreciate that developing an area of land where there currently is none would, by its very nature, change the character of the area. However, given the suggested spacing of the dwellings on the site and four dwellings proposed, I do not find that the development would intensify the use of the site to be considered harmful to the character of the village overall.
10. In all, therefore, I find that the development would not be harmful to the character and appearance of the area and therefore would not be contrary to Policies NW12 and NW13 of the Core Strategy¹ which seek to positively improve a settlement's character and appearance and conserve, enhance and where appropriate restore landscape character.

¹ North Warwickshire Local Plan: Core Strategy (Adopted 9th October 2014)

Listed buildings

11. The Homestead is a Grade II listed building and St Nicholas Church to the south of the appeal site is a Grade II* listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas Act 1990 (the Act), requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
12. Historical maps show how The Homestead has maintained an area of garden immediately adjoining the building which forms an important setting to the building and is therefore of significance in defining the setting to the listed building. Beyond this has been an open area of land which today, constitutes a domestic garden with many trees. The appeal site would be some distance from The Homestead and as a result the garden area immediately adjoining the building would be retained, as well as some of the garden beyond. Consequently the development would not encroach onto setting of the listed building to be considered harmful.
13. St Nicholas Church is a prominent landmark within the local area, south of and on ground higher than the appeal site. Given its raised position, the church is appreciated within a setting of trees and mature landscaping which are therefore of significance in defining the setting to the listed building. Given the distance of the appeal site from the church, together with the development being on land lower than the listed building, the verdant setting to the church would not be harmed by the proposed development.
14. I recognise that from Bishop's Field and further west, the new dwellings could be seen within the same view as the church. However, given the distance of separation and the change in levels described, the development would not encroach onto the setting of the listed building to detract from its setting and in a way that could be considered harmful.
15. In considering the proposal and the setting of the listed buildings and in accordance with the expectations of the Planning (Listed Building & Conservation Areas) Act 1990 therefore, I find that the proposal would have a neutral impact on the setting of the listed buildings. Consequently I do not find that the proposal would be contrary to Policy NW14 of the Core Strategy or paragraphs 61 and 132 of the National Planning Policy Framework (the Framework) which seek to protect and enhance the quality of the historic environment, commensurate to the significance of the asset.

Other matters

16. I have had regard to the petition and the range of concerns brought to my attention by local residents. Matters concerning character, heritage and TPO trees have been addressed within the main section of this decision.
17. I appreciate that considerable work has been undertaken on the emerging Neighbourhood Plan, and together with the forthcoming Local Plan, will set out policies for housing. However, notwithstanding the support for the emerging Neighbourhood Plan and its iterations, both the Neighbourhood Plan and the forthcoming Local Plan are at an early stage of adoption and therefore I can attach limited weight to them. Nonetheless, whilst the appeal site is not

allocated for development within current or forthcoming planning policy and a notable need for housing on the site has not been identified, the presumption in favour of sustainable development² states that development that accords with the development plan should be approved³. I have found that the development would not conflict with the adopted development plan and with no material considerations to the contrary, I find no reason to consider the development unacceptable.

18. The petition also raises a concern that the development will set a precedent for additional development within the village, which in turn would impact on local character. However, each development proposal should be assessed primarily on its own merits and alongside the policy framework at that time. The proposal does not necessarily set a precedent therefore.
19. Matters of vehicular access and highway safety, limited pedestrian access and impact on local wildlife have been raised as concerns. The Council raised no objection on these grounds and in the absence of substantive evidence to persuade me otherwise, I find no reason to take a different view. Nevertheless, based on the evidence before me I do consider it necessary to condition any planning consent to ensure that these matters are considered appropriately at the reserved matters stage of planning. Reference has been made to a potential ransom strip to the site. This is not a matter before me for consideration.
20. Local concerns have been raised regarding flooding and harm to residential amenity. The more detailed aspects of the proposal are for consideration at the reserved matters stage when residents will have an opportunity to comment further. Nevertheless, in view of the evidence before me and having seen the site, I have found no reason to disagree with the Council that the development as proposed would not cause problems of flooding or result in harm to resident's living conditions.
21. The indicative plans show that the dwellings could be accommodated on the site whilst leaving sufficient space on its boundaries for landscaping. In this way I do not find that the development would materially alter views from the footpaths to be considered harmful to the public's enjoyment of them.
22. The proposed development was originally supported with a draft Section 106 agreement in support of affordable housing. However, following the reinstatement of affordable housing thresholds in the Planning Practice Guidance (PPG), a contribution to this effect is no longer required for the development proposed.

Conditions

23. The Council has suggested a number of planning conditions which I have considered against the advice in the PPG. As a result I have amended some of them for clarity and eliminated others to avoid duplication.
24. The standard conditions requiring compliance with stated details on the site plan, specifying the scope of the development, details of the reserved matters, the time limits for submission of reserved matters, and the time limit for the

² Paragraph 14 of the National Planning Policy Framework

³ Paragraph 12 of the National Planning Policy Framework

commencement of development are necessary in the interests of proper planning.

25. In the interests of local biodiversity and the protection of local wildlife and to ensure that trees remain an important part of the character and appearance of the area, I have included conditions regarding a scheme for the compensation of biodiversity loss, surveys to be carried out for Great Crested Newts, Badgers and Bats, details regarding tree retention and restricting site clearance to outside the bird breeding season.
26. In the interests of highway safety I have included conditions with regards to the provision of a turning area during construction, the provision of a highway crossing, parking and manoeuvring space on the site, a footway extension, a limit to the height of structures or planting nearest the public highway and restricting access to the site to that approved.
27. I have also included a condition with regards to surface water drainage and the disposal of foul sewage, as well as a condition minimising or preventing the spread of extraneous material onto the public highway and a condition restricting operational hours of construction to ensure that the development does not cause undue harm to the environmental quality of the area and to resident's living conditions.
28. I have included a condition with regards to archaeological investigation to ensure that there are no significant adverse impacts on the local historical environment.

Conclusion

29. In all, therefore, I have found that the proposal would not have a harmful effect on the character or appearance of the local area or on the setting of the listed buildings. In light of these conclusions the appeal is allowed.

R Walmsley

INSPECTOR

CONDITIONS SCHEDULE

- 1) Details of the layout, scale, appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the access shown on the Site Plan & Location Plan, Ref 9293.01.
- 5) With the exception of the access shown on the Site Plan & Location Plan, Ref 9293.01, no other details shown on this drawing are hereby permitted.
- 6) The development shall be limited to 4 dwellings and the developable area shall be limited to the area shown on the Site Plan & Location Plan, Ref 9293.01 and no other.
- 7) No development shall commence until plans and details showing surface water drainage works and the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the dwellings are occupied.
- 8) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) has been submitted to and approved in writing by the local planning authority. The details submitted shall include:
 - (i) a plan showing the position of every tree on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating the trees protected by a Tree Preservation Order and which trees are to be removed;
 - (ii) a schedule in relation to every tree identified listing information as specified in paragraph 4.4.2.5 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced); and, any proposed pruning, felling or other work;
 - (iii) in relation to every existing tree identified to be retained on the plan referred to in i) above, details of:
 - i. any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area; and,
 - ii. all appropriate tree protection measures required before and during the course of development (in accordance with

paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced);

- (iv) areas of existing landscaping to be protected from construction operations and the method of protection.

No part of the development shall be commenced or equipment, machinery or materials brought into the site until the approved scheme for the protection of retained trees has been carried out. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 9) No development shall take place until a Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the local planning authority. The WSI shall include an assessment of archaeological significance and a programme of archaeological evaluative work and associated post-excavation analysis to include report production and archive deposition. The WSI shall be carried out as approved and a report detailing the results of the WSI shall be submitted to the local planning authority.
- 10) No development shall take place on land identified in the WSI referred to in condition 9 and is affected by the archaeological evaluative work in the WSI, until a detailed archaeological mitigation strategy document and implementation programme has been submitted to and approved in writing by the local planning authority and the approved archaeological mitigation strategy has been carried out in accordance with the agreed implementation programme.
- 11) Prior to the commencement of development, surveys for Great Crested Newts, Badgers and Bats shall be undertaken in accordance with the recommendations of the Preliminary Ecological Assessment dated February 2015. The results of the surveys, together with any mitigation measures as appropriate, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 12) Prior to the commencement of development a scheme for the compensation of biodiversity loss which achieves no net loss of biodiversity, and a scheme for external lighting designed to minimise the effect of the development on bats, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 13) Demolition or construction works shall take place only between 07:00 and 19:00 on Monday to Friday and between 08:00 and 13:00 on Saturdays. No demolition or construction works shall take place on Sundays and recognised Public Holidays.
- 14) Site clearance shall only take place outside the bird breeding season.
- 15) There shall be no means of vehicular access to the site other than from the position identified on the Site Plan & Location Plan, Ref 9293.01.

- 16) The vehicular access to the site shall not be used unless a public highway crossing has been laid out and constructed in accordance with the specification of the Highway Authority.
- 17) No dwelling shall be occupied until a footway extension has been constructed between the existing footway (fronting number 2 The Green) and the site.
- 18) No structure, tree or shrub shall be erected, planted or retained within 2.4 metres of land maintainable at public expense and exceeding or likely to exceed a height of 0.3 metres above the level of the public highway carriageway.
- 19) No development shall take place until details for the provision of car parking, manoeuvring space and service areas, to include surfacing and ground levels, have been submitted to and approved in writing by the local planning authority. The details shall be implemented in accordance with the approved details before the dwellings are occupied and retained thereafter.
- 20) No development shall take place until a turning area has been provided within the site to enable site operatives, construction vehicles and visitors to leave and re-enter the public highway in a forward gear. The turning area shall remain in place throughout the construction period for the development.
- 21) No development shall take place unless measures are in place that minimise or prevent the spread of extraneous material onto the public highway via the wheels of vehicles entering and leaving the site. Any extraneous material on the public highway as a result of the development shall be removed immediately.

APPENDIX C

Proposed residential development

Land at The Homestead, Main Road, Austrey

ADVICE

1.0 Introduction

1.1 On 10 November 2015 North Warwickshire Borough Council ("the Council") refused an application by the owner of the Homestead, Main Road, Austrey ("the owner") for outline planning permission for a proposed residential development in part of the rear garden of the property ("the application site"). The owner subsequently submitted an appeal to the Planning Inspectorate against that refusal, but before the appeal could be determined by an Inspector under the written representations procedure, the Council made a Tree Preservation Order ("TPO")¹ the effect of which was to protect a number of trees in and around the application site, including in particular a Norway Maple tree (marked "T1" on the Plan attached to the TPO), the implications for the development of the application site of which are discussed below.

1.2 By a decision letter ("DL") dated 5 October 2016, Rachel Walmsley, an Inspector appointed by the Secretary of State for Communities and Local Government allowed the appeal and granted outline planning permission in accordance with the terms of the application subject to conditions ("the OPP").

1.3 In allowing the appeal, the Inspector referred² to

"Concerns...raised for the loss of a tree protected by a Tree Preservation Order (TPO) as a result of the new access proposed³ It was apparent from my observations on site that the tree contributes positively to the verdant character of the area. The Tree Report suggests that no works are proposed to this tree, however, in light of the application being in outline and the plans being indicative, I cannot be certain about the future of this tree; details of landscaping are earmarked for consideration at the reserved matters stage. It is reasonable, however, to impose a condition on any outline consent to ensure that the existence of the TPO'd tree is considered appropriately at the reserved matters stage, alongside more detailed landscape proposals"

1.4 Condition 8 of the OPP states:

"No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) has been submitted to and approved in writing by the local planning authority. The details shall include:

- (i) a plan showing the position of every tree on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating the trees protected by a Tree Preservation Order and which trees are to be removed;
- (ii) a schedule in relation to every tree identified listing...any proposed pruning, felling or other work;

¹ North Warwickshire Borough Council (The Homestead, Main Street, Austrey) Tree Preservation Order 2016

² DL paragraph 8

³ The tree being that marked "T1" on the Plan attached to the TPO, which I am instructed, unless removed, would effectively prevent use of the approved vehicular access to the development.

- (iii) in relation to every existing tree identified to be retained... (details of tree protection measures)...

No part of the development shall be commenced or equipment, machinery or materials brought into the site until the approved scheme for the protection of retained trees has been carried out. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars"

- 1.5 I am instructed that reserved matters and details required to discharge pre-commencement conditions, including condition 8, have been prepared and are ready for submission to the Council. The Council's planning officer, has, however, apparently advised that it would be better if such details were not submitted until the Council has confirmed the TPO (which it must do before 16 December 2016), as officers will be recommending to members that in light of the Appeal decision, tree T1 should in fact be removed from the Order.
- 1.6 Given, however, the apparent level of local opposition to this development, the fact that members refused planning permission in the first place against officer recommendation and the Council then proceeded to make the TPO in response to the submission of the appeal, there is understandably some concern that the officer recommendation to remove tree T1 from the TPO may not be accepted by members but rather the TPO will be confirmed with tree T1 still included.
- 1.7 I am instructed to advise on the implications for the development approved by the OPP of tree T1 remaining protected under a confirmed TPO, and in particular whether the Council could lawfully prevent the development from taking place e.g. by refusing consent to fell the tree pursuant to the TPO and/or Condition 8 of the OPP.
- 2.0 Discussion**
- 2.1 It is important to note that the planning application was submitted in outline with all matters reserved save for access. Thus the Appeal Inspector confirmed:⁴
- "...with the exception of details regarding access, I have considered the drawings as indicative and dealt with the appeal on this basis" (my underlining)
- 2.2 In the light of this, it seems to me that the Inspector's reference in DL paragraph 8 to the future of the currently protected tree T1 being uncertain on the basis of "the application being in outline and the plans being indicative" simply cannot be right. Indeed Condition 5) of the OPP confirms that
- "With the exception of the access shown on the Site Location Plan, Ref 9293.01, no other details shown on this drawing are hereby permitted"
- 2.3 Thus the access is not in outline, the plan insofar as it relates to the details of the access, is not indicative. Axiomatically, if tree T1 was to prevent the construction, or use, of the access (which I understand would be the case due to its low canopy and the inability for it to be pruned sufficiently to enable vehicles to pass underneath the same) then not only would it be necessary to remove the tree to enable the approved access to be implemented, but any

⁴ DL paragraph 2

Order or development management decision that prevented the tree's removal would effectively amount to a derogation from the grant of the planning permission itself.

- 2.4 Whatever the Inspector meant, therefore, in DL paragraph 8 and in imposing Condition 8, it simply could not have been to create a situation whereby the local planning authority either in dealing with reserved matters, or approving details submitted under Conditions, could prevent the development being carried out in accordance with the planning permission that she herself had granted. Furthermore, whatever the Inspector's intention, it would in any event be unlawful, in my view, for the Council to seek to prevent the use of the approved access by continuing to protect tree T1 and refusing consent for its removal – see e.g. *Kent CC v Kingsway Investments* [1971] A.C. 72 at 96A-B where Lord Morris of Borthy-y-Gest stated that in respect of a permission granted subject to a condition of later approval of specified reserved matters,
- "...It must, of course, be assumed that the authority will act in good faith. They must not misuse their functions so as indirectly and without paying compensation to achieve what would amount to a revocation or modification of the permission already given" (my underlining)
- 2.5 In the light of the above, the detailed approval of the access by the Inspector in my view should leave the future of tree T1 in no doubt at all – it has to come down in order to enable the approved access to be implemented and put to its intended use. Axiomatically, the Council's officer is right to indicate that in the light of the Appeal decision members should be recommended to remove tree T1 from the TPO before confirming the Order, but whether the tree were to be removed from the Order or not, as stated above any refusal by the Council to approve the removal of the tree pursuant to details submitted pursuant to Condition 8 of the OPP would in any event derogate from the grant of the planning permission. In these circumstances I doubt that delaying the submission of details until the TPO has been confirmed (with or without T1) would serve any useful purpose.
- 2.6 In conclusion, I am in little doubt that the Council should not seek to prevent the OPP (including the approved access) being implemented e.g. by retaining tree T1 in the TPO and/or refusing to approve its removal under Condition 8. To do so, in my view, would be to misuse their powers and would be actionable either on appeal or through the Courts.
- 2.7 I am perfectly happy for this advice to be shared with the Council's planning officer in the hope that in both making her recommendations to members in relation to the TPO, and in determining details submitted under reserved matters and/or conditions, the potential legal implications of the Council's planning decision making are kept at the forefront of her mind.

9 November 2016



Simon Stanion
Partner/Head of Planning

#SHAKESPEAREMARTINEAU

APPENDIX D

ARBORICULTURAL APPRAISAL / INSPECTION AND TREE REPORT

- **NWBC Ref No :**
- **Site Address :** Land at The Homestead, Main Road, Austrey
- **Prepared by :** Andrew Watkins
- **Prepared for :** Erica Levy
- **Date of Inspection :** 4th, 10th and 11th November 2016
- **Date of Report :** 6th December 2016

Site Inspection and Tree Inspections with associated Survey Schedule in regards to placement of Tree Preservation Order (TPO)

Introduction

The trees upon the site address noted above are potentially at risk from a proposed development on the site, as such North Warwickshire Borough Council has requested that the health, amenity value, continued and remaining contribution of the trees is assessed, confirmed and noted. This inspection and report will form part of the basis for North Warwickshire Borough Council to determine whether a TPO is warranted at this time.

The trees were surveyed and inspected by the author in line with current standard practise (BS 5837:2012 Trees in relation to design, demolition and construction-Recommendations). The trees were inspected at ground level only, with the use of binoculars where appropriate. No invasive investigations were undertaken at the time of the survey. No soil samples were taken at the time of the survey.

Survey Findings

The site is currently in the open view of several residential properties that border the site, these properties benefit from views of the majority of the trees surveyed due to the historic placement of the trees on the site address and the mature nature of the trees.

The varying species of trees found upon this site do collectively form a diverse and desirable collection that is of a benefit to the local community and area, both at this present time and in future generations of the local community.

There is evidence of a caring, determined, well executed and sympathetic approach to the planting of the trees on the site address. The majority of the collection of trees remains in a high standard of condition with very few defects noted at the time of the survey due to the implementation of this well planned strategy.

Historic Arboricultural maintenance of a high standard has been performed in relation to the trees. This again has ensured the longevity of the majority of the assets.

In conclusion

In relation to whether the trees on the site are deemed worthy of protection by TPO?

The loss of the trees noted for retention within the schedule would have a devastating impact on the surrounding land and a detrimental effect on the overall amenity value of the area. The collection of trees is bio-diverse and mature by nature and as such fully worthy of protection from removal.

Several trees have been noted within the schedule for removal and as such these trees would not be worthy of protection.

TPO Ident No	Tag No	Species	Height (M)	Stem Dia (MM)	Branch Spread (M) N S E W	Crown Height (M)	Age Class	Condition	Comments/Preliminary Recommendations	Life Exp (YRS)	Ret Cat	RPA * (Lin M)	RPA ** (M ²)
N/A	532	Contorted Willow	12	650	5 5 5 5	1	MAT	POOR	FELL	<10	U	N/A	N/A
1	533	American Elm	7	250	3 4 4 2	1.5	YNG	A	No work at this time	20-40	B	3.1	31
N/A	534	Hemlock-spruce	10	190	2 2 2 2	2	YNG	POOR	FELL. Conjoined stem with included bark.	<10	U	N/A	N/A
2	535	Blue Atlas Cedar	10	190	2 2 2 2	2	YNG	B	No work at this time	20-40	B	2.3	16
N/A	536	Monkey Puzzle	N/A	N/A	N/A	N/A	N/A	DEAD	FELL	N/A	N/A	N/A	N/A
N/A	537	Eucalyptus	16	390	5 5 5 5	4	MID	POOR	FELL. Low amenity value	<10	U	N/A	N/A
3	538	Whitebeam	13	350	4 4 4 4	4	MID	B	No work at this time	>40	B	4.2	55
N/A	539	Silver Birch	3	170	5 5 0 3	3 2	MID	POOR	FELL. Low amenity value	<10	U	N/A	N/A
4	540	Deodar Cedar	15	1010	5 5 5 5	2	MAT	B	No work at this time	>40	B	12	462
5	541	Scots Pine	12	220	2 2 2 2	10	YNG	B	No work at this time	>40	B	2.6	22
6	542	Whitebeam	9	210	3 3 3 3	2	MID	B	No work at this time	>40	B	2.5	20
7	543	Norway Maple	16	470	6 6 6 6	2	MID	B	No work at this time	>40	B	5.6	100
8	544	Cherry	10	360	5 5 5 5	4	MAT	B	No work at this time	10-20	B	4.3	59
9	545	Apple	5	180	4 4 4 4	2	MAT	B	No work at this time	10-20	C	2.2	15
10	546	Willow	12	320	4 4 4 4	3	MAT	B	No work at this time	10-20	B	3.8	46
11	547	Norway Maple	16	490	4 4 4 4	3	MID	B	No work at this time	>40	B	5.9	109
12	548	Cherry	10	520	4 4 4 4	2	MAT	B	No work at this time	>40	B	5.9	109

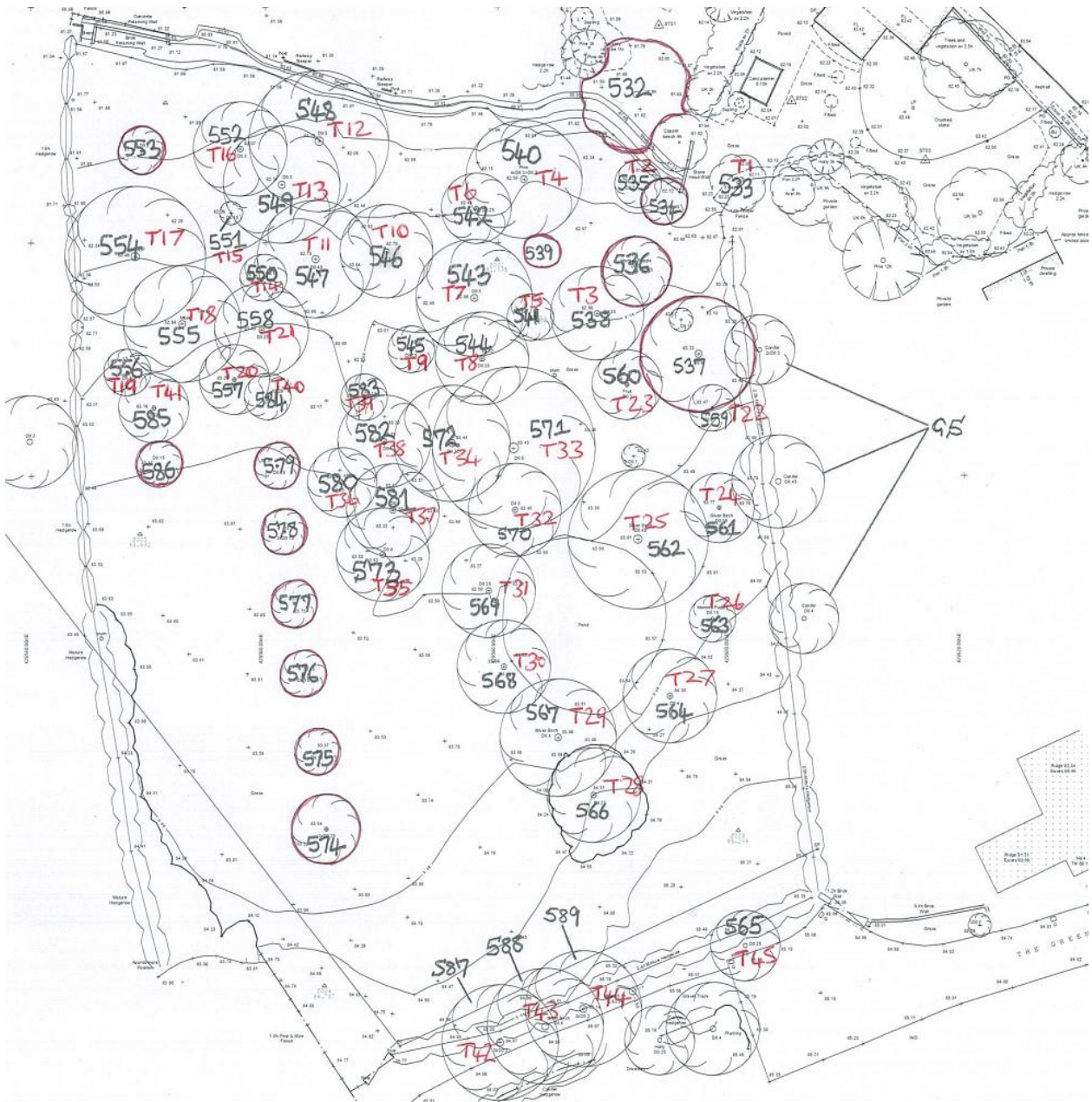
13	549	Apple	10	520	4 4 4 4	2	MAT	B	No work at this time	20-40	B	5.9	109
14	550	Brewers Spruce	10	190	3 3 3 3	2	MID	B	No work at this time	20-40	B	2.3	16
15	551	Apple	10	520	4 4 4 4	2	MAT	B	No work at this time	20-40	B	5.9	109
16	552	Cherry	10	520	4 4 4 4	2	MAT	B	No work at this time	20-40	B	5.9	109
N/A	553	Hawthorn	6	160	2 2 2 2	2	MID	POOR	FELL. Basal Decay	<10	U	1.9	12
17	554	Beech	15	480	5 5 5 5	2	YNG	A	No work at this time	>40	A	5.8	104
18	555	Apple	8	190	3 3 3 3	0	YNG	B	No work at this time	20-40	B	2.3	16
19	556	Apple	10	520	4 4 4 4	2	MAT	B	No work at this time	20-40	B	5.9	109
20	557	Pear	10	520	4 4 4 4	2	MAT	B	No work at this time	20-40	B	5.9	109
21	558	Pear	10	190	2 2 2 2	0	YNG	B	No work at this time	>40	B	2.3	16
22	559	Hemlock-Spruce	9	310	2 2 2 2	0	YNG	A	No work at this time	>40	A	3.7	44
23	560	Apple	6	300	5 5 5 5	2	MID	B	No work at this time	20-40	C	3.6	41
24	561	Silver Birch	15	190	3 3 3 3	6	MID	B	No work at this time	20-40	B	2.3	16
25	562	Silver Birch	16	440	6 6 6 6	4	MAT	B	No work at this time	10-20	B	5.3	88
26	563	Monkey Puzzle	7	130	2 2 2 2	1	YNG	B	No work at this time	>40	B	1.6	8

27	564	Horse Chestnut	14	260	3 3 3 3	2	MAT	B	No work at this time	10-20	B	3.1	31
28	566	Weeping Ash	7	360	5 5 5 5	0	YNG	B	No work at this time	>40	B	4.3	59
29	567	Silver Birch	11	450	4 4 4 4	2	MID	B	No work at this time	>40	B	5.4	92
30	568	Willow	10	360	5 5 5 5	2	MAT	B	No work at this time	10-20	C	4.3	59
31	569	Walnut	10	380	5 5 5 5	3	MID	B	No work at this time	>40	B	4.6	65
32	570	Cherry Plum	11	280	4 4 4 4	2	MID	B	No work at his time	20-40	C	3.4	36
33	571	Willow	16	580	6 6 6 6	3	MAT	B	No work at this time	20-40	B	7.0	152
34	572	Tibetan Cherry	10	300	5 5 5 5	3	MAT	B	Remove Ivy	20-40	B	3.6	41
35	573	Mountain Ash	11	370	4 4 4 4	2	MID	B	Remove Ivy	20-40	B	4.4	62
N/A	574	Apple	6	250	2 2 2 2	2	MAT	B	No work at this time	20-40	C	3.0	28
N/A	575	Apple	6	250	2 2 2 2	2	MAT	B	No work at this time	20-40	C	3.0	28
N/A	576	Apple	6	250	2 2 2 2	2	MAT	B	No work at this time	20-40	C	3.0	28
N/A	577	Apple	6	250	2 2 2 2	2	MAT	B	No work at this time	20-40	C	3.0	28
N/A	578	Apple	6	250	2 2 2 2	2	MAT	B	No work at this time	20-40	C	3.0	28
N/A	579	Apple	6	250	2 2 2 2	2	MAT	B	No work at this time	20-40	C	3.0	28
36	580	Mountain Ash	8	250	3 3 3 3	2	MID	B	No work at this time	20-40	B	3.0	28
37	581	Whitebeam	12	480	4 4 4 4	3	MID	B	Remove Ivy	20-40	B	5.8	104
38	582	Whitebeam	10	430	4 4 4 4	3	MID	B	Remove Ivy	20-40	B	5.2	84
39	583	Pear	9	180	3 3 3 3	2	MAT	B	No work at this time	10-20	C	2.2	15

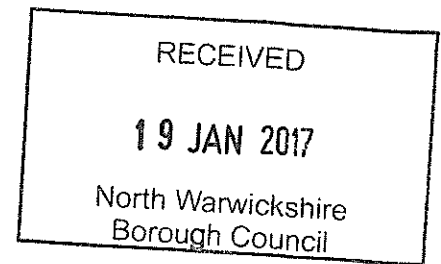
40	584	Apple	5	200	3 3 3 3	1	MAT	B	No work at this time	10-20	C	2.4	17
41	585	Apple	4	180	3 3 3 3	1	MAT	B	No work at this time	10-20	C	2.2	15
N/A	586	Apple	6	220	2 2 2 2	2	MAT	B	No work at this time	20-40	C	3.0	28
42	587	Horse Chestnut	10	300	4 4 4 4	3	YNG	B	Remove Ivy	>40	B	4.2	55
43	588	Silver Birch	10	300	4 4 4 4	3	YNG	B	Remove Ivy	>40	B	4.2	55
44	589	Horse Chestnut	10	300	4 4 4 4	3	YNG	B	Remove Ivy	>40	B	4.2	55
45	565	Norway Maple	9	210	4 4 4 4	2	YNG	A	No work at this time	>40	A	2.5	20

RPA * the minimum distance measured from the trunk of the tree at which tree protective barriers should usually be erected.

RPA ** the minimum area in M² around which tree protective barriers should usually be erected.



**THE GREEN HOUSE
THE GREEN, AUSTREY
WARWICKSHIRE CV9 3EF**



Ms E Levy
NWBC
The Council House, South Street
Athersotne
Warwickshire CV9 1DE

13 January 2017

*Delivered by hand
19/1/2017.*

Dear Erica

THE HOMESTEAD MAIN ROAD AUSTREY CV9 3EF PAP/2015/0149

We are addressing this to you as we have no names of members on the Planning & Development Board. Would you please pass our comments, as soon as is possible, onto the relevant Authority and please be kind enough to advise us that this has been done.

We note that this Board met on 12.12.16 and we feel it was inappropriate for us to be informed of its decision by the developer on 5.1.17, and not through correct channels and officials.

Furthermore, I recently bumped into our Borough Cllr. David Humphreys and on informing him of the decision he said he had not been informed of this either and he sits on the Planning Committee! It seems all of us will have to rely on the developer for information!

We disagree with the decision to lift the TPO for the following reasons; -

We bought and planted the 'Acer Platanoides Crimson King' – a striking example as described by Hillier's the world renowned tree & shrub expert, which awarded it an A.G.M. in 1969. (award of garden merit). We planted it over 20 years ago and it has over 20 years left of life. The Planning Inspector on site commented that the tree 'contributes positively to the verdant character of the area' and that 'the TPO'd tree is considered appropriately at the reserved matters stage'. What consideration was given to this? The only consideration seems to be that development is wanted.

Since this tree was scored the highest points on the report, it beggars belief the TPO should be lifted. On page 11a/12 (2.90 it is stated that 5 points out of the 19 scored were because of the immediate threat by the development proposal and intimating these points should be deducted. This is totally irrelevant as all the trees in the report had 5 points added for this threat. If you deduct 5 points from the other trees, the Acer still has the majority of points. We also bought and planted the tree on what we consider to be part of the public footpath (not the public highway), which went from Main Road up to the Church. We consider we own this tree.

We have lived in the village of Austrey since 1966 and remember the footpath still existing then. We bought our present house in 1976 as the Green House, Church Walk. Parts of our house are well over 200 years old. We have deeds going back to 1906 and it shows clearly our curtilage with the footpath illustrated. We also have deeds regarding Yew Tree Cottage (next to the Church) which mention the footpath and a sworn affidavit to this effect – ie access from the Church to Main Road.

Until, circa, 1970 the only access to our house was this footpath. We extended our house and gardened from Main Road to the top of The Green. The then Planning Inspector, Mr John Sutton, saw that we were gardening the frontage and said we certainly could keep up with the gardening, but we didn't own all of it. We presumed he knew that part of this was the aforementioned footpath.

At the earliest, the planning application was refused by Highways because visibility to the South at the junction of The Green into Main Road was substandard. It very shortly rescinded this decision and we were told by Erica Levy this was because Main Road has a 30mph speed limit and there were few developments to the South of Austrey. Since that decision 55 planning applications, to the South, have been approved. Highways did not revisit this matter! If this application goes ahead it will mean a possible extra 100 vehicles passing this substandard junction in order to travel to surrounding areas and along the M42 corridor. This particular proposed development is not wanted by the village and is not needed.

Savoy Consulting, Worcester in a letter to Bailey Designs, Tamworth in 2015 stated also that it is not obvious how we leave in vehicles from our drive. This is nonsense, it is quite apparent where our exit gates are - immediately adjacent to the proposed access and a safety issue for us. The deeds mentioned above, and the footpath details may be viewed by any interested party at our house at any time.

Finally, we note that the National Trust recently stated that most Councillors believe the 'planning system' is biased in favour of developers at the expense of local communities. This would seem to be the exact case here, since elected Borough Councillors on the North Warwick Planning Committee unanimously rejected this development, as did the elected Parish Councillors and the Resident Association of Austrey!

Clearing the site – this would involve the tree and the hedge. The developer give the impressions that this is a 'done deal'. Houses do not absorb carbon dioxide or provide habitat for birds and insects nor do they absorb water, quite the contrary.

We can give you names and addresses of residents that have lived in the village for over 50 ears or who were born in the village (over 70 years) who will vouch that this footpath is the case.

For your information, the developer was on site last week and mentioned he would begin work in March. According to the RSPB Society the nesting season begins then. This is at odds with the Inspectors Orders. The hedge and tree would be affected.

Your comments would be much appreciated and let us hope that fairness to all concerned and common sense will prevail!

Yours sincerely,

MRS S M COLLINS.

MR M J COLLINS