

**(11) Application No: PAP/2015/0517**

**52, Birmingham Road, Water Orton, B46 1TH**

**Variation of condition no:3 of planning permission PAP/2010/0307 to allow the unrestricted occupation of the care home; in respect of conversion of 2 semi detached properties residential (C3 use), into a six bedroom residential care home (C2 use) for occupants aged 18+, for**

**Mr Hanif Shah - Elite Care Homes Ltd**

### **Introduction**

This application was reported to the October Board meeting, but a determination was deferred in order that Members could visit the site and secondly because additional information was to be submitted by the applicant to address matters referred to in that report.

Members have now visited the site and additional information has been submitted.

The previous report is attached for convenience at Appendix A.

### **The Site Visit**

Members have visited the site of this care home and its surrounds. A note of that visit is attached at Appendix B. In summary the visit included looking at the frontage of the building and its access onto Birmingham Road; the side of the site as viewed through the Industrial Units, the rear garden of the site and the interior of the building.

### **Additional Information**

The applicant has submitted additional information with regards to the questions being asked by Members during public speaking at October's Board meeting. This additional information provides details of the service user profile in that they will be:

- Aged 18+ Male or Female;
- Diagnosed with a Learning Disability, Autism, Mental Health Illness or Dual Diagnosis;
- Individuals who do not pose significant risk to themselves or others; an
- Individuals ready to step down from hospital environments returning into the community.

The service offered will be:

- a step down service offering a personalised approach allowing individuals who are looking into living in the community to start taking positive steps towards living alone
- the provision of an adequate level of support and care to enable independent living;
- assistance with activities of daily living such as cooking, budgeting and shopping;
- encouragement to access and engage in local community facilities such as attending college, leisure centres and day centres.

## Introductory Remarks

Members are reminded that the Board is dealing with a variation to a planning permission and thus its remit is only to assess the planning merits of the proposal. In this respect Members are not required to address the principles of the use of this building as a residential care home as this use is lawful.

Members are also not required to address matters that are more properly dealt with under other legislation or question how the care home should be managed or make any judgement on the personal credentials of the applicant. The Care Home will need to be registered with the Care Quality Commission (CQC). The CQC is an Independent Regulator of health and social care in England who make sure services meet fundamental standards that people have a right to expect whenever they receive care. The CQC monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety and they publish what they find, including performance ratings to help people choose care. It is the CQC who will make a judgement on the personal credentials of the applicant and question how the care home should be managed through legislation available to be used by them. It is outside the remit of the planning system to get involved in such issues.

In order to keep to its remit of only assessing the planning merits of this proposal, the guiding principle for Members is to ask whether the removal of these restrictions on this planning permission accords with the Development Plan.

## Observations

This part of the report will draw on the matters raised in the previous report at Appendix A along with the concerns raised by the Board and ascertain whether these have been addressed through the additional information provided and through Members visiting the site.

### **a) Whether the use proposed remains within a residential care home within Use Class C2**

The lawful use of this building is as a residential care home within Use Class C2. From the additional information provided by the applicants and from the site visit it is clear that the use intended to be operated from this building will remain within Use Class C2 as being a non-secure residential care home providing accommodation and care for people in need of care.

Most of the objection letters submitted relate to the fear of the type of resident who may occupy these bedrooms if this age restriction is removed. The type of resident being referred to by the objectors is a resident who would require a secure unit. Secure residential institutions such as young offender's institutions, detention centres, short term holding centres etc. are within a different use class being a Use Class C2A. Planning permission is required for a residential care home to operate as a secure residential institution. A use within Use Class C2A is **NOT** being sought under this variation of condition application.

Based on the evidence provided by the applicant it is clear that the use intended to be operated from this building will remain within Use Class C2 as a non-secure residential care home. A note can be added to any variation consent granted as follows:

“For the avoidance of doubt this consent does not permit any other use within Use Class C2 other than as a residential care home. This consent does not allow any use within Use Class C2A (Secure Residential Institutions).”

**b) Any potential impacts from removing condition 3 requiring the use to be restricted to provide short term assisted accommodation for persons over the age of 50 for a period not exceeding six months per period of stay.**

As stated in section (a) the use permitted to be undertaken at this building is a care home under Use Class C2.

Policy NW10 (Development Considerations) in the Core Strategy 2014 states that development should avoid and address unacceptable impacts upon neighbouring amenities through overlooking, overshadowing, noise, light, fumes or other pollution.

There is no evidence to suggest that younger residents aged 18+ will generate unacceptable impacts upon neighbouring amenities such as noise when compared to residents aged 50+. Indeed, the Council’s Environmental Health Officer offers no objections to the removal of this age restriction.

Similarly, there is no evidence to suggest that residents staying in a building for a period in excess of six months will generate unacceptable impacts upon neighbouring amenities such as noise when compared to residents staying for a maximum of six months.

The current planning permission is for the use of eight bedrooms for people requiring care. The applicant has agreed to a condition restricting the number of residents to six if the age and length of stay restrictions are removed. This will result in a smaller scale care unit being operated from the site to the benefit of neighbouring amenities.

Condition (11) - “Only six residents shall occupy the site at any one time”.

Based on the above it is considered that the removal of the restrictions in condition 3 will be in accordance with the requirements of Policy NW10 (9) of the adopted Core Strategy. A note can be added to any variation consent granted ensuring that the other conditions attached to planning permission ref: PAP/2010/0307 relating to hours of visiting and delivery times remains relevant.

### **c) Highway Safety**

As observed on site, the use of six bedrooms for residential care in this location is not a large scale operation. Policy NW10 (Development Considerations) requires that development should encourage sustainable forms of transport and should provide for proper vehicular access, sufficient parking and manoeuvring for vehicles.

The Highway Authority has no objection to this variation. There should be adequate car parking provision both on-site, off-site within a public car park and opportunities for residents and visitors to use public transport and to walk.

Although the 2010 permission has been taken up, the dropped kerb has not been provided. As discussed, the highway conditions as contained within the 2010 decision notice remain.

“The conditions contained within the decision notice issued for planning permission ref: PAP/2010/0307 remain applicable for this proposal. It is important to note that conditions 6, 7 and 8 relating to highway works have not been implemented on the site. These need to be implemented before the use can occupy this building.”

The reduction in the number of occupants of this building to six will reduce the level of traffic associated with such a use. A planning condition can be imposed to ensure that the gates located within the vehicular access operate correctly.

(10) – “The gates located within the vehicular access to the site shall not be hung so as to open over the public highway footway, and shall not be closed during visiting hours or during shift change periods”

Based on the above it is considered that the removal of the restrictions in condition 3 will comply with Policy NW10 (5) and (6) in the Adopted Core Strategy with regards to highway safety.

## **Conclusions**

Given the clarifications set out in this report; the additional amendments and the use of planning conditions to mitigate adverse impacts, it is considered that the balance at this final stage of the process has not altered from the previous report. As such this variation of condition is recommended

## **Recommendation**

That condition number 3 attached to planning consent ref: PAP/2010/0307 be **VARIED** to read as follows and with the following additional conditions attached:

3) The buildings shall not be used for any purpose, including any other purpose in Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any statutory instrument revoking and re-enacting that Order with or without modification other than as a residential care home for persons aged 18+.

### **REASON**

To prevent unauthorised use of the property which could lead to adverse impacts on neighbouring occupiers.

10) The gates located within the vehicular access to the site shall not be hung so as to open over the public highway footway, and shall not be closed during visiting hours or during shift change periods.

**REASON**

In the interests of highway safety.

11) Only six residents receiving care shall occupy the building at any one time. The remaining two bedrooms can be occupied by care workers employed to provide this care.

**REASON**

To ensure that the use remains small in scale and does not impact on neighbour amenity values or cause highway safety issues.

**Notes**

1. The conditions contained within the decision notice issued for planning permission ref: PAP/2010/0307 remain applicable for this proposal. It is important to note that conditions 6, 7 and 8 relating to highway works have not been implemented on the site. These need to be implemented before the use can occupy this building.
2. For the avoidance of doubt this consent does not permit any other use within Use Class C2 other than as a residential care home. This consent does not allow any use within Use Class C2A (Secure Residential Institutions).

## BACKGROUND PAPERS

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

Planning Application No: PAP/2015/0517

<b>Background Paper No</b>	<b>Author</b>	<b>Nature of Background Paper</b>	<b>Date</b>
1	The Applicant's Agent	Additional Information	19/10/15
2	S. Wilkinson	Minutes of the Site Meeting	19/10/15

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

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

**Application No: PAP/2015/0517**

**52, Birmingham Road, Water Orton, B46 1TH**

**Variation of condition no:3 of planning permission PAP/2010/0307 relating to allow the unrestricted occupation of the short stay respite unit/home; in respect of conversion of 2 semi detached properties residential (C3 use), into 8 bedroom short stay respite unit/home to support older adults (C2 use), for**

**Mr Hanif Shah - Elite Care Homes Ltd**

### **Introduction**

The application is reported to the Planning and Development Board for determination under the Council's Adopted Scheme of Delegation at the Assistant Director and Solicitor to the Council's discretion

### **The Site**

The site lies to the north of Birmingham Road within a predominantly residential area. It consists of a pair of semi-detached properties built within the last ten years with car parking to the front of the site and amenity land to the rear. There is a Nursing Home located six properties away to the west.

### **The Proposal**

Planning permission was granted under ref: PAP/2010/0307 for the conversion of these two semi-detached properties into a single property with a restricted C2 use (Residential Institutions). A copy of decision notice ref: PAP/2010/0307 is attached to this report at Appendix A. Condition number 3 attached to this consent restricted this eight bedroomed property to be used for short term assisted respite care for persons over the age of 50 years old for a stay not exceeding six months.

This proposal is to vary the requirements of condition 3 to allow the buildings to be used as a residential care home without the restrictions on age or length of stay. The other conditions attached to consent ref: PAP/2010/0307 relating to the hours of deliveries; the visiting hours and the car parking area would remain in place.

### **Background**

Planning permission was granted under application ref: FAP/2002/7194 in 2002 for the erection of the original two semi-detached properties.

### **Development Plan**

North Warwickshire Core Strategy (October 2014) - NW1 – (Sustainable Development); NW2 (Settlement Hierarchy) and NW10 (Development Considerations)

North Warwickshire Local Plan 2006 (Saved Policies) - ENV13 (Building Design); ENV14 (Access Design), HSG5 (Special Needs Accommodation), TPT1 (Transport Considerations in New Development), TPT3 (Access and Sustainable Travel and Transport) and TPT6 (Vehicle Parking)

## **Other Relevant Material Considerations**

The National Planning Policy Framework 2012 – (the “NPPF”).

## **Consultations**

Environmental Health Officer – He confirms that he has no comments on this variation of condition. Their previous comments on the change of use application submitted in 2010 related to concerns regarding visiting times and the hours for deliveries.

Warwickshire County Council as Highway Authority – The Council confirms that it has no objection to the proposal subject to the imposition of conditions. It states that although included within the documentation is that the development was completed on 1 January 2011 the dropped kerb footway crossing required under planning condition number 8 has not been constructed. The proposal to remove the restriction on the age of the residents and the duration of their stay will affect the highway network differently. Firstly, there will be more staff but historically the majority of staff at care homes are local and do not drive to work. The car park has a minimum of seven car parking spaces. It is not a large scale operation and there is a car park nearby and other forms of sustainable transport within walking distance. As such the proposed amendment should not have a significant impact on the highway network.

## **Representations**

Water Orton Parish Council – The Council confirms that following its Parish Council meeting which was attended by members of the public, it wishes to object to this proposal until further information is available to supply to the public regarding access and noise. They express their concern that the conditions attached to this 2010 consent with regards to the times of access and delivery to the property was appropriate for the respite care, but not for a much younger client basis who will be in care for a longer time period. They also query whether the property has ever been used for respite care for the over 50's.

246 objections have been received from local residents relating to the following matters:

- impact on the highway network and to vary this condition will cause on-street parking in a busy area;
- the building will become a Bail Hostel attracting undesirable residents including ex-offenders;
- this type of use is inappropriate in this area as it located close to a residential care home for the elderly, close to childminders and families and the route for young children walking to school;
- the buildings have never been used as a respite care home and remain empty, and
- allegations that the applicant has used this postal address to register their children into the local school.

## **Observations**

### **a) Introduction**

The site lies within the Development Boundary for Water Orton. The Settlement Hierarchy as outlined in Policy NW2 states that Water Orton is classed as a category 3B settlement where development, within the development boundary, will be permitted where it is considered to be



appropriate to its place in the settlement hierarchy. The site lies on a number of regular bus routes and within a short walking distance of rail services and many local services and facilities at Water Orton and so is classed as a sustainable location.

A material planning consideration of significant weight here is that planning permission has been granted in 2010 for the change of use of these two residential units into a restricted C2 (Residential Institution) use. The justification for this approval as contained within the decision notice was that:

*"The proposal is considered acceptable in principle given its location within a Development Boundary and suitably located for sustainable transport provision. Access and parking arrangements are considered achievable and acceptable subject to conditions, whilst the impact on neighbouring amenity is also acceptable subject to relevant controls over visiting hours, staff movements and deliveries, and further control over the type of occupant cared for at the site."*

The key issue here is that the principle of a respite care home under Use Class C2 has been accepted under permission ref: PAP/2010/0307. This permission has been implemented as the previous semi-detached dwellings have been converted into one large building complete with a lift, fire doors, smoke alarms, passive lighting, emergency lighting and fire escapes amongst other things to enable it to be used as a Care Home. As such Members can only comment on whether the removal of the restrictions contained in condition 3 attached to consent ref: PAP/2010/0307 are acceptable.

Condition 3 restricted this C2 use to a respite home for short-term assisted accommodation for persons over the age of 50 for a period not exceeding a six months. The proposal is to remove this restriction so that the use becomes a residential care home. It is important that the following issues are addressed.

#### **b) Highway Safety**

The Highway Authority states that it has no objection to the proposed variation of the condition to allow younger people to occupy the care home for a longer time period. It acknowledges that the variation of condition would affect the highway network differently. Firstly, there will be more staff, however, they state that historically, the majority of staff employed at care homes mostly do not drive to work. As such the peak period in the car park would be at shift change.

Long term care should result in more visitors to residents of the site, compared to respite use. The applicant has stated that most of the residents will leave the site to visit friends and family at their own homes and that, although visits into the care home are pre-organised, these are infrequent. However, as stated by the Highway Authority, there will be visits from social workers, doctors and other health professionals. The site may also need to accommodate regular ambulance movement, however, during non-peak times, they consider that there is sufficient space within the site for ambulances to leave and re-enter the public highway using a forward gear.

It is also stated by the Highway Authority that based on eight bedrooms, this is not a large scale operation and so there should be adequate car parking provision both on-site, off-site within a public car park and opportunities for residents and visitors to use public transport and to walk for the proposed amendment not to have a significant impact on the highway network. The applicant has stated that they will only use six bedrooms for residents with the remaining two bedrooms used by members of staff during the night-time shifts. It is recommended that in order to address highway concerns about an increase in traffic generation and parking through the variation of condition number 3, a further condition is imposed constraining the use to the occupation of a maximum of six bedrooms.

Although the 2010 permission has been taken up, the dropped kerb has not been provided. As such the highway conditions as contained within the 2010 decision notice conditions remain and prevent the building being occupied until they have been complied with. They relate to the dimensions of the access, car parking, manoeuvring and service areas and for the visibility splays required onto Birmingham Road and the need to construct this vehicular access onto Birmingham Road. An additional highway condition is recommended relating to the existing gates which are a concern as those entering or exiting the site using a vehicle will obstruct the footway and carriageway

Issues raised by the local residents with regards to vehicles parking on the street and obstructing driveways are concerns not shared by the Highway Authority and any incidents will need to be enforced by the Local Police.

Based on the above, it is considered that the varied scheme complies with Saved Policies ENV14 and TPT3 in the North Warwickshire Local Plan 2006 relating to highway safety.

#### **c) Impact on neighbouring properties**

Core Policy NW10 (Development Considerations) states that development should avoid and address unacceptable impacts upon neighbouring amenities through overlooking, overshadowing, noise, light, fumes or other pollution. The original 2010 change of use application considered the potential for disturbance to neighbouring properties. Privacy and overlooking concerns were considered to be no different to that already being experienced from the existing lawful residential use. The greatest concerns were given to the introduction of a staffing need, deliveries, refuse collections and visitors. Planning conditions were attached to the change of use permission restricting the potential for night-time disturbance through restricting visiting hours and hours for receiving deliveries. These conditions will remain in place.

With regards to the proposal to remove the restrictions on this care home, the neighbouring Orton Manor Nursing Home is an example of an unrestricted Residential Care Home. It caters for 38 residents. The building at 52a and 52b Birmingham Road is considerably smaller. It will be for six residents and this can be conditioned to limit its occupation to this number accordingly. The applicant's agent has submitted a Supplementary Statement (copy appended at Appendix B) which confirms that the applicant will accept the limitations of this condition.

The building involved is a detached building with a large parking forecourt and a large rear garden. The Environmental Health Officer offers no objections to this variation of condition 3 to allow longer stays by potentially younger clients. His comments are made after an assessment on whether this variation will impact on neighbouring amenities over and above those which will be experienced from the change of use planning consent. As such, it is considered that an unrestricted residential care home of this small scale in this location will not impact on the residential amenity of neighbouring residents.

#### **d) Other Matters**

A number of the objections relate to the potential for residents of the care home to be rehabilitating ex-violent prisoners. There is a lot of concern locally that with the number of childminders operating in the area and vulnerable children and adults living in the area then these two uses will not be compatible.

The applicant is Elite Care Homes who specialise in caring for people with Mental Health issues. The care home will not be a secure unit. It will be for patients being released from hospital who require support to adjust to living in the community. This level of support may only be 2 hours per day to assist them in accessing college courses or employment or assisting in them using the bus services whilst other residents may need more support for personal hygiene etc. All residents will be striving to live independently in the community again. As the care home

is not a secure unit then none of the residents will be from the Sex Offenders Register or will have complex mental health needs.

Indeed, mental health accounts for about 23% of the burden of disease in England and NHS funding for mental health has been increased by £300 million in 2014. It is considered that this small scale residential care home will provide an important service to bridge this gap between hospital and independent living whilst not being a threat to the safety of the residents living in the neighbouring area.

It is confirmed that there are no trees protected by Tree Preservation Orders on this site.

#### **e) Conclusion**

It is considered that this variation can be supported in this location subject to the imposition of two additional conditions to ensure that it does remain small in scale and that the gates erected to the frontage of the site do not cause highway safety issues.

#### **Recommendation**

That condition number 3 attached to planning consent ref: PAP/2015/0517 be varied to read as follows and with the following additional condition attached:

3) The buildings shall not be used for any purpose, including any other purpose in Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any statutory instrument revoking and re-enacting that Order with or without modification other than as a residential care home.

Reason: To prevent unauthorised use of the property which could lead to adverse impacts on neighbouring occupiers.

10) The gates located within the vehicular access to the site shall not be hung so as to open over the public highway footway, and shall not be closed during visiting hours or during shift change periods.

Reason: In the interests of highway safety.

11) Only six residents shall occupy the site at any one time.

Reason: To ensure that the use remains small in scale and does not impact on neighbour amenity values or cause highway safety issues.

#### **Notes:**

1) The conditions contained within the decision notice issued for planning permission ref: PAP/2010/0307 remain applicable for this proposal. It is important to note that conditions 6, 7 and 8 relating to highway works have not been implemented on the site. These need to be implemented before the use can occupy this building.

## BACKGROUND PAPERS

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

Planning Application No: PAP/2015/0517

Background Paper No	Author	Nature of Background Paper	Date
1	Applicant's Agent	Planning application forms and plans	13/8/15
2	Environmental Health Officer	Consultation response	11/9/15
3	S. Wilkinson	Letter to agent	22/9/15
4	Water Orton Parish Council	Objection Letter	16/9/15
5	246 emails from local residents	Objections	7/9/15 – 24/9/15
6	Highways Authority	Consultation response	28/9/15
7	Applicant's Agent	Additional Information	28/9/15
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*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

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

**Member Site Visit at 52 Birmingham Road, Water Orton for ref: PAP/2015/0517**

**Monday 21 October 2015**

Present:

Cllrs Henney, Humphreys, Jenns, Lea, Payne, Reilly, Simpson, Sweet, Wright, together with S. Wilkinson and the applicants Misheck Hakulandaba, Roy Banda and Aisha Kauser

Site visit started at 6.00pm.

The frontage of the site was inspected with regards to the parking provision. The gates were opened to see if any of the parking spaces would be unable to be used. The requirement for a dropped kerb to be installed before occupation of the care home as part of the 2010 planning permission was explained.

Local residents had gathered on the footpath outside the site on Birmingham Road. The residents remained in this location and did not accompany the Members whilst they looked around the site and its surroundings.

Members walked along Birmingham Road and turned into the access road leading to the Roberts site and Scout Hall. Members looked through the gates towards the Scouts Hall building. The Industrial uses at the former Roberts site were observed in relation to the rear garden of number 52. It was explained that there is a planning application being considered for three dwelling houses on this site.

Members walked back to number 52 and into the building. Members congregated in the hall and heard that the use proposed is for rehabilitation and recovery of residents who have been referred from local community health teams. The residents will have had a period of stay in hospital and will be looking for independent living. The residential care home will not be a secure unit and each resident has the right to a front door key.

Members walked around the rear garden and along the boundaries of the site in relation to the neighbouring properties. It was pointed out that the trees in the rear garden were not protected by Tree Preservation Orders.

Members then walked around the building and observed the communal lounge areas, the kitchen, the utility room, the bedrooms, the bathrooms and the lift. Fire doors were noted as being in place for each room in order to comply with Building Regulations.

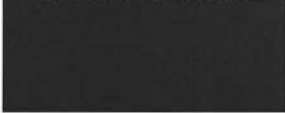
The site visit finished at 6.50pm.



North Warwickshire  
Borough Council

Jeff Brown BA Dip TP MRTPI  
Head of Development Control Service  
The Council House  
South Street  
Atherstone  
Warwickshire  
CV9 1DE

Ms Carole Chambers



Switchboard: (01827) 715341  
Fax: (01827) 719225  
E Mail: [PlanningControl@NorthWarks.gov.uk](mailto:PlanningControl@NorthWarks.gov.uk)  
Website: [www.northwarks.gov.uk](http://www.northwarks.gov.uk)

Date: 14 October 2010

The Town & Country Planning Acts  
The Town and Country Planning (Listed Buildings and  
Conservation Areas) Act 1990  
The Town & Country Planning (General Development)  
Orders  
The Town and Country Planning (Control of  
Advertisements) Regulations 1992 (as amended)

**DECISION NOTICE**

Full Planning Application

Application Ref: PAP/2010/0307

**Site Address**

52a & 52b, Birmingham Road, Water Orton, B46 1TH

Grid Ref: Easting 417213.52  
Northing 291095.97

**Description of Development**

Conversion of 2 semi detached properties residential (C3 use), into 8 bedroom short stay respite unit/home to support older adults (C2 use)

**Applicant**

Ms Carole Chambers

Your planning application was valid on 8 September 2010. It has now been considered by the Council. I can inform you that:

Planning permission is **GRANTED** subject to the following conditions:

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

**REASON**

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

2. The development hereby approved shall not be carried out otherwise than in accordance with the floor plans received by the Local Planning Authority on 17 June and 8 July 2010. For the avoidance of doubt, the parking layout plan is not approved and reference should be made to the condition(s) below.

**REASON**

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

Authorised Officer: 

Date: 14 October 2010



3. The respite home hereby approved shall not be used for any purpose, including any other purpose in Class C2 of the Town and Country Planning (Use Classes) Order 1987, (as amended), or in any statutory instrument revoking and re-enacting that Order with or without modification other than for short term assisted accomodation for persons over the age of 50, not exceeding 6 months per period of stay.

REASON

To prevent unauthorised use of the property which could lead to adverse impacts on neighbouring occupiers.

4. No deliveries or shift changes shall occur outside of the hours of 0700 to 2200.

REASON

To protect the amenities of nearby residential property.

5. Visiting hours shall not occur outside of the hours of 0800 to 2000.

REASON

To protect the amenities of nearby residential property.

6. The use hereby permitted shall not commence until full details of the provision of the access, car parking, manoeuvring and service areas, including surfacing, drainage and levels have been submitted to and approved in writing by the Council. No building shall be occupied until the areas have been laid out in accordance with the approved details. Such areas shall be permanently retained for the purpose of parking and manoeuvring of vehicles, as the case may be. The vehicular access to the site shall not be constructed in such a manner as to reduce the effective capacity of any highway drain or permit surface water to run off the site onto the public highway.

REASON

In the interests of safety on the public highway.

7. The development shall not be occupied until pedestrian visibility splays have been provided to the access to the site with a 'x' distance of 2.4 metres and 'y' distances of 2.4 metres as measured from the rear edge of the public highway footway. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway footway.

REASON

In the interests of safety on the public highway.

8. The access to the site for vehicles shall not be used unless a public highway footway crossing has been laid out and constructed in accordance with the standard specification of the Highway Authority.

REASON

In the interests of safety on the public highway.

Authorised Officer: \_\_\_\_\_



Date:

14 October 2010

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**SUPPLEMENTARY STATEMENT**

Variation of condition 3 of planning permission ref:  
PAP/2010/0307 to allow the unrestricted occupation of  
the short stay respite unit/home at 52a & 52b  
Birmingham Road, Water Orton

**CN-PLANNING**

☎: 07734 86 86 44

✉: [contact@cnplanning.co.uk](mailto:contact@cnplanning.co.uk)

🌐: [www.cnplanning.co.uk](http://www.cnplanning.co.uk)

Ref: CNP/2015/06-04

Date: September 2015

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rec'd 28/9/15



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### Introduction

- 1.1 This Supplementary Statement responds to correspondence from the Local Planning Authority (LPA) dated 18 September and received 22 September, as enclosed at Appendix 1; as well as the general points being raised in objections lodged by third parties. This Statement is designed to be read in conjunction with the aforementioned letter and the original Planning Statement ('the Statement') submitted with the application.

### Proposed wording of the condition

- 1.2 It is accepted that the suggested wording outlined in the Statement omits crucial words. This has arisen through a simple administrative error when preparing the Statement. The wording as suggested in the LPA's letter is acceptable, namely:

*"The buildings shall not be used for any purpose, including any other purpose in Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any statutory instrument revoking and re-enacting that Order with or without modification, other than as a residential care home."*

### Additional conditional control

- 1.3 5.1 to 5.7 of the Statement set out the legislative and policy parameters for use of conditions. It is noted that Planning Practice Guidance (PPG) states at section 21a, paragraph 031:

*"in deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application" and "in granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission" [my emphasis].*

- 1.4 The above guidance makes it clear that the LPA does not have the ability to address shortcomings which might exist under the existing permission. Cross reference is made here to paragraph 5.6 of the Statement where the PPG is reproduced in full. Attention is given to the key questions under the 'relevant to the development to be permitted' part of the table which states "a condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development".

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- 1.5 The LPA's letter correctly summarises the manner of operation, with only six residents occupying the building at any one time and the balance of two bedrooms used by members of staff during the night-time shifts. It is considered by the LPA that a condition to constrain the use as such is appropriate to address concerns about impacts on residential amenity or increases in traffic generation and parking requirements.
  - 1.6 The existing permission carries no such control, allowing all 8 bedrooms to be occupied by residents. The proposed additional condition therefore could be argued to be remedying a pre-existing problem, contrary to the PPG. Notwithstanding the fact the Applicant is confident in any case that no unacceptable impacts in these respects would arise, as above; he recognises the need to maintain good relations with neighbours and is therefore willing to accept such a condition. It does still however remain the responsibility of the LPA to ensure that the condition does meet all the tests as set out in the NPPF and the PPG, so to meet its statutory obligations under Section 73 of the 1990 Act.

#### Objections received

- 1.7 The LPA has only forwarded a couple of neighbour objections and the comments from the Parish Council (PC). The following therefore responds as best as possible in the time available.
- 1.8 The PC asks how control over visiting and delivery hours can be maintained with a younger client base. It is unclear how this conclusion is reached when looking at the age profile of residents at the home, with it seemingly concluded that younger residents would need to be visited or bring about deliveries outside of the hours allowed current specified in conditions 4 and 5. The answer is quite simple – the applicant is not seeking to vary these controls. The applicant does not expect these controls to be restrictive to their operations or to their clients, and hence the LPA should similarly have confidence that the conditions would remain as effective and enforceable as they do now.
- 1.9 The PC questions, on behalf of a neighbour, whether the property has ever been used for the over 50s. It may be the case that the premises have not been fully used since their conversion from residential to the care home in 2011, but it is not necessary to 'test' each proposal before considering an alternative in the future. This hinges on the very principles of the planning system in that there is a presumption in favour of development and permission should only be withheld where the adverse impacts are significant and would lead to unacceptable impacts. The NPPF reaffirms this approach, which has been in place since the inception of the Planning Acts.

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- 1.10 The PC and other objections query an increase noise levels. In order to reach this point of concern, the writers make an unsubstantiated assumption – that younger residents will lead to greater noise levels. First of all there is no evidence for such a link, with it perfectly possible for the home to continue to cater for a wide range of ages – including over 50s as it does now – with a range of occupants who have different personas. Some may use the external spaces, others may not. The applicants are responsible for all occupants such that they cannot come and go as they please, nor act in an anti-social manner without consequence. Secondly the focus of this point, and indeed the overall use of the premises, cannot be the social characteristics of occupants. The Government make it quite clear that matters of prejudice, or stereotypes, are not material planning considerations and the LPA must divorce such inferences and comments from their assessment of the proposal. Finally the objectors will not have been able to appreciate the above context set out at 1.5 and 1.6 – that the proposal would operate to a lesser extent than is presently possible (i.e. 6 residents instead of 8). Whilst comings and goings related to staff would remain consistent, there would inevitably be a reduction in comings and goings related to residents. Furthermore the application seeks to omit the maximum period of stay such that the same resident might be at the home for a number of years, inevitably reducing the comings and goings associated with moving a new resident in/existing resident out.
- 1.11 It is noted from the County Highway Authority's (CHA) response that they hold a slightly different view in respect of likely vehicle movements compared to that already permitted. It is also acknowledged that a vehicle crossover has not been implemented in accordance with the 2010 permission but the applicant is willing to address this (it should be noted that the applicant only took control of the premises earlier this year). The main observations from the CHA's response is that the above reduction in potential capacity will not have been weighed into their observations, and in any case they do not consider there is a capacity issue in respect of the surrounding network or parking availability on site.
- 1.12 There should also be consideration of the original permitted use of the premises – as two 4-bed dwellinghouses, suitable for families. Such dwellings would facilitate young children to be using the external spaces and/or adolescent children coming and going in the evenings and weekends, along with any associated vehicle noise. Similarly so the dwellings could have individually changed to a House in Multiple Occupation (HMO) under Class C4 of the Use Classes Order 1987 (the UCO) allowing up to 6 unrelated persons to live as a single household – all without the need for planning permission. Arguably the disturbance effects of this type of use would be much greater than that now proposed (and controlled by conditions).
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- 1.13 The LPA has also forwarded the response of the Senior Pollution Control Officer (PCO) who raises no objection to the proposed variation of condition 3. The comments of the Environmental Health Officer (EHO) in respect of emergency exit routes and food preparation facilities are covered by other legislation and not constraining factors here. The lack of objection, or indeed a request for additional control, from the PCO is highly material. This not only demonstrates a lack of evidence that the proposal would lead to increased noise and/or disturbance, but also that the additional condition requested by the LPA is questionable under the NPPF/PPG tests. The applicant's willingness to agree the additional condition should therefore be afforded weight as 'planning gain' under this development.
- 1.14 Moving on to other objections received, it is noted that neighbours are reticent regarding the lack of maintenance of the garden since the properties were first built some 10 years ago. The applicant only took on responsibility of the properties in February 2015 and hence was, until these comments were made, unaware of such issues. The applicant maintains the properties in a suitable fashion and in any case former ownership and attitude of that owner(s) are not material planning considerations here. If neighbours consider there are maintenance needs then they should approach the applicant directly to discuss progressing these.
- 1.15 The matter regarding whether a tree is protected by a Tree Preservation Order (TPO) again is a maintenance issue not related to the proposal before the LPA. The applicant is unaware that this tree is protected, but the LPA may wish to clarify this in the interests of all affected parties.
- 1.16 As a closing point on noise and disturbance from a care home, the use falls within C2 of the Use Classes Order 1987 (as amended) for reason of its similarity to a conventional residential use. There is thus a general acceptance that this use is appropriate in a residential area. This is demonstrated by the existence of Orton Manor care home just a few properties away – a care home which continues to operate without harmful effects on the surrounding community.

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**APPENDIX 1**

LPA's letter dated 18 September 2015

**(12) Application No: PAP/2015/0561**

**C W Young Limited ( Builders Yard ), Common Lane, Corley, CV7 8AQ**

**Variation of Condition 2 of planning permission PAP/2014/0345 dated 16/12/14 reducing the development to ten units and subsequent alterations to the layout for**

**The Cassidy Group**

**Introduction**

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

A detailed planning application was granted at the end of 2014 for the residential redevelopment of this former builders' merchant yard and business resulting in eleven new houses. The permission involved an accompanying Section 106 Agreement which required the remediation of the site and the provision of an off-site financial contribution for affordable housing provision.

The permission was for 8 three bedroom two and a half storey semi-detached houses (9.6 metres to their ridgelines); two three bedroom semi-detached one and half storey dormer bungalows (6.5 metres tall) and one four bedroom detached dormer bungalow. Access was to be in the same location as existing and a small cul-de-sac would lead into the site with the development mainly provided on the eastern side. An existing tree was to be retained.

A copy of the approved layout and elevations is at Appendix A

**The Site**

This is a rectangular piece of land just over 5 hectares in extent on the northern side of Common Lane about 900 metres east of Corley Moor and 1.5 kilometres west of Corley. There is a substantial hedgerow fronting the site and along its eastern boundary. There are detached houses on the opposite side of the road and other dispersed houses and an equestrian centre to the north-west at Corley Moor, otherwise the site is in open countryside. The M6 Motorway is situated about 800 metres to the north. It is generally a flat site with a slight incline to the north into the site.

The site can be seen in two halves. On the eastern side was the area known as C W Young's Builders Merchants. Until recently this was covered in building materials. The western half – in different ownership – contained overflow storage for this business as well as more open grass land.

The development permitted in 2014 and described above is confined to the front right hand quadrant of the whole site.

As a consequence of the planning history of the site as a whole, the planning permission granted was accompanied by a Section 106 Agreement which amongst other things required cessation of the unauthorised builders merchant's yard and the remediation of the whole of the site including removal of builder's materials and contaminated land from both halves of the whole site. That is now very largely

completed and the site stands vacant and cleared. The tree shown to be retained on the approved plan had to be removed because the level of contamination was effectively poisoning it and it thus had a very short life expectancy.

## **Background**

A much more involved description of the planning history and the reasons for the grant of the 2014 permission can be found at Appendix B.

## **The Proposals**

The applicant is seeking a variation of the 2014 permission effectively reducing the number of houses to ten with a different cul-de-sac layout. The development would still be confined to the right hand corner as before. This is illustrated at Appendix C.

The accommodation now proposed is for six three-bedroom dormer bungalows (7 metres to their ridgelines) and four four-bedroom detached houses (8.7 metres to their ridgelines). The bungalows would be along either side of the cul-de-sac with the houses across the rear.

The remainder of the land would be put back to pasture as previously approved and there would be additional planting – notably further semi-mature trees to replace that lost in the centre of the site and along the far northern boundary.

The footprint of the development now proposed is 855 square metres compared with 870 square metres as approved. The volume now proposed is 4315 cubic metres and that of the approved scheme is 4389 cubic metres.

The existing Section 106 Agreement is not proposed to be altered – the remediation obligations and the off-site affordable housing contribution would remain the same.

## **Representations**

One letter expresses the view that no further development should be allowed than that already granted.

A letter of objection states that it would be wrong to build larger houses when there is an affordable housing need.

## **Consultations**

Environmental Health Officer – No objection provided the existing Section 106 is not varied and the planning conditions affecting remediation are not altered. It would be appropriate to ensure that new fenestration is properly insulated against noise from the M6 Motorway.

Warwickshire County Council as Highway Authority – Originally submitted an objection relating to the internal geometry of the proposed cul-de-sac. Amended plans have been submitted. The County Council has not yet responded but informally has indicated that it would withdraw its objection subject to standard conditions. Members will be updated at the meeting.

Warwickshire Museum – No comments to make.

## **Development Plan**

The Core Strategy 2014 – NW1 (Sustainable Development); NW2 (Settlement Hierarchy), NW3 (Green Belt), NW4 (Housing Numbers), NW6 (Affordable Housing Provision), NW10 (Development Considerations) and NW12 (Quality of Development)

Saved Policies of the North Warwickshire Local Plan 2006 – ENV4 (Trees and Hedgerows); ENV6 (Land Resources), ENV7 (Development of Existing Employment Land Outside of Defined Development Boundaries), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design) and TPT6 (Vehicle Parking)

## **Other Material Planning Considerations**

The National Planning Policy Framework 2012

## **Observations**

The site is in the Green Belt. Planning permission was granted very recently for the residential redevelopment of the site. It was considered to be inappropriate development notwithstanding the definition within the National Planning Policy Framework dealing with the complete redevelopment of previously developed land. The Council concluded that the degree of actual Green Belt harm was moderate and that there was no other harm. However when the matters raised by the applicant were assessed, it concluded that they did amount to the very special circumstances necessary to override the harm found by virtue of the inappropriateness. Appendix B explains this in some detail. This planning permission is thus now a planning consideration of substantial weight.

It is considered that the proposed amendment is not significantly or materially different to the recently approved scheme to warrant a re-assessment of the principle of that planning permission. This is because the development is substantially the same. The number of houses is reduced and as can be seen above that is of some benefit in terms of the amount of built development thus reducing impacts on openness. Moreover by having the smaller units at the front there is perhaps also a qualitative benefit on openness too. The proposed variation is thus considered to be an improved scheme in terms of its Green Belt impact. There are no other alterations of note and thus there remains no other harm.

The arguments put forward by the applicant are the same and as there is a marginally less harmful impact the Board is recommended again to conclude that there are very special circumstances here. Of merit too is the fact that the site has now been cleared and the unauthorised use has ceased. The applicant has accepted that the existing Section 106 obligations regarding full remediation prior to occupation have to remain. This again is material and any variation granted here would not affect the existing Agreement in this regard.

There is however one outstanding matter which needs to be addressed. The current Agreement is for an off-site contribution of £35k for affordable housing provision off-site. The value of that contribution was based on eleven houses and the value of those properties. The applicant has thus been requested to re-visit his calculation against the current proposals. He has done so and provided a comprehensive appraisal. This shows that there is very little in the way of differences between the schemes due to



increased building costs and the costs of clearing the site. As such the applicant is prepared to retain the £35k contribution.

### **Recommendation**

That planning permission be **GRANTED** subject to the Section 106 Agreement dated 12/12/14 and to all of the conditions as attached to planning permission PAP/2014/0345 dated 16/12/14 as set out in Appendix B, subject to a change in plan numbers to reflect the reduction the number of dwellings, together with those affecting highway matters.

## BACKGROUND PAPERS

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

Planning Application No: PAP/2015/0561

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	3/9/15
2	Mrs Macdonald	Objection	11/9/15
3	Environmental Health Officer	Consultation	16/9/15
4	Applicant	E-mail	17/9/15
5	Case Officer	Letter	21/9/15
6	Environmental Health Officer	Consultation	21/9/15
7	Warwickshire Museum	Consultation	28/9/15
8	Mr & Mrs Mayes	Representation	26/9/15
9	Applicant	E-mail	29/9/15
10	Warwickshire County Council	Consultation	30/9/15
11	Applicant	E-mail	8/10/15
12	Case Officer	Letter	12/10/15
13	Warwickshire County Council	E-mail	12/10/15
14	Applicant	E-mail	27/10/15

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

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

# APPENDIX A,

**Notes:**

1. The following notes apply to all sheets.
2. All dimensions are in millimeters unless otherwise stated.
3. All dimensions are to the centerline of the line unless otherwise stated.
4. All dimensions are to the face of the line unless otherwise stated.
5. All dimensions are to the centerline of the line unless otherwise stated.
6. All dimensions are to the face of the line unless otherwise stated.
7. All dimensions are to the centerline of the line unless otherwise stated.
8. All dimensions are to the face of the line unless otherwise stated.
9. All dimensions are to the centerline of the line unless otherwise stated.
10. All dimensions are to the face of the line unless otherwise stated.

**2014.03.04.5**

PROJECT NO.	2014.03.04.5
PROJECT NAME	2014.03.04.5
PROJECT LOCATION	2014.03.04.5
PROJECT DATE	2014.03.04.5
PROJECT DRAWN BY	2014.03.04.5
PROJECT CHECKED BY	2014.03.04.5
PROJECT APPROVED BY	2014.03.04.5

**Legend:**

- APPROVAL:  ARCHITECTURE
- APPROVAL:  CIVIL ENGINEERING
- APPROVAL:  ELECTRICAL ENGINEERING
- APPROVAL:  MECHANICAL ENGINEERING
- APPROVAL:  PLUMBING ENGINEERING
- APPROVAL:  STRUCTURAL ENGINEERING
- APPROVAL:  LANDSCAPE ARCHITECTURE
- APPROVAL:  ENVIRONMENTAL ENGINEERING
- APPROVAL:  OTHER

**Client:** G.M.H. HOLDINGS (PVT) LTD.

**Project:** 2014.03.04.5

**Location:** 2014.03.04.5

**Scale:** 1:1000

**Drawn by:** 2014.03.04.5

**Checked by:** 2014.03.04.5

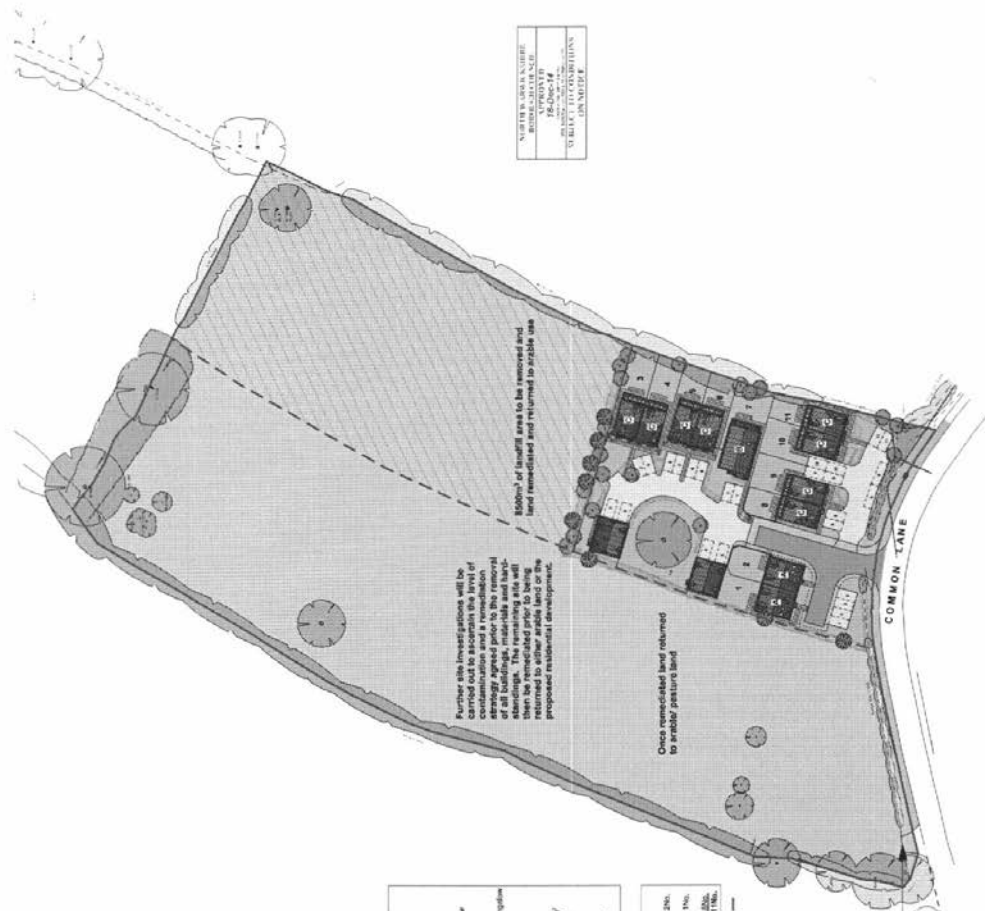
**Approved by:** 2014.03.04.5

**Date:** 2014.03.04.5

**Sheet No.:** 2014.03.04.5

**Sheet Total:** 2014.03.04.5

**Company:** G.M.H. HOLDINGS (PVT) LTD.



**REMARKS:**

1. Number 2.5 storey dormer bungalow  
Gross area = 1200.00m<sup>2</sup>  
SF Gross area = 43.5m<sup>2</sup>
2. Number 1.5 storey detached dormer bungalow  
Gross area = 600.00m<sup>2</sup>  
SF Gross area = 21.75m<sup>2</sup>
3. Number 1.5 storey semi detached dormer bungalow  
Gross area = 600.00m<sup>2</sup>  
SF Gross area = 21.75m<sup>2</sup>

Highway and driveway area = 107.75m<sup>2</sup>

Based on total area = 2400.00m<sup>2</sup>  
Total Land Use Area = 43.1%  
(includes per se)

Based on CF = 1.00m<sup>2</sup>/m<sup>2</sup>  
Total Land Use Area = 51.85%  
(includes per se)

**LEGEND:**

Type A	3 Bedroom dormer bungalow	92m <sup>2</sup> / 992m <sup>2</sup>	24%
Type B	3B detached dormer bungalow	137m <sup>2</sup> / 1473m <sup>2</sup>	14%
Type C	4 Bed detached bungalow	1320m <sup>2</sup> / 18320m <sup>2</sup>	11%
<b>Total</b>			

Denotes ownership boundary

\*COB Denotes collection day bin store

Commercial metal gates removed and single 4.0m wide timber farm gate installed.

**(2) Application No: PAP/2014/0345**

**C W Young Limited (Builders Yard), Common Lane, Corley, Coventry, Warwickshire, CV7 8AQ**

**Proposed development of 8 No. 2.5 storey semi detached house, 2 No. semi detached 1.5 storey dormer bungalows, 1 No. detached dormer bungalow and 2No. garages with storage above with associated highways, hard standing and landscaping. Scheme also includes the clear up of the remainder of the builders yard, for**

**Mr James Cassidy - Cassidy Group**

**Introduction**

The receipt of this application was reported to the August meeting of the Board and a copy of that report is attached as Appendix A. It includes a description of the site and the proposal together with an outline of the planning background associated with this site and the relevant Development Plan policies and other material planning considerations that will need to be considered in the determination of the application. That report should be treated as an integral part of this current report.

**Amendments to the Proposal**

Since the August meeting there have been changes made to the proposal. These are listed below:

- the internal road layout has been slightly re-aligned to overcome concerns from the Highway Authority;
- there have been minor revisions to the appearance of the proposed houses – slightly lowered eaves lines and the introduction of small hipped ridges for the larger houses, and
- an increased off-site financial contribution towards affordable housing has been made rising from £10k to £35k.

The revised layout and appearance are attached at Appendices B and C.

**Additional Information Submitted by the Applicant**

The applicant was requested to provide evidence to support some of the arguments he was putting forward for his proposal.

He has said that the existing employment provision on site connected to the lawful use and responses from three locally based timber merchants indicate employment levels of around a half dozen people is about average. Also all three were asked if they would consider moving to the site with the benefit of the lawful use. All three were not interested for the following reasons: poor overall location; poor access for deliveries, extra associated costs from an isolated site and because the current access arrangements are poor.

## **Consultations**

Warwickshire County Council as Highway Authority – No objection to the amended plans subject to standard conditions

Warwickshire County Council (Public Rights of Way) – No objection

The Coal Authority – No objection

Environmental Health Officer – No objection subject to standard conditions requiring remediation prior to work commencing and verification that such remediation has taken place.

Environment Agency – No objection subject to the same conditions as the Environmental Health Officer.

Severn Trent Water Ltd – No objection subject to conditions.

## **Representations**

Three letters of support have been received from local residents referring to the consequential visual improvement of the area; safer highway conditions, the smart appearance of the houses and the provision for affordable houses.

Three objections have been received from local residents referring to the land being Green Belt; greater traffic generation, the illegal use should end first, an un-ambitious design, a flawed public consultation undertaken by the applicant and no affordable housing

The Parish Council say that it has received mostly objections from residents. It continues by saying that commercial considerations have influenced the application and that there are differences here to the recent Corley Nurseries approval; if there are no sites available in Corley for affordable housing why is it being promoted here, the development is not in-keeping and the existing Enforcement Notices should be complied with first before any decisions are made on the lawful side of the site.

On the revised plans, and bearing in mind the lawful uses here, the Parish Council has the following comments:

- The Council acknowledge the lawful uses and therefore that some limited development is inevitable
- The Council wishes to see all of the remaining parts of the site completely returned to Green Belt with no business activity.
- The Council remains concerned about the affordable housing contribution.
- The Council has concerns about the access although understands that the County Council will comment, and
- Still considers that the overall design is not in-keeping.

## **Changes in Material Planning Considerations**

There are matters that need to be brought up to date since the last report.

### **a) The Development Plan**

Firstly the Inspector handling the submitted Core Strategy has submitted his report indicating that in his view the Strategy is sound subject to proposed Modifications. The Council has resolved to adopt the Strategy subject to these Modifications. This adoption is however subject to a six week period to enable legal challenge, but the Modified Core Strategy should now be treated as part of the Development Plan. Whilst it replaces the North Warwickshire Local Plan 2006 in many respects, some of the saved policies do carry weight.

As a consequence it is appropriate to outline below those Development Plan policies that are now relevant to the determination of this application. They are:

- a) North Warwickshire Core Strategy 2014 – NW1 (Settlement Hierarchy); NW2 (Green Belt), NW3 (Housing Development), NW4 (Split of Housing Numbers), NW5 (Affordable Housing), NW8 (Sustainable Development), NW9 (Renewable Energy and Energy Efficiency), NW10 (Quality of Development) and NW11 (Natural and Historic Environment).
- b) Saved Policies of the North Warwickshire Local Plan 2006 – ENV4 (Trees and Hedgerows); ENV6 (Land Resources), ENV7 (Development of Existing Employment Land Outside of Defined Development Boundaries), ENV8 (Water Resources), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), HSG3 (Housing Outside of Development Boundaries) and TPT6 (Vehicle Parking)

The National Planning Policy Framework 2012 and the National Planning Practice Guidance 2014 remain as material planning considerations.

### **b) Housing Supply**

Secondly, the Council has very recently indicated in July, that it does not have a five year housing supply. Because of historic under delivery, a 20% uplift has to be added, thus making the five year supply in effect a six year supply. The Council has a 5.7 year supply.

### **c) Enforcement Action**

Thirdly, the prosecution referred to in the Background section of Appendix A is to be heard in mid-December.

## **Observations**

### **a) Introduction**

As indicated in the previous report, the planning history here leading to the current prosecution in respect of the non-compliance with extant Enforcement Notices, is a material planning consideration. The issue is as always, what weight should be given to

this matter. However this has to be considered at the end of the process when a final assessment is made of all relevant matters, not at the beginning of the process. The following report will therefore start by looking wholly at how the current development proposals sit against the Development Plan and other planning policy considerations. The recommended approach to this is set out in the following paragraph. Once this has been resolved it will then be appropriate to balance that outcome against other material considerations – including the planning history.

In dealing with the application, Members should be aware that the application site is the whole of the land shown on the plan at Appendix D. The actual residential redevelopment proposal is confined to one area – the south west of the whole site. This area coincides exactly with the area covered by a Certificate of Lawfulness for a B2 General Industrial Use namely the manufacture of timber products and ancillary storage of timber and timber products together with their sale. A second Certificate includes a small office building which for all intents and purposes should be treated as being within the B2 lawful area. In effect therefore the applicant is seeking the exchange of these lawful uses for new residential use. Members are asked to approach this application in this way too.

From the consultation section above, it can be seen that there are no objections from the consultation responses and thus there is no case here for refusal of the application based on potential adverse impacts arising under these matters. The substance of the case is therefore very much a planning policy matter. There are two policy matters that need to be resolved first – whether the proposal is appropriate or not appropriate development in the Green Belt, and secondly whether it is “sustainable development” in terms of the NPPF given that such development would carry significant weight

#### **b) Green Belt**

The site is in the Green Belt. The control of new development here will be determined in line with the NPPF. The erection of new dwellings in the Green Belt as proposed here is inappropriate development in the Green Belt by definition within the NPPF. As such the proposal carries a presumption of refusal (paragraph 87). However Members will know that there are exceptions to this and that these are defined in the NPPF at paragraph 89. In this case there is just one that is relevant here. This will now be explored.

The exception is where a development is for “the partial or complete redevelopment of previously developed sites, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt and the purposes of the including land within the Green Belt, than the existing development”.

Whilst the application site is not wholly previously developed land, the actual redevelopment area is. It benefits from two Certificates for industrial/commercial uses hence the proposal does fall within the scope of this exception. The exception does not differentiate between uses, as the redevelopment referred to in the NPPF does not say, “in the same use class as the existing”. Hence the residential redevelopment here will fall within the scope of the exception. The two critical matters are thus the two conditions set out – the impact on openness and the impact on the purposes of including land within the Green Belt.

Taking the first of these, then there are two measures that can be applied – one quantitative, the other qualitative. In terms of the former, then the footprint of the existing lawful buildings within the lawful site is 100 square metres, and the volume is

380 cubic metres. The equivalent figures for the footprint and volume of the new houses are 750 square metres and 3500 cubic metres. The proposal on this basis is substantially greater than the existing and not just marginally. The increase is substantial. However, it must be remembered that the B2 Certificate also refers to storage of timber and timber products. This is an essential element of the operation of lawful use and thus should be taken into account in the quantitative measure. Members and officers are aware that there has always been timber stored outside on this part of the site and also that local timber merchant's yards also depend on outside timber storage in their yards. The question is how to calculate a meaningful measure based on the description in the Certificate. This is because the site could be taken over by a different timber merchant quite lawfully and operated in a more modern and regulated way than presently. It has been agreed with the applicant that around 75% of the site regularly has stored timber and that this proportion is also seen at other local timber yards. Timber is stored in stacks and over time and season the heights of these stacks will change. It has been agreed that a reasonable volume for stacked timber within the terms of the lawful use would be around 5000 cubic metres. When added to the lawful building volume that becomes 5380. This is greater by 35% than the volume of the proposed houses. It can thus be seen that using a volumetric quantitative measure, the proposal is likely to have less of an impact on openness than the continued lawful use particularly if operated by a different occupier.

Turning to the qualitative measure, then it is considered that there would be an adverse worsening on the openness of the Green Belt hereabouts using a timber merchant as the base-line. There are several reasons for this - permanent built development throughout the site; the heights of buildings, tall development behind the road frontage, tall buildings at the rear and development in depth.

When these two measures are combined it is considered that there will be an overall moderately worse impact on the openness of the Green Belt arising from the proposed redevelopment of the existing lawful site.

In respect of the other condition – the impact on the purposes of including land within the Green Belt - then there are five such purposes. The first is to check the unrestricted sprawl of large built up areas. Here the site is divorced from such areas and thus there would no change if a different use was made of the land. The second is to prevent neighbouring towns from merging. The same conclusion is reached here too. The third is to assist in safeguarding the countryside from encroachment. Here the redevelopment site is confined to the site of lawful commercial use which is not a countryside use. The fourth is not relevant as it refers to the setting of historic towns. The fifth is to assist in urban regeneration. This purpose is not affected as the site already has lawful brown field status and thus cannot prejudice urban regeneration. As a consequence it is considered that this second condition of the exception is satisfied.

Concluding all of these matters therefore, and in respect of the first of the two central planning policy matters referred to in the introduction to this section, it is considered that the proposed redevelopment here remains as inappropriate development in the Green Belt and is thus de facto, harmful. The degree of actual harm is considered to be moderate.



In these circumstances, Members will be aware that they now have to consider whether the planning considerations put forward by the applicant are of such weight as to amount to the "very special circumstances" necessary to overcome the presumption of refusal by way of the inappropriateness of the proposed development (paragraph 87 of the NPPF). These will be explored following consideration of the second of the two central planning policy matters – that of sustainability.

**c) Sustainable Development**

The site is not in a sustainable location as it is not within an identified settlement as being appropriate for new housing in the Development Plan. Moreover it is isolated from local services and facilities and is dependent upon car travel. These matters certainly count against the proposal. On the other hand there are matters which count in its favour, namely that the houses would be Code 3 houses and include renewable energy measures such as heat recovery and whole house ventilation; sustainable drainage measures would be introduced and there would be the remediation of contaminated land not only on the redevelopment site but over a substantially larger area of adjoining land. Additionally there is some weight to the fact that the lawful use itself would generate HGV and light traffic, and that the proposed use would probably generate less traffic and of a different nature – not the HGV's. The location is after all unsustainable whether occupied by the lawful or the proposed use. In conclusion therefore the matter here is balanced, without there being a strong case either way. This neutral position will have to be weighed in the final assessment.

**d) Very Special Circumstances**

The applicant has put forward a number of considerations which he argues do carry sufficient weight to overcome the presumption of refusal here. Before looking at these it is convenient here to say that he considers that in terms of the openness argument that the quantitative figures expressed above would suggest that there is no worse impact on openness than a continuation of the lawful use. Additionally he considers that qualitatively the proposal is superior to such a continuation, and that because there is no worse impact on the five purposes, he would argue that his proposal is appropriate development in the Green Belt. However he acknowledges that a different view can be taken and that is why he has put forward his case for very special circumstances here.

The first of these is that the proposed "exchange" of uses is supported by the NPPF in principle. Reference is made to paragraph 51 which says that, Local Planning Authorities, "should normally approve planning applications for change to residential use from commercial buildings (currently in the B use class) where there is an identified need for additional housing in the area, provided there are not strong economic reasons why such development would be inappropriate". There are several elements to his argument here. Firstly as will be explained below, there is an identified housing need. Secondly, the approach set out in the NPPF paragraph contains a proviso – there being no "strong economic reason why such a development would be inappropriate". In essence this is a "safeguarding" condition saying that the retention of a site in employment use might be better in economic terms than a housing redevelopment. The present employment on the site is limited – just three or four people, and even if the site were occupied by a different timber operator, that figure would be around six – the applicant's evidence on this is sound as it is based on actual research. Moreover that evidence also shows that there is very little reasonable prospect of a new occupier actively wanting to take over this site because it is too remote and not convenient –

again this evidence is sound, based on actual research. Overall therefore it is not considered that there is a demonstrable economic case to be made to support the safeguarding of this site. Thirdly and notwithstanding the NPPF's focus on economic reasons it is considered that there should be an environmental argument here too. The applicant argues that if lawful use continues, even if operated under different management, there would continue to be an industrial use in a rural area, with all of its potential noise, pollution and traffic impacts. Moreover there would be a substantial visual improvement to the lawful site. There is certainly merit to this argument. When all of these matters are put together then it is considered that there is support for the applicant's reference here to paragraph 51 being treated as a material consideration. That support is considered to be significant for the following reasons. The Council has previously agreed to such "exchanges" in the past both locally in the Green Belt at Corley and elsewhere; there is no overriding case to retain the site as employment land, and there are environmental adverse impacts in retaining the lawful use. It is considered therefore that in principle given the setting of this site and the nature of the local highway network, that this argument does carry significant weight in support of the proposal.

The second is that the Council still does not have a five year housing supply. This is accepted. It carries weight. Members will know that the NPPF particularly addresses this issue and that where there is no five year supply then the Council would have to evidence "significant and demonstrable" adverse impacts if it is to refuse this application (paragraph 14). As concluded earlier in this report there are no such impacts arising from technical issues – highways, drainage or contaminated land. The two potential adverse impacts are on the openness and thus the "integrity" of the Green Belt and whether the proposal can be considered to be sustainable development. It has been concluded above that there would only be a moderate adverse impact on the openness of the Green Belt but that the issue of whether the proposal is "sustainable" in terms of the NPPF is balanced without a strong indication one way or the other. In these circumstances therefore the applicant's position carries weight. However Government guidance in its National Planning Practice, clearly states that, "unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm, to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt". As there is moderate harm here to the openness of the Green Belt, the applicant's case would not carry significant weight.

The third is that taken together the redevelopment site and the whole of the adjoining land would be remediated from contamination. Contamination carries the risk of pollution both on and off-site, and the survey work submitted with the application clearly indicates that this land is contaminated. Both the Council's own Environmental Health Officer and the Environment Agency highlight the need to remove this contamination through agreed remediation procedures. This can be dealt with by planning condition supplemented by a Section 106 Agreement. This argument therefore does carry weight in support of the proposals.

The fourth is that the development would provide some benefit in terms of the contribution towards off-site affordable housing. This matter will carry weight given the Development Plan's housing requirements for the Borough. It is acknowledged that the site is not appropriate for on-site affordable housing given the lack of locally accessible services and facilities. As such an off-site contribution is thus appropriate here in lieu of such on-site provision. Given the clearance and decontamination of the land the subject of the lawful use here, it is considered that the value of the contribution here is

acceptable, and that it can be dealt with through a Section 106 Agreement. The applicant's argument does therefore carry weight.

The final consideration put forward by the applicant is that there would be an overall visual improvement to the area. Again here there is some weight to be attached to this given the removal of the B2 lawful use and all of its associated characteristics, and its replacement with a more conforming use. The overall visual character and appearance of the local area is not one of wide open countryside free of built development. There are significant numbers of frontage and dispersed dwellings in Common Lane itself as well as nearby in Corley Moor. The presence of the M6 motorway too is very apparent. As a consequence there is some weight to the applicant's case.

So the matter now becomes a question of what weight should be given to these matters to see if they amount to the very special circumstances necessary to outweigh the presumption of refusal here by way of the inappropriateness of the development. It is considered that on balance they do. In support of this conclusion are the exchange of uses where there is a record of environmental and highway concern arising from the lawful use and the new use would lessen that harm; the de-contamination of the site and surrounding land and the off-site affordable housing contribution. Against the conclusion would be that it is not whole-heartedly a sustainable development and because Government guidance states that Local Planning Authorities should not necessarily release Green Belt land for housing development in order to meet a gap in their five year land supply. It is considered here that this latter point is the critical one, and what tips the balance is the conclusion that the actual impact on the openness of the Green Belt arising from the redevelopment would cause only moderate harm. If the degree of harm had been greater then the balance might well have reached a different conclusion.

As a consequence therefore the initial view is that the recommendation to the Board should be one of "minded to support". Before actually reaching this conclusion however there are other issues to consider – the most pressing being the planning history of the site.

#### **e) The Planning History**

Both the content of the last report – Appendix A – and the introduction to this report outlined the significance of this matter in the consideration of this application. In short there are extant Enforcement Notices that apply here which have not been fully complied with over time. As a consequence the argument is that redevelopment should not be supported as a means of achieving final compliance with those Notices.

This is wholly an understandable argument and one that has been referred to by the Parish Council and other objectors. In approaching the matter therefore, as set out earlier in this report, officers have been very aware that the approach should be one of establishing the planning merits of the actual proposal as if the Notices did not exist. In other words had there been no enforcement background at all, what would the recommendation be to the Board for this redevelopment proposal. Indeed that it is the approach that Members are recommended to adopt in their own assessment of this proposal. However that background will always remain in people's minds. In order to assist here, there are two matters that Members might wish to consider.

The first is that there is also a lawful use established here. It is the "exchange" of that use by an alternative that is the content of this redevelopment proposal and thus the approach to be taken is exactly that which has been taken in the past with other cases. There is no difference. The second is a little more technical, but the extant Enforcement Notices require the discontinuance of the unlawful uses and the removal of associated stored materials. These unlawful uses have not been factored into the arguments set out above – particularly those on the visual impacts and the impacts on openness. Moreover none of the Notices require remediation of the contaminated land on the Notice sites or indeed its return to pasture or green fields. Hence even if there was compliance, the land could be left in a contaminated and degraded state. As a consequence of these two matters, officers are confident that consideration of the enforcement background to the land here can be and has been, properly divorced from consideration of the planning merits of the current application.

**f) Section 106 Agreement**

The provision of the off-site affordable housing condition can be dealt with in the normal way through a Section 106 Agreement.

There was reference above to such an Agreement also potentially including matters to do with the remediation works. Indeed the Parish Council in its latest comments also refers to the need to secure overall restoration back to green fields for that land outside of the redevelopment area. This needs further explanation. In view of the weight given to the remediation of the whole of the land here – that within the redevelopment site itself and that beyond – it is considered that the conditions set out below should be supplemented by clauses within an Agreement. This is largely because there are different land owners involved; because remediation needs to be completed before work commences on any works connected with the construction of the layout or the houses within this proposal, and final restoration to green field needs to be completed before occupation of the new houses. As such it should require commitment to that remediation within say six months of the date of any planning permission. Additionally, given the enforcement history here, the 106 Agreement should contain a clause in which the owners undertake not to breach the requirements of the extant Notices, and not to re-start any of the uses and activities enforced against, following the grant of any planning permission. Such an Undertaking in an Agreement would be enforced directly through Injunction Proceedings. In effect these clauses would in essence renew the Enforcement Notices thus maintaining the Council's position.

Because of the need to ensure swift action on site, it is recommended that rather than the usual standard three year life of a planning permission, this should be shortened to require commencement as soon as appropriate given the remediation needed. A twelve month condition is therefore recommended below.

### **g) Other Matters**

There are other matters which also need to be considered. The first is that the applicant does put forward the argument as a material consideration that his proposal does represent the only realistic and practical proposal to resolve the enforcement situation at the site. One can understand his approach, but the report above has deliberately avoided giving any weight to this consideration and thus it is advised that it should not be included in the considerations to be assessed as to whether they amount to very special circumstances. In other words the proposals should stand on their "own two feet" in planning terms.

The second matter is the financial appraisal of the applicant. This is not made public because of commercial confidentiality, but it is considered that it is robust.

Finally the Parish Council is worried about how an approval here can be aligned with the decision to grant approval for the redevelopment of the former Corley Nursery site in Church Lane a few months ago. Firstly the two situations are the same in principle – both have been found to be inappropriate development in the Green Belt but that in both cases there are planning considerations of such weight to amount to the very special circumstances to override the presumptions of refusal. In short these are paragraph 51 of the NPPF; the Council's lack of a five year housing supply, the provision of affordable housing and the lack of any other adverse impacts. At the Corley Nursery site the affordable housing provision is to be on-site and here there is an off-site contribution in lieu of on-site provision. That contribution can be used in Corley or elsewhere, with first priority going to adjoining parishes. There is no in-compatibility here.

### **h) Conclusions**

The matters raised above do not carry sufficient weight to alter the preliminary recommendation from section (d) of this report.

The proposed development here is over the threshold set out in the 2009 Direction relating to matters to be referred to the Secretary of State to see if he wishes to "call-in" the case for his own determination. The recommendation below makes allowance for this.

### **Recommendation**

That subject to the completion of a Section 106 Agreement relating to the provision of an off-site affordable housing contribution as set out in this report together with clauses to ensure remediation of the land adjoining the redevelopment, and subject to the following conditions, the Council is minded to support this development proposal and therefore refers the case to the Secretary of State under the 2009 Direction, to see if he wishes to determine the matter himself.

1. The development to which this permission relates must be begun not later than the expiration of twelve months from the date of this permission.
2. Standard Plan numbers condition – plan number 6749/19A received on 28/7/14 and plan numbers 6749/7J, 8B, 9C, 10C, 11B, 12A, 13A, 14C and 17B received on 9/9/14.

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### Pre-commencement Conditions

3. No work on the construction of any development hereby approved shall commence until full details to show how foul and surface water is to be disposed of have first been submitted to and approved in writing by the Local Planning Authority. Only the approved measures shall then be implemented on site.

REASON

In order to reduce the risks of pollution and flooding.

4. No works whatsoever, including demolition and site clearance, shall take place until a UXO (Unexploded Ordnance) threat assessment has been carried out for the site, and that assessment submitted to the Local Planning Authority.

REASON

In the interests of the safe development of the site

5. No works whatsoever, including demolition and site clearance, shall take place until a written assessment of the nature and extent of contamination over the whole site has been submitted to the Local Planning Authority. This assessment shall include contamination whether or not it originates on the site, and assess risks to human health, property (including buildings, crops, livestock, pets, woodland and service infrastructure), adjoining land, ground and surface waters, ecological systems and archaeology.

REASON

In order to reduce the risk of pollution.

6. The assessment referred to in condition (5) shall include recommended remediation measures so as to render the whole site suitable for the development hereby approved. No work shall commence on site, including demolition and site clearance, until such time as remediation measures have been agreed in writing by the Local Planning Authority. Only the approved measures shall then be implemented on site.

REASON

In order to reduce the risk of pollution.

7. Within three months of the completion of the measures agreed under condition (6) above, a Verification Report shall be submitted to the Local Planning Authority demonstrating that the agreed remediation measures have been fully completed. No work whatsoever shall commence on the construction of the buildings, layout or infrastructure of the development hereby approved, until such time as the Verification Report has been agreed in writing by the Local Planning Authority.

REASON

In order to reduce the risk of pollution.

8. No work shall commence on site, including demolition and site clearance, until such time as full details of a scheme to eradicate/control Japanese Knotweed, including the timing and phasing of the measures, have been submitted to and approved in writing. Only the approved scheme shall then be implemented.

REASON

In order to reduce the risk of pollution

9. No work shall commence on the construction of any dwelling hereby approved until such time as full landscaping details based on plan number LDA/L1007/9001 have first been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall then be implemented on site.

REASON

In the interests of the visual amenities of the area.

10. No work whatsoever shall commence on the construction of any dwelling hereby approved until such time as details of all facing and roofing materials, ground surface materials and boundary treatments have first been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall then be implemented on site.

REASON

In the interests of the visual amenities of the area.

11. No work whatsoever shall commence on the construction of any dwelling or road or service infrastructure hereby approved until such time as full details of the measures to be used to protect the oak tree during construction have first been submitted to and approved in writing by the Local Planning Authority. Only these measures shall then be implemented and they shall remain present on site until agreed that they can be removed by the Local Planning Authority.

REASON

In the interests of the visual and ecological amenities of the area.

**Pre-Occupation Conditions**

12. No dwelling hereby approved shall be occupied until the whole of the access arrangements, the road layout and all parking and turning areas as shown on the approved plan have first been completed in full to the satisfaction in writing by the Local Planning Authority.

REASON

In the interests of highway safety

13. No dwelling hereby approved shall be occupied until the whole of the new highway footpath to be constructed alongside the site as shown on the approved plan has first been fully completed to the written satisfaction of the Local Planning Authority.

REASON

In the interests of highway safety.

**On-going conditions**

14. All of the garages shown on the approved plan shall remain as such at all times and shall not be used for any other purpose other than the parking of vehicles.

REASON

In the interests of highway safety

**Notes**

1. Public Footpath M299 runs alongside the west boundary of the site and should remain open and unobstructed at all times.
2. Advice on the scope, content and the method of undertaking the assessment required under condition 5 should be taken from both the Environment Agency and the Environmental Health Officers of the Borough Council. You are strongly advised to take that advice.
3. Advice on the content and scope of the report required by condition 7 can be obtained from the Environment Agency and the Environmental Health Officers of the Borough Council. The report will need to contain results of sampling and monitoring carried out during remediation and include a long term monitoring and maintenance plan.
4. Coal Authority Standard Standing Advice



## BACKGROUND PAPERS

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

Planning Application No: PAP/2014/0345

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	3/7/14
2	Mrs Turnball	Objection	24/7/14
3	Mr Burdett	Support	28/7/14
4	Mrs McDonald	Objection	25/7/14
5	Mrs Griffiths	Objection	10/8/14
6	Parish Council	Objection	12/8/14
7	Mr and Mrs Willis	Support	14/8/14
8	Mrs Lewis	Support	21/8/14
9	Severn Trent Water Ltd	Consultation	18/8/14
10	Environmental Health Officer	Consultation	24/7/14
11	Environment Agency	Consultation	19/8/14
12	Coal Authority	Consultation	28/7/14
13	Coal Authority	Consultation	11/8/14
14	WCC Footpaths	Consultation	4/8/14
15	WCC Highways	Consultation	21/8/14
16	Applicant	E-mail	29/8/14
17	Head of Development Control	Letter	4/8/14
18	Applicant	Letter	4/8/14
19	Head of Development Control	Letter	1/9/14
20	Applicant	E-mail	2/9/14
21	Applicant	E-mail	5/9/14
22	Head of Development Control	E-mail	10/9/14
23	Applicant	E-mail	10/9/14
24	Applicant	E-mail	12/9/14
25	Parish Council	Representation	24/9/14

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

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



**General Development Applications**

(#) Application No: PAP/2014/0345

**C W Young Limited (Builders Yard), Common Lane, Corley, Coventry, Warwickshire, CV7 8AQ**

**Proposed development of 8No. 2.5 storey semi detached house, 2 No. semi detached 1.5 storey dormer bungalows, 1 No. detached dormer bungalow and 2No. garages with storage above with associated highways, hard standing and landscaping. Scheme also includes the clear up of the remainder of the builders yard, for**

**Mr James Cassidy - Cassidy Group**

**Introduction**

This application is to be reported for determination by the Board at the discretion of the Head of Development Control in view of the two matters referred to below. This initial report however just notes its receipt; describes the site and the proposals together with the supporting documentation and outlines the relevant Development Plan policies and other material planning considerations.

The site is wholly in the Green Belt and in the event of the Council resolving that the proposed redevelopment represents a departure from the Development Plan as defined by the 2009 Direction it could be referred to the Secretary of State for determination.

Secondly, the site has been the subject of formal enforcement action over very many years and as a consequence of this, the application description refers to "further clearance work".

**The Site**

The application site is a rectangular piece of land of just over 5 hectares in extent on the northern side of Common Lane about 900 metres east of Corley Moor and 1.5 kilometres west of Corley. There is a substantial hedgerow fronting the site and along the eastern boundary. A large oak tree stands centrally within the site. There are three detached houses on the opposite side of the road and other dispersed houses and an equestrian centre to the north-west at Corley Moor with more substantial residential ribbon development nearby towards Corley Moor, otherwise the site is in open countryside. The M6 Motorway is situated about 800 metres to the north. It is generally a flat site with slight incline to the north into the site.

The application site can be seen in two halves. On the eastern side of the site is the area known as C W Young's Builders Merchants. Until very recently this has been covered in stored builder's materials, paving slabs, timber and aggregates. However in recent months much of the rear of this part of the site has been partially cleared and there are now stock piles of crushed materials here. There is a small porta-cabin office at the front behind the hedgerow; a few other small storage buildings on either side of the central access and some small brick buildings in the southeast corner behind the road frontage. Vehicular access is directly off Common Lane central to the site's

frontage on the outside of a bend in the lane. The western half of the site – in different ownership – contains an overflow storage area for materials as well as more open grass land.

Appendix A illustrates the location of the site in general terms.

## **Background**

The eastern half of the site was used agriculturally in the 1950's together with the construction of timber sheds. However in the 1960's commercial uses took over completely with the continuation of the timber business and the introduction of a builder's merchants business. This latter use was unauthorised and the Council commenced formal enforcement action. Notwithstanding several appeals both against refusals of planning permission and Enforcement Notices, the situation is that there are extant Notices affecting the whole site – both halves as described above. These require the removal of all building materials and the cessation of the builder's merchants business. Failure to comply with these Notices has led to successful prosecution of the business by the Council on two occasions. However continuing non-compliance has led the Council to authorise a third prosecution in the Courts. This is currently on-going and is being dealt with by the Crown Court rather than with the Magistrates Court.

Notwithstanding this background, there are two Certificates of Lawfulness affecting the front part of the larger site. One dating from 1996 relates to a small portion of land on the left hand side of the access and covers an office use. The second dating from early 2014, relates to the front portion of the site – roughly equivalent to the redevelopment site - and covers the manufacture of timber products.

The proposed residential development is for that part of the site covered by the two Certificates referred to above. All builders merchant's activity would cease and the entire site – including land to the west - would be cleared of builder's materials and hard standings. The land outside of any residential scheme would then be returned to grass land. If granted and implemented, such a planning permission would extinguish the lawful uses too.

Appendix B illustrates the extent of the site covered by the extant Notices.

## **The Proposals – Description**

In short the proposal is for the construction of 11 houses on the front portion of the eastern half of the site covering 0.98 hectares and the whole of the remaining land to the rear and to the west being cleared, remediated and returned to grass land. The redevelopment area amounts to around 20% of the whole site.

The housing scheme would comprise a short cul-de-sac extending back into the site from an improved vehicular access in its present location roughly along the line of the existing track. The housing mix would comprise 8 three bedroom semi-detached houses; 2 three bedroom semi-detached bungalows and one four bedroom detached bungalow. Four of the eight houses would front the site behind the retained frontage hedgerow and the others would be to the rear on the eastern side of the cul-de-sac. These would be two and a half storeys tall – 9.6 metres to their ridge line. The two semi-detached bungalows would be located on the right hand side of the access at the front of the site; one and a half storeys in height – 6.5 metres to their ridges. The detached bungalow would be central to the site. There are also two detached garage blocks

proposed together with on-site parking. This would allow 200% parking provision throughout the site. The oak tree would be retained within a communal amenity space. The proposed layout and elevations are illustrated at Appendix C.

The residential redevelopment as described and illustrated above would cover about the area of the sites the subject of the two Certificates. The implementation of a planning permission for this scheme would clearly extinguish those lawful uses. Additionally the applicant is proposing:

- Clearance of all building materials throughout the larger site and adjacent land
- Remediation of that land and restoration to grass land, and
- The provision of a new 2 metre wide footpath along the Common Lane frontage.

No affordable housing is proposed on-site, but an off-site contribution of £10k is offered.

## **The Proposals – Supporting Documents**

### **Ground Conditions Report**

This concludes that the likelihood of underground coal mine workings affecting the site's stability is very low and that natural ground subsidence hazards are also considered to be not significant, provided that specific ground investigations are undertaken prior to development. Radon gas and other landfill gas emissions are considered not to be significant. Ground waters are considered to be of moderate risk from contamination on site and the proposals will need to incorporate suitable surface water discharge measures. An intrusive ground investigation will need to be carried out to assess levels of contamination arising from the existing uses on the site, including the need to remove any asbestos and to assess whether there are areas of made ground. Interestingly the report identifies the site as being of moderate risk from ordnance from the Second World War and thus a suitably qualified investigation should take place.

### **Preliminary Ecology Report**

The tree and hedgerows should be retained and new landscaping should include species that will enhance local bio-diversity. Further survey work is needed to establish the presence of greater crested newts in the ponds at the rear of the site. The bat survey suggests that there is limited potential for roosting bats or for on-site foraging but the tree and hedgerows should be retained. The report says that construction work and remedial work should be undertaken with regard to the bird-nesting legislation; that the removal of likely habitats for hedgehogs and reptiles should also have regard to the appropriate legislation and that mammal ramps may be needed. As there is Japanese Knotweed on site, its clearance should be supervised under the recommendations of a qualified expert.

### **Arboricultural Survey**

The single oak tree; other hedgerow trees and the hedgerows themselves have good visual impact and are a long term asset for the site. Appropriate protection measures should thus be undertaken during the construction period.

### **Utilities Assessment**

This says that Severn Trent Water has confirmed that there are no public sewers crossing the site and that mains water is available through installation of new infrastructure. Both the National Grid and Western Power indicate that there is adequate availability within the vicinity of the site, with British Gas confirming that mains gas can be provided. It is said that the proposed access has been designed following advice from the Highway Authority.

### **Sustainability Statement**

This argues that the proposal would contribute to the local economy; assist in providing new housing, meet Building for Life housing standards, re-use brownfield land, provide Level 3 Sustainable Homes, deliver sustainable drainage systems, enhance bio-diversity and remediate the land.

### **Transport Assessment**

This describes the surrounding highway character - Common Lane with a 40mph limit; grass verges outside the site and a pavement running down to Corley Moor. There is a limited bus service along Common Lane into Coventry and Nuneaton. The Assessment concludes that this network is capable of accommodating the traffic likely to be generated from the scheme and that this is likely to be less than that arising from continuation of the existing site activities.

### **Design and Access Statement**

This Statement describes how the layout design has been arrived at and how the elevations are considered to reflect any local characteristics.

### **Public Consultation Report**

This describes a consultation undertaken by the applicant in advance of submission. This amounted to hand delivered consultation forms to 58 local households. 24% of these were returned. Of these – 64% agreed that they would like to see the site remain open; 64% agreed that the site caused highway problems, 50% considered that an urban site was more appropriate for a builders merchants, 71% preferred housing on brownfield land, 43% preferred housing on the site rather than commercial use and 57% supported the proposal.

### **Planning Statement**

This Statement begins by outlining the planning policy background to the case. It then provides the applicant's arguments in support of his proposal. In particular it refers to the redevelopment of brown-field land; the remediation of the site and its wider setting, the delivery of housing to meet the five year housing supply and the provision of an off-site financial contribution towards affordable housing.

## **Development Plan**

Saved Policies of the North Warwickshire Local Plan 2006 – Core Policy 2 (Development Distribution); Core Policy 8 (Affordable Housing) and policies ENV1 (Protection and Enhancement of the Natural Landscape), ENV2 (Green Belt), ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV7 (Development of Existing Employment Land outside Defined Development Boundaries), ENV8 (Water Resources), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), HSG2 (Affordable Housing), HSG3 (Housing Outside of Development Boundaries) and TPT 6 (Vehicle Parking).

## **Other Material Planning Considerations**

The National Planning Policy Framework 2012 – (the “NPPF”)

The Council’s Submitted Core Strategy – 2013: Draft policies NW1 (Settlement Hierarchy); NW2 (Green Belt), NW4 (Split of Housing Numbers), NW5 (Affordable Housing) and NW8 (Sustainable Development)

The Inspector’s Proposed Main Modifications – 2014: MM14 (to NW1); MM24 (to NW4), MM30 (to NW5), MM51 (to NW8).

The Town and County Planning (Consultation) (England) Direction - 2009.

## **Observations**

The planning history of this site and the adjoining land is a material planning consideration in the determination of this application, but that has to be balanced against assessment of the proposals against the Development Plan; the emerging replacement Plan and the NPPF. This will not be straight forward.

As the site is in the Green Belt the Board will first need to determine whether the proposals are appropriate or not appropriate development. If the latter, then it will need to assess those considerations put forward by the applicant to see if they amount to the very special circumstances necessary to outweigh the presumption of refusal. If it is considered that they do, then there may be a need to refer the matter to the Secretary of State as a departure under the 2009 Direction. The Council is free to refuse planning permission if the Board does not consider that there are the very special circumstances here, without referral.

As usual the Board will have also to consider issues of design, layout access and appearance as well as the offer of the off-site financial contribution. Any matters arising from representations made and through consultation responses will also need to be considered.

## **Recommendation**

That the report be noted at this time

## BACKGROUND PAPERS

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

Planning Application No: PAP/2014/0345

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	17/7/14

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

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

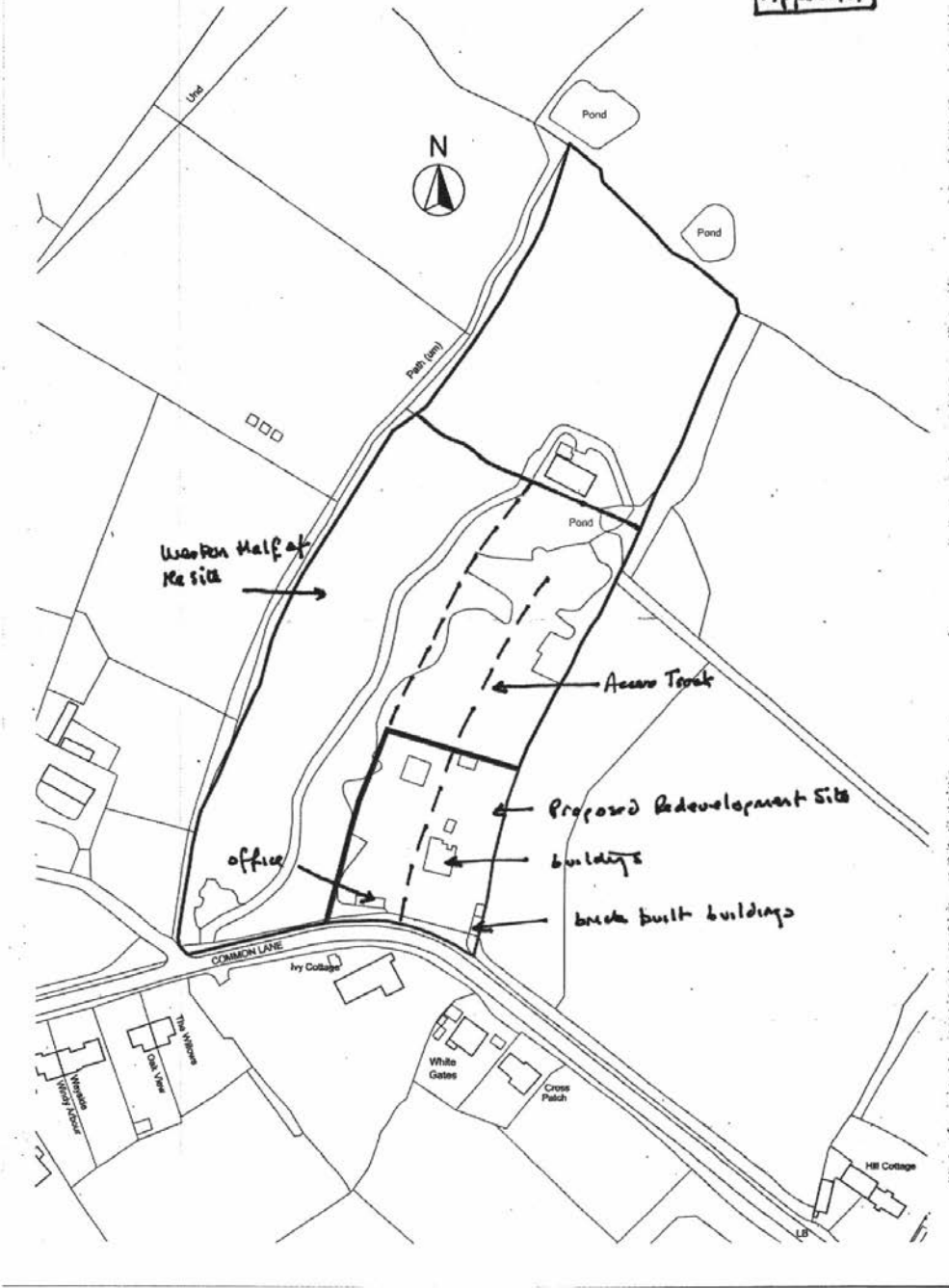




6/36

4/192

Appendix A



Appendix B







APPENDIX C

**Notes:**

- 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE LOCAL, STATE AND FEDERAL CODES.
- 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE LOCAL, STATE AND FEDERAL CODES.

20140345

**PROJECT INFORMATION**

PROJECT NAME: [REDACTED]

DATE: 9-Sep-14

PLANNING DEPARTMENT: [REDACTED]

**CLIENT**

NAME: [REDACTED]

ADDRESS: [REDACTED]

PHONE: [REDACTED]

EMAIL: [REDACTED]

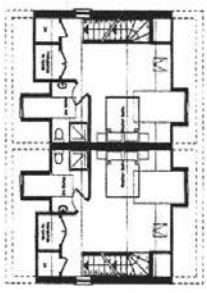
**DESIGNER**

NAME: [REDACTED]

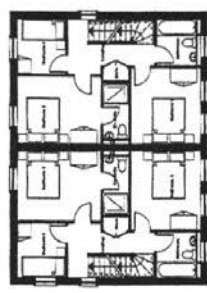
ADDRESS: [REDACTED]

PHONE: [REDACTED]

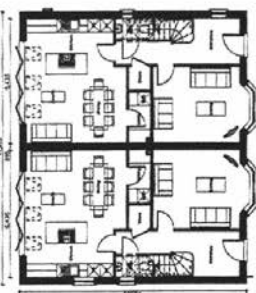
EMAIL: [REDACTED]




Second Floor Plan



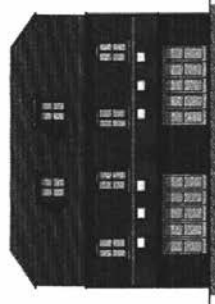
First Floor Plan




Ground Floor Plan



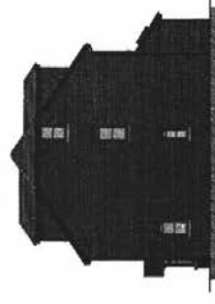
Front Elevation



Rear Elevation



Side Elevation

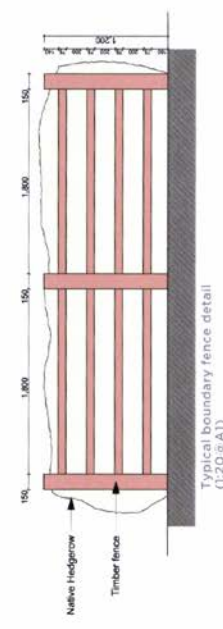


Side Elevation



PAP/20150561

NOTES:  
 1) THIS DRAWING MUST NOT BE SCALED.  
 2) ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.  
 3) THIS DRAWING IS THE PROPERTY OF GDM GROUP AND SHALL REMAIN THE PROPERTY OF GDM GROUP UNLESS OTHERWISE STATED.



NOT TO SCALE  
 1:20 @ A1  
 1:20 @ A1  
 1:20 @ A1

REVISIONS  
 DATE ISSUED: 03/06/2015  
 PLANNING & DEVELOPMENT DIVISION

APPENDIX C

1	CLIENT	GDM GROUP
1	DRAWING TITLE	PROPOSED SITE LAYOUT - 10 UNITS
1	DRAWING BY	Checked By
1	DATE	18/03/15
1	DRAWING NUMBER	15000-A1
1	REVISION	Revision
1	PROJECT	COMMON LANE CONCRETE
1	PRELIMINARY	<input type="checkbox"/> PRELIMINARY <input type="checkbox"/> FOR CONSTRUCTION
1	STATUS	<input type="checkbox"/> APPROVAL <input type="checkbox"/> DESIGN SIGN
1	DATE	25/06/15

**LEGEND**

Type A	3 bedroom owner houses	150,7m <sup>2</sup> (1629m <sup>2</sup> )	0m
Type B	4 Bed detached house	202m <sup>2</sup> (2248m <sup>2</sup> )	40m
<b>Total</b>			<b>40m</b>





**(13) Application No: PAP/2015/0614**

**Land North Of Stone Cottage, Lower House Lane, Baddesley Ensor, CV9 2QB**

**Erection of ground mounted solar panels with an electrical output of approximately 4MW along with associated infrastructure, landscaping and ancillary structures, for**

**Mr Scott Newhouse - Blue Planet Solar**

**Introduction**

This application is reported to the Board for information at this time. A further determination report will be produced in due course. This current report will describe the proposals and identify the relevant Development Plan policies applicable to the application.

**The Site**

This amounts to 12.45 hectares of agricultural land to the south of the former Baxterley Colliery rail line beyond the current Birch Coppice Business Park and west of Lower House Lane. Wood End is some 900 metres to the west. Fields Farm and Baddesley Farm are located on the other side of Lower House Lane. There is scattered residential property to the south – noticeably Cope’s Rough which adjoins the site to the south-west, the Wood End Leisure Park and Stone Cottage to the south-east. Beyond this there are large woodland areas. The far western end of Baddesley Ensor – Hill Top and Manor Close - is further to the east and on higher ground than the application site.

The site has a distinct slope running south to north with a height difference of around 25 metres.

There are public footpaths crossing the site – the AE59 and AE60 – which run essentially east/west through the whole site and a further one skirts the eastern boundary – the AE58.

The site is illustrated at Appendix A.

**The Proposals**

This is a proposal for a solar farm to generate renewable electricity for a period of 25 years. The ground mounted panels would have an electrical output of around 4MW along with associated infrastructure, landscaping and ancillary structures. It is said that this would provide annual power for around 1216 residential properties. The associated development includes power inverter stations, transformer stations, security fencing and associated access gates. Gravelled roads are also proposed within the development for access and maintenance.

The panel layout would run east/west across the whole site. The arrays are ground mounted and would be around 0.7 to 2.4 metres high so as to give a 25 degree angle to maximise solar gain. The arrays would be blue/black matt coloured and treated with a coating to minimise solar glare. They would be 8.5 metres apart. Three inverter/transformer buildings would be located throughout the site – each being a pre-cast concrete building, 5 by 3 by 3 metres tall. The substation would be at the far south western corner of the site – 6 by 2.4 by 3.5 metres tall. The development would link to the National Grid to the south of the site via an underground connection.

A deer fence of two metres in height would be erected around the perimeter and be supported on wooden poles. Gaps will be retained for the movement of animals. CCTV cameras would be pole mounted at regular intervals along this fence.

A Landscape and Bio-Diversity Plan has also been prepared to ensure that existing vegetation and new planting is managed appropriately. Existing trees are to be coppiced in order to reduce over-shadowing and the main features of the proposals include retention of existing hedgerows at three metres in height; additional trees to be added to hedgerows where appropriate, wildflower and grass sward planting in the fields and the addition of bat boxes, habitat piles and pond management.

A temporary construction compound is to be located in the far south western corner with direct access onto Lower House Lane. Construction is likely through an 11/12 week period and HGV deliveries are estimated to amount to some 125 movements in that time.

The proposed arrangements as set out above are shown at Appendix B.

A cross section through the site is shown at Appendix C

There are several supporting documents that accompany the application.

The Transport Assessment says that construction will take around 11 or 12 weeks with a start being made in the Spring of 2016. The development would be completed in one phase. The assessment indicates a likely 125 deliveries in that period – 250 actual movements – with a frequency of around three or four a day. Smaller and lighter vehicles would amount to some ten movements a day. All access to the construction compound would be via an upgraded existing field gate access onto Lower House Lane and the routes taken would be to the north to the A5. A wheel wash would be provided.

An Arboricultural report says that trees are largely limited to the northern boundary of the site alongside the railway line embankment with others as individual specimens around the perimeter or within the hedgerows in the site itself – eighteen in total together with nine other small groups of trees and eight lengths of hedgerows. The trees do “shade” the panels and if the maximum capability of the site is to be achieved, the eighteen individual trees would have to be removed. Hedgerows are around 2 metres tall and would not affect overall capability if kept at this height.

An Agricultural Land Classification Assessment concludes that due to the soil structure and texture the site is Grade 3b. This is described as moderate quality land capable of producing moderate yields of a narrow range of crops or lower yields of a wider range such as grass which can then be grazed.

A Habitat Survey concludes that the site is characterised by arable land, poor semi-improved grassland bordered by ditches, hedgerows and woodland with a single pond. The report concludes that the proposed development would be unlikely to have any adverse impacts on a nearby SSSI – Kingsbury Wood 1.8 km away – or on the nine Local Wildlife Sites around the site. Retention of as many of the hedgerows and trees is recommended together with enhancements such as nesting boxes and bat boxes. A pre-commencement badger survey is recommended and mitigation measures installed. The bio-diversity enhancements proposed in the perimeter corridors will be a positive step.

A Heritage Statement concludes that the development proposals will have no physical impact on any known heritage assets. There is a low-level of prehistoric activity in the local landscape and no specific evidence suggests that the site is thus affected. Roman activity is likely to be concentrated to the north. The site appears to have formed part of the agricultural hinterland of the surrounding farmsteads and village settlements of the medieval period. There is evidence of ridge and furrow from photographs but on-site work suggests that modern plough work has removed these features. The hedgerows may well represent historic boundaries and thus should be retained. There are three Grade 2 Listed Buildings within a kilometre of the site – Stone Cottage; Stone Cottage outbuildings and Baddesley Farmhouse - but none would be adversely affected with only small levels of harm to their setting.

A Landscape and Visual Assessment states that the site is in the “Tamworth – Urban Fringe Farmlands” designation as defined by the North Warwickshire Landscape Character Assessment. This is described as being an undulating landform with predominantly open arable land part of a fragmented landscape comprising a complex mix of agricultural, industrial and urban fringe land uses, heavily influenced by the adjoining settlements and highway network. Views are said to be generally “internal” contained within the wider landscape by peripheral settlements, woodland and landform. It concludes that the overall effect on the existing landscape would be adverse but to a minor degree; the effects of new planting, both for trees and hedgerows would be beneficial with the overall effect on the character of the landscape as being adverse but to a minor degree. In terms of visual impact then publically accessible views from the footpaths would be heavily affected but would be transitory and of moderate impact in longer term views. Impacts from the surrounding scatter of residential property is said to be adverse but only to a moderate degree.

A Planning Statement incorporates a Design and Access Statement. This sets out the planning policy background identifying Saved Policies of the 2006 Local Plan and the 2014 Core Strategy. Attention is also drawn to the relevant sections of The National Planning Policy Framework and to the same in the National Planning Practice Guidance. Specific Guidance on Solar PV projects is also referenced. The overall conclusion is that the development would bring significant benefit outweighing any harm.

## **Development Plan**

The Core Strategy 2014 – NW1 (Sustainable Development); NW10 (Development Considerations), NW11 (Renewable Energy), NW12 (Quality of Development), NW13 (The Natural Environment), NW14 (The Historic Environment), NW15 (Nature Conservation), NW17 (Regeneration),

Saved Policies of the North Warwickshire Local Plan 2006 – Core Policy 10 (Agriculture and the Rural Economy); ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV8 (Water Resources), ENV12 (Building Design), ENV14 (Access Design), ENV16 (Listed Buildings), ECON8 (Farm Diversification), TPT1 (Transport Considerations), TPT2 (Traffic Management).

### **Other Material Planning Considerations**

The National Planning Policy Framework 2012

The National Planning Practice Guidance 2014

Meeting the Energy Challenge White Paper 2007

The UK Renewable Energy Strategy 2009

UK Solar PV Strategy

Government's Written Statement 2015

### **Observations**

As with other such projects Members will have to balance the likely harm created by this proposed development on a number of factors against the general support that is outlined in a number of material planning considerations specifically related to renewable energy projects and for solar projects in particular. The future report to the Board will address that balance. In the interim it is strongly recommended that the Board undertakes a site visit to and around the site in order that Members have a better understanding of the development and how it might impact visually and on the character of the local landscape.

### **Recommendation**

That Members visit the site and its surroundings.

## BACKGROUND PAPERS

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

Planning Application No: PAP/2015/0614

<b>Background Paper No</b>	<b>Author</b>	<b>Nature of Background Paper</b>	<b>Date</b>
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	7/10/15

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

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PAP/2015/0614

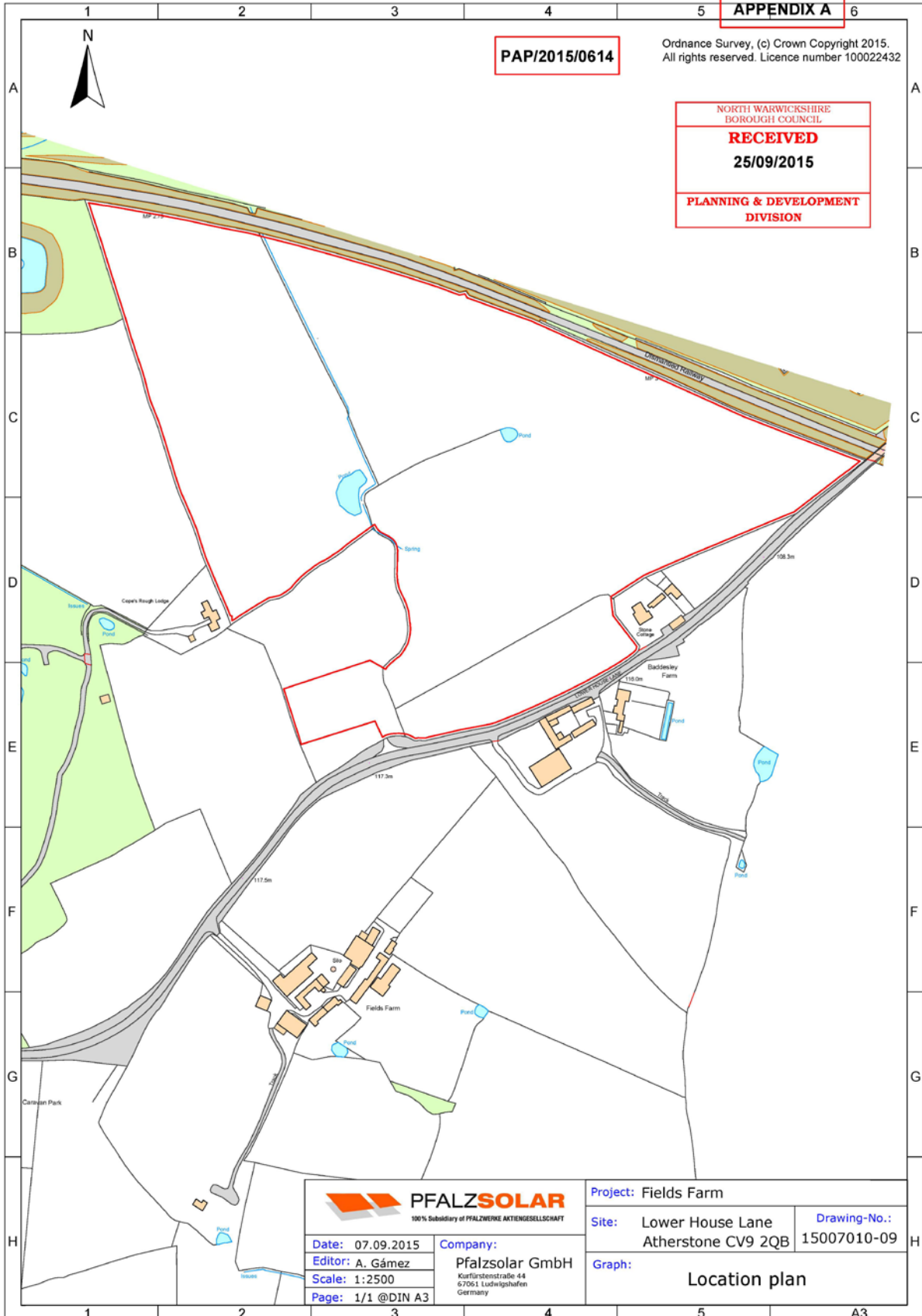
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BOROUGH COUNCIL

**RECEIVED**

**25/09/2015**

**PLANNING & DEVELOPMENT  
DIVISION**



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Editor: A. Gámez	Pfalzsolar GmbH
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Page: 1/1 @DIN A3	67061 Ludwigshafen
	Germany

Project: Fields Farm	Drawing-No.:
Site: Lower House Lane	15007010-09
Atherstone CV9 2QB	
Graph:	Location plan



