

Agenda Item No 5

**Planning and
Development Board**

19 March 2012

**Planning
Applications**

**Report of the
Head of Development Control**

1 Subject

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

2 Purpose of Report

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

3 Implications

- 3.1 Should there be any implications in respect of:

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

4 Site Visits

- 4.1 Members are encouraged to view sites in advance of the Board Meeting. Most can be seen from public land. They should however

not enter private land. If they would like to see the plans whilst on site, then they should always contact the Case Officer who will accompany them. Formal site visits can only be agreed by the Board and reasons for the request for such a visit need to be given.

- 4.2 Members are reminded of the “Planning Protocol for Members and Officers dealing with Planning Matters”, in respect of Site Visits, whether they see a site alone, or as part of a Board visit.

5 **Availability**

- 5.1 The report is made available to press and public at least five working days before the meeting is held in accordance with statutory requirements. It is also possible to view the papers on the Council’s web site: www.northwarks.gov.uk.
- 5.2 The next meeting at which planning applications will be considered following this meeting, is due to be held on Monday 16 April 2012 at 6.30pm in the Council Chamber at the Council House.

6 **Public Speaking**

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

Planning Applications – Index

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General Development Applications

(1) Application No: DOC/2012/0016

Car Park, Park Road, Coleshill, Birmingham, B46 3LA

Application to discharge condition 25 of planning permission PAP/2011/0529 dated 20 December 2011 relating to car park management plan, for

WM Morrison Supermarkets PLC

Introduction

This application is reported for information at this time, with a view to a determination at the April Board meeting.

The Site

This is the car park at the junction of Park Road with the Birmingham Road on the west side of Coleshill opposite the Memorial Park and the Leisure Centre.

Background

Outline planning permission was granted for the construction of a retail store on this and adjoining land in 2009. This was later amended in December 2011. The application was the subject of several conditions. Matters to do with the design and appearance of the building together with other items are dealt with under separate cover elsewhere on this agenda. This particular application seeks to discharge details of a Car Parking Management Scheme for the car park. This presently is a free long stay public car park, and with the arrival of the store, the permission contains a condition to look at measures to manage the different usage of the new car park.

The Proposal

Condition 25 of the 2011 permission states,

“No development whatsoever shall commence on site until such time as a car park management plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall describe how the car park is to be made available to the general public and how the use of the car park is to be managed, together with the provision of 10 long stay car parking spaces. The approved plan shall remain in operation at all times unless otherwise agreed in writing by the Local Planning Authority.” The reason for the condition is “to ensure that the car park is made available to the general public as well as to customers.”

A copy of the proposed management plan is attached at Appendix A.

Members' attention is drawn to the following matters proposed in the plan:

- Maximum free short stay of three hours together with penalty charges thereafter.
- Car parking surveys undertaken after six and twelve months following first trading.
- Free unrestricted car parking outside of trading hours throughout the remainder of the 24 hour period.
- 10 "long stay" spaces will be identified and these will be exempt from the three hour maximum stay.

Development Plan

Saved Policies of the North Warwickshire Local Plan 2006 – TPT 6 (Vehicle Parking)

Other Material Planning Considerations

Government Guidance – PPG13 (Transport)

Draft National Planning Policy Framework

Observations

Members will recall that when the outline application was reported to Council in 2009, and again when the proposed alterations to the access arrangements were discussed in late 2011, the Board was advising on a three hour free stay during trading hours, and this seems to have been taken on board by Morrison's. Also at the time of considering the 2011 amendment, Members specifically requested that car park usage be surveyed regularly during the first year of operation in order to see how the management scheme was operating. This is built in to the draft submitted.

A determination report will be brought to Board following the expiry of the consultation period.

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: DOC/2012/0016

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	27/2/2012

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.

2012 / 0016

~~APPENDIX A~~

RECEIVED

27 FEB 2012

North Warwickshire
Borough Council

Car Park Management Plan, for Morrisons Store, Coleshill

1. This Car Park Management Plan relates to the car park bounded by Park Road / Birmingham Road adjacent to the proposed Morrisons Store to be constructed in Coleshill.
2. The Car Park Management Plan shall take effect upon the opening of the proposed supermarket on the adjacent Site, and shall have effect during such period(s) as the adjacent site is used as a retail store. The car park may be closed during construction of the Store.
3. Use of the car park will not be restricted to users of the store and will be available for parking, subject to conditions set out below, to users of the town centre and other adjacent properties. Entry to the car park by vehicles other than private motorcars and motorcycles may be restricted, save to the extent that the vehicles are delivering to or otherwise servicing the supermarket.
4. Morrisons reserve the right to control entry and exit of vehicles by manual or automatic barrier or Parking Eye System.
5. Morrisons will manage and monitor the car park as a short-stay town centre car park with a maximum permitted free stay of 3 hours per day (which may be reviewed subject to the results of full car parking surveys that will be completed after both 6 & 12 months by Morrisons or successor in title). Use in excess of 3 hours shall be prohibited and penalty charges of such amount as Morrisons, or its successors, from time to time stipulate may be imposed and enforced.
6. These charges will apply during the conditioned retailing hours, these are: Monday to Saturday inclusive 0700-2200 and Sundays 1000-1600. These hours may be subject to change if required, by submission and approval of appropriate planning application. Outside these hours, the car park will be free for all users. It is envisaged that the car park will be open to the public 24 hours a day Monday to Sunday.
7. In accordance with Planning Condition 25 which is placed on the application by North Warwickshire Borough Council. Morrisons will provide 10 'long stay' spaces

that will be exempt from the 3 hour maximum stay.

8. Should issues / reports of crime and disorder be reported then Morrisons reserve the right to secure the Car park at night by telescopic bollards or other appropriate entry control systems.
9. Staff authorised by the company to use the car park may be exempted from the maximum stay restricted and copies of car park monitoring information will be provided to the Council on request at intervals to be agreed.
10. Morrisons will retain all receipts from car park excess charges.
11. Morrisons reserve the right to sub-contract the management of the car park to a specialist company, which will be responsible for the collection of excess charges and the monitoring and supervision of the car park.
12. Morrisons will be responsible for the day-to-day inspection, maintenance and repair of the car park and associated equipment.
13. Morrisons reserve the right to restrict the use of the car park by vehicles other than cars, light vans, motorcycles and bicycles and will provide the Council with reasonable notice of such restrictions.
14. Morrisons reserve the right to close all or parts of the car park as necessary for maintenance or repair or operations, such operations to be carried out with undue delay and will provide the Council with reasonable notice of such closure.
15. Should there be abuse of the short stay nature of the car park then Morrisons and / or NWBC reserve the right, subject to agreement between both parties, to implement new measures of car park enforcement.

(2) Application No: PAP/2010/0622

Brook House, Warton Lane, Grendon, Atherstone, CV9 3DT

Extensions and alterations to form ground floor swimming pool and first floor accommodation, for

Mr Martin Newbold

Introduction

This application is reported to the Board because a Section 106 Agreement is involved in this application.

The Site

The site lies in open countryside.

The existing dwelling house is detached and around 140 metres from Warton Lane, which is to the north east, and accessed from that road by a drive. The garden area is extensive with it being to the east and south of the site. The house itself is close to the northern and western boundaries.

The house has been painted white and has been considerably extended over the years in the form of a rear and side two storey extension with rear and side single storey extensions. The original house was a two storey cottage which can be seen in the south eastern facing elevation. To the south west of the house is a range of outbuildings.

Immediately to the north is Brook House Farm which comprises a bungalow and a range of agricultural buildings. This property has its own separate drive to Warton Lane, and has a boundary of mature trees with the application site.

There is a public footpath (Number AE14) that crosses the application site from the north to the south.

The general layout can be seen on the attached location plan.

The Proposal

The proposal is for first floor extensions above existing flat roof elements, which presently accommodate a snooker room and lounge. There would be a gable feature at its end in order to match that on the opposite side of the present house.

The extension above the snooker room would 4.3 metres wide, 8.3 metres long and 6.3 metres high to the roof ridge. The ridge line would tie in to the existing ridge. The proposal would lead to one large bedroom with en suite; a further bedroom and one slightly enlarged bedroom.

The proposed elevation and layout plan can be viewed at Appendix A, and the existing elevation and layout plan can be viewed at Appendix B.

Photographic images of the existing dwelling house can be viewed at Appendix C.

Background

The planning history of this property is significant to the approach to be taken to this current application. Hence it is important to be aware of this as there have been numerous building regulation and planning applications. Whilst some have been implemented, others have not and other extensions appear to have taken place with no definitive planning record. These applications are listed below.

Application No.	Proposal	Decision	Date
PAP/2010/0339	Certificate of Lawfulness for two storey extension.	Allowed	23/8/10
PAP/20070259	Extensions and alterations to form ground floor swimming pool and first floor accommodation	Refused and appealed. Appeal upheld	Refused – 13/8/07. Appeal – 14/12/2009
FAP/2003/8441	First Floor Extension	Approved with Conditions	15/10/03
HIS/1900/9122	Erection of swimming pool, kitchen extension and conservatory	Approved with Conditions	30/07/87
HIS/1900/7954	Erection of verandah and alterations to existing access	Approved with Conditions	04/12/85
BNW760071	Sun lounge (Building Regulations) Known as snooker room now	Approved	24/03/76
HIS/1900/2571	Vehicular access and construction of drive	Approved with Conditions	28/07/71

The critical applications relating to consideration of the current application are the 2007 refusal which was upheld at appeal, and the 2010 Certificate of Lawfulness, which will both be considered as part of the observations, later in the report.

Development Plan

Saved Policies of the North Warwickshire Local Plan 2006 - ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design) and ENV1 (Protection and Enhancement of the Natural Landscape)

Other Relevant Material Considerations

Government Advice: - The draft National Planning Policy Framework 2011

Supplementary Planning Guidance: - The Council's SPG – A Guide for the Design of Householder Developments – Adopted September 2003

Representations

None received

Observations

This application has generated a significant number of issues, and all of these will need to be addressed in the determination of this case.

a) Volume calculations

As members are aware, saved Local Plan Policy ENV13 and the Adopted Householder Supplementary Guidance seek to restrict householder extensions to no more than 30% of the volume of the original dwelling house. It is calculated here that the original house had a volume of 631m³. The existing built extensions to the house have led to a volume increase of approximately 103%. The proposed extension taken with the previous extensions would lead to a volume increase of 157%.

As can be seen the volume increase, notwithstanding the current proposal, is well in excess of the 30% guidance, and thus a potential refusal here would be expected. However, other material planning considerations have to be brought into the assessment, and these relate to the fall back position under permitted development rights, and to the Certificate of Lawfulness referred to above.

b) Fall back position

As members are aware, in 2008 the Town and Country Planning (General Permitted Development) Order 1995 was significantly amended, and this changed the criteria for extensions to dwelling houses. In 2010, an application was submitted for a front extension to the existing dwelling house, which can be viewed at Appendix D. This would involve significantly extending the house forward beyond the original front building line. The Council determined that that this extension was permitted development and thus issued the 2010 Certificate referred to above. This determination was wholly site specific because the front elevation did not “front a highway” and therefore under the new Order, the proposed extension becomes permitted development. The applicant has also pointed out that the footprint of the extension could have

been even larger due to the wording of the Order and orientation of the house. Officers agree with this conclusion.

Therefore the fall back position here is a material planning consideration of substantial weight. In short the applicant can benefit from permitted development rights to add front extensions here two, three or even four times the size of the existing house, let alone the original house. The present proposal however does not seek to extend at the front of the house, but to the side over the existing flat roof elements.

Additionally, the existing property benefits from class E outbuilding development rights – e.g. for stables; garages etc. This means that further sizeable outbuildings could be constructed without the need for the submission of planning applications. They would be subject to limitations such as height, size and siting, but in general terms, because of the orientation of the existing house, these could be extensive.

It is therefore material that the fall back positions of extensions to the house constructed under permitted development rights could lead to a substantially larger volume increase and increased footprint to that which is now proposed. This is wholly due to the site specific circumstances here and the wording of the new Order.

Members will see that the essence of this current application is that the applicant is offering to forgo these rights in “exchange” for planning permission for the proposals as set out above and illustrated in Appendix B.

c) A Legal Agreement

The applicant as mentioned is offering an “exchange”. To that effect a draft Unilateral Undertaking under Section 106 of the 1990 Act is submitted. This effectively says that if permission is granted for the current proposals, then the developments covered by the 2010 Certificate will not be implemented and that the owner would agree to have residential permitted development rights removed for any further extensions; roof alterations and new outbuildings. A copy of the draft is at Appendix G.

d) The 2007 Refusal and Dismissed Appeal

In 2007, planning permission was refused for erections and alterations to form a ground floor swimming pool and first floor accommodation. The refused plans can be seen at Appendix E. The refusal reason was:

“The site lies within the open countryside and outside any development boundary as identified within the adopted North Warwickshire Local Plan. The proposed extensions are considered to be disproportionate to the original dwelling house, which has already been extensively increased in size. The proposal therefore represents inappropriate development in the open countryside affecting the openness and rural character of the countryside in which it is situated. Such a proposal is therefore contrary to policy ENV13 of

the adopted local plan as well as guidance contained within the adopted SPG 'A Guide for the Design of Householder Developments'."

The refusal is a material planning consideration, and therefore the current proposal should be materially different if it is to find support. The current proposed plans - as set out in Appendix A - are materially smaller with no additional footprint to the dwelling and therefore they would have less impact on openness than the refused plans.

The refusal was appealed to the Secretary of State and following the appeal it was dismissed. The appeal decision can be viewed at Appendix F. It is worth noting that the Planning Inspector in paragraph 8 says that the proposal would harm the character and appearance of the existing dwelling. In paragraph 10, he says that the white painted render gives Brook House a particular prominence. He concluded that this would be substantially increased by the scale and uncharacteristic design details of the proposals. In paragraph 11, the Inspector concluded that the proposals would not respect local distinctiveness, but would detract from the character and appearance of the surrounding countryside.

Therefore the current proposal has to be assessed against the findings of the Planning Inspector in respect of design matters.

e) Scale and Design

The scale and design of the current proposal is considered to better reflect that of the existing dwelling, therefore leading to a scheme that is more in character and appearance with the existing dwelling. The proportions of the roof design seek to match that of the existing dwelling, including adopting the same ridge line and having a gable end to balance the elevation. Overall it is considered that the scale, mass and design of the extension is an improvement on the 2007 refused scheme, that is better designed and would have less impact on the openness of the area.

Whilst this conclusion is of weight, it still has to be balanced against the simple fact that the current proposals would increase the volume of the original house to substantially over the 30% policy guidance.

f) Neighbour Amenity

The present house is about 12 metres from the boundary to Brook House Farm to the north east and around 60 metres away from the dwelling at that farm. It is considered that the first floor extension would not lead to an unacceptable loss of privacy, amenity or light.

It is neither considered that users of the public footpath that crosses the site would have their amenity impaired by the proposal.

g) Conclusions

It must be stressed from the outset that the consideration of this application is wholly site specific, reflecting the particular planning history of the premises; the orientation of the existing house, the wording of the current Development Order, the change in that wording during recent years whilst the applicant has been considering his proposals, and an appeal decision. The essence of the matter is that, because of these specific factors, the applicant can presently benefit from permitted development rights to effectively quadruple the size of his existing house and add substantial outbuildings without the need to submit planning applications. Development Plan policy is ineffective in such a circumstance.

The applicant has, through his past applications; continuing submissions, and in his own evidence at appeal, made it very clear that he does intend to extend his house and that he may still wish to do so in the future. There is thus a reasonable prospect of him using existing permitted development rights to do so. The Inspector at the appeal concluded likewise and thus treated this "commitment" as material.

In order to bring some degree of certainty to this situation which has been evolving now since before 2007, the current proposal and draft Unilateral Undertaking has been put forward by the applicant. It would enable him to undertake his extension proposals and would bring the consideration of all further proposed extensions back under the control of the Authority. Members will recognize that this approach has been agreed at other sites within the Borough. What is different here is the site geography and the scales involved.

As set out above, the scale and design of the current proposal is better than the situation that led to the refusal and subsequent appeal. It responds to the criticisms of the Inspector. However it clearly still does not accord with the 30% guidance. The issue therefore is whether all of the material considerations as set out in this report are of sufficient weight to override that guidance.

On balance, it is considered that they are.

Recommendation

That subject to the Section 106 Agreement being signed as outlined above, planning permission be **GRANTED** subject to the following conditions:

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

REASON

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

2. The development hereby approved shall not be carried out otherwise than in accordance with the plan numbered 061104/2 received by the Local

Planning Authority on 13th July 2011 and the site location plan received by the Local Planning Authority on 13th January 2011.

REASON

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

3. The facing white render and roof tiles used shall be of the same, type, texture and colour as those used on the existing building.

REASON

In the interests of the amenities of the area and the building concerned.

4. No additional opening shall be made other than shown on the plan hereby approved, nor any approved opening altered or modified in any manner.

REASON

To protect the privacy of the occupiers of adjoining properties.

5. The north western facing en-suite windows to the first floor shall be glazed in obscured glass and shall be permanently maintained in that condition.

REASON

To protect the privacy of the adjoining property and to prevent overlooking.

Notes

1. The applicant is reminded that the application approval must be read in conjunction with the associated Legal Agreement, in that no extensions, alterations or outbuildings whatsoever as covered by Part 1, Class A, B, C, D and E of the Town and Country Planning (General Permitted Development) Order 1995 as amended, should be constructed without planning permission first being obtained through the submission of a planning application to the Local Planning Authority.

2. The submitted plans indicate that the proposed works come very close to, or abut neighbouring property. This permission does not convey any legal or civil right to undertake works that affect land or premises outside of the applicant's control. Care should be taken upon commencement and during the course of building operations to ensure that no part of the development, including the foundations, eaves and roof overhang will encroach on, under or over adjoining land without the consent of the adjoining land owner. This planning permission does not authorise the carrying out of any works on neighbouring land, or access onto it, without

the consent of the owners of that land. You would be advised to contact them prior to the commencement of work.

3. You are recommended to seek independent advice on the provisions of the Party Wall etc. Act 1996, which is separate from planning or building regulation controls, and concerns giving notice of your proposals to a neighbour in relation to party walls, boundary walls and excavations near neighbouring buildings. An explanatory booklet can be downloaded at www.communities.gov.uk/publications/planningandbuilding/party

4. The Development Plan policies which are relevant to this Decision are as follows:

North Warwickshire Local Plan 2006 (Saved Policies) : ENV11 - Neighbour Amenities; ENV12 - Urban Design; ENV13 - Building Design; ENV8 - Water Resources, ENV1 - Protection and Enhancement of the natural landscape.

Other Relevant Material Considerations:

Government Advice : The draft National Planning Policy Framework 2011

Supplementary Planning Guidance : SPG - A Guide for the Design of Householder Developments - Adopted September 2003

5. The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from coal mining. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological fissures; mine gas and previous surface mining sites. Although such hazards are often not readily visible, they can often be present and problems can occur as a result of development taking place, or can occur at some time in the future. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required, be submitted alongside any subsequent application for Building Regulations approval. It should also be noted that this site may lie within an area where a current licence exists for underground coal mining. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

Justification

The proposal is for first floor extensions. The extensions are considered by virtue of their size and scale not to have an adverse impact upon the

openness of the countryside in which the property is located. The volume increase exceeds the guidance figure, however special circumstances outweigh policy, in that larger extensions and outbuildings can be constructed without the need for a planning application and therefore the permitted development fall back position is a material planning consideration in this case, together with the site specific geography of the position of the house with respect to the nearby road. The design is considered to reflect the character and appearance of the existing dwellinghouse. In order to control future development with regards to extensions and alterations to the dwellinghouse and further outbuildings, a legal agreement has been set out and therefore control maintained over the dwellinghouse. The proposal is not considered to result in a loss of amenity, privacy or loss of light that would result in an unacceptable loss of amenity and privacy in the area.

The proposal is considered to be in general accordance with ENV11, ENV12, ENV13 and ENV1 of the saved policies from the North Warwickshire Local Plan 2006; to the adopted Householder SPG 2003, and relevant national planning policy guidance.

BACKGROUND PAPERS

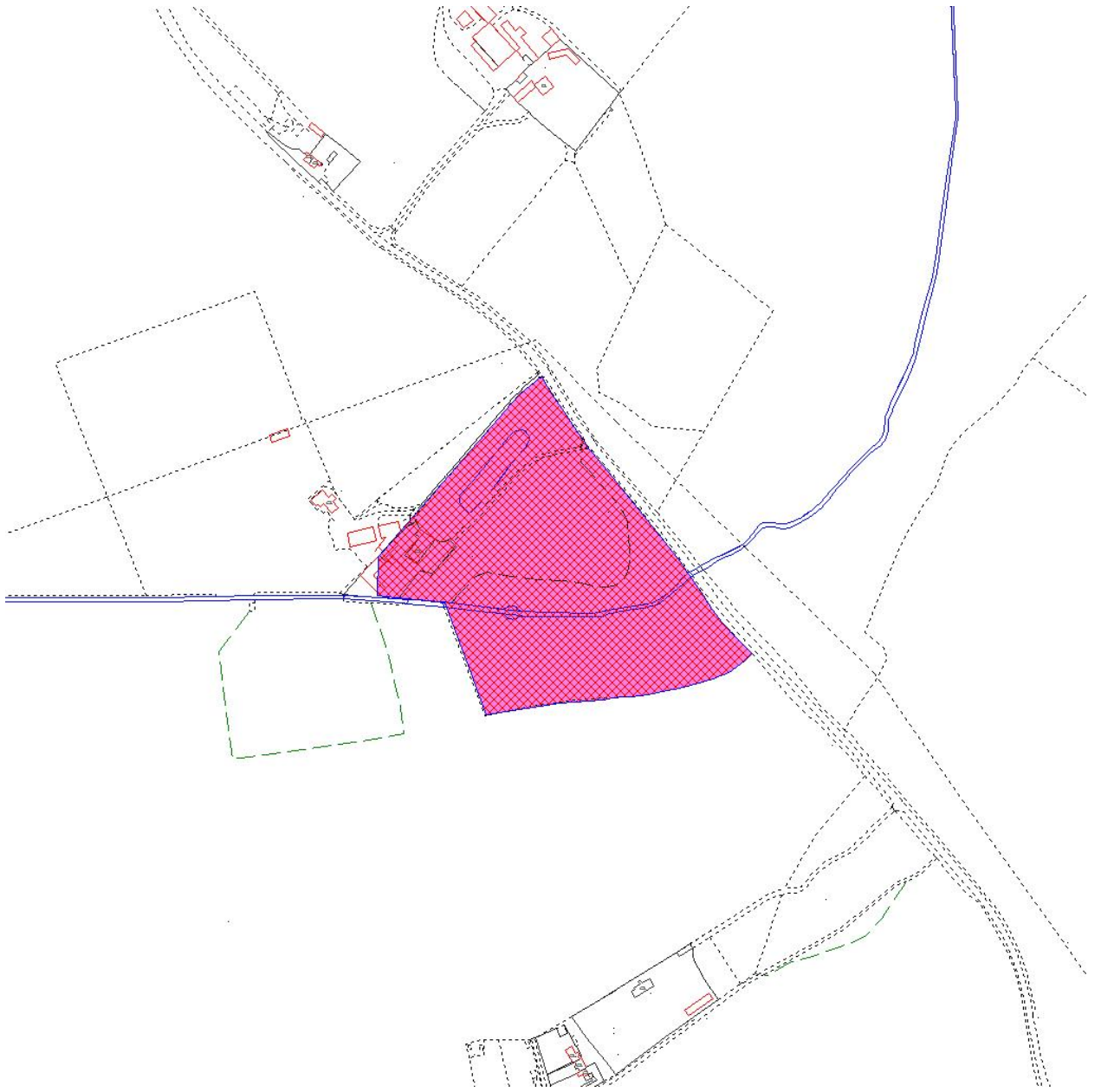
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97
 Planning Application No: PAP/2010/0622

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	3/12/2010
2	Development Control Team	Application valid	22/2/2011
3	Case Officer	Letter and email to agent	4/3/2011
4	Case officer	File note of phone call to agent	5/4/2011
5	Agent	Email to case officer	5/4/2011
6	Case officer	Email to agent	15/4/2011
7	Development Control Manager	Email to agent	26/4/2011
8	Agent	Email to Development Control Manager	27/4/2011
9	Agent	Email to Development Control Manager	10/5/2011
10	Agent	Email to Development Control Manager	14/6/2011
11	Case officer	Letter to Premier Building Design	28/6/2011
12	Premier Building Design	Letter to Development Control Manager	28/6/2011
13	Premier Building Design	Letter to Development Control Manager	13/7/2011
14	Development Control	Reconsultation following revised plans	15/7/2011
15	Agent	Email to case officer	15/7/2011
16	Case officer	Email to agent	18/7/2011
17	Agent	Email to case officer	19/7/2011
18	Case officer	Email to Council Solicitor	25/7/2011
19	Premier Building Design	Email to case officer	20/7/2011
20	Council Solicitor	Email to case officer	25/7/2011
21	Case officer	Email to agent	3/8/2011
22	Agent	Email to case officer	5/9/2011
23	Agent	Email to case officer	28/9/2011
24	Agent	Email to case officer	10/11/2011
25	Case officer	Email to agent	10/11/2011
26	Agent	Email to Council Solicitor	11/11/2011
27	Council Solicitor	Email to agent	1/12/2011
28	Case officer	Email to Council Solicitor	1/12/2011
29	Agent	Email to Council Solicitor	23/12/2011
30	Council Solicitor	Email to agent	29/12/2011

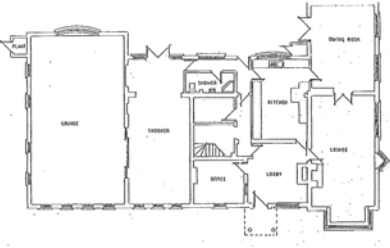
31	Case officer	Email to Council Solicitor	15/2/2012
32	Council Solicitor	Email to case officer	15/2/2011

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

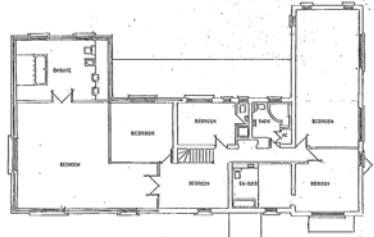
A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.



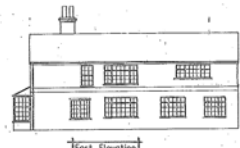
Appendix A – Proposed Plan




Ground Floor Plan




First Floor Plan



East Elevation



South Elevation



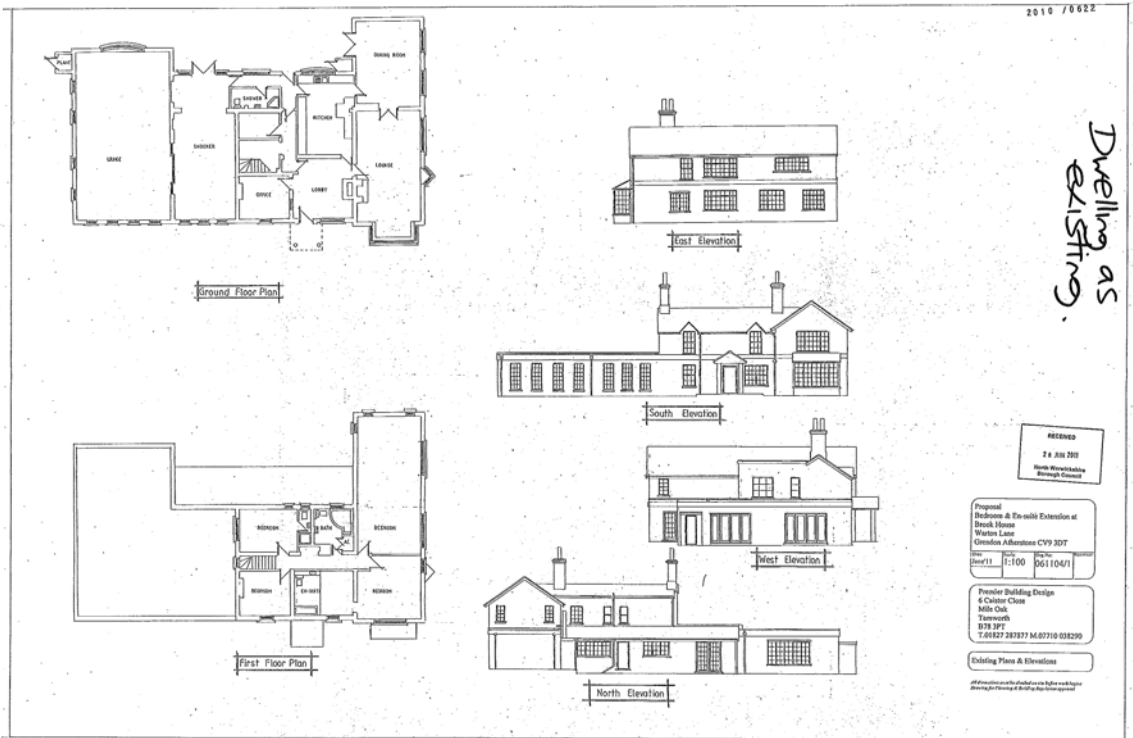
North Elevation

2010 / 0622

2010 - Current
Proposed
Application
Plan

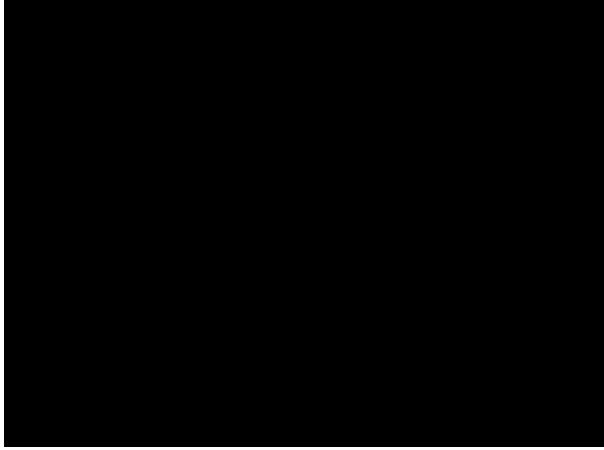
<p>RECEIVED</p> <p>13 JAN 2010</p> <p>North Warwickshire Borough Council</p>
<p>Proposed Bedroom & En-suite Extension at Brook House Winton Lane Glenfield Atherstone CV9 3DT</p> <p>Site No: 0611042</p> <p>Scale: 1:100</p>
<p>Prentice Building Design & Colour Close 5116 Oak Tamworth B79 3PT T:01827 287877 M:07739 038200</p>
<p>Proposed Plans & Elevations</p> <p><small>All dimensions are checked and taken from the drawings prepared for this application.</small></p>

Appendix B – Existing plan

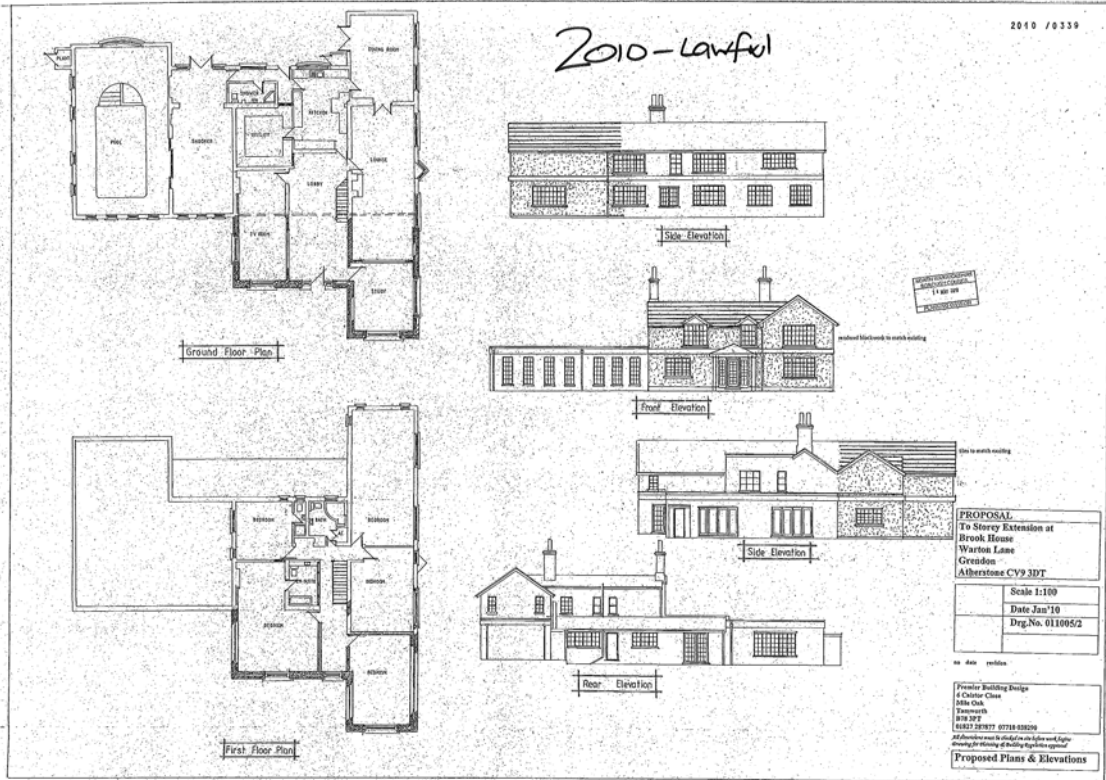


Appendix C – Photographs of the site





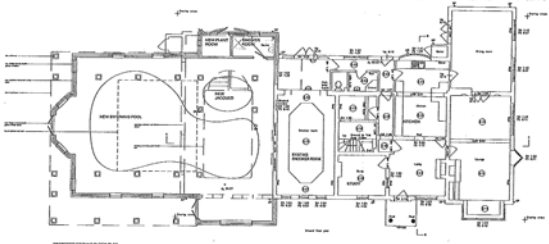
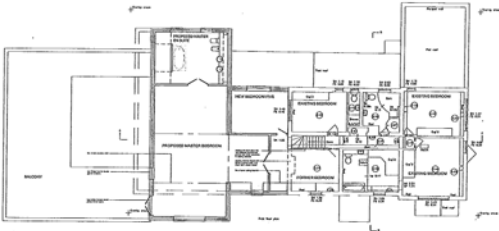
Appendix D – Certificate of Lawfulness Approval



Appendix E – 2007 Refused application plans

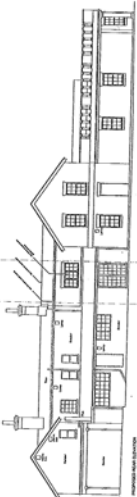
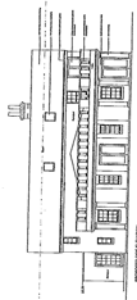
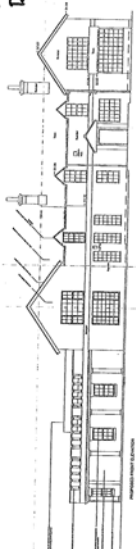
2007 - layout Plan
Refused

2007 / 0259

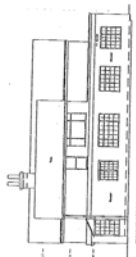


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2007 - Proposed
Plan
Retused



NOT TO SCALE



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2007 / 0219

Appendix F – 2009 Appeal Decision following the 2007 refusal



Appeal Decision

Hearing held on 25 November 2009

by **Stuart Hall** BA(Hons) DipTP FRTPI MIHT

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pms.gsi.g
ov.uk

Decision date:
14 December 2009

Appeal Ref: APP/R3705/A/08/2068743
Brook House, Warton Lane, Grendon CV9 3DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Newbold against the decision of North Warwickshire Borough Council.
- The application (Ref PAP/2007/0259), dated 24 April 2007, was refused by notice dated 13 August 2007.
- The development proposed is alterations and extensions.
- This decision supersedes that issued on 2 October 2008. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues in this appeal are the effects of the proposed development on character and appearance, in relation firstly to the existing dwelling and secondly to the surrounding countryside.

Reasons

Character and appearance

3. The substantial Brook House is the result of unrelated alterations and additions to a 2 storey gable-ended mid C19th cottage. Beyond its original north-east end there is a 2 storey extension with forward-facing gable, with a flat-roofed single storey element behind. The 2 storey depth of the cottage has been increased rearwards beneath a flat roof, and beyond its south-west gable a large flat roofed single storey side and rear addition, some 11.5 metres (m) wide, almost doubles the length of the property's front elevation.
4. A proposed second storey, including a front and rear gable, would largely cover this side extension, which at the time of the application contained a snooker room and an indoor swimming pool in need of substantial repair. A new single storey side addition would extend the length of the building by a further 10.5 m or thereabouts, housing a much larger replacement pool and related facilities.
5. It is common ground that the appeal proposals would take the increase in the volume of the building since 1948, already some 92%, to around 178%. This would be substantially above the limit of 30% set by the second limb of Policy ENV13 of the *North Warwickshire Local Plan*, adopted in 2006. Submissions that this is a stricter form of control than applies in the Green Belt, and

unsupportive comments by the Local Plan Inspector, do not affect the status of the policy, which was duly "saved" by Direction in July 2009.

6. However, there has been a material change of circumstances since the Local Plan was adopted, as the utility of this limb of the policy is now weakened by changes in permitted development rights. The Council intend to review the policy in their emerging Core Strategy. Accordingly, I conclude that its quantitative constraint is not a determining consideration in this appeal.
7. The existing lack of balance in the 2 storey form of the building would be partially redressed by the new gable. However, this would be wider than the north-east gable and would rise further above the main ridge, so that the mass and proportions of the 2 storey extension would dominate the resulting main structure of the much enlarged dwelling. In relation to building form, the beneficial loss of the architecturally unrelated single storey side extension would be negated by the proposed replacement. An ornate balustrade roof surround, above a peripheral colonnade, would add to the apparent mass of the extension and to the existing mix of design elements that contribute to the building's visual incoherence.
8. Rather than overcoming the agreed design shortcomings of the present building, these main elements of the proposals would largely maintain and add to them on a significantly larger and more prominent scale. Therefore, notwithstanding those existing shortcomings, I conclude on the first main issue that the scheme would harm the character and appearance of the existing dwelling. Thereby, it would conflict with the first qualitative limb of saved Policy ENV13, which requires that the scale, massing, height, and appearance of extensions should positively integrate with their surroundings.
9. Brook House and its single storey outbuildings are situated in extensive grounds within gently undulating open countryside characterised by large arable fields, hedgerows and sporadic groups of trees. The house stands between 2 copses some 150 m from the nearest road, from which it is barely visible. However, it is clearly seen in middle distance views from several points on public footpath AE14 on slightly higher ground, generally to the south.
10. Occasional buildings in the northern Warwickshire countryside do not have a prevailing design theme. However, the use of white painted render on external walls, in contrast with the inconspicuous brickwork of its outbuildings and nearby buildings at Brook Farm, gives Brook House a particular prominence. This would be substantially increased by the scale, uncharacteristic design details and matching materials of the appeal proposals which, although situated on hard-surfaced ground, would also reduce openness around the existing dwelling.
11. Bearing these points in mind, I conclude that the proposals would not respect local distinctiveness but would detract from the character and appearance of the surrounding countryside. This would conflict with the first limb of saved Policy ENV13. It would also run counter to the thrust of guidance in *Planning Policy Statement 7: Sustainable Development in Rural Areas* that seeks to protect the countryside's intrinsic character.

Other matters

12. It is common ground that in place of the appeal scheme a substantial free-standing single storey extension, similar in design but constructed 5 m to the south west of the existing building, would be permitted development. This fall back position is a material consideration to be weighed with other matters against the harm that I have concluded the appeal scheme would cause. The amount of weight it should carry is determined by its impact in relation to the identified main issues and the likelihood of it being carried out.
13. Plans of such an extension, housing a swimming pool, are submitted on behalf of the appellants. Though it would not add directly to the mass of the main dwelling, viewed from the public footpath it would be read with that building and would accentuate the discordant horizontal emphasis of its single storey element. In my view, it would not be materially more or less acceptable than the appeal scheme in relation to character and appearance.
14. The content of the alternative scheme differs materially in that an additional large master bedroom, a significant component of the appeal scheme, would be omitted. Be that as it may, I am advised that a replacement swimming pool is the appellants' primary requirement, bearing in mind the existing pool's restricted size and the disproportionate costs of its repair. The commissioning of the submitted alternative plans is said to demonstrate the appellants' firm intentions should the appeal fail.
15. However, at my site visit in the course of the Hearing I saw that the south-west end of the existing single storey extension had been removed and substantial excavation works had taken place both within and beyond the line of the wall. Within the excavation, I saw the base and incomplete sides of what the appellants' representatives agreed is a new swimming pool in course of construction, extending from within the existing building across the gap between it and the site of the alternative scheme.
16. No submissions before me account for the works in progress. In the absence of evidence to the contrary, and notwithstanding earlier submissions made in apparent ignorance of those works, I consider it reasonable to conclude that the works represent the appellants' current intentions. There is nothing to suggest a desire for 2 pools. The alternative scheme to which I am invited to have regard would appear to require the works to be abandoned, the side wall reinstated on new foundations, and the excavations back-filled and, perhaps, compacted. The evidence before me leads me to conclude that there is not a realistic possibility that the submitted fall back position would arise should the appeal fail. Therefore, I give it limited weight.
17. I am unaware of all the considerations in other appeal decisions featuring saved Policy ENV13 to which the Council refer. Therefore, they are of limited assistance to me in assessing the weight I should attach to the saved policy. However, the appellants' submissions concerning the inflexibility of the second limb of this policy do not subvert its underlying aim and purpose. I find no cause to assign the remainder of the saved policy less weight than that normally attaching to the development plan. More permissive supplementary

planning guidance was adopted by the Council some 3 years before the adoption of the Local Plan, and so carries limited weight.

18. Having regard to my conclusions on the merits of the submitted alternative scheme, I am not persuaded that the appellants' offer to surrender permitted development rights would render the appeal scheme acceptable. A landscaping condition would offer only limited mitigation, as it would be several years before new tree planting would provide an effective screen.
19. The above considerations lead me to conclude that these other matters, taken together, do not outweigh the material harm that I have identified in relation to character and appearance, in conflict with the thrust of the development plan and national policy guidance. It follows that the appeal should not succeed.

Stuart Hall

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

M Westmoreland Smith	Of Counsel
Alan Riley	Alan C Riley Associates
Graham Lea	APA Planning Services Ltd

FOR THE LOCAL PLANNING AUTHORITY:

J Brown	North Warwickshire Borough Council
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DOCUMENTS

- 1 Perspective sketch of appeal scheme and permitted development scheme, submitted on behalf of the appellants

Appendix G – Draft Legal Agreement

THIS DEED is made the day of 2011

BETWEEN

NORTH WARWICKSHIRE BOROUGH COUNCIL of The Council House, South Street, Atherstone, CV9 1BG (the Council) (1)

MARTIN RICHARD NEWBOLD and **LYNDA RUTH NEWBOLD** of Brook House, Warton Lane, Grendon, Atherstone, Warwickshire (the Owner) (2) and

DUDLEY BUILDING SOCIETY of Dudley House, Stone Street, Dudley, West Midlands, DY1 1NP (the Mortgagee) (3)

1. WHEREAS

1.1 The Owner is the owner of Brook House, Warton Lane, Grendon, Atherstone, Warwickshire (the Property) which is shown for identification purposes on the plan attached and edged red.

1.2 The Council is the local Planning Authority for the area in which the Land is situate.

1.3 The Owner has by application number 2010/0622 applied to the Council for Planning Permission in relation to the Property.

1.4 The Council is prepared to grant the planning permission subject to conditions and subject to the Owner entering into this agreement.

1.5 The Mortgagee is the proprietor of a Charge over the Property dated 27th September 2006

2. NOW THIS DEED WITNESSES as follows:-

2.1 This agreement is made pursuant to the provisions of Section 106 of the Town and Country Planning Act and in consideration of the covenants on the part of the Owner which follow

2.2 This agreement creates an obligation which is a planning obligation for the purposes of Section 106 of the Act and is enforceable by the Council

2.3 For the purposes of this agreement where the context so admits references to the Owner shall include his successors in title and the expression the Council shall mean either the Council or its Statutory successor as the local Planning Authority for the area within which the land is situate.

2.4 Any reference to the land shall unless the context otherwise requires include each and every part of the land and every reference to any part of the land shall unless the context requires include each and every part of such part.

3.1 The Owner with the intent to bind the Property into whosoever's hands the same may come hereby covenants with the Council that the Owner shall comply with the Planning Permission and with the following obligation:-

3.1.1 that none of the rights within classes A, B, C or E in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, as amended, will be implemented at the Property.

3.1.2 for the avoidance of doubt these are the rights within the classes mentioned in 3.1.1 above as at the date of this Agreement and the obligation is intended to bind the Owner and successors in title should the classes be renumbered or added to after the date of this Agreement by way of further legislative amendment.

4. No person shall be liable for a breach of covenant contained in this deed after having parted with all interest in the Property without prejudice to any liability for any subsisting breach of covenant prior to parting with such interest.
5. The Owner shall pay to the Council all the Council's reasonable legal costs in the preparation and execution of this Agreement limited to the sum of £750 inclusive of any value added tax prior to the completion of this Agreement.
6. This Deed will be registrable as a local land charge
7. The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed

unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

The Common Seal of North Warwickshire Borough Council
was hereunto affixed in the presence of:-

Designated Officer

Signed as a Deed by **Martin Richard Newbold**
in the presence of:-

Signed as a Deed by **Lynda Ruth Newbold**
in the presence of:-

Executed as a Deed by **Dudley Building Society**

Acting by:

General Development Applications

(3) Application No: PAP/2011/0565

Laxes Farm, Nuneaton Road, Over Whitacre, B46 2NL

Ground works to form a fishing pool and a new vehicle access track. Change of use of land from agriculture to fish breeding / stocking pool with occasional private fishing use for

Mr and Mrs J Clarke

Introduction

This application is referred to the Board at the discretion of the Head of Development Control.

The Site

This covers an area of some 3.0 ha of agricultural land, forming part of Laxes Farm, and is within the West Midlands Green Belt. The site is a part of a larger field, which has previously been partly arable and partly grass pasture. The land slopes down from the south east to the north west. The sloping topography limits views from the south east and adjacent woodland limits views from the north east. Three public footpaths pass close to the site; the routes of these will not be obstructed.

The Proposal

This involves the formation of a pool with a surface area of some 2.2 ha; a reed bed with an area of 150m² and the formation of a new track to provide vehicle access to the pool.

The pool will be retained by a broad low embankment on the downslope. The maximum height of this will be 1.25m above existing ground levels and the downslope gradient will be similar to that of the surrounding land. On the upslope, banks will be graded into the surrounding land and finished levels overall will blend with existing landscape contours. The design of the pond reflects guidance to provide a good aquatic environment and to dissuade use of the site by larger birds, such as Canada geese, and to minimise the hazard to overflying aircraft. The normal water level will be 92.7m above OD, and depth is designed to vary from shallows to 2m. The pool will drain to an existing ditch via an outfall pipe and reed bed, which will be formed downslope to the west of the pool.

Vehicle access to the site is from the existing vehicle access to the B4114, Nuneaton Road, via the existing private road to Laxes Farm, which also serves Estate Cottage and Keepers Cottage.

The pool is to be used to breed coarse fish. Fish will be introduced as 'fingerlings' and raised to an average size of 2lbs before being sold to stock fisheries elsewhere. It is stated the pool will also be used for occasional club fishing by prior arrangement.

The pool will be formed by using a 'cut and fill' technique involving cutting into the existing slope. Excavated earth material will be used to construct the new earth embankment to retain the pool. Hours of working are proposed to be from 0800 hrs to 1700 hrs Monday to Friday inclusive and 0800 to 13:00 on Saturday with no working on Sundays or public holidays. The formation of the pool will require the importation of 20300 m³ of additional inert earth material to form the embankment and to provide an impermeable clay lining to the pool. A permit from the Environment Agency will be required to authorise the deposit of material on the land. The permit regime requires operators to keep records of material imported, including type, amount and the source of material and of the location within the site where it is deposited.

Construction works are programmed to take between 9 to 18 months to complete. This range reflects that work is dependent on weather and on the availability of the suitable inert materials required, as these derive mostly from development sites. Given the present climate of reduced activity in this sector, sources of suitable material are more limited. The number of lorries bringing material to the site would be a maximum of 5 per hour. If this rate was sustained, construction could be complete within 7 weeks. The actual rate is likely to be less and there are likely to be periods when no lorries visit the site. If construction was completed over 30 weeks, this would require an average of 10 lorry visits / day.

Comprehensive detail and assessment of the proposed development is submitted with the application in the following documents :-

Supporting Information - this summarises the proposed development.

Landscape and Visual Assessment - this sets out the approach and methodology of the visual assessment undertaken and concludes that once complete the overall visual impact of the development will be neutral. Whilst differing in appearance, this will be neither better nor worse than at present. Adverse visual impact will be experienced during the construction phase. This is considered to be of medium significance to walkers on nearby footpaths and medium to low significance for nearby properties with views of the site.

Protected Species Assessment – details the surveys undertaken; it found no evidence of protected species on the site or in the near vicinity; it identifies existing habitats to be retained, eg hedgerows and includes recommendations to ensure this is undertaken in accordance with environmental legislation and best practice.

Hydro-Geological Assessment and Hydrological Assessment – these show the proposed development will not result in any adverse impact on the water environment or for flooding.

Landscape and Habitat Management Plan – this details measures to be implemented to ensure the development provides a good aquatic environment; to minimise aviation bird strike hazard; to reduce the visual impact; to protect existing wildlife habitats, the planting schedule and the ongoing maintenance for planting and the pool environment.

Environmental Action Plan - the development will be undertaken in accordance with this document. This details how the development will be progressed during the design, construction and post-construction stages to ensure it is constructed and managed in accordance with legislative requirements and best practices. It sets out objectives, procedures and practices to be followed, details resources and staff responsibilities to ensure constraints and required mitigation are fully addressed.

Development Plan

Saved Policies of the North Warwickshire Local Plan 2006: Core Policy 3 (Natural and Historic Environment), ENV1 (Protection and Enhancement of Natural Landscape), ENV2 (Green Belt), ENV3 (Nature Conservation), ENV4 (Trees and Hedgerows) ENV6 (Land Resources), ENV8 (Water Resources), ENV11 (Neighbour Amenities), (Access Design)

Other Relevant Material Considerations

Government Advice: - PPS1 (Delivering Sustainable Development), PPG2 (Green Belt), PPS4 (Planning for Sustainable Economic Growth)

The draft National Planning Policy Framework

Consultations

Birmingham International Airport – No objection subject to a condition to require measures to reduce risk to over flying aircraft from bird-strike.

Severn Trent Water – No objection.

Warwickshire County Council - Highways – No objection subject to conditions to provide a bound surface to the vehicle access and to prevent extraneous material from the site being deposited on the highway.

Warwickshire County Council - Rights of Way – No objection providing public footpaths remaining unobstructed at all times and appropriate signage is provided where the vehicle access track crosses footpaths.

Warwickshire Wildlife Trust – The proposal is likely to enhance local biodiversity due to the creation of the reed beds, the wetland areas around the pool edges and additional woodland planting. It is noted that existing features most important to biodiversity, i.e. the surrounding hedgerows and woodland, will all be retained.

Environment Agency – No objection.

Representations

Over Whitacre Parish Council – Objects, citing that the main purpose of this type of development is to provide opportunity for tipping of waste material and that the developments are irrelevant to agricultural diversification and to the improvement of the local landscape and that the construction brings considerable upheaval to the local community from high numbers of tipper lorry movements, mud on highway, and the deposition of unregulated waste.

CPRE Warwickshire – Objects, citing

- the proposed development will not protect or enhance the existing 'Ancient Arden' landscape, contrary to saved policies CP3 and ENV1;
- the cumulative damaging impact of other similar small developments often promoted as farm diversification which together have eroded character of the Ancient Arden landscape;
- the development is an opportunity for cheaper landfill, tipping will generate a stream of HGV's and require formation of new access tracks;
- the proposed pool will be larger and bear little resemblance to the small field ponds identified in the Warwickshire Landscape Guidelines as typical of 'Ancient Arden' landscape
- the site is within the Special Landscape Area designated within the former Warwickshire Structure Plan 1996-2011,
- details indicate that there are no listed buildings near the development site, however six of the buildings named in the Landscape Visual Appraisal submitted are listed buildings;
- the emerging draft Core Strategy recognises the importance of the natural and historic environment of North Warwickshire and proposes to conserve and enhance the quality, character, diversity and local distinctiveness.

Three separate representations have been received from four local residents. All object to the proposed development. Concerns identified are summarised below:-

- the fishing pool will not provide economic growth or meaningful employment;
- the proposal is unsustainable development and will result in the irretrievable loss of agricultural land

- the importation and tipping of waste material will result in intensive use of local rural roads by HGV's, these will pollute the environment and be detrimental to the quality and enjoyment of the visual and residential amenity and to businesses wholly dependant on the visual attractiveness of the landscape and amenity in this locality;
- fishing pools and similar developments should only be permitted where all minerals required are available on the site, to avoid import or export of materials;
- previous problems with drainage systems and mud deposits on the local highway;
- the need for this development , given other similar developments exist nearby;
- the proposal is essential to enable tipping of waste material on agricultural land within the green belt;
- the proposed pool will alter the character of the Arden landscape;
- increased traffic will cause inconvenience and disturbance during construction phase, vehicles exiting the site will cause traffic hazard given the national speed limit in place on this stretch of the B4114.
- The development will be visible from the Centenary Way, a recreational path, this will detract from enjoyment of the Arden landscape.

The following paragraphs have been provided by the applicant in response to the concerns raised in the representations received:-

“The stated intention is to use the proposed pool to breed and stock fish. These will be sold to other fisheries. The proposal is thus a commercial enterprise and as such it could contribute to economic growth although it will not provide any additional employment. The pool will also be used for occasional fishing.

The development is not necessarily unsustainable. The proposed fish breeding / stocking use is appropriate to a rural location and will not give rise to significant additional traffic. The importation of material will require journeys by lorry, however the removal of waste material from construction sites usually requires such a journey to a suitable disposal landfill, a reduction in the distance travelled could improve overall sustainability.

The development will result the loss of agricultural land, however this will be limited to the area of the pool, the access track and immediate surroundings, around 3ha in all, adjacent areas will be planted with trees and surrounding grass land will provide pasture.

The importation of material will require tipper lorries to visit the site during the construction phase. Actual numbers of vehicles and the duration of this phase may vary within the limits referred to previously. This will result in increased numbers of lorries and this is likely to have an impact on the local highway and on amenity. Adverse impacts arising from the construction activities will however be limited to the period of construction. Measures to mitigate adverse impacts during this phase can be required by conditions to,

limit hours of operations, numbers of vehicles, minimise the deposit of material from the site on the highway and planting to reduce visual impact

The planning system has a presumption in favour of development that is in accordance with the development plan and planning guidance. The existence of other pools nearby is not per-se a valid reason to require justification of the need for another similar development. Such justification would be appropriate only if this is required by specific policy or where this is identified to be a material consideration, however evidence of the scale of the adverse impact and the resulting harm would be essential to properly assess cumulative effect.

The existing vehicle access to Laxes Farm has been altered recently to improve visibility for vehicles exiting the site. The Highway Authority do not object to the proposal subject to conditions.

The development will have a visual impact. Assessment of visual impact involves judgement. The landscape assessment submitted has been undertaken in accordance with published guidance and provides a clear statement of the approach and methodology adopted.”

Observations

The proposed development is an open area use and it will preserve the openness of the green belt. No built structures are proposed. It is thus appropriate development within the green belt and thus is in accord with saved policy ENV2.

The details submitted clarify the proposed development and consultation responses conform that it would have no adverse impact on the water environment or for flooding; that no protected species were found on the site or in the near vicinity; the more valuable existing wildlife habitats, such as existing hedgerows will be retained and protected during construction and that the development is designed to provide a varied aquatic environment and to minimise aviation bird strike hazard. The proposal is thus in accord with saved policies ENV3, ENV4 and ENV8.

The Highway Authority has no objection to the proposed vehicle access subject to conditions to ensure a bound surface is provided together with measures to prevent deposit of extraneous material on the highway. The vehicle access is thus in accord with saved policy ENV14.

The impact on neighbouring properties and visitors on footpaths will be experienced most during the construction phase. These impacts can be mitigated through conditions to limit working hours and the numbers of lorries accessing the site per hour. The Environmental Action Plan details clearly how the development will be progressed during the design, construction and post-construction stages to ensure it is constructed and managed in accordance with legislative requirements and best practices. The objectives, procedures and practices to be followed, details of resources and staff

responsibilities to ensure constraints and required mitigation are fully addressed provide a robust development framework. The proposal is thus considered to be in accord with saved policy ENV11.

Saved policy ENV6 seeks to protect best and most versatile agricultural land. The most recent agricultural land classification provides six grades of classification 1, 2, 3a, 3b, 4 and 5. Land in grades 1, 2 and 3a is considered to be best and most versatile agricultural land. The broad strategic level information available indicates this land is within grade 3, it is not however possible to identify whether it is grade 3a or 3b. Notwithstanding this, the area that would be permanently lost is relatively small, less than 3 ha. The harm resulting from the loss of this limited area is not in this instance considered to be sufficient to justify refusal of the development on this issue alone.

The most significant planning consideration is the impact of the development on the character of the existing landscape. Saved policy ENV1 requires that development that would not protect or enhance the existing landscape will not be permitted. Consideration of this impact for the proposed development is finely balanced.

The landscape character of this area is classified within the Warwickshire Landscape Guidelines as Ancient Arden; the characteristic features of which are varied undulating topography with irregular pattern of small to medium sized fields, field ponds associated with permanent pasture, hedgerows, roadside oaks and narrow winding lanes. The Guidelines seek to conserve this pastoral character and to convert less valued arable land back to permanent pasture and to retain and manage field ponds. The proposal includes elements that further this conservation management strategy with the reversion of arable land to grassland and introduction of pool and wetland areas, although these are larger than the traditional field pond.

The applicants contend the visual impact of the complete development is neutral in that although the earthworks will be a slightly alien feature, the impact is reduced through careful grading and planting. The CPRE however contend that the proposed development will not protect or enhance the existing 'Ancient Arden' landscape, and is thus contrary to saved policies CP3 and ENV1. This partly derives from a view that there has been a cumulative effect on landscape quality, due to the impact of already implemented similar developments, often promoted as farm diversification, and outstanding planning permissions, which erode the character of the 'Ancient Arden' landscape. Assessing the significance of cumulative effect is often problematic as the effect is often perceived rather than quantified and frequently involves a judgement. It is not clear at present that the cumulative effect referred can be shown to have significantly eroded the character of the existing landscape.

The WLG were produced in 1993, since then a number of changes have occurred within the landscape as a result of farming practices, most significantly the removal of field boundaries resulting in the formation of larger fields and the erosion of the traditional field pattern identified. Aerial

photography shows the application site has itself experienced this phenomenon. Given the above, the application site is now not entirely characteristic of the 'Ancient Arden' landscape identified.

The sloping topography of the site, and the proximity of the established woodland, limit views of the completed development from the wider area. The significant visual impact will be limited to views from the land closer to the site and thus will be experienced by walkers. The impact is experienced as a transitory rather than a permanent effect. Although the new pool will differ from the characteristic field ponds, being larger, it will provide diverse wet land habitat that is being lost elsewhere and the design does integrate the new pool into the existing landscape.

Given the above it considered that although the development provides limited protection or enhancement to the natural landscape as defined by the landscape character assessment, and thus is not be fully compliant with saved policy ENV1, it will not result in significant harm to the character of the existing landscape here and it will improve local biodiversity thereby enhancing the natural local environment which is in accord with saved policy CP3.

Recommendation

That the application be granted subject 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 site plan received on 09/11/2011, drawings numbers 11336PROP & 11336SEC received on 02/11/2011 & the Topographical Survey received on 23/2/2012.

REASON

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

3. No development shall commence before details of the protection measures proposed for existing trees and hedges on the site have been submitted to, and approved in writing by the Local Planning Authority. The approved measures shall then be in place prior to work commencing.

REASON

In the interests of the protecting the visual amenity of the landscape and the conservation of protected species.

4. No development shall commence until a turning area has been provided within the site so as to enable all vehicle types to leave and re-enter the public highway in a forward gear and the existing vehicle access to the B4114 Nuneaton Road has been surfaced with a bound material in accordance with details submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of safety on the public highway

5. No development shall commence until written notice has been given to the Local Planning Authority of the date the approved works will commence and a period of 14 days has elapsed since the giving of notice.

REASON

To limit the duration of the construction operation in the interest of amenity.

6. No construction traffic or lorries shall access the site and no material shall be imported or exported from the site unless measures are in place to minimise the deposit of extraneous material onto the public highway by wheels of vehicles accessing the site in accordance with details submitted to and approved in writing by the Local Planning Authority. The details shall include arrangements for the sweeping of the public highway. The agreed measures shall be implemented and maintained in good working order at all times.

REASON

In the interests of safety on the public highway.

7. Within three calendar months of completion of the works detailed within this application all site access roads other than those marked on the approved plans shall be removed and the land reinstated to its original condition.

REASON

In the interests of amenity.

8. The development shall be constructed, operated and maintained in accordance with the Environmental Action Plan Ver 1.1 received on the 23/02/12 and the Landscape & Habitat Management Plan received on 02/11/2011.

REASON

In the interests of amenity, safety, prevention of pollution and to protect ecology.

9. No waste soils, including subsoils or other fill shall be imported to the site until a scheme of sampling of imported waste material and a means of importation control has been submitted to, and agreed in writing by the Local Planning Authority. This scheme shall ensure that a written record is maintained of all of the material deposited at the site so as to identify the quantity, source and type of material. The scheme shall also ensure material deposited at the site is sampled and a written record of the sampling and the results is maintained. The written records shall be available for inspection at the site at all times.

REASON

In the interests of avoiding contamination and pollution of the ground water environment.

10. No material shall be imported, deposited or exported from the site after the expiry of a period of 18 months from the date works commenced.

REASON

In the interests of amenity.

11. No materials shall be delivered to or exported from the site; other than between 0800 hours and 1700 hours on Monday to Friday and 0800 hours and 13:00 hours on Saturday There shall be no such activity on Sundays, Bank Holidays or other public holidays.

REASON

In the interests of amenity.

12. All vehicles carrying fill material into or from the site shall be sheeted or covered at all times.

REASON

In the interests of highway safety.

13. Any facilities for the storage of oils; fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage; the compound shall be at least equivalent to the capacity of the largest tank; vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points; associated pipework; vents; gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse; land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels overflow pipe outlets shall be detailed to discharge downwards into the bund.

REASON

To prevent pollution of the water environment.

14. The development shall be carried out in accordance with the section details as shown on the approved drawing 11336 SEC. No more than 20358 m³ of material shall be imported to the site, as stated to be required in the Environmental Action Plan Ver 1.1 received on the 23/02/12. Within three months of the completion of the ground works a survey of the final ground levels on the site shall be undertaken and the results submitted in writing to the Local Planning Authority.

REASON

To ensure that the development is undertaken in accordance with the approved plans.

15. The pool hereby approved shall be used for fish breeding and stocking purposes and for private fishing use by the occupiers of Laxes Farm only. No other fishing use, including occasional use by angling clubs, shall take place until details of proposed use have been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of amenity and highway safety.

Justification

The proposed development is in line with the conservation and management strategies within the Warwickshire Landscape Guidelines; it includes features broadly characteristic of the Ancient Arden landscape which, when mature, will not have any significant adverse visual effect on the landscape. The

proposal will retain existing tree and hedgerows, will not have harmful effects for any protected species and will create new habitats that will enhance local biodiversity. The proposal will not result in the significant loss of best or most versatile agricultural land and will not have any adverse impact for existing water resources or on risk of flooding. The resulting feature will not result in any significant loss of amenity for occupiers of nearby properties; disturbance during the construction period will be time limited and will be mitigated through the measures identified in the Environmental Action Plan. The proposal is thus considered to accord with Saved Policies CP3, ENV3, ENV4, ENV6, ENV8, ENV11 and ENV14 of the North Warwickshire Local Plan 2006.

BACKGROUND PAPERS

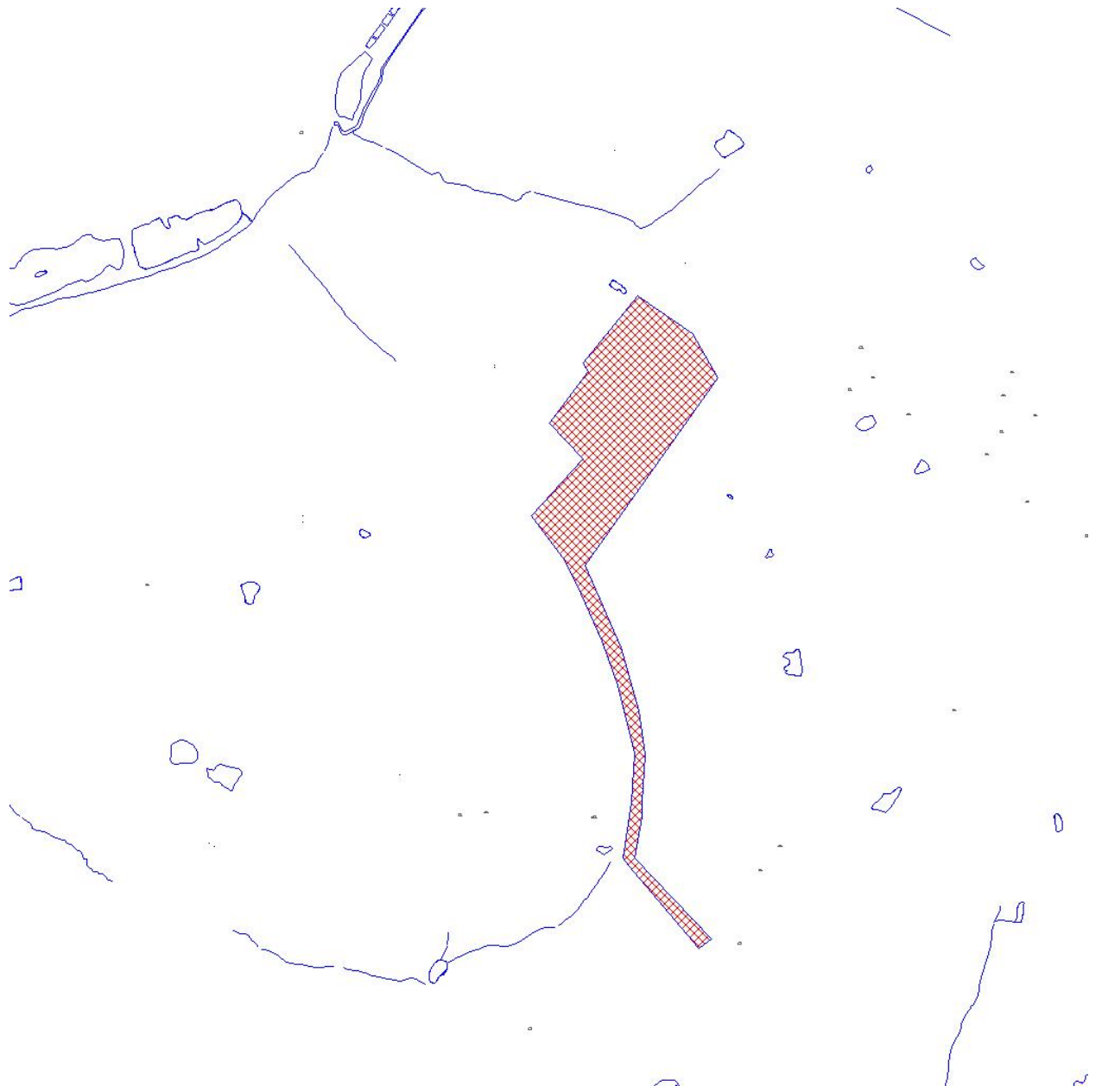
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2011/0565

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statements	2/11/11 27/2/12
2	A Davies BIA	Consultation	6/1/12
3	C Thorley WCC	Consultation	6/12/11
4	E Bettger WCC	Consultation	12/12/11
5	P Gethins EA	Consultation	5/1/12
6	J Vero CPRE	Consultation	7/12/11
7	B Walton STW	Representation	7/12/11
8	R Hancocks	Representation	19/11/11, 21/11/11, 21/12/11 9/2/12
9	S Long	Consultation	30/12/11
10	L Chandler OWPC	Consultation	12/1/12
11	R Poulson, A Callwood	Consultation	10/2/12
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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.



(4) Application No: PAP/2011/0623

Junction 10 Service Station, Tamworth Motorway Services, Green Lane, Dordon

Erection of a single 67 metre tall, 330kw wind turbine and associated infrastructure, for

Mr Tony Raven (Moto Hospitality Ltd)

Introduction

This application is reported to Board given the sensitivity of the proposal. This report follows an interim report presented in December 2011 recommending a site visit and tour prior to determination (Appendix A). The visit was undertaken on 28 January 2012.

The Site

The proposed siting is within the M42 junction 10 service station adjacent to the lorry parking area. There is substantial planting around the service station, with semi-mature to mature tree planting throughout. To the north and west lie industrial units within the Tamworth Borough, with residential development beyond these. There is further industry to the south-west beyond which is further residential development. The A5 and M42 surround the site, with relatively flat farmland to the east and south. Birch Coppice and the associated mound lie to the south-east, with Dordon to the east and Birchmoor to the north east. Appendix B shows the context in more detail.

The landscape in this area is generally flat, meaning that there are long distance views of the site. However there is a clear and obvious urban influence in this area, with the industrial buildings within Tamworth and Birch Coppice have a distinct impact on the landscape character here. The A5 and M42 have a further urbanising effect. The residential estates within Tamworth and the settlements of Dordon and Polesworth further add to the human influence on this landscape.

The Proposal

It is intended to erect one 67m to tip (50m to hub) wind turbine and associated monitoring/control equipment. Elevations are shown at Appendix C and comparisons are below (note: some of the examples have much greater mass in comparison). The turbine will provide for the needs of the service station.

Comparison	Height
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Telecommunications mast at Hermitage Lane, Birchmoor (the sail mast)	38.3m
3M water tower, Atherstone	~34m
Council House, Atherstone	~12m (not including lift housing)
Full scale pylons	~45 to 50m
Grendon Fields Farm wind turbine	36m to hub, 46m to tip
DIRFT logistics terminal (Junction 18, M1) turbines	110m to tip

Background

The proposal was assessed in respect of the Environmental Impact Assessment (EIA) Regulations 1999 in August 2011. Whilst the proposal is classed as development under paragraph 3(i) of Schedule 2 to the Regulations, it has been concluded that due to the lesser scale of this wind turbine (compared to full scale wind farms); a lack of statutory and local constraints in respect of ecology, heritage, aviation and land designations, the presence of adequate statements and information to address noise and ecological concerns, and the proximity to the strategic road network; that the development is not considered to be EIA development such that the submission of an Environmental Statement is not required.

Development Plan

North Warwickshire Local Plan 2006 (Saved Policies): Core Policy 2 (Development Distribution), Core Policy 3 (Natural and Historic Environment), Core Policy 11 (Quality of Development), ENV1 (Protection and Enhancement of Natural Landscape), ENV3 (Nature Conservation), ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV9 (Air Quality), ENV10 (Energy Generation and Energy Conservation), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV16 (Listed Buildings, Non-Listed Buildings of Local Historic Value and Sites of Archaeological Importance (including Scheduled Ancient Monuments) and TPT1 (Transport Considerations In New Development).

West Midlands Regional Spatial Strategy (Phase 1 Revisions January 2008): POLICY EN1 (Energy Generation).

Other Relevant Material Considerations

Government Advice: PPG2 (Green Belts), PPS1 (Sustainable Development – Climate Change Supplement), PPS22 (Renewable Energy), Planning for Renewable Energy – A Companion Guide to PPS22, Overarching National Policy Statement for Energy (EN-1), National Policy Statement for Renewable Energy Infrastructure (EN-3), The Assessment and Rating of Noise from Wind Farms (ETSU-R-97: September 1996), and the draft National Planning Policy Framework (NPPF).

Consultations

The Ministry of Defence raises no objection subject to conditions, and Birmingham Airport raises no objection whilst Coventry Airport has not responded.

The Environmental Health Officer has considered the noise report provided, and notes that it projects noise breakout would be below current background levels at nearby receptors. However a precautionary approach by way of condition is recommended.

Warwickshire Wildlife Trust initially raised some concerns to the ecology and bat studies and sought further bat survey work. However, dialogue with the applicant's ecologist clarified various points to the degree that the objection could be lifted, subject to conditions. The RSPB has not responded.

The Highways Agency and County Highways Authority raise no objection to the proposal having reviewed the siting, the proposed construction traffic routing and access.

Tamworth Borough Council raise objection on the grounds that the proposal would have a significant adverse impact on visual amenity; that there is concern about the noise that might arise from the turbine as well as safety concerns; and that the proposal will be of no benefit to the community in which it would be located, suggesting land east of the M42 instead.

Representations

The Campaign for the Protection of Rural England objects stating that the turbine will be highly visible for some distance and must be considered on a cumulative basis; that it would be detrimental to landscape character, that it would be harmful to the health of local residents, there are safety concerns and turbines are unreliable sources of renewable energy.

Dordon Parish Council considers the proposal not to be in keeping with the semi-rural and low-rise area.

Polesworth Parish Council and the Baddesley Ensor Parish Council have not responded.

Local members of the Dordon, Polesworth West, Baddesley and Grendon Wards, along with the Chair and Vice Chair of the Planning Board were notified of the application on 5 December 2011. 20 site notices were erected on 9 December 2011 at various locations around the Whateley, Hockley, Stonydelph, Birchmoor, Dordon and Baddesley Ensor area; and this was followed by 2219 neighbour notifications, along with notifications to Tamworth Borough Councillors, sent on 15 December 2011. An article also appeared in the Tamworth Herald on 12 January 2012.

33 individual neighbour representations, consisting of 31 objections and 2 letters of support, as well as 427 'round robin' letters from Tamworth residents

have been received. Overall this represents a response rate of 20.7%. The objections focus on the following matters:

- Visual and landscape impacts, as well as a need to consider cumulative impact;
- Residential amenity impacts from noise generated by the turbine and shadow flicker;
- Impact on wildlife, namely birds and bats;
- Heritage and tourism impacts;
- Highway safety, both in terms of distraction and potential for 'ice throw';
- Interference to radio and television signals;
- Health and safety risks to those using the service station and adjacent bridleway, as well as health/sleep impacts for residents; and
- It is only for financial gain, is an expensive and unreliable source of energy and devalues local properties.

Legal Requirements under the Habitats Directive

All EU protected species are listed in Annex IV(a) of the EU Habitats Directive. Article 12 of the Directive states “*Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) their natural range, prohibiting (a) all forms of deliberate capture or killing of specimens of these species in the wild [and] (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration...*”.

Regard is also had to Regulation 9(5) of the Conservation of Habitats and Species Regulations 2010 which states “...*a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.*”

Drawing on *Vivienne Morge v Hampshire County Council [2010] EWCA*, the key consideration is whether the proposal would result in a deliberate action. Whilst this ruling focussed on Article 12(b), it logically follows from the wording of both 12(a) and 12(b) that the principles apply to Article 12(a). The ruling concludes that a “deliberate” act is an intentional act knowing that it will or may have a particular consequence. It follows from this meaning that where an activity is judged *unlikely* to lead to harm to a protected species, then if harm does unexpectedly occur it is unlikely that it will have occurred “deliberately”.

An overall ecological appraisal of the land around the turbine site is provided. This notes that existing buildings and woodland hold negligible potential for bat roosts, with floodlighting and traffic further discouraging them. The extent and diversity of the habitat, as well as physical barriers to migration such as the M42 and surrounding roads, limits the potential for nesting birds, amphibians (including Great Crested Newts), reptiles, otters and voles, and dormice. No badger setts exist on or close to the site.

Whilst there is no record of bats within 1 kilometre of the site, the surrounding woodlands have foraging potential with bats following such linear features. The *Morge* ruling found that each case has to be judged on its own merits, and a species by species approach is required. Despite pre-application discussions with Natural England concluding that no bat survey work was necessary, a bat survey was undertaken. This did identify a limited presence of this Common Pipistrelle bats – but away from the proposed siting and mostly commuting. Coupled with the intention to remove some trees in the immediate vicinity, the extent of activity places any the risk of bat mortality in the lowest risk category. There is thus suitable mitigation that the turbine is, on the balance of probability, *unlikely* to lead to harm.

In light of the above, it is considered that there would be no deliberate act occurring if a bat fatality occurred in respect of the turbine. It is considered that the Council has satisfied its legal duty under Regulation 9(5) of the Conservation of Species and Habitats Regulations 2010.

Observations

The nature of this application requires a number of technical assessments, surveys and reports to be undertaken to inform the determination. Many of the representations received provide specific comments which can be grouped under headings. As such, the report is set out in a manner to consider these grouped impacts in turn.

a. Ecology and habitat (bats, nesting birds and bird strike risk; and tree removal)

Matters pertaining to bats are discussed above. Warwickshire Wildlife Trust seeks a suitable separation between the turbine and those trees to be retained. This can be easily achieved such that micro-siting will not undermine this necessary separation. They also seek the introduction of bird nesting boxes to compensate for the loss of trees in order to provide the above separation. The site is not on a regional or local bird migration corridor.

It is acknowledged that there will be some loss of trees in order to meet the ecology objectives above as well as to install the necessary foundations. An Arboricultural Implications Assessment (AIA) is provided. This identifies the removal of a tree group immediately under and adjacent to the site, and proposes compensatory planting. The trees to be removed are not considered to be of significant amenity value to warrant protection in their own right, and peripheral groups will remain in order to provide some screening of the lorry park from western aspects. Subject to condition, the proposal here is considered to be acceptable.

b. Noise and vibration (mechanical noise, aerodynamic noise, and vibration)

Vibration is not considered to be of issue here given sufficient distance to residential receptors and the 24 hour use of the service station by HGVs and domestic vehicles. Noise associated with wind turbines is two-fold – (1) the noise from the hub and gearbox (mechanical noise), and (2) the passing of the blades through the air (aerodynamic noise), including the ‘blade swish’ or Amplitude Modulation (AM) effects increasingly referred to in high profile cases.

A noise profile of the turbine is provided with the application, in accordance with technical guidance ETSU-R-97 as outlined in PPS22. A background noise assessment is also provided. Night time noise limits should not exceed 35dbA at the nearest residential receptor, and 45dbA during the day. It is clear that beyond 680m, noise from the turbine will fall below 35dbA, but this does not account for the ‘masking effect’ of background noise. When this is factored in, the nearest dwelling some 380 metres distant already suffers from a background noise level greater than daytime recommendations (from the A5 and

M42), whilst the next nearest properties on Mickleton at Stonydelph suffer from a background level greater than the noise breakout from the turbine. The potential for AM effects is negligible given it is only a single turbine of medium scale, the need for particular wind conditions, and the distance to receptors.

The Environmental Health officer has considered the noise profile and background noise assessment and finds there to be no issue. However a precautionary approach is recommended and he asks that a condition limiting noise levels at receptors to 5dbA above background levels is attached, with the turbine capable of being shut down to allow relevant monitoring in light of a complaint.

c. Visual and landscape impact

A number of visualisations have been provided, and some of these are attached at Appendix D. It is clear that the proposal will be visible at varying distances and from a number of locations. It must be remembered that the greater the distance from the turbine, the more it 'disappears' into the surrounding landscape, especially given the slim nature of its design and obstructions within that line of sight. Conversely whilst more visible when closer, the angle of viewing means that it will be mostly seen against the predominant grey, white and pale blue of the sky. The visualisations demonstrate just this, with the turbine beginning to blend with surrounding features and the sky when viewed from some distance. Officers have visited a multitude of locations in all directions from the site, including settlements to the north and viewpoints not provided by the applicant. Members will also recall visiting a number of key viewpoints, including those in Tamworth.

Long distance views are generally along the transport corridors, especially with built form and terrain obstructing or influencing many of the other viewpoints. Medium distance views are also generally along transport corridors, with the visualisation from the top of Mendip Way (Appendix C) highlighting this. Consequently views from within the built up areas of housing to the north, west and south-west, and that in Dordon very much depend on the orientation of dwellings and them being upon a rise in the terrain (e.g. the northern side of Stonydelph and the southern side of Hockley). This means that *unobstructed* views are generally limited to a relatively tight oval, similar to that shown in the Zone of Theoretical Visibility (ZTV) at Appendix E. The western edge of Dordon leads onto open and flat farmland across to the M42 meaning that views from this edge, Birch Coppice and Birchmoor are generally unrestricted across these wide panoramas. Members' attention is drawn to the context outlined here.

There are two points upon which to focus – (1) effect on landscape character and (2) impact on visual amenity. Dealing with landscape character first, regard is had to the assessment provided. A key merit of this site is a lack of statutory designations – it is not within Green Belt, it is not a National Park or an Area of Outstanding Natural Beauty. It is not within or on the fringe of a designated estate or other protected amenity. This is significant in assessing the importance of this landscape and how harm arising from the proposal should be weighted.

In terms of defining landscape character, the site falls within the 'Tamworth Urban Fringe Farmlands'. The Landscape Character Assessment (LCA)¹ describes this area as "*indistinct and variable*". The M42 motorway has a dominant presence, and the A5 further adds to this. The large scale industrial sheds at Tamworth and Birch Coppice have a significant urbanising influence here; along with the settlements of Dordon, located upon the crest of a gentle escarpment, and Tamworth. The spoil heap at Birch Coppice is particularly large and a visual detractor too. The farmland in the immediate area is generally devoid of hedgerows, with tree cover in this area low, such that mitigation of the urban influences is negligible. There are no regional or national footpath routes in this area, although local footpaths and bridleways do allow aspects beyond the highways.

It is not disputed that most onshore wind turbine developments carry significant landscape and visual effects. However significant effects are not necessarily *unacceptable*. Such proposals attract negative and positive responses depending on individual perceptions, with some viewing a turbine as attractive, acceptable and contributing to the well being of the natural environment, whilst others regarding it as unattractive and unacceptable. The response rate outlined above goes some way to reflecting this divide in opinion. The key here is whether the impacts are unacceptable to the degree which it runs against the objectives of planning policy, and it is that which must be established if a refusal is to be sustained. The context of the site and the extent of this scheme are thus the key factors.

The turbine, as noted, will 'disappear' into the landscape when viewed at distance such that it will not appear oppressive and dominant in the wider picture. Furthermore whilst this area of North Warwickshire is strictly rural, the urban influences mentioned above are significant influences on detracting from any true feeling of 'rural'. Those urban features already impact on the rural setting here and it is not considered that this proposal would undermine or change this character, with the turbine appearing as a component of the landscape. Indeed it is only the height which raises its prominence, with little to no mass associated with it, and this height is necessary in order to avoid turbulent airflows towards ground level. As such, it is not considered there is *unacceptable* harm to the intrinsic qualities of the existing landscape, with the proposal invoking little change on the LCA.

At closer proximity, the focus moves towards visual amenity impacts as opposed to landscape character. There will be a more 'local' degradation of views. The site context is again relevant, with the corridor nature of long and medium distance views, and the limited zone in which wide unobstructed panoramas are possible reducing the scope for such views to be degraded. The question is therefore whether the impact is so grand to be *unacceptable*.

¹ [North Warwickshire Landscape Character Assessment 2010](#)

The literal obstruction by the turbine itself is limited to the width of the tower and length of the blades (i.e. views are possible beyond and either side of it). This obstruction is akin to a telephone mast for instance. Nevertheless, it would not harmonise with the immediate and wider setting for the simple fact it is not a dwelling or industrial building, and there is thus a conflict with ENV12 and the thrust of design policy under Tamworth's Local Plan (although this decision must not be based on their policy). However, Members are also encouraged to consider that the original Birch Coppice proposals had the same point of conflict, and instead of similar mass this proposal merely has height.

Members are reminded of the *significant weight* given under PPS22 to the wider environmental and economic benefits of renewable energy projects, *whatever their scale*; and this is crucial in establishing the benchmark in which to assess the impacts against. The supplement to PPS1 also states that renewable energy should be capable of being accommodated where environmental, economic and social impacts can be addressed satisfactorily. The benefits of the proposal must therefore be balanced against the harm. The adverse visual impact here is considered to be limited to a certain area. This is established through the assessment above. Regard is also had to the fact that the lifespan on this turbine is limited (as outlined under (d) below).

Objections raise issue with the wider environmental and economic benefits as they consider the scheme will only benefit the applicant, as well as noting media coverage of the negative economic aspects of turbines, at the cost of adverse visual impacts to others. The companion guide to PPS1 confirms that the Council should not require the applicant to demonstrate the overall need for renewable energy, nor question the energy justification for this particular proposal. The draft NPPF echoes this and recognises that *“even small scale projects can provide a valuable contribute to cutting greenhouse gas emissions”*.

Nevertheless, justification is provided. The average wind speed at hub height at this location is around 6.7 metres per second. The Service Area's consumption between November 2010 and October 2011 was 1,768,001 kWh. The estimated output from the turbine is 915,805 kWh per annum – covering 51.7% of this annual demand. This is equivalent to the demand of approximately 192 homes (assuming the average household consumption of 4,766 kWh per annum²), thus reducing demand on centralised energy sources by an equivalent scale. This is of considerable merit. Members attention is also drawn to the fact that the height of the turbine is half that of full scale installations. Whilst the constraints of the site prevent such a full scale turbine, a higher wattage (and thus taller) turbine could have been proposed here in order to increase the percentage of annual demand met. However the height proposed demonstrates a realisation that a balance between

² www.decc.gov.uk/en/content/cms/statistics/regional/electricity/electricity.aspx

meeting 100% of annual demand and external impacts is necessary. In addition whilst there is no *direct* benefit to local homes or businesses, the average wind speed accounts for days with little or no wind, as well as days to the opposite end of the scale. Hence on the latter days, it could potentially generate more than is required by the service station at that point in time, and this surplus will be exported to the National Grid – thus having an *indirect* benefit. Members are encouraged to consider the wider benefits here as well as the guidance in PPS22 previously outlined.

Further argument is advanced under economic benefits to local and wider area, with the ability to reduce energy costs helping to safeguard local jobs, as well as creating short term employment during construction. However, these are considered to be peripheral benefits which do not carry sufficient weight in themselves.

Some representations call for consideration of cumulative impact, in line with PPS22. However this assessment must be done on the basis of extant permissions and existing installations – not on the basis of what might occur in the future. Such future proposals will be subject to the same consideration. At present, the Grendon Fields Farm turbine is the only consented installation within the local area. As this is some distance from the proposal and beyond settlements and undulating topography, there is not considered to be a cumulative impact.

Overall, it is considered that there are wider environmental and economic benefits resulting from this proposal, and it is considered these are sufficient to outweigh the visual harm caused in immediate vicinity.

d. Construction/decommissioning impacts (highway routing, cabling and temporary works)

The turbine is manufactured abroad and will be shipped to the UK. It is intended to use the national motorway network to reach junction 10, before using the existing access route into the service station. Swept path analysis demonstrates there is no need to remove structures or street furniture. Vehicles required for delivery and erection also meet these limitations, and no capacity issues are raised by the Highways Agency or Highway Authority.

The construction phase will involve a period of foundation installation before downtime due to the setting of the concrete foundation. The erection of the turbine will take around 2 to 3 days. Temporary compounds can be appropriately sited either on within the application site or on the adjacent hardstanding, with the cable routing to link to a substation in the south-west corner of the services. This substation is known to have sufficient capacity. The construction phase is not considered to pose an ecological or aviation risk (subject to conditions), nor cause harm to archaeological interests.

The projected lifespan for this turbine is 25 years. This is an important reminder that the development is only temporary and there will be decommissioning impacts. As it is not possible to project what ecological, highway and physical changes may occur around the site at that time, a condition to ensure prior submission of decommissioning detail is necessary.

e. Safety and amenity impacts (ground stability, failure, icing, highway safety and shadow flicker)

A number of objections raise concern over the safety impacts of a turbine sited above active areas of the service station. These relate to structural failure, fire, icing of the blades and ice throw upon rotation, and arcing of lightning off the blades. It is noted that recent media coverage of turbine failures will have raised the profile of such concerns. However the facts and specifics of those incidents must be considered. They all relate to different turbine models of differing construction types. The failures also occurred during extreme adverse weather conditions and were coupled by untimely technical failures of low probability. Ultimately it is for the applicant to consider the safety impacts of any such development proposal, as would be the case with new commercial or residential premises, or works to trees; and there is separate legislation which drives risk assessments in this respect (Occupiers Liability Act 1984). The Health and Safety Executive will not advise on such proposals.

Nevertheless, the applicant has sought to allay such concerns. The turbine is designed and certified to international standards to withstand sustained wind speeds of 112mph, and gusts of 156mph. Met Office records demonstrate the strongest recorded gust in the Midlands is 105mph. The likelihood of reaching 'survival' wind speeds is therefore extremely remote. The turbine is also programmed to slow in sustained wind speeds greater than 53.6mph. There is a lightning protection system incorporated into the turbine, with grounding of the turbine akin to that on a high rise or transmitter mast.

The turbine is also fitted with an ice detection system. This monitors for build up of ice on the blades as well as detecting minor imbalance arising from ice. It should be noted that for ice to form in the first instance, the weather conditions must be quite particular. The relevant thresholds have been defined from years of experience of turbines operating in Scandinavia and the Alps, such that the turbine will shut down and not operate until sensors demonstrate that the ice has naturally melted and ambient temperatures are acceptable. Many elements of the turbine are inflammable or fire retardant. All mechanic and electrical elements which could give rise to fire are fitted with sensors to reduce the likelihood of overheating, with fire detectors also fitted in the hub and top of the tower (since a ventilation system moves air from the bottom to the tower to the top). Regular maintenance will

further reduce any risk here. In addition to the above safety systems, there are further sensors which would cause automatic shut down if necessary. There is also a manual override. The companion guide to PPS22 advise that the topple distance should be the height of the turbine to the tip, plus 10%. This would equate to 73.4 metres. This only incorporates some of the lorry and car parks. Coal Authority records show no mine shafts or workings in this location which could accentuate any such risks.

When considering the likelihood of an incident occurring which could raise risk to life or property, it is clear that there is a chain of specific climatic, electrical, mechanical or structural failures which have to occur in the first instance, before factoring the chance of a receptor being affected. In this context there is an extremely remote safety risk here.

The Highways Agency and Highway Authority have considered the impact of the turbine on highway safety. In terms of visual distraction, pre-application discussions indicated that a minimum offset of the turbine height plus 50 metres from the M42 boundary would be necessary. There is approximately 140 metres to that boundary thus achieving this requirement. In addressing the potential for dazzle, the rotor blades and machine house are painted a matte grey, with any gloss level at a maximum of 30%. It is noted that both the Highways Agency and Highway Authority raise no objection to the application.

Consideration is also given to potential for shadow flicker to residential properties (created by passing of the blades across direct sunlight). For it to cause health problems, the frequency of the flicker needs to exceed 2.5 hertz. The turbine would cause less than 1 hertz at most. Furthermore there are specific simultaneous conditions required: a sun close to the horizon, clear weather with no cloud or haze to reduce sunlight intensity, sufficient wind to turn the turbine at an adverse frequency, and alignment of the viewpoint with the sun and turbine with no obstructions or overshadowing.

PPS 22 states that *“flicker effects have been proven to occur only within ten rotor diameters of a turbine”*. The only residential property that is within 334m of the proposed turbine location is Kinsal Green, at 304m away. However this is outside of the 130 degrees either side of north which can be affected at these latitudes in the UK³. The turbine will not therefore cause any shadow flicker at nearby dwellings. Further consideration is given to the Travelodge, service station buildings and nearby offices. An assessment shows that for around 1% of annual daylight hours, there could be a residual risk to employees and customers. However this needs to be rated against the specific simultaneous conditions listed above, as well as considering that their

³ Para 73 of the Technical Annex to [Planning for Renewable Energy: A Companion Guide to PPS22](#)

presence in these buildings is transitory and sometimes seasonal. On balance, there is not considered to be an unacceptable impact here and the Environmental Health Officer raises no comments.

f. Heritage

The site is unconstrained by listed buildings or ancient monuments. It may be possible to obtain views of the turbine from listed buildings further away, but the setting of these interests is not considered to be harmed. Indeed the same consideration extends to Conservations Areas, especially those within Tamworth. However views from these Areas are often obstructed by existing buildings and at some distance from the proposal.

There are a number of recorded archaeological features within 1km of the site. However no request for further archaeological work has been received from the County Museum.

g. Civil and military aviation

The Ministry of Defence, along with Coventry and Birmingham Airports, have been consulted. No objection has been raised with the turbine sitting outside of safeguarded areas and within radar tolerances, although the MoD request conditions to inform them of construction dates and heights of construction equipment. The applicant provides further evidence of correspondence with National Air Traffic Services (NATS), airports and airstrips in the area, which raise no objections. The proposal will be topped with two static red lights, as is required under civil aviation regulations.

h. Electromagnetic interference (television, radio and communications)

The scattering of signal is less likely with turbines of the scale proposed. Ofcom were contacted by the applicant prior to application, identifying four links in the vicinity. However impacts are considered acceptable. The Midlands has also recently transferred from analogue to digital transmission of television programming. Digital signals are not affected by electromagnetic interference. Radio signals are also less susceptible to interference, and in any case there is a move towards digital here anyway. There is not considered to be an adverse impact here.

In summary, it is considered that there are no adverse impacts in respect of landscape character, noise and neighbouring amenity, ecology and habitat, highway and public safety, and aviation and interference risk.

The main focus here is thus the visual appraisal. Concerns in respect of visual amenity are appreciated, and Members will wish to consider any opportunity to resist the proposal. However such resistance must be based on policy and there being an unacceptable impact arising from the proposal. Appeal decisions relating to similar proposals have been considered in gauging the weight afforded to impacts and counter argument. As such, whilst there would be a significant impact on visual amenity in the immediate vicinity, the wider benefits are considered to outweigh any harm brought about by the proposal.

Recommendation

The application be **Granted** subject to the following conditions:

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

REASON

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

2. The turbine hereby approved shall be removed on or before 25 years from the date which the turbine is first used for electricity generation purposes or it ceases to be used for electricity generation purposes, whichever is sooner; with the blades, hub, tower, foundations, access track and associated equipment removed and the ground restored to its former condition unless otherwise agreed in writing by the Local Planning Authority.

REASON

In recognition of the limited life expectancy of the development hereby approved, and to ensure that the use does not become permanently established on the site.

3. The date which the turbine is first used for electricity generation purposes shall be confirmed in writing to the Local Planning Authority within 2 weeks of that date.

REASON

To enable the monitoring of requirements set out under condition 2.

4. The development hereby approved shall not be carried out otherwise than in accordance with the plans numbered TMSALP-1 and TMSASP-1 received by the Local Planning Authority on 1 December 2011; Appendix B to the 'Additional Planning Information' statement received by the Local Planning Authority on 1 December 2011; the plan numbered LP-1 and the Tree Protection Measures outlined at paragraphs 3.5 and 3.6 of the 'Arboricultural Implications Statement & Tree Protection Plan' dated 15 July 2011, received by the Local Planning Authority on 1 December 2011; and the New Access Track Construction Method detailed at 6.5.1 of the 'Additional Planning Information' statement received by the Local Planning Authority on 1 December 2011. The turbine shall be an Enercon E33 330kW model in off white colour, with hub height of 50m and maximum height to blade tip of 67m, and permanently maintained in accordance with these approved details and plans.

REASON

To ensure that the development is carried out strictly in accordance with the approved plans; to ensure that the ecological, noise and visual impacts of the turbine do not vary during the lifetime of the turbine; and to ensure that there is no detrimental impact to highway safety.

5. Prior to the decommissioning of the turbine, details of the routing and access, manner of dismantling and disposal of materials (accounting for ecological, highway, safety and amenity impacts relevant to the date of decommissioning) shall be submitted to and approved in writing by the Local Planning Authority. Decommissioning shall then be carried out in accordance with these approved details.

REASON

To ensure the highway, ecological, noise and aviation safety impacts can be properly assessed in the context of the area at the time of decommissioning.

6. Tree 3 and group TG4 as shown on the plan numbered TPP-1 of the 'Arboricultural Implications Statement & Tree Protection Plan' dated 15 July 2011, received by the Local Planning Authority on 1 December 2011 shall be removed prior to construction works commencing. A 30 metres distance shall also be maintained to Tree group TG5, measured from the nearest tip of the turbine blade, as

shown on the plan numbered TPP-1, with any necessary trees removal to occur prior to construction works commencing. No other trees shall be removed.

REASON

To avoid impacts on key foraging routes of a European Protected Species.

7. Prior to commencement of development, no less than 160 trees shall be planted in or immediately adjacent to Area B as shown on the plan numbered LP-1 of the 'Arboricultural Implications Statement & Tree Protection Plan' dated 15 July 2011, received by the Local Planning Authority on 1 December 2011. The species mix shall be of a native mix, drawing on those species removed in tree group TG4.

REASON

To ensure that replacement planting is achieved on a 2:1 ratio in order to ensure there is no net loss of biodiversity at the site.

8. The landscaping and planting scheme referred to in condition 7 shall be implemented within six calendar months of the date of this permission or prior to development commencing, whichever is sooner; and in the event of any tree or plant failing to become established within five years thereafter, each individual tree or plant shall be replaced within the next available planting season, to the satisfaction of the Local Planning Authority.

REASON

So that new planting becomes established in order to ensure there is no net loss of biodiversity at the site.

9. Prior to commencement of development, a scheme for the provision and type of bird boxes and their proposed locations across the site shall be submitted to the Local Planning Authority for approval in writing. The approved scheme shall then be implemented prior to removal of trees as detailed in condition 6.

REASON

To accommodate the temporary loss of bird nesting habitat on site.

10. Any noise generated by the wind turbine shall not exceed the greater of 35dB(A) or 5dB(A) above background noise (LA90,10min), at wind speeds within the site not exceeding 10 metres per second when measured in free field conditions at any residential receptor (in existence at the time of the permission). The noise emission values for the wind turbine shall include the addition of any tonal penalty as recommended in ETSU-R-97. In order to establish this measure, the operator will be required to shut down the wind turbine at the request of the Local Planning Authority so that the operating and background noise levels can be compared. This condition shall apply for both day and night time periods. If the noise from the wind turbine is found to exceed the above limits, the Local Planning Authority may require that the turbine be shut down until the issue is resolved. The prior written approval of any corrective or mitigation measures shall then be necessary from the Local Planning Authority, and such measures shall be installed/implemented

prior to the turbine being brought back into use and thereafter permanently maintained as approved.

REASON

To protect the amenities of nearby residential property.

11. Prior to commencement of development, the applicant shall notify the Ministry of Defence Safeguarding Team of the date of commencement of works, the intended duration of works, the maximum height of construction equipment, and the exact latitude and longitude of the turbine. This notification shall also be copied to the Local Planning Authority.

REASON

In the interests of air traffic safety and civil defence.

Notes

1. The Development Plan policies which are relevant to this Decision are as follows: North Warwickshire Local Plan 2006 (Saved Policies): Core Policy 2 (Development Distribution), Core Policy 3 (Natural and Historic Environment), Core Policy 11 (Quality of Development), ENV1 (Protection and Enhancement of Natural Landscape), ENV3 (Nature Conservation), ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV9 (Air Quality), ENV10 (Energy Generation and Energy Conservation), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV16 (Listed Buildings, Non-Listed Buildings of Local Historic Value and Sites of Archaeological Importance (including Scheduled Ancient Monuments) and TPT1 (Transport Considerations In New Development); West Midlands Regional Spatial Strategy (Phase 1 Revisions January 2008): POLICY EN1 (Energy Generation).
2. The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority. It should also be noted that this site may lie within an area where a current licence exists for underground coal mining. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com.

Justification

The proposal conflicts with saved policy ENV12 of the North Warwickshire Local Plan 2006. However, the wider environmental and economic benefits arising from the development are considered sufficient to outweigh the visual harm caused in immediate vicinity. Otherwise the proposal is not considered to bring harm to landscape character, with the turbine forming a component of the existing landscape, which is already subjected to considerable urban influence. Risk to protected and other species is either negligible or suitably controlled by condition such that, on the balance of probability, harm is not considered to be likely; highway safety impacts are considered

satisfactory; construction and decommissioning impacts are considered acceptable subject to conditions; neighbouring amenity impacts are considered acceptable; and noise concerns are not considered to be of issue given the qualified assessment of likely impacts and ability to limit the use of the turbine if noise is found to exceed recommended levels. Matters relating to the impact on the setting of heritage assets, aviation and safety implications, and interference with electromagnetic signals are all considered acceptable. The proposal is therefore in accordance with saved policies Core Policy 2, Core Policy 3, Core Policy 11, ENV1, ENV3, ENV4, ENV6, ENV8, ENV9, ENV10, ENV11, ENV16 and TPT1 of the North Warwickshire Local Plan 2006; the West Midlands Regional Spatial Strategy (Phase 1 Revisions January 2008): POLICY EN1; National Planning Policy Guidance: PPS1, Planning and Climate Change: A Supplement to PPS1, PPS22, Planning for Renewable Energy - A Companion Guide to PPS22, PPS24, the Overarching National Policy Statement for Energy (EN-1), the National Policy Statement for Renewable Energy Infrastructure (EN-3) and draft National Planning Policy Framework (July 2011); and Technical Guidance: The Assessment and Rating of Noise from Wind Farms (ETSU-R-97: September 1996). There are no other material considerations that indicate against the proposal; and there is not considered to be conflict with Article 12 of the EU Habitats Directive.

BACKGROUND PAPERS

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

Planning Application No: PAP/2011/0619

Background Paper No	Author	Nature of Background Paper	Date
1	Case Officer	Screening Opinion	01/08/2011
2	The Applicant or Agent	Application Forms and Plans	01/12/2011
3	Case Officer	Email to Councillors	05/12/2011
4	Warwickshire Wildlife Trust	Consultation reply	09/12/2011, 14/12/2011
5	Birmingham Airport	Consultation reply	09/12/2011
6	David C Hart	Representation	19/12/2011
7	Richard Cox	Representation	19/12/2011
8	Zoe Hodgins	Representation	19/12/2011
9	Nigel Bullock	Representation	19/12/2011 23/12/2011
10	Steve Hollowood	Representation	19/12/2011
11	T G Barge	Representation	19/12/2011
12	John Bonner	Representation	19/12/2011
13	Kevin Caveney	Representation	19/12/2011, 30/01/2012
14	Highways Agency	Consultation reply	19/12/2011
15	Ian Warner	Representation	20/12/2011
16	Richard Miller	Representation	20/12/2011
17	Ministry of Defence	Consultation reply	20/12/2011
18	Case Officer	Email to Coleshill & District Civic Society	20/12/2011
19	Julie Newell	Representation	21/12/2011
20	Alan Newell	Representation	21/12/2011
21	Graham Hadley	Representation	22/12/2011
22	Peter Ward	Representation	22/12/2011
23	Case Officer	Email to HFD Tamworth	22/12/2011
24	John Barry	Representation	23/12/2011
25	Pauline Wilson	Representation	23/12/2011
26	CPRE	Consultation reply	23/12/2011
27	Betty Bullock	Representation	26/12/2011
28	Duncan Shaw	Representation	28/12/2011
29	Karen Ballard	Representation	29/12/2011
30	Kevin Usher	Representation	29/12/2011
31	John Wakeman	Representation	30/12/2011
32	Andrew Smith	Representation	30/12/2011
33	Ms D Veasey	Representation	31/12/2011
34	Marie Baldwin	Representation	01/01/2012
35	Mr & Mrs B Barlow	Representation	03/01/2012

36	Paul Doxey	Representation	03/01/2012
37	David Cameron	Representation	03/01/2012
38	Mr K F Horton	Representation	05/01/2012
39	Gary Heath	Representation	06/01/2012
40	Axel Fauveau	Representation	09/01/2012
41	Mark Burrows	Representation	10/01/2012
42	Dordon Parish Council	Consultation reply	10/01/2012
43	Agent	Email to Case Officer	12/01/2012
44	Tamworth Herald	Newspaper article	12/01/2012
45	Sheryl Blower	Representation	13/01/2012
46	Agent	Email to Case Officer	13/01/2012
47	Environmental Health Officer	Consultation reply	16/01/2012
48	Tamworth Borough Council	Consultation reply	23/01/2012
49	Head of Development Control	Notes of Members site visit	28/01/2012
50	Case Officer	Email to Residents Group chair	30/01/2012
51	Agent	Email to Case Officer	02/02/2012
52	Petition carrying 225 objections		02/02/2012
53	Mrs D Meacham	Representation	20/02/2012
54	Leader, Tamworth Borough Council	Email to Case Officer	15/02/2012
55	Case Officer	Email to Leader, Tamworth Borough Council	22/02/2012
56	Petition carrying 202 objections		02/03/2012
57	Agent	Email to Case Officer	07/03/2012

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

(4) Application No: PAP/2011/0623

Junction 10 Service Station, Tamworth Motorway Services Area, Green Lane, Dordon

Erection of a single 67 metre tall, 330kw wind turbine and associated infrastructure, for Mr Tony Raven (Moto Hospitality Ltd)

Introduction

This application is reported to Board given the sensitivity of the proposal. This report is intended as an interim report only, as the consultation is open and a formal assessment of the proposal underway.

The Site

The proposed siting is within the M42 junction 10 service station adjacent the lorry parking area. There is substantial planting around the service station, with semi-mature to mature tree planting throughout. To the north and west lie industrial units within the Tamworth Borough, with residential development beyond these. There is further industry to the south-west beyond which is further residential development. The A5 and M42 surround the site, with relatively flat farmland to the east and south. Birch Coppice and the associated mound lie to the south-east, with Dordon to the east and Birchmoor to the north east.

The landscape in this area is generally flat meaning that long distance views of the site are quite possible. However there is obvious human influence in this area, with the industrial buildings within Tamworth and Birch Coppice have a distinct influence on the landscape character here, and the A5 and M42 having a further urbanising effect. The residential estates within Tamworth and the Dordon/Polesworth settlement further add to the human influence on this landscape.

The Proposal

It is intended to erect one 67m to tip (50m to hub) wind turbine and associated monitoring/control equipment. The turbine will primarily provide for the needs of the service station before feeding surplus electricity into the national grid.

Background

The proposal was assessed in respect of the Environmental Impact Assessment (EIA) Regulations 1999 in August 2011. Whilst the proposal is classed as development under paragraph 3(i) of Schedule 2 to the Regulations, it has been concluded that due to the lesser scale of this wind turbine (compared to full scale wind farms); a lack of statutory and local constraints in respect of ecology, heritage, aviation and land designations, the presence of adequate statements and information to address noise and ecological concerns, and the proximity to the strategic road network; that the development is not considered to be EIA development such that the submission of an Environmental Statement is not required.

Development Plan

North Warwickshire Local Plan 2006 (Saved Policies): Core Policy 2 (Development Distribution), Core Policy 3 (Natural and Historic Environment), Core Policy 11 (Quality of Development), ENV1 (Protection and Enhancement of Natural Landscape), ENV3 (Nature Conservation), ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV9 (Air Quality), ENV10 (Energy Generation and Energy Conservation), ENV11 (Neighbour Amenities), ENV12 (Urban Design) and TPT1 (Transport Considerations In New Development).

West Midlands Regional Spatial Strategy (Phase 1 Revisions January 2008): POLICY EN1 (Energy Generation).

Other Relevant Material Considerations

Government Advice: PPS22 (Renewable Energy), Planning for Renewable Energy – A Companion Guide to PPS22, Overarching National Policy Statement for Energy (EN-1), National Policy Statement for Renewable Energy Infrastructure (EN-3), The Assessment and Rating of Noise from Wind Farms (ETSU-R-97: September 1996), and the draft National Planning Policy Framework (NPPF).

Consultations

A number of statutory consultees and qualified bodies have been approached. These include Ministry of Defence, Birmingham Airport, Coventry Airport, Campaign for the Protection of Rural England (CPRE), Warwickshire Wildlife Trust, RSPB, Warwickshire County Council Highway Authority, the Highways Agency, NWBC Environmental Health, Tamworth Borough Council, Dordon Parish Council, Polesworth Parish Council and Baddesley Ensor Parish Council.

At the time of writing, various site notices are to be erected in the area including within Tamworth. In addition notification letters are to be sent to properties in the immediate area that will likely have direct sight of the proposal.

Local members of the Dordon, Polesworth West and Baddesley and Grendon Wards, along with the Chair and Vice Chair of the Planning Board were notified of the application on 5 December 2011.

Representations

At the time of writing, none have been received.

Observations

It is not intended to discuss the policy implications and merits of the application at this stage given the consultation period is open. Indeed, at the time of writing officers are waiting for consultation replies from statutory and technical consultees to inform the principle of development. Formal assessment of the application against Development Plan policy and material guidance, along with reference to representations made, is intended in time for presentation at the January or February Planning Board.

Notwithstanding this, the visual and landscape impacts can be considered at an early stage and without reference to technical reports or qualified opinion. Members should be aware of the zone of theoretical visibility and the visualisations produced by the applicant, which are attached at Appendix A. A detailed Planning Statement is also provided, and Members who are particularly interested in this item are encouraged to obtain a copy. The Board is therefore asked to consider whether a tour of the locale, visiting key vantage points, would be necessary and beneficial.

Recommendation

That the above report is noted, and the Board undertake a site visit prior to determination of this application. Members who are particularly interested in this item are encouraged to obtain a copy of the detailed Planning Statement from the Case Officer.

APPENDIX B



Site location

APPENDIX C

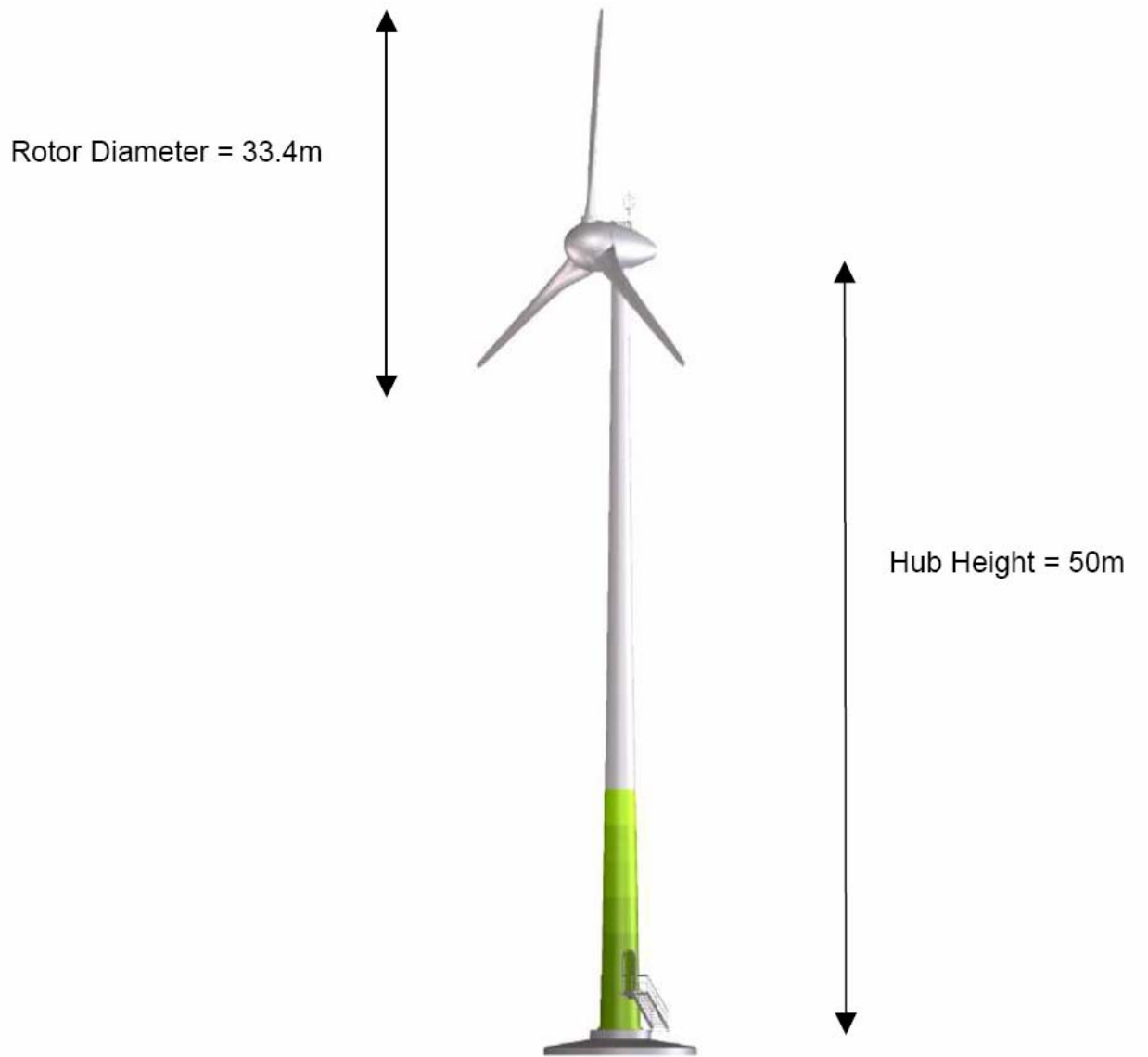
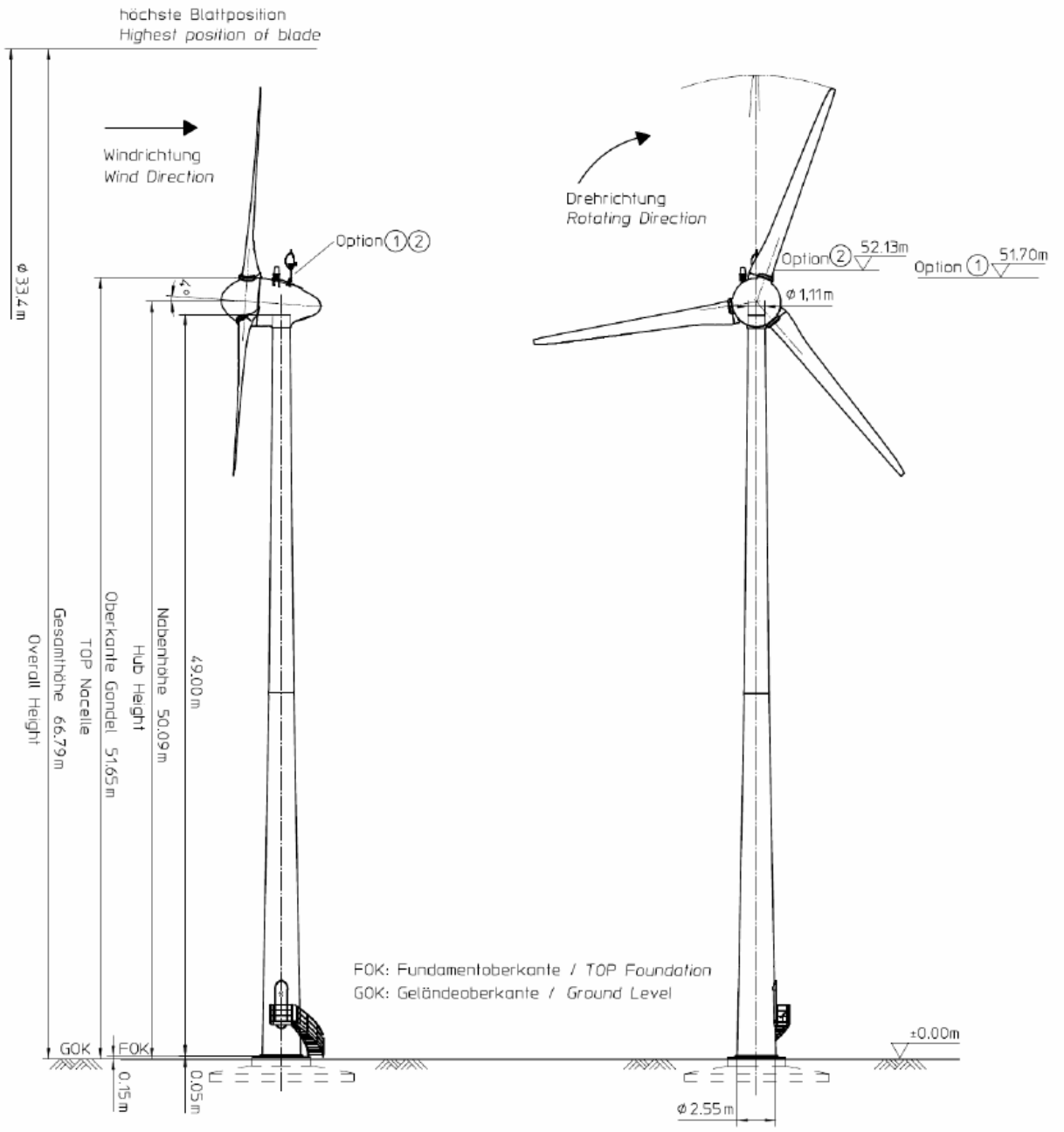
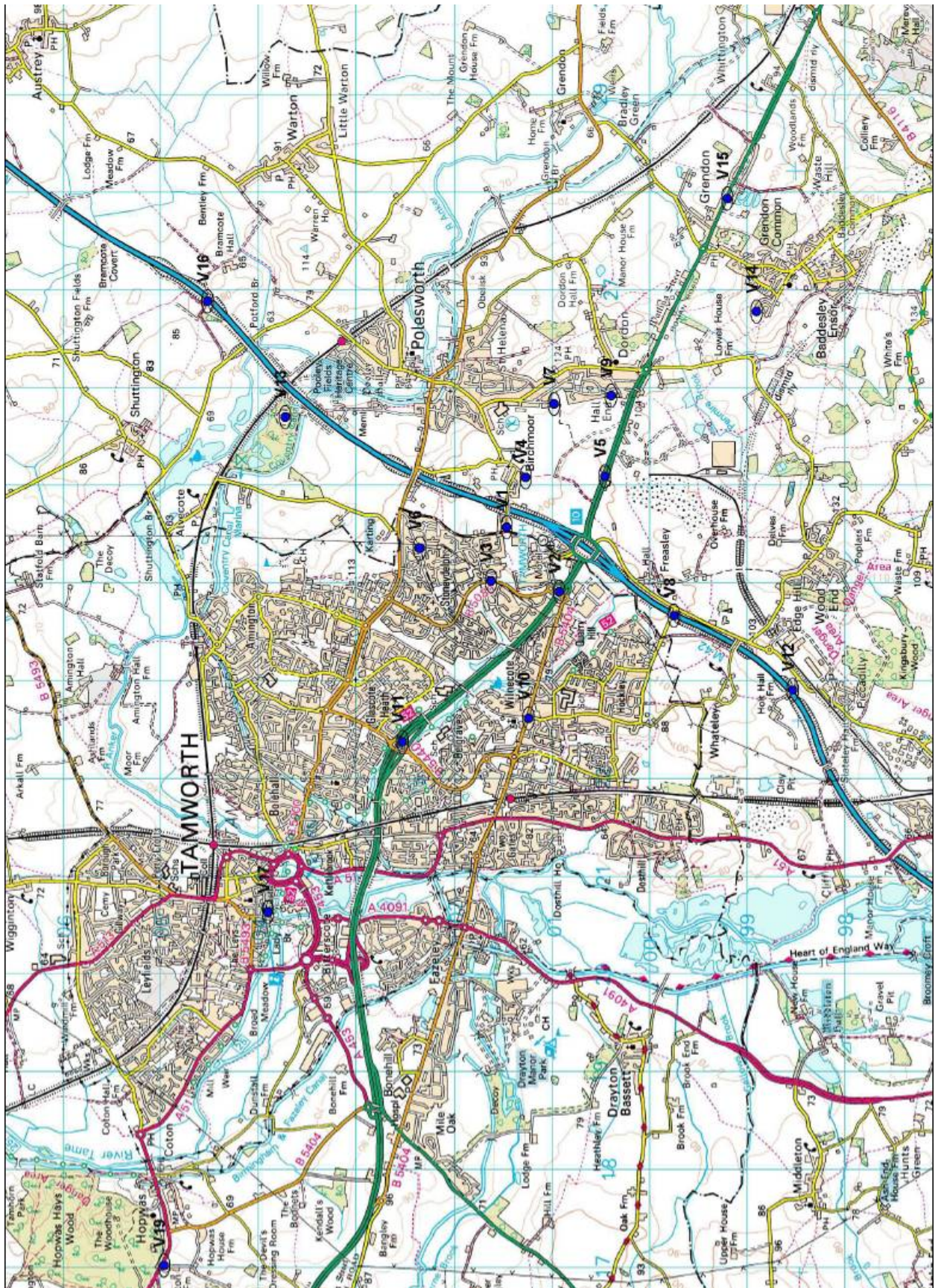


Figure 1: Enercon E33 330kW

Note: colouring to base not proposed here



APPENDIX D



Photomontage locations



Location V4: Top of bridleway leading from Cockspur Street



Location V5: A5 Watling Street



Location V6: Chiltern Road/Mendip Way, Stonydelph



Location V8: Overwoods Road bridge over M42

APPENDIX E

Zone of Theoretical Visibility: 5km Radius Exclusions Added; Half of Tower Visibility

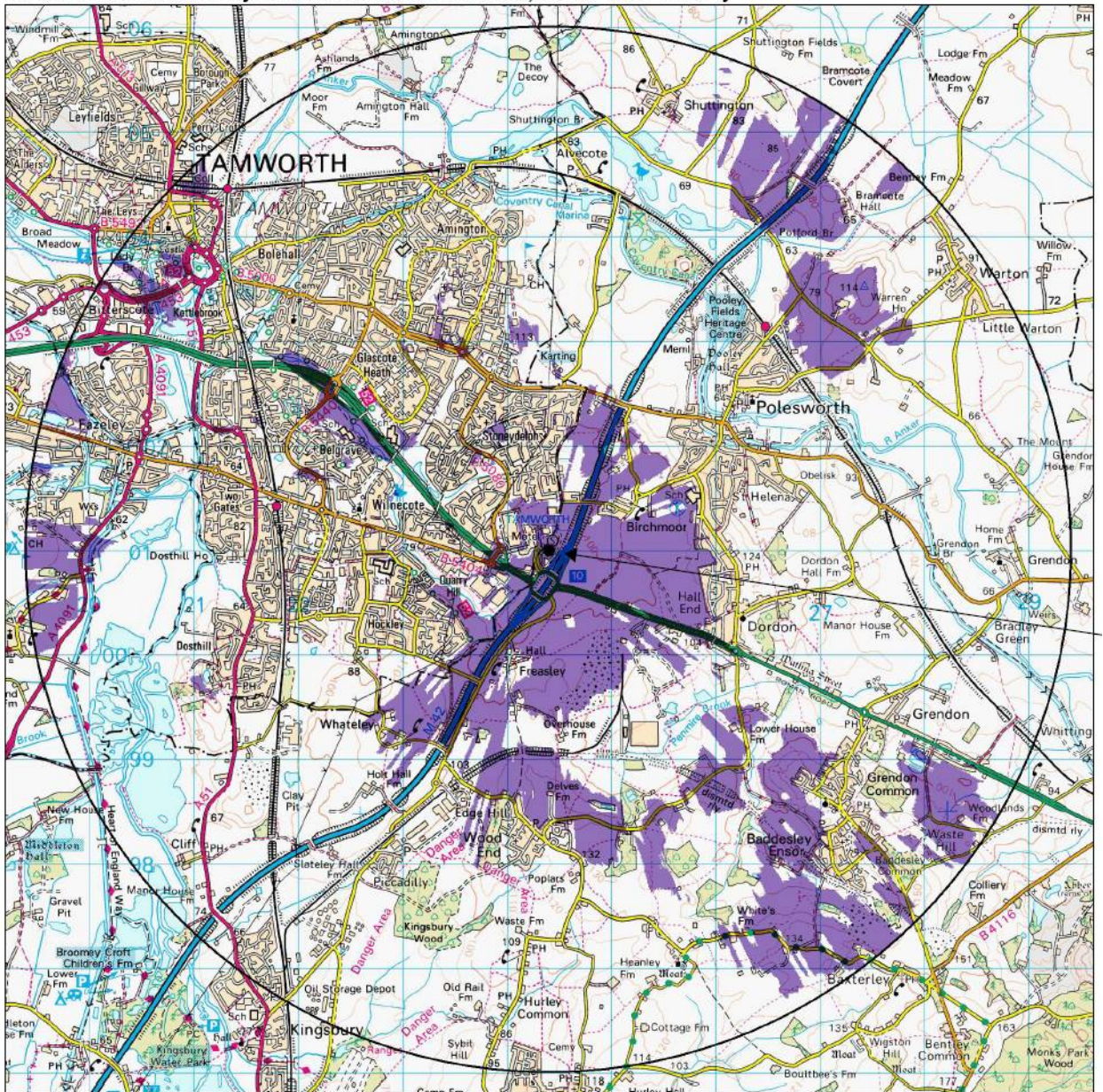


Figure D1: 5km Exclusions Added ZTV Map Showing Visibility of Top Half of Turbine Tower

(5) Application No: PAP/2011/0634

The Common, Baddesley Ensor, Warwickshire,

Creation of village pond at Land between "Crow Hill" and "The Common" Baddesley Ensor, for

Linda Evans - Friends of Baddesley Common

Introduction

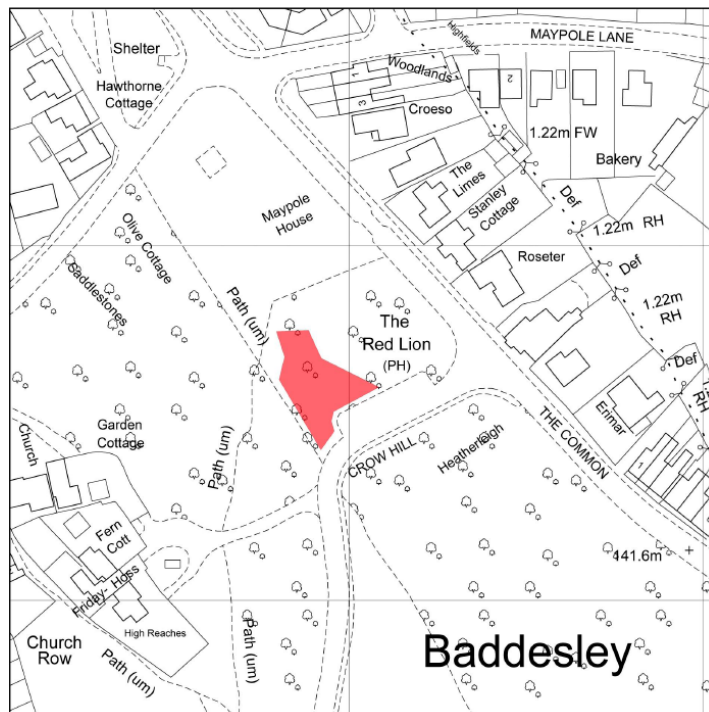
This application is referred to the Board at the request of a local member, concerned about potential impacts.

The Site

The site comprises an area of land in the south east corner of the Lower Common at Baddesley Ensor which lies adjacent to The Common and Keys Hill. The area (approximately 25 metres x 15 metres) currently comprises scattered trees, tall herbs and rough grassland.

The Proposal

In short this is to create a village pond at the location shown below.

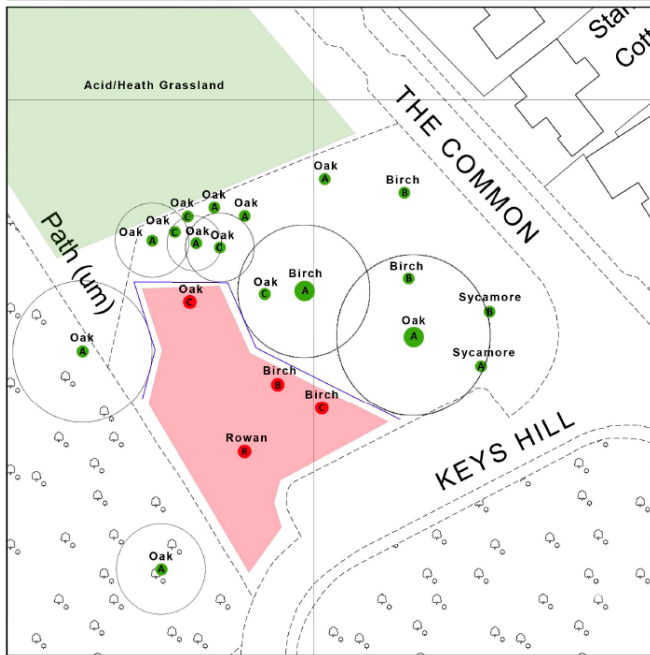
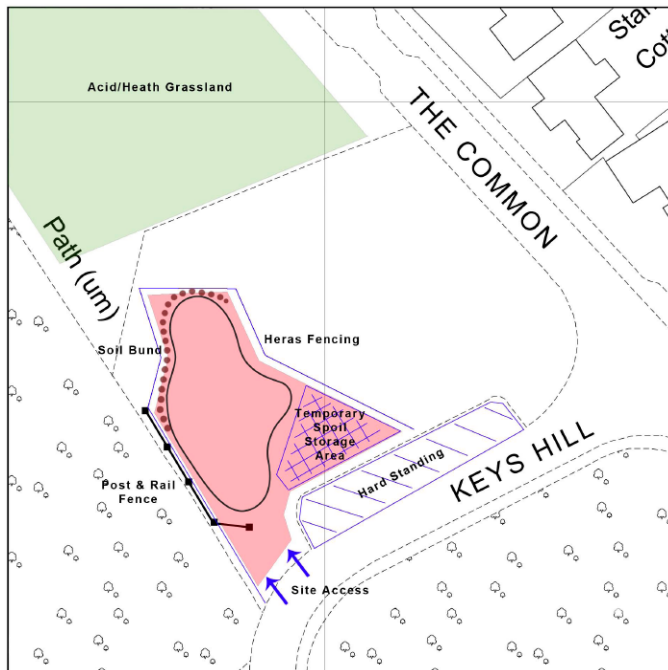


The applicant indicates that the specification and design of the pond should fulfil the following objectives:

- To create a high quality freshwater habitat for wildlife that increases biodiversity in the area;
- To create an aesthetic enhancement to the landscape of the village of which the residents can be proud;
- To create a safe amenity for school children to learn about the natural world and to enjoy its diversity;
- To create a wetland habitat that is easily maintained and managed by volunteers from Friends of Baddesley Common.

The pond is primarily designed to maximise the wildlife value of the site and includes the following design features: -

- shallow sloping sides with a wide area of shallow water and areas of native marginal and emergent vegetation which blend in to the existing landscape ;
- underwater bars and shoals to benefit aquatic plants and capture sediment;
- a maximum depth of 1.0m which allows for submerged plant communities, protection for invertebrates and amphibians over the winter period and water retention in summer;
- an irregular shape to optimise the edge to area ratio and thus increases the pond margins where most of the wildlife interest occurs;
- access to the water edge to facilitate pond dipping by local Primary School children;
- low soil bunds used to protect the heath land and acid grassland habitat to the north and the footpath to the west from run off during winter high water level;
- a low post and rail fence dividing the pond from the 'Black Path' footpath to ensure pedestrians or cyclists do not inadvertently walk or ride into the pond (subject to application under S.38 Commons Act 2006 (Consent for works)).



The illustrations above show the general layout of the pond and illustrates that it will only necessitate the removal of four trees.

The application details a planting proposal and maintenance regime; a construction method statement, a reptile survey and a method statement to avoid harm to protected species.

The planting will be undertaken in accordance with the zoning as shown below

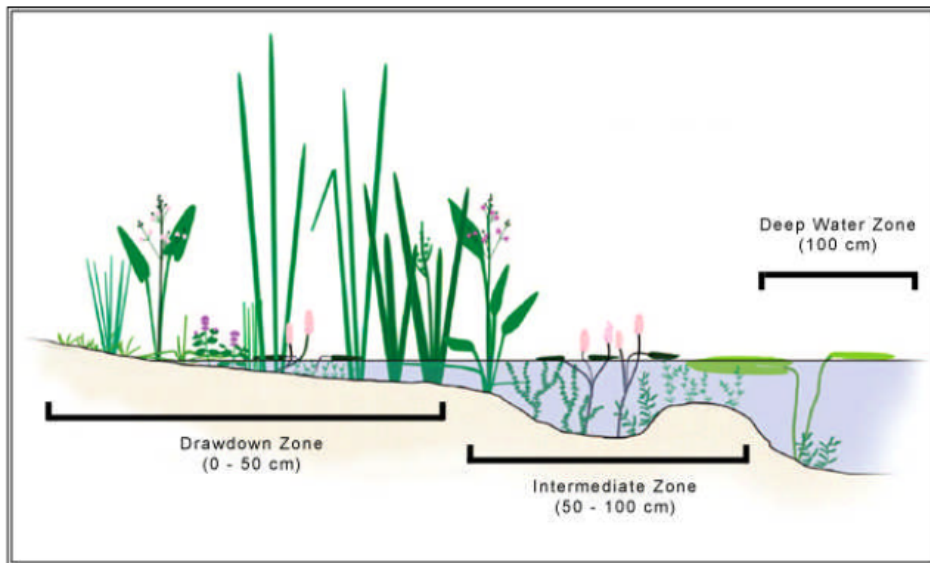


Figure 2: Edge zones of proposed pond

Background

The land is Registered Common Land. If planning permission is granted, the applicants will need to apply for consent from the Secretary of State under Section 38 of the Commons Act of 2006 to construct works on common land.

The 2 hectares of acid/heath grassland on the site have been recognised as a Site of Importance for Nature Conservation (SINC). The applicant indicates that there is no acid grassland or heath land present on the site of the proposed pond and advises that the chosen site historically contained a previous village pond which was in-filled in the 1930's.

A planning application for a similar proposal was submitted in 2010 but was subsequently withdrawn following the receipt of concerns raised by consultees, including English Nature; the Open Spaces Society and the Council's Tree Officer.

Development Plan

Saved Policies of the North Warwickshire Local Plan 2006 – Core Policy 3(Natural and Historic Environment), Core Policy 11 (Quality of Development), ENV1 (Protection and Enhancement of the Natural Landscape), ENV3 (Nature Conservation), ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV8 (Water Resources), ENV11 (Neighbour Amenity) and ENV14 (Access Design)

Other Relevant Material Considerations

Government Advice: Planning Policy Statement 9 – Biodiversity and Geological Conservation

Consultations

Environment Agency – Assesses the environmental risk as low in terms of pollution and flooding and therefore has no objection to the application.

Warwickshire County Council Highways Authority – Notes that the proposal differs from the previous application, in that the pond has been moved closer to Keys Hill and is shallower. The Highways Authority does not object to the position of the pond as it indicates that it has no record of accidents in the area. It offers no objection subject to conditions.

Warwickshire County Museum – No objection. The Museum confirms that old maps show there to have been a pond (or possibly a quarry) at this site.

Warwickshire Wildlife Trust – The proposed site is situated immediately to the north of Baddesley Common Local Wildlife Site (LWS). However, given that the LWS is separated from the site by Keys Hill, and taking account of the nature of the development, it is not considered that the proposal will have any adverse impacts on the LWS. Baddesley Common does support areas of dry heath and acid grassland which, given the scarcity of these habitats locally, are considered to be of county importance. On review of the Habitat Biodiversity Audit data for Warwickshire, Coventry and Solihull and the habitat map by Middlemarch Environmental Ltd, enclosed within the accompanying Project Report, I am therefore pleased to note that the proposed location has avoided these key features. In turn, Warwickshire Wildlife Trust raises no objection to the proposal subject to the full implementation of the proposed planting scheme, the construction management plan and the method statement to avoid impacts on protected species. We consider that suitably worded planning conditions should be imposed to achieve these ends.

Natural England – No objection. The pond is not likely to damage any habitat features that were the reason for the original objection from English Nature.

Environmental Health Officer - The site is a former village pond which has been in-filled at some stage between 1904 and 1913. Excavations at the site show that there is an element of made ground identifiable at the site (as would be expected). Whilst most of the made ground may be removed and disposed of at a suitably authorised facility (waste categorisation will be necessary for this) the remaining - and largely unidentified - made ground may have an impact on the water quality of the pond. In order to protect the water quality of the pond it will be necessary to assess the quality of the infill material that will remain on site (including that used in the creation of the low bunded areas at the perimeter of the pond). However, it has been suggested that the pond may be lined if the hydrological/hydrogeological setting is such that it is necessary. This may resolve any issues with contamination of water in the pond depending on the specification of the pond lining. However, I am not sure that it is being proposed for certain.

To date it appears that no chemical testing has been done on the infill material and no waste classification has been carried out for the material that will be removed from site. It is recommended that this is undertaken and the scope of sampling and testing is agreed with us in advance. The results of

the investigation and assessment of them should be presented to us and remediation (if necessary) proposed and agreed in advance too. Therefore, she raises no objection subject to conditions.

Warwickshire County Council (Rights of Way) - No objection

Severn Trent Water - No objection

Open Spaces Society - We do not wish to object to this application, since the applicants have assured us they will seek consent for the works under s38 of the Commons Act 2006 before implementing any decision.

Representations

Council for the Protection of Rural England – Supports this proposal to reinstate Baddesley's former village pond. It hopes that as much excavated material as possible will be accommodated within the scheme and there will be no need for the extensive use of HGVs to remove soil etc. Furthermore, as a community project, it would not expect there to be any importation of material for 'mounding', as has happened with pond creation elsewhere in the Borough.

A further letter of support has been received indicating that this development will increase the biodiversity of the area with minimal disturbance to wildlife. It also has the capacity to increase use of the common by local people for leisure purposes, children in particular. It therefore has the potential to increase understanding of the natural environment.

A letter of objection has been received indicating that in the writer's opinion this proposed development is totally unnecessary. The main concern is that it would be a child magnet and "as we know children and water do not go together". Also this site is in close proximity to the local chip shop and one would wonder how many discarded papers would be thrown into pond. The common was once a beautiful spot, but seems to be more of a scrubland now.

A further letter of objection with four signatories is attached as Appendix A.

Observations

The site lies outside the development boundary for Baddesley and Grendon, being on the Common Land which separates the two parts of the settlement. The proposed site is situated immediately to the north of Baddesley Common Local Wildlife Site (LWS). Baddesley Common does support areas of dry heath and acid grassland which, given the scarcity of these habitats locally, are considered to be of county importance. The site is not within the Green Belt.

Though the site lies outside the development boundary, the development does not propose new built development and is for a use which is potentially

compatible with the traditional use of the land. It is not considered that the proposed development is objectionable in principle.

The main considerations relate to the impact on the visual amenity of the area, the effects on the ecology and nature conservation interests of the locality, the effect on flooding and pollution and the effect on highway safety and on public safety.

From consultation responses detailed above it is apparent that none of the consultees raise objections in principle. The matters raised are all capable of being addressed through the inclusion of conditions on any planning permission.

The Environment Agency and Severn Trent Water do not raise flooding/water resources issues. The objectors concerns about potential for flooding can not be upheld.

The Open Spaces Society and Natural England are satisfied that the effect on the land as common land can be addressed through the Section 38 consent application.

The proposed location of the pond has avoided the areas of dry heath and acid grassland that are an important habitats locally, thus the Warwickshire Wildlife Trust and Natural England raise no objections concerning the nature conservation value of the land or the effects of the development on nature conservation interests.

The Highway Authority has no records to support the objectors concerns about highway safety and do not object to the proposed pond.

The revisions made to the scheme have ensured that the proposal minimises the effect on the loss of trees. Only 4 trees are proposed to be felled. Of these, one is a Rowan Tree which has a rotten trunk and another is a Silver Birch with a divided trunk. These trees thus have limited value or longevity. The proposal retains all but one of the oak trees in the locality. In the context of the whole of the tree cover at The Common the proposed tree loss will not cause material harm and would not be materially contrary to the provisions of Policy ENV4 of the Local Plan.

It is considered that there will be no significant adverse effects on the visual amenity of the area. The pond design is appropriate and the associated engineering works are minimal, comprising only low bunding, low level fencing and limited signage. Furthermore, the site is relatively distant from nearby dwellings and should not result in any significant harm to residential amenity.

An objector expresses the view that the applicant's claim of a pond having previously been at this location is unsupported by evidence, however, the Warwickshire County Museum confirms that old maps show there to have been a pond (or possibly a quarry) at this site. Additionally, the Warwickshire

County Museum confirms that there are no archaeological interests in the locality that would be affected by the proposed development.

Concerns have been raised about the possible public safety implications of an unattended pond on land used by the public as there are undoubtedly risks associated with drowning, particularly for children. In response to this the applicant advises that the wide shallow margins and gentle gradient to the maximum water depth coupled with the erection of a low post and rail fence adjacent to the public footpath makes the likelihood of accidental immersion slight. They are of the opinion that through education and liaison with the local school and vigilance by local people the site should pose no more risk than any other standing water. They advise that the Royal Society for the Prevention of Accidents (ROSPA) guidelines for water safety will be observed and 'No Swimming' signs will be erected. The applicant has been asked to indicate the number, size, design, materials and location of the proposed safety signs so that they can be considered as an integral part of the application, and has been asked to be aware that a reasonable balance needs to be struck between protecting the visual amenity of The Common and ensuring the safety of users of the area in any proposal. To date such a scheme has not been received but it is anticipated that it will be for presentation at the Board meeting. It is true that the creation of a body of water which is unattended does have inherent risks but the risk here will be no greater than any other village pond commonly found in English villages all over the country. The scheme is designed to reduce risk in some respects and the prevention measures that can be addressed through signage can be covered by the application of a planning condition. On balance the risk to public safety is not considered to be sufficiently large as to justify the refusal of planning permission.

The proposed pond will provide an addition to the recreational and educational resources of the area.

The proposal may therefore be supported subject to conditions.

Recommendation

That the application be **GRANTED** subject to the following conditions:

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

REASON

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

2. The development hereby approved shall not be carried out otherwise than in accordance with the Baddesley Pond Project document submitted by the Friends of Baddesley Common, dated December 2011 and the plans and cross sections contained therein received by the Local Planning Authority on 7 December 2011.

REASON

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

3. All the trees on the tree retention/removal plan (Appendix E of the Baddesley Common Pond Project Document) shown as "to be retained" shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

REASON

In the interests of the amenities of the area.

4. Prior to the commencement of development a scheme for a suitable access point from the public highway into the site for construction traffic, the provision of space within the site for the loading/unloading of vehicles and a signing scheme for the period of construction for the approach to the access along the public highway, shall be submitted to and approved in writing by the Local Planning Authority, in consultation with the Warwickshire County Council Highways Authority Area Team.

REASON

In the interests of safety on the public highway.

5. The development hereby permitted shall not commence or continue unless measures are in place to prevent/minimise the spread of extraneous material onto the public highway by the wheels of vehicles using the site and to clean the public highway of such material. Details of the scheme shall first be submitted to and approved by the Local Planning Authority in writing.

REASON

In the interests of safety on the public highway.

6. Prior to the commencement of development a scheme for the erection of safety signage shall be submitted to and approved by the Local Planning Authority in writing. The scheme shall specify the number, size, design, materials and location of the proposed safety signs.

REASON

In the interests of public safety.

7. The development hereby approved shall not be carried out otherwise than in full accordance with the planting schedule (Paragraphs 1.2 and 1.3), maintenance regime (Paragraphs 1.4, 1.5 and 1.6), the construction method statement (Section 3), and method statement to avoid harm to protected species (Section 8) of the Baddesley Pond Project document submitted by the Friends of Baddesley Common, dated December 2011 by the Local Planning Authority on 7 December 2011.

REASON

In the interests of amenity and the protection of nature conservation interests.

8. Prior to the commencement of development the following shall be submitted to and approved in writing by the Local Planning Authority:

A) a scheme for the chemical testing of infill materials to be imported to the site.

B) a site investigation of the nature and extent of contamination at the site.

The site investigation shall be carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The

remediation of the site shall incorporate the approved additional measures.

REASON

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Notes

1. Section 163 of the Highways Act 1980 requires that surface water shall not flow - so far as is reasonably practicable - from premises onto or over the highway footway/carrageway. The developer should, therefore, take all steps as may be reasonable to prevent water so flowing.
2. The conditions require the applicant / developer to notify the Highway Authority's Area Team prior to the commencement of the development. It should be noted that the costs incurred by the County Council in the undertaking of its duties in relation to the construction of the works may be recoverable from the applicant/developer. The Area Team may be contacted by telephone: (01926) 412515.
3. The applicant is advised that to comply with the condition relating to the protection of trees, the measures should be in accordance with British Standard 5837:2005 "Trees in Relation to Construction - Recommendations".
4. The proposal involves the felling of trees where there may be bats present that would be disturbed by the proposed development. You are advised that bats are deemed to be European Protected species. Should bats be found during the carrying out of the approved works, you should stop work immediately and seek further advice from the Ecology Section of Museum Field Services, The Butts, Warwick, CV34 4SS (Contact Ecological Services on 01926 418060).
5. The Development Plan policies which are relevant to this Decision are as follows:
North Warwickshire Local Plan 2006 (Saved Policies): Core Policy 3, Core Policy 11, ENV1, ENV3, ENV4, ENV6, ENV8, ENV11 and ENV14.
6. The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority. It should also be noted that this site may lie within an area where a current licence exists for underground coal mining. Any

intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com.

Justification

Though the site lies outside the development boundary, the development does not propose new built development and is for a use which is potentially compatible with the traditional use of the land. It is not therefore objectionable in principle. The development will not cause harm to visual amenity with minimal loss of trees, nor to residential amenity, the nature conservation interests of the locality will not be adversely harmed, with adequate preventative/warning measures the pond should not cause undue harm to public safety and there should be no substantial impact on highway safety or the water environment. The pond will add to the recreational/educational resources of the area. The proposal accords with the provisions of the above development plan policies.

BACKGROUND PAPERS

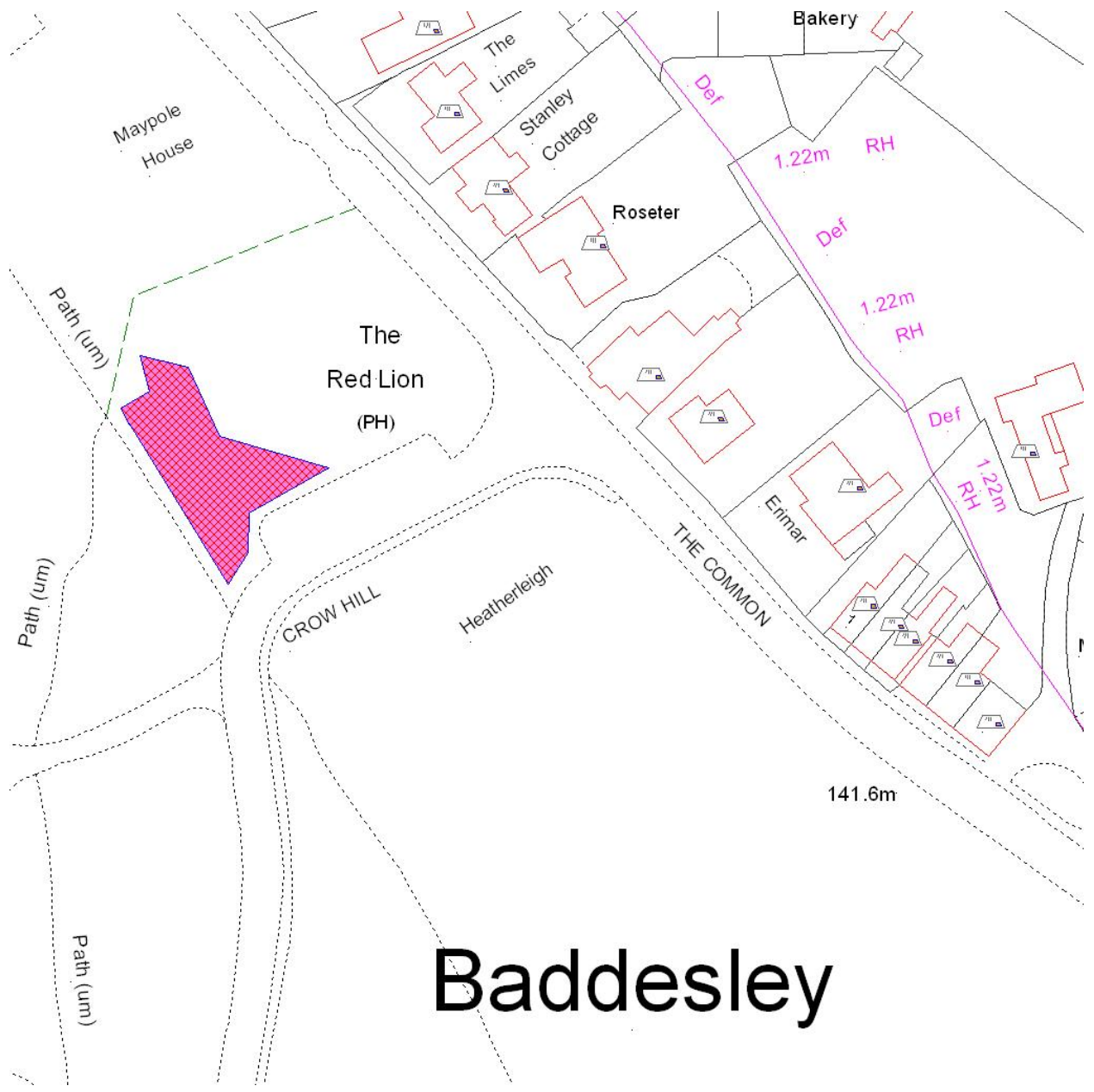
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2011/0634

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	7 12 11
2	Severn Trent Water	No objection	9 1 12
3	J Macdonald	Representation - Support	9 1 12
4	S Evans	Representation – Comments	12 1 12
5	Warwickshire County Council Rights of Way Officer	Consultation Reply	13 1 12
6	Council for the Protection of Rural England	Representation – Support	16 1 12
7	Warwickshire County Council Highways Authority	Consultation Reply	20 1 12
8	Natural England	Consultation Reply	20 1 12 27 1 12 17 2 12
9	Environmental Health Officer	Consultation Reply	2 2 12
10	Warwickshire County Museum	Consultation Reply	22 2 12 23 2 12
11	Environment Agency	Consultation Reply	27 2 12
12	Open Spaces Society	Consultation Reply	28 2 12
13	Warwickshire Wildlife Trust	Consultation Reply	23 2 12
14	I Coombes and others	Representation - objection	25 1 12

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.



Baddesley

APPENDIX A

North Warwickshire Borough Council
Planning Control
The Council House
South Street
Atherstone
Warwickshire
CV9 1DE

High Reaches
Crow Hill
The Common
Baddesley Ensor
Nr Atherstone
Warwickshire
CV9 2DZ

25th January 2011

Dear Madam,

Re: Application Ref PAP/2011/0634 – Creation of a village pond at Land between “Crow Hill” and “The Common” Baddesley Ensor.

We wish to put on record that we strongly object to the above Planning Application and would set out below our argument against the creation of a “Village Pond” on The Common at Baddesley Ensor:

We intend to append supporting documentation which are listed under the relevant appendices.

1) The Development Plan

We have consulted the North Warwickshire Local Plan (adopted July 2006) and refer to policies ENV1, ENV2, ENV3, ENV4, ENV11, ENV12, ENV14 and ENV15.

▪ ENV1

We do not believe that this development would enhance the existing landscape, and it would certainly add to the destruction of both acid grassland and trees that are to be removed within the designated area. Against ENV1 – 3.27 and 3.28.

It should be noted that the amount of trees on the common have increased significantly over the past 25 years, mainly due to a lack of any planned maintenance strategy, however whilst the trees require a regime of management, the numbers of nesting birds has increased dramatically. This increase has added significantly to the diversity of the area.

▪ ENV2

This policy clearly indicates that the prime aim is to maintain the open nature of Green Belts areas.

▪ ENV3

Having consulted warwickshire.gov.uk/biodiversity, Baddesley Common is registered as an SINC (Site of Importance for Nature Conservation) for being Lowland Heathland, with particular emphasis on Acid Grassland, Natural England (a consultee) have put forward their original objection (appendix 1) on the basis of the destruction of this rare habitat.

This habitat is also known as being associated with Adders (*Vipera berus*), which is an endangered species.

The Action for Wildlife Plan quite clearly sets out the Objectives and Targets which allow for the promotion and good management of this area

to improve the condition. A pond does exist within the Common which has previously been cleared by The Friends of Baddesley Common, and there is no benefit in removing grassland and trees to add another. The issues that exist with the upper pond will undoubtedly occur with the proposed pond, ie leaf drop and also Keys Hill has a camber which will naturally send run off from the road surface to the pond. There is a hardstanding at the top of the proposed pond, which is used as vehicle parking for the Red Lion Inn, diesel, petrol and oil spillage will also be transferred via ground seepage into the pond.

▪ ENV4

States – “Development will not be permitted if it would result in the loss of trees, woodlands or hedgerows that in terms of their historical, ecological, townscape or landscape significance make a positive contribution to the quality of the local environment.” The proposal relies on the removal of good quality trees that equate to 20% of the copse area, this is unacceptable and permission should be refused.

▪ ENV12

This proposed development does not utilise an existing or indeed pre existing feature. Evidence exists within the supporting information provided for the planning proposal and also testimony that a pond has never been in this location. The proposal will undoubtedly encourage undesirable opportunities for vandalism and the dumping of waste. There is also no valid reason as to how this proposal will make a positive contribution to the area, indeed it will be the opposite.

▪ ENV14

The proposed site for the “pond” and its design does not present safe and easy access, indeed the proposal for a dipping shelf for local children is in itself a highly unsafe proposal. The proposed pond stated as 1m at its deepest point and approximately 375m² In area. A number of cases have recently come to the public’s attention regarding drowning of youngsters in domestic ponds; the proposed pond is considerably larger than any domestic pond and will not be monitored at all times. There is also the real possibility that this pond will dry out, and this presents even further challenges for children to attempt to recover items that have become exposed, therefore creating additional dangers. The FoBC state that the risk apportioned to the pond is “low”, we do not have a pond on the site at present and therefore the risk is “nil”. Creating something that adds risk is not appropriate development. Any signage would also be inappropriate to the area.

▪ ENV15

This proposal falls foul of this policy as trees will be required to be removed. The site is also an SINC and a development of this nature would not enhance the area. The FoBC have consulted an Arboriculturalist, however the full report has not been submitted with the proposal. The trees that are noted to be removed are generally mature and in sound condition and compliment the copse of trees as they stand and therefore it is wholly inappropriate to remove these trees which we believe would damage the current ecology of the area.

2) Government Guidance

We believe that this proposal warrants refusal under PPS9 - Biodiversity and Geological Conservation (25th May 2006) as it goes against criteria and Natural England.

This proposed development also requires invoking a Section 38 under the Commons Act of 2006, which prohibits works, except with the consent of the appropriate national authority (the secretary of state), on registered common land. Whilst we understand that this revised scheme is not being opposed by the Open Spaces Society the proposal still goes against the CROW Act 2000. This proposed development should therefore not be permitted.

3) Planning Legislation

- The proposed development is not supported by the Local Plan and is also not supported by PPS9 (25th May 2006).
- The proposed development is not supported by Natural England see their original email appendix 1.
- The original proposed development was not supported by the Open Spaces Society (not originally consulted). See appendix 2 "Finding Common Ground" for more information alongside the original objection appendix 3. Open Spaces have subsequently reversed their original stance, however the fundamentals of the revised application are exactly the same as the previous application and should be rejected on the same grounds.
- DEFRA Common land consents policy guidance 2009, appendix 4, sets out clear criteria for consent under section 38 which we believe show that this proposal is not permissible and will be vehemently challenged

4) Design and appearance (The original report from 2010 contained appendices and reports omitted from this document)

In this heading we will refer to the supporting documentation Baddesley Common Pond Project- A Submission by The Friends Of Baddesley Common, December 2011, and comment on the various sections.

▪ Section 1 – Pond Design and Management.

The proposed pond has never been located at the site as shown, and there is no conclusive evidence to support its existence, even in the original Middlemarch documentation, ponds have existed on The Common but substantially lower down. It should be noted that the proposed site is both sloping and also not fed by any natural watercourse. A fence is proposed albeit low in nature, but would be contrary to S.38 Common Act 2006 and the CROW Act 2000.

The proposed site is dominated by a copse of trees some of which have been removed and thinned by The Friends of Baddesley Common, not as part of an ongoing management strategy, but obviously with the proposed pond in mind, as other areas of trees have remained untouched. These untouched areas are more of a safety issue especially on the highways borders where trees overhang and are potentially dangerous to traffic and pedestrians. The Common should be managed as a whole and not for specific projects and with good management the Acid Grassland and Heath could be extended which is to be encouraged.

We note the historical time line relating to the maps and would reiterate that a pond has never existed at the point proposed. The bore holes logs do not offer any information which would suggest that a pond existed.

Whilst the Environment Agency are surmising that the detail shown relates to a pond, It does not. We also note that Environment Agency will require an outfall in the event of a storm; the current details show an outfall that would increase Flooding of the area around the proposed pond this is of serious concern. We have read the Pond Design and Management statement from The Friends of Baddesley Common and do not agree that the proposed pond will provide aesthetic enhancement to the village, we believe that the proposed pond would be a health and safety hazard to the local children and we do not believe that the proposed pond is easily managed. We must also consider the longer term approach when The Friends of Baddesley Common are unable to continue with the "management" either through lack of volunteers or funds etc. The possible introduction of other protected species and the potential for the demise of the indigenous population is not good management.

▪ Section 2 – Environmental Impact Assessment and Arboricultural Implications.

We reiterate the comments above in regards to outflow, and would also state that the pond will not be fed from any natural watercourse and will stagnate and dry out which is not a sustainable solution and will prove to be unsightly and odorous, with a high risk of pollutants washing in from the road and hard standing area.

It should be noted that ponds of smaller area are highly likely to dry out.

Natural England stated their original objection on the grounds of the importance of the ecology of the site. We concur with the fact that the heath habitat conservation should be the priority.

Warwickshire Wildlife Trust has been misinformed in regard to the location of the proposed pond, and have also identified the fact that pond clusters are of more importance, ie the development of a wetland environment rather than a one off pond.

There are many areas of the Common which hold standing water after a prolonged wet spell and this does not indicate the site being part of a large village pond.

In regard to the trees, we believe that the removal of trees (20% of the trees in the vicinity) will be detrimental to the current ecology of the area and those requiring removal are of sufficient quality to remain. It should also be noted that we believe that the addition of a pond in the area would sufficiently harm the natural water table leading to the demise of the other larger trees in the copse. A report by Symbiosis Consulting is referred to but not appended to the submission?

Broadleaved trees especially Oak (proposed pond surrounded by Oak) have leaves that do not degrade well in water but contain high levels of Tannins which will make water smell bad and taste bitter, not acceptable in a village environment.

▪ Section 3 – Construction Method Statement

The statement does not include a document which specifically relates to the tree protection measures required under BS5837- Trees in relation to construction – recommendations, which given the nature of the area we believe would be extensive, costly and counterproductive to the digging of a pond in this area see appendix 5.

We also believe that a suitably qualified Project Manager would need to be engaged given the sensitive nature of the site, adding cost and therefore making the proposal unworkable. The document doesn't contain any soil analysis from the area and, given the large amount of spoil to be removed from site, we believe this to be fundamental. Current legislation makes the transfer and disposal of contaminated spoil very difficult and costly and we do not believe that this proposal adequately addresses this issue. Selected subsoil may also not be the appropriate medium for the creation of bunds around the pond due to the potential for leachates to transfer into the pond that are not sustainable within the wetland environment. The proposal relies on the pond being lined, we would point out that there is sufficient concern in regard to the liner being damaged by the remaining tree roots in the area that the pond would not be sustainable. It is noted that no new services (ie known) exist within the area from records currently held, It is not known however as to what naturally occurring drainage would be disturbed on the site.

▪ Section 4 – Topography Survey

The topography details the site to be sloping and the proposed pond is shown as having a steep side to one end which is unacceptable as a potential hazard, transect B to B shows a change in ground level (pre excavation) of some 2 metres from the Keys Hill side. This sloping site will ensure that the run off from a flooded pond will wash downhill over the remaining Common, which is unacceptable. It also means that run off from the road and hard standing area will be sufficient to wash into the pond.

It should also be noted that the FoBC have dug out the "Black Path" to the South of the proposed pond and they have stated that this will be bordered and shaled, even in it's current state they have created a channel through the Common which will wash silt etc across the carriageway into the pond, see appendix 6, a considerable amount of water washes down the Common due to the topography. A further point is that during any period of Snow, Ice or Frost the bend at Keys Hill becomes treacherous and vehicles regularly end up down the "Black Path" these vehicles will end up in the pond as proposed see appendix 7.

▪ Section 5 – Soils and Geology

We note the Geology comments and would restate that the underlying surface Geology is not suitable for a natural pond. The trial pit investigations noted in the professional report (not included in this submission) by Middlemarch support the fact that The Common has been formed as a result of man made sediments over the years that the area was a mining community. We find no evidence within the report of any substrata that would determine that an earlier pond occupied the area, I.e. no deposits that would suggest an earlier pond and no extraordinary sediments across the site: See Pond Conservation: The Water Habitats Trust (April 2010).

The professional trial pits detailed sediments as dry and noted that the area was therefore not suitable on it's own to support surface water- fed wetland habitats. Therefore confirming that a pond has not existed in this location, as the proposed pond will require a man made liner.

▪ Section 6 – Hydrology and Meteorology

No natural hydrological features are present and therefore the pond will not be sustainable under natural conditions. However flooding could be a possibility due to no natural outfall. The design does detail an outflow from the proposed pond and we cannot see the Environment Agency, Natural England or Severn Trent being amenable to the creation of a new water course within the Acid Grassland area.

It is noted that an overflow is proposed onto the common, this would be unacceptable and lead to potential flooding of areas of Acid Grassland and Heather, with the potential to further flood over the existing roads and paths

We concur with English Nature in that the proposed expenditure on this project would be better channelled into the proper management of the existing environment.

▪ Section 7 – Phase 1 Habitat Survey

The Middlemarch Report 13th July 2010 is referred to but not included in this submission.

Acid grassland is recorded in and around the pond area and is therefore consistent with the designation of the site as an SINC and promotes English Nature's objection, and the priority of the FoBC should be to maintain the species recorded within the tree area and to manage the area to allow the Bell heather to proliferate. Bats are prevalent in the area and as a full survey was not carried out the potential of the trees within the area cannot be ruled out as roosting areas.

As previously stated the proliferation of bird species over the years is directly correlated to the increase in trees, and these should therefore remain insitu. In the absence of a complete and up to date and extensive study by an accredited Ecologist we concur with the habitat being suitable foraging habitat for indigenous reptile species found in Acid Grassland and Lowland Heathland, see appendix 8, and therefore should be managed in the appropriate manner.

▪ Section 8 – Method Statement To Avoid Harm To Protected Species

In the absence of a detailed and extensive study the potential for harm is unknown and therefore an unacceptable risk. However it should be the intention of the FoBC to ensure that the current flora and fauna are well managed and allowed to flourish in their own habitat.

▪ Section 9 – Reptile Survey

In the absence of a detailed and extensive study carried out by an accredited Ecologist we are not in a position to confirm or deny the findings of the study carried out by the FoBC. With the importance placed on Baddesley Common as an SINC we feel that the submission requires more emphasis on the local flora and fauna than is currently available and therefore permission should not be granted.

5) Conclusion

In conclusion, we reiterate our strong objection, backed up by the original comments of Natural England and the Open Spaces Society. We also note that the application requires consent under the Common Land Act 2006 specifically S38, a move which we would also vehemently oppose. There hasn't been a risk assessment carried out which should detail the fundamental risks to the project which would indicate that the project is not sustainable in the long term.

The proposal doesn't meet the needs or requirement of the Local Development Plan nor does it comply with DEFRA Common land consents policy guidance 2009. The Submission by the FoBC isn't robust enough to argue the case and has a number of omissions which we see as fundamental to the proposal:

- Natural England expressed their original objection, this resubmission is for the same planning permission on the same area of land and therefore should be rejected .
- The Area is a heathland / grassland habitat and should not be disturbed (designated SINC).

- Although the trees in the area are not subject to a preservation order they are important to the local ecology and bird population and should not be removed.
- No up to date Ecology report by an accredited Ecologist has been presented as part of the application and we consider this fundamental.
- We do not consider this proposal to be sustainable in the future and we do not have assurance that all risks will be appropriately managed and devolved.

On the basis of the above submission we hereby request that you refuse planning permission for application number PAP/2011/0634.

We are willing to attend the planning committee to restate our opinion.

Yours Faithfully

For and on behalf of the following signatories:

Name	Signature.....
Name	Signature.....
Name	Signature.....
Name	Signature.....
Name	Signature.....
Name	Signature.....
Name	Signature.....

Appendices :

1. Natural England Letter of Objection
2. Finding Common Ground (OSS)
3. Original letter of Objection – Open Spaces Society
4. DEFRA Common Land Consents Guidance 2009
5. Tree canopies and protection measures
6. Black Path issue
7. Accident Blackspot
8. Lowland Heath & Acid Grassland (Local BAP)
9. Photographs

(6) Application No: PAP/2011/0646

Land rear of 17 to 21, Queensway, Hurley,

Residential development consisting of 7no: 3 bed and 8no: 2 bed housing, associated parking and new access, for

Waterloo Housing Association

Introduction

The receipt of this application was reported to the January Board meeting because the Council owns the land the subject of the proposals. A site visit has also been undertaken and the matter is now referred back to the Board for determination.

A copy of the previous report is attached at Appendix A. This contains the background to the case which will not be repeated here. Additionally, the main planning policy issues were outlined.

Amendments

There have been two changes to the plans since the original submission. The first involves variations to the appearance of the dwellings through substituting the boarding with tile-hanging. The second involves the inclusion of the land needed to accommodate the access turn-in on the southern side within the application red line, together with land in the rear garden at 15 Queensway for parking space. In both cases this land is owned by the Borough Council.

Consultations

Warwickshire County Council as Highway Authority – No objection, subject to conditions. It says that Queensway is subject to a 30mph speed limit and also benefits from traffic calming measures. The visibility splays proposed at the new junction comply with standard requirements in these circumstances. It is agreed that there is on-street car parking, but it is said that most properties have private access drives which would help reduce on-street parking. Number 15 is to have its own parking spaces re-located at the rear, and each new house is to have two parking spaces thus again not likely to exacerbate parking problems. There have been no recorded injury accidents in the vicinity of the proposed development within the last five years.

Severn Trent Water Ltd – No objection subject to conditions. In light of the representations received (as recorded below), the applicant was requested to explore the drainage issue in more detail. As a consequence an overall strategy has been worked up in association with Severn Trent Water Ltd. Foul water would discharge to an existing foul water sewer in Queensway which flows south to north under the road emerging from the built up area, north of the site and hence to the works in Hurley Common. Because of site levels, a

gravity connection can not be made either directly to Queensway or to the open land to the north of the site. Therefore a dual pump pumping station is to be constructed on site in order to enable a connection to the sewer in Queensway, at the site's access to that road. In respect of surface water run-off, then there is an existing surface water sewer running across the site along its southern border. Surface water flows into this sewer are to be attenuated using a combination of separate underground storage tanks for highway drainage and for the houses themselves; rain water harvesting for all properties and permeable paving. The discharge from these tanks will be agreed with Severn Trent Water and the Environment Agency. This overall approach has been agreed as a technical solution by the agencies involved.

Warwickshire Police – No objection from a crime prevention perspective

Environmental Health Officer – No comments

Coal Authority - No objection subject to standard advice

Representations

Eighteen letters of objection have been received. These refer to several matters:

- Inadequate access. – Queensway is narrow, already has significant on-street car parking, is a bus route, is used by school children, has traffic calming measures and the access is onto a bend. Additional traffic will exacerbate all of the highway problems that drivers and residents have to experience now, and turning into and out of the site will be dangerous for all users because of reduced visibility and difficult manoeuvring.
- Loss of green space. – Loss of green fields and open views.
- The houses are not needed – There are empty houses in Hurley, no housing need, and if so not on green fields. The houses should be for the elderly.
- Existing drainage problems will be made worse – flooding in particular.
- Disruption whilst work is in progress.
- No facilities in the village.
- Impact on the residential amenity of neighbouring properties.
- Loss of bio-diversity.

The Kingsbury Parish Council has written saying that it wishes to raise concerns about the proposed access and the existing flooding and drainage problems on the site and at neighbouring properties.

Observations

a) Introduction

The first point to make as outlined in the previous report is that this site is not in the Green Belt. It is within the development boundary of Hurley as defined

in the North Warwickshire Local Plan 2006. Indeed it has been included in the village boundary since 1984 when the land was first allocated for housing by the Coleshill District Local Plan. As a consequence, the proposed housing proposal is appropriate to a defined Local Service Centre such as Hurley, and there is no objection in principle to the application.

Moreover as the proposal is within Hurley, a Category 4 settlement as defined by the Local Plan, all new housing has to be “affordable” within the definitions of that Plan. As the application has been submitted by a Registered Social Landlord, this requirement is satisfied. All fifteen units will be affordable houses.

Given this background the key issues are the matters raised by the objectors.

b) Housing Need

The housing requirements for the Borough are set out in the Local Plan. That Plan also identifies where the requirement should be located. Whilst there are no allocated sites within Hurley, this land has been included within the Development boundary even although it remains a green field site. The reason is that the site has been safeguarded for housing purposes since 1984. The overriding housing need identified in the Local Plan is the provision of affordable housing. This is defined in respect of North Warwickshire’s profile within that Plan. The proposal here will provide for both socially rented and shared ownership housing meeting the local need as identified through the Borough Council, and on land set aside for that purpose.

It is understood that there are empty houses within Hurley at present, but there always needs to be a “vacancy” rate in order accommodate different accommodation requirements. Moreover those houses may not meet identified need or they may not be within the control of the Council or other Housing Providers. These would be. The new occupiers here would also “free –up” other housing in the settlement, such that the housing market and situation in Hurley will improve, thus enabling a range of property to become available. The Housing Officer supports this proposal indicating that it will meet local housing needs. There has been some criticism that the site should be safeguarded for the elderly. The 2006 Local Plan is not specific in this respect, and secondly, the immediate local housing need as recognised by housing officers is for family housing.

c) Highway Matters

The central theme running through practically all of the objections is concern that the proposed access will not be safe, and there will be increased dangers from more traffic using what is perceived to be a substandard highway. The Highway Authority however does not object. It has been made aware of the content of the objections but it remains of the view that it does not wish to raise an objection. Given that it has re-considered its position, but still retains

its conclusion, that consultation response should carry substantive weight. In these circumstances, a reason for refusal would be difficult to defend in an appeal situation.

d) Drainage Matters

It is acknowledged that this site is low lying and that it is prone to flooding. However Severn Trent Water Ltd does not object requiring the imposition of a planning condition reserving full details of the drainage proposals for further approval. The applicant has in fact pre-empted this issue and as set out above has been actively exploring a solution with the relevant Agencies. A technical solution can be achieved and it would be appropriate therefore to protect this situation through a planning condition.

e) Outlook and Amenity

It is a matter of fact that this land has been safeguarded for residential development since 1984 and thus there is no weight to be given to the argument that openness would be lost here. The layout of the proposal results in the new housing units being some distance away from existing property, and the separation distances are similar to many estates throughout the Borough. The rear gardens of existing houses are already overlooked by neighbouring property. This will not materially worsen under the present proposals. It is recognised that the new units will be accessed by vehicles, but as stated above the land has been reserved for housing, which would almost inevitably involve car access, for almost thirty years.

f) Conclusion

The proposal is in fully in accord with planning policy in respect of the provision of housing in the Borough and is located on “safeguarded” land. It will meet an identified local need and assist in meeting the Council’s housing targets. Given the absence of objection from the main consultation agencies, the application is recommended for approval.

Recommendation

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

- i) Standard Three year condition
- ii) Standard Plan numbers – 9094/2E and 9024/3F received on 28/2/12; plan number 9094/5A received on 9/12/11 and plan numbers 9094/4B, 6B and 7C received on 15/2/12.
- iii) No development whatsoever shall commence on site until such time as full details of the measures to be installed for the disposal of foul and surface water from the whole site have first been submitted to and approved in writing by the Local Planning Authority. These measures shall include provision to resolve, as

appropriate, existing flooding on the site. Only the approved measures shall then be installed.

Reason: In the interests of reducing the risks of pollution and flooding.

- iv) No work shall commence on the construction of any house until such time as details of the facing brickwork, the roofing tiles and the tile hanging to be used have first been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall then be used.

Reason: In the interests of the visual amenities of the area.

- v) There shall be no occupation of any of the houses hereby approved until such time as landscaping details for the whole site have been first submitted to and approved in writing by the Local Planning Authority. Only the approved details shall then be undertaken in the next available planting season following approval.

Reason: In the interests of the visual amenities of the area.

- vi) There shall be no occupation of any of the houses hereby approved until such time as the whole of the access arrangements at the junction with Queensway; the whole access road and the whole of the parking and turning areas have first been fully completed to the written satisfaction of the Local Planning Authority.

Reason: In the interests of highway and traffic safety.

- vii) Notwithstanding the provisions of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended, or as might be subsequently amended, no development within this Part shall commence without the written approval of the Local Planning Authority.

Reason: In the interests of the residential amenities of all occupiers both of the development and of neighbours.

- viii) No house hereby approved shall be occupied until such time as visibility splays have been provided on either side to the vehicular access to the site measuring 2.4 by 43 metres as measured from the near edge of the public highway carriageway. No structure, tree or shrub shall be erected, planted or retained within these splays exceeding or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.

Reason: In the interests of highway safety.

- ix) The development shall not be constructed in such a manner as to reduce the effective capacity of any drain or ditch within the limits of the public highway.

Reason: In the interests of highway safety.

- x) No gate or barrier fronting the parking bays to the rear of 15 Queensway shall be hung so as to open within five metres of the near edge of the public highway carriageway.

- xi) Reason: In the interests of highway safety.

Notes

- i) Severn Trent Water Ltd advises that there is a public sewer located within the site. Attention is drawn to the Water Industry Act 1991 and the Water Act 2003.
- ii) Coal Authority Standing Advice
- iii) The Warwickshire County Council advises that works within the public highway are subject to procedures under Sections 38 and 284 of the Highway Act 1980; the Traffic Management Act 2004, together with the New Roads and Street Works Act 1991 and accompanying Codes of Practice. Advice should be sought directly from the County Council.
- iv) The Warwickshire County Council also draw attention to Section 163 of the Highway Act 1980 in respect of drainage
- v) There is an existing telecommunications pole that will need re-locating. Contact should again be made with the County Council

Justification

The site is within the development boundary for Hurley as defined by the North Warwickshire Local Plan 2006. Moreover the site has been safeguarded for housing development in earlier Development Plans. As a consequence there is no objection in principle to the proposal. The proposal is for 100% affordable housing provision as required by the Local Plan and the type of housing proposed matches locally identified housing need. A Registered Social Landlord would deliver and manage the provision. There have been no adverse comments from the various consultation agencies notwithstanding concerns expressed by local residents. The Highway Authority has not altered its position despite a request to re-consider in light of representations received by the local community. There are no matters arising in respect of other planning considerations. The proposals thus accord with saved Core Policies 2 and 8 of the North Warwickshire Local Plan 2006 together with saved policies ENV6, ENV8, ENV11, ENV12, ENV13, ENV14 and TPT6 and Government guidance in its PPS1 and PPS3.

BACKGROUND PAPERS

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

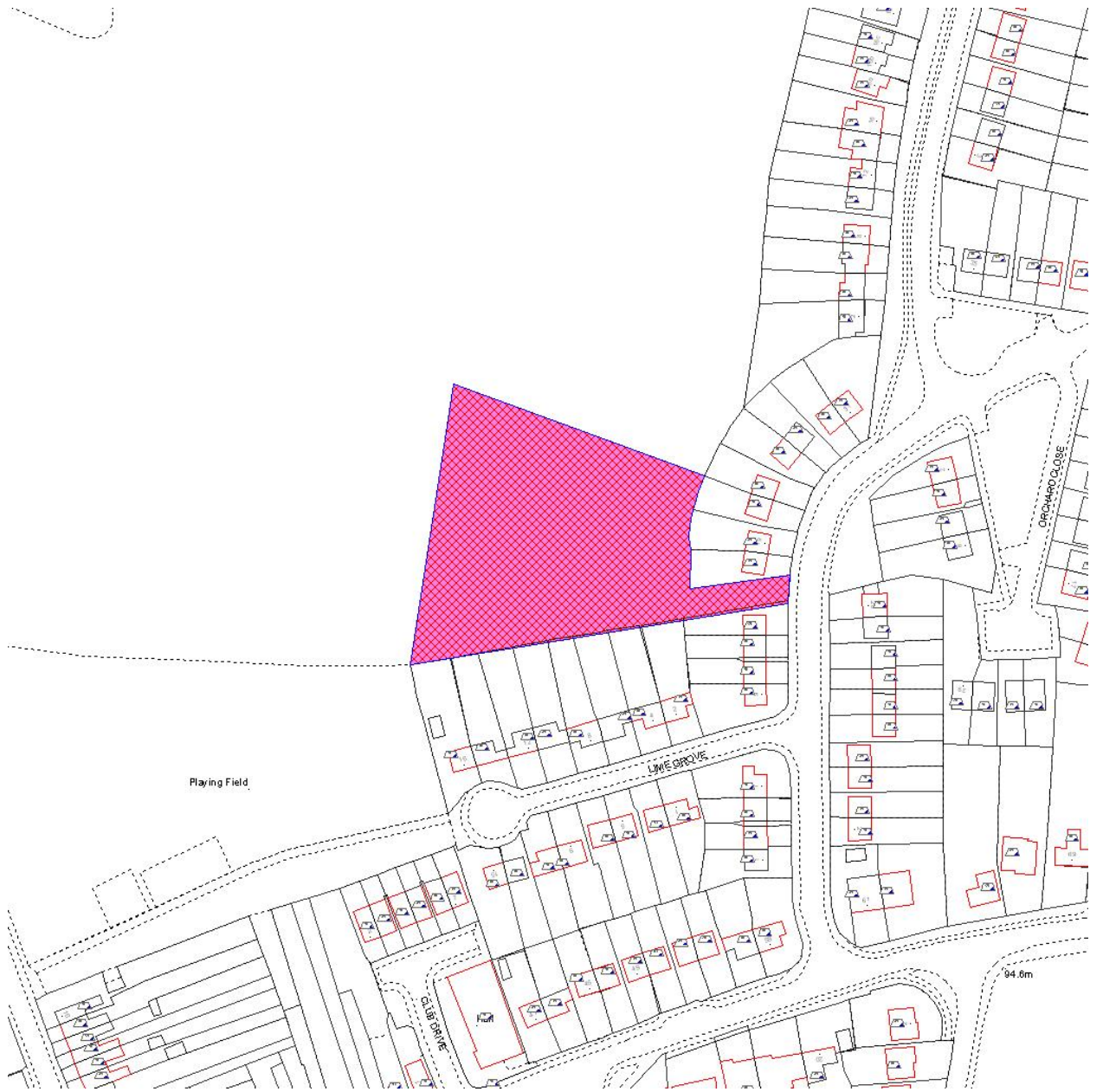
Planning Application No: PAP/2011/0646

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	9/12/11
2	R Green	Objection	22/12/11
3	C Burrows	Objection	30/12/11
4	A Underhill	Objection	2/1/12
5	P Robinson	Objection	3/1/12
6	A Daniel	Objection	3/1/12
7	Mr & Mrs Dawson	Objection	4/1/12
8	M Bridgewater	Objection	6/1/12
9	J Turner	Objection	5/1/12
10	Warwickshire Police	Consultation	6/1/12
11	S Gladders	Objection	9/1/12
12	R Daniel	Objection	3/1/12
13	Severn Trent Water Ltd	Consultation	5/1/12
14	Mr & Mrs Mawer	Objection	7/1/12
15	M Smith	Objection	7/1/12
16	J & A Sears	Objection	7/1/12
17	Mr & Mrs Marriott	Objection	10/1/12
18	A & J Bowerbank	Objection	6/1/12
19	B Workman	Objection	12/1/12
20	Warwickshire County Council	Consultation	23/1/12
21	Kingsbury Parish Council	Consultation	23/1/12
22	K Snazle	Objection	24/1/12
23	M Lloyd	Representation	23/1/12
24	Coal Authority	Consultation	18/1/12
25	Environmental Health Officer	Consultation	18/1/12
26	Agent	Amended plans	15/2/12
27	Applicant	E-mail	15/2/12
28	Warwickshire County Council	Consultation	17/2/12

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.

7



General Development Applications

() Application No PAP/2011/0646

Land rear of 17 to 21 Queensway Hurley

Residential development consisting of 7no: 3 bed and 8no: 2 bed housing, associated parking and new access, for

Waterloo Housing Association

Introduction

This application will be reported to the Board for determination in due course as the land is owned by the Council. This report is thus for information purposes only enabling Members to view the proposals at an early stage.

The Site

This is an area of 0.4 hectares of agricultural land being part of a larger field immediately to the north of Lime Grove and to the west of Queensway to which there is an access. This junction is 110 metres north of its junction with Knowle Hill. There is also residential development bounding its eastern boundary.

The site slopes down by about two metres from east to west and there are small trees randomly located along the eastern and southern boundaries.

The Proposal

This is to erect fifteen houses on the site – seven would have three bedrooms and eight would have two. The layout includes an improved access onto Queensway which would lead into a small cul-de-sac enabling a single row of cottage style semi-detached houses along the western boundary of the site, with a similar row on the northern side of the road. The trees referred to above are shown to be retained. The proposed layout is illustrated on the plan at Appendix A. The house design is illustrated at Appendices B and C.

For reference purposes, the distance of the southern gable of plot 15 from the rear elevations of the properties in Lime Grove is 27 metres, and that of the side elevation of plot 1 to the rear of the Queensway properties is 16 metres. Each property has two car parking spaces.

The proposed new access would include an improved vision splay and radius turn-in on its southern side taking some land from number 15 Queensway, which is a Council owned property.

The application is accompanied by a Design and Access Statement together with a Ground Conditions Report.

The applicant has indicated that the new units would all be “affordable” to meet the terms of the Development Plan, with the mix of tenure between rented and shared ownership to be agreed with housing officers of the Council.

Development Plan

Saved Policies of the North Warwickshire Local Plan 2006 – Core Policy 2 (Development Distribution); Core Policy 8 (Affordable Housing), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), HSG2 (Affordable Housing), HSG4 (Densities), TPT6 (Vehicle Parking)

Other Material Planning Considerations

Government Planning Guidance – PPS3 (Housing), PPG13 (Transport)

The draft National Planning Policy Framework (2011)

The Council’s Draft Core Strategy (Autumn 2011)

Observations

This site is inside the development boundary defined for Hurley by the North Warwickshire Local Plan 2006. It is not in the Green Belt. Indeed this piece of land has been so designated since the adoption of the Coleshill District Local Plan dating from 1984. This is because it was specifically allocated for housing development. This land has thus been “safeguarded” for housing purposes since 1984.

Apart from considering this background in respect of the principle of the proposed development, Members will be aware that design issues together with an assessment of the impact of the proposal on the amenity of existing residents will also be important. Access and highway matters will play a significant role in the case too.

The applicant has already undertaken pre-application consultation and a summary is attached at Appendix D.

In view of the nature of some of these responses, it is considered that the Board might wish to visit the site prior to determining the application.

Recommendation

That the Board undertakes a site visit prior to the determination of this application.

BACKGROUND PAPERS

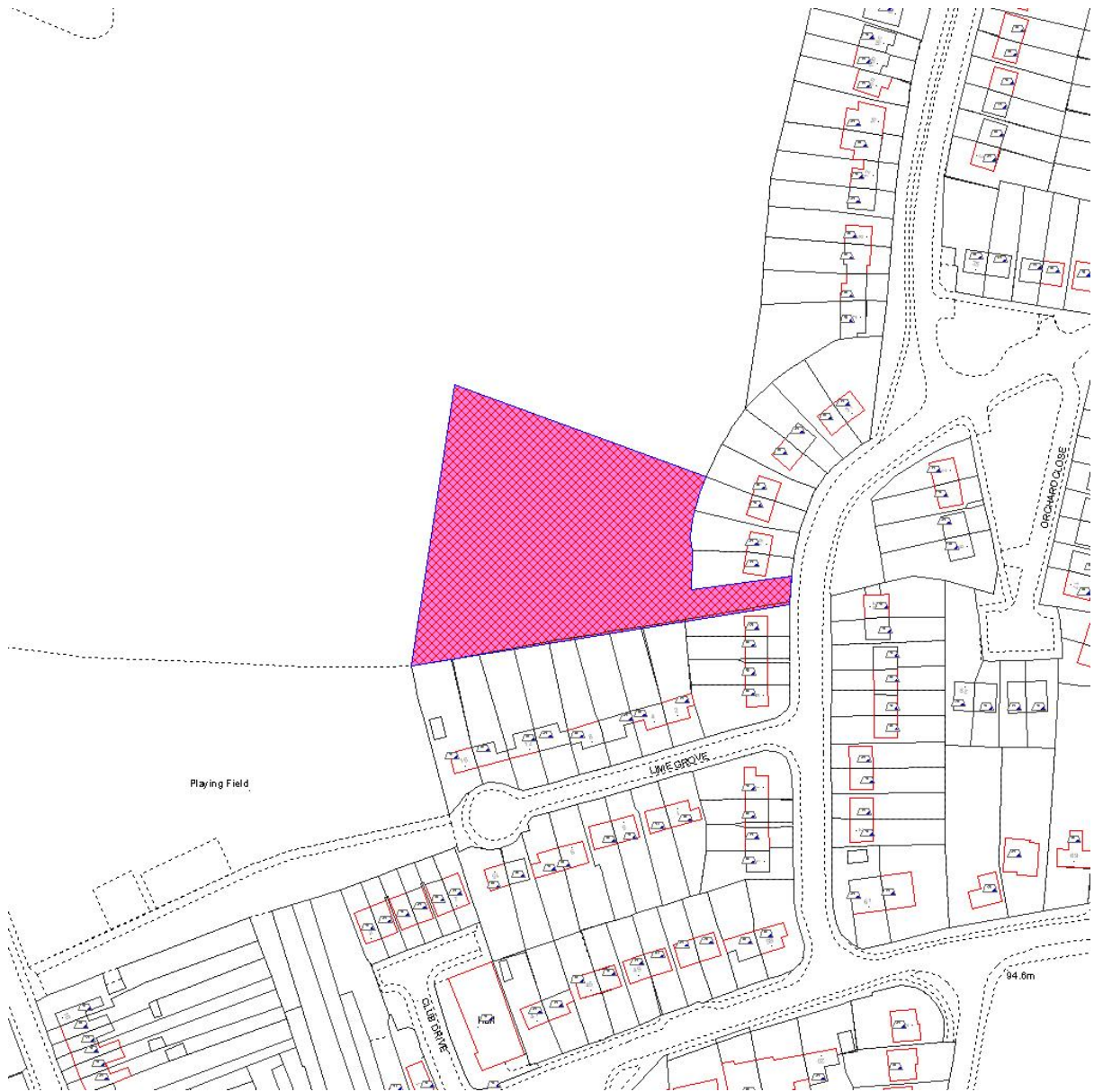
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

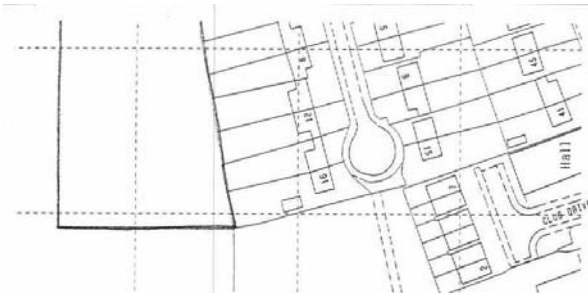
Planning Application No: PAP/2011/0646

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms and Plans	9/12/11

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.





**LOCATI
PLAN.**
Scale 1/12:

Plot A Additional info
Plot B Access to build
WATER
BAILEY
 ARCHITECTURAL
 THE MANOR
 STAFFORDSHIRE
 RESIDENTIAL

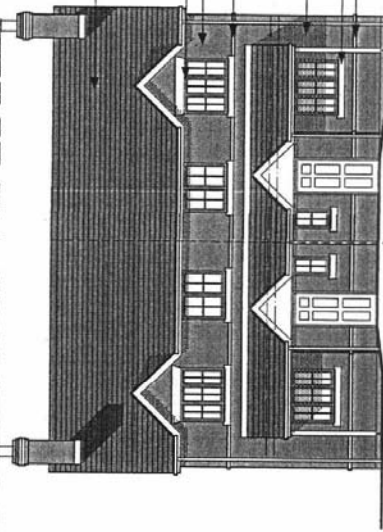
APPENDIX A

ACCOMMODATION.

- 5 No. 3 Bed Semi-Detached Houses
- 2 No. 3 Bed Terraced Houses.
- 7 No. 2 Bed Semi-Detached Houses.
- 1 No. Terraced Houses.

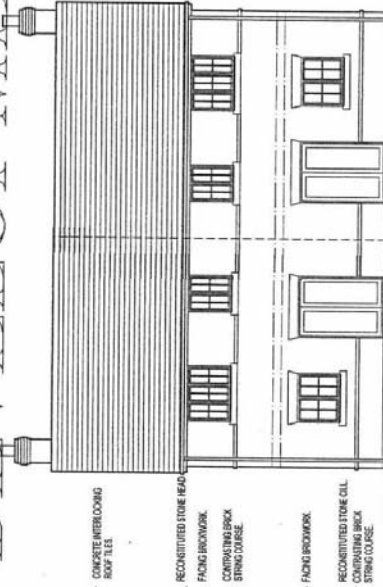


RESIDENTIAL DEVELOPMENT A



Plot 2 - Type A (Handed)

Plot 1 - Type A.
FRONT ELEVATION - facing Lime Grove.

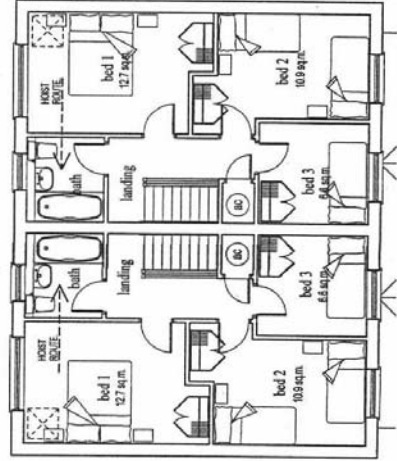
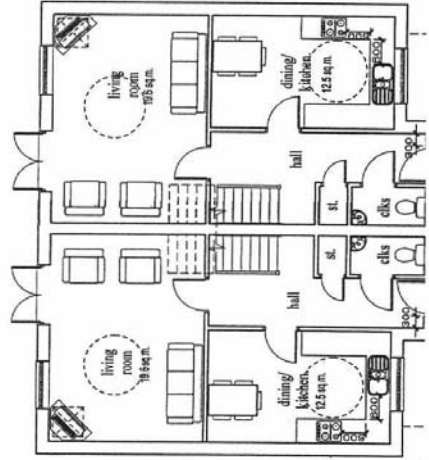


Plot 1.

REAR ELEVATION.

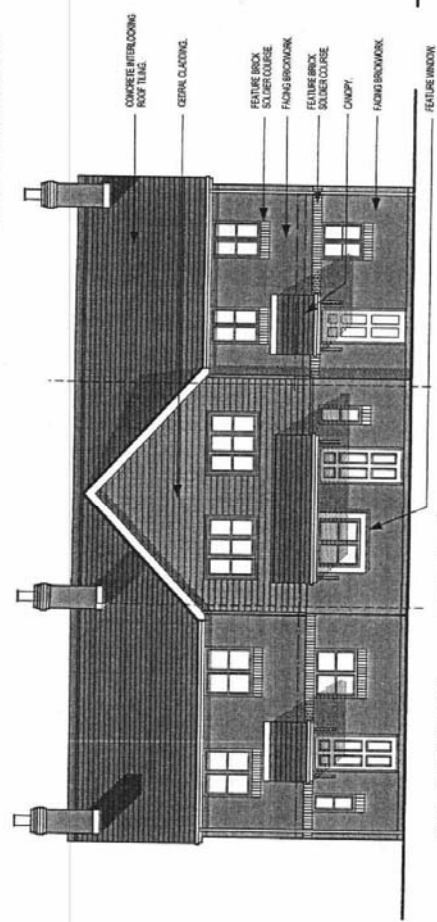
- CONCRETE W/REINFORCING ROOF TILES
- RECONSTITUTED STONE READ
- FACING BRICKWORK
- CONTRASTING BRICK STRING COURSE
- FACING BRICKWORK
- RECONSTITUTED STONE GILL
- CONTRASTING BRICK STRING COURSE

APPENDIX B





GROUND FLOOR PLAN.



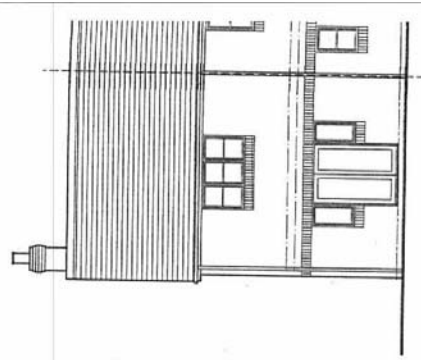
Plot 5 - Type B1 (Handed).

Plot 4 - Type B1.

Plot 3 - Type Ct.

FRONT ELEVATION - facing Lime Grove.

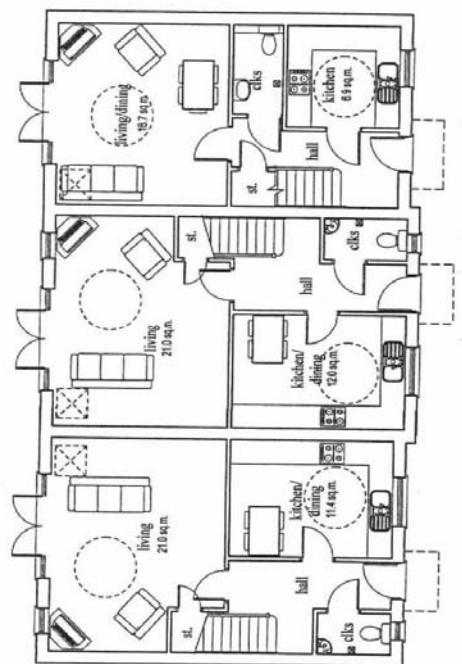
FIRST FLOOR PLAN.



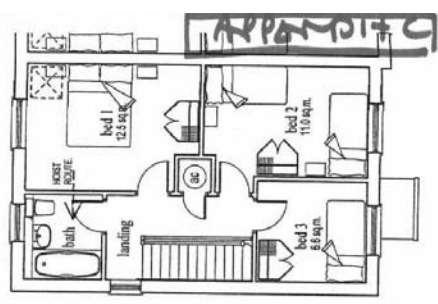
Plot 3.

Plot 4.

REAR ELEVATION.



GROUND FLOOR PLAN.



APPROXIMATE

APPENDIX D

APPENDIX A

ANALYSIS OF RESIDENT CONSULTATION

Ref: 9094 - December 2011

Bailey Design Limited
The Manor House
Lichfield Street
Tamworth
B79 7QF

Analysis from Resident Consultation Meeting at Hurley

What do you consider the most important features of the area?

	No. of respondents
• Access to community facilities/schools/shops/	9
• Bus services	9
• Streets & footpaths	4
• Lighting	9
• Trees & open areas	11
• Low crime/feelings of safety	8
• Close knit community	13

Other:

- > Rubbish
- > Prefer shared ownership at rear of 18/19 Queensway
- > Jobs
- > Lack of proper bus service 4
- > Peace
- > Need bungalows

Do you think the proposals for the site are good or bad?

	Good	Bad
• Mix of houses/flats	2	2
• Size of houses/flats	4	2
• Building heights	5	2
• Design of buildings	3	2
• Materials used	3	2
• Level of car parking	4	2
• Location of car parking	3	2
• Open areas	5	3
• Landscaping - trees and shrubs	4	3
• Distance from other properties	5	4
• Impact on other properties	3	4

Comments:

- > Good in general terms, but 15 properties look a bit cramped. Would be better to reduce to 12.
- > Use of Sycamore not good, not native, spreads seedlings rapidly, trees prone to tar spot and nuisance to residents and farmer.
- > Could an outside hedge be planted beyond the fencing to blend in better when viewed from the field side? Native hedging preferably, trees available from Woodland Trust.
- > Whole idea not acceptable. Plenty of empty houses on estate, utilise these!
- > Not required.

Are there any problems with the site at the moment?

	No. of respondents
• Unkept/unsightly	2
• Litter	1
• Vandalism	
• Attracts anti-social behaviour	

Other:

- > Trees and open areas.
- > Hardly used - used for dog walking etc.
- > All of the above, but I do not feel the new houses are required.
- > Open land.

Do you think the proposals fit in with the surroundings?

	No. of respondents
• Yes	7
• No	5

Comments:

- > No, this needs to be kept an open space.
- > I think the quality of Waterloo houses are very good, but I do not want more houses in the village.
- > The new proposal makes the other houses look second class (and always will).

Do you have any other comments?

- > Access very dangerous.
- > Enough empty houses in Hurley already.
- > My son needs to buy a house as soon as possible and I think this is brilliant Waterloo. I think it's a very good idea - rent and buy.
- > We do not want the proposals to go ahead, the bend on Queensway to the left of the entrance is already an accident black spot, buses have trouble here as it is and increasing the volume of traffic will make this worse. It will also devalue the house we live in due to the view from our back garden being spoiled. There are empty houses in Hurley, why build more?
- > As a resident of Hurley, in particular Coronation Rd, I feel that this new development is not a good development. I have lived in the village for 10 years and bought my property purely for the views. However, I now feel that with this development, not only will it ruin land locally to me I have concerns that the development will eventually go further and affect other land, including land that at present is supposedly greenbelt. This in turn will affect house prices to the detriment of current owners.

- > We strongly disagree with this development as we think it will affect our house price, also who will they think of moving into our village, how long before they decide to build more and take over all our rural views? We don't want all the disruption that comes with it. We moved into Hurley as a rural area specifically as a rural area. This will dramatically affect the reason we decided to move to this area and is already causing stress.
- > Too much traffic into village leaving Lime Grove dangerous. Drains in Summer and floods in Winter at the moment. Footpaths used for 50 years plus and devalue my house by thousands of pounds. Land set aside for garages NOT houses, extra land brought in '80s.
- > Not sure, the boundary fence is very close to the new houses and existing houses on Queensway.
- > No, I understand the proposals.
- > As long as there are no more buildings being built other than the proposals put forward.
- > I object very strongly that you're looking to build on green fields, when there is ground within Hurley Village that could be used. Also there are empty housing within the Village. Also the access off Queensway not safe. Queensway already has a problem with parked cars and can be unsafe for pedestrians and children.
- > Affordable housing would definitely help our situation of needing a larger house without moving out of the village.
- > Concerns over traffic access all day/night and headlights into front room.
- > Proposals are not required.
- > I oppose the houses being built as there are plenty of houses in this village, owned by a private company that should be revamped. I also oppose the traffic that will increase.
- > No houses on the land. Traffic problems coming onto Queensway very dangerous, children playing could be dangerous.
- > More need for housing.
- > No objections, need bungalows.
- > In my opinion all new housing should be built with Photovoltaic solar panels. The panels could be purchased by N.W.B.C. fitted by your contractors. Benefits - N.W.B.C. to gain from the 'Feed in Tariff', resident benefits from some cheap electricity.
- > Road access very dangerous, especially in Winter. Empty houses on estate.
- > Empty houses in Hurley need using to stop vandalism. Bad access to proposed site.

(7) Application No: PAP/2011/0670

Ash End Farm, Middleton Lane, Middleton, Tamworth

Variation of condition no. 2 of planning permission PAP/2009/0451 dated 7 December 2009 relating to development being carried out in accordance with specified plans in respect of conversion of redundant agricultural building to provide habitable dwelling,

for Mr Mike Byrne

Introduction

This report follows deferral at the February Board meeting to allow for a Members site visit as well as to allow further opportunity for the applicant to consider further amendments. The February report is attached at Appendix A.

The Site

Ash End Farm lies to the south-east of Middleton Lane, in open countryside and the West Midlands Green Belt, close to the Ash End Children's Farm. It originally comprised a former farmhouse together with a range of outbuildings forming a courtyard adjoining the lane. To the south is agricultural land served by a field access to Middleton Lane. This is more particularly shown at Appendix B with the building, the subject of this case, outlined in red. This building was originally a single storey gable end barn with openings facing the courtyard. Brickwork and tiles matched the main farmhouse and other courtyard buildings. Photos and plans at Appendix C show this in more detail, whilst the table over summarises the dimensions

The current situation is that the original building, in the vast majority, has been demolished and a new, larger building constructed. The brickwork used is different to the original and the walls contain cavities and insulation. The footprint is greater, and the ridge height and eaves have also increased. The table over summarises these dimensions. There is a small projection to the south (rear) elevation where there is also an area of hard standing some 3.65 metres deep, and a retaining wall which rises to 1.5 metres adjacent to the highway. Photos at Appendix D show this in more detail.

The site is some distance from the nearest main road, with access along a single track country lane. There is no public transport passing or close to the site with the exception of a 'call on request' service running once on a Thursday.

The Proposal

Is it intended to vary condition 2 of the planning permission ref: PAP/2009/0451 which originally allowed the conversion of the original

building to provide a habitable dwelling (although limited to ancillary use by way of condition 3 and a Unilateral Undertaking). This variation seeks to substitute the approved plans for an alternative set, as shown at Appendix E and of dimensions summarised below. The alternative plans propose to bring the ridge and eaves height back close to that originally approved, retain the rear projection and changes to openings, reduce the height of the wall where retained, and allow for the retrospective grading of land levels to the south of the building.

A draft Section 106 Unilateral Undertaking is also submitted restricting the use of the building to incidental residential accommodation – Appendix H.

Background

The history up to the February Board meeting is summarised at Appendix A.

Since then further amendments have been received. In summary, the rear wall of the building has been largely pulled back in line with the original wall, although the outer skin of brickwork and the rear projection remain beyond that line. The position of the front wall has not been altered which is also beyond the original line. The original walls are shown dashed on the plans. At the time of writing these plans are open to consultation, although no further representations have been received. Any representations received will be reported at the meeting.

Summary of dimensions

	Original	Existing	Now proposed
Depth (m)	4.4	5.35	4.81
Length (m)	19.4	19.4	19.4
Eaves height (m)	2.3	2.75	2.45
Ridge height (m)	4.2	5.5 (approx)	4.35
Footprint (m ²)	85.36	104.44*	93.96*
Volume (m ³)	277.4	422.1*	318.8*

*including rear projection

Development Plan

Saved policies of the North Warwickshire Local Plan 2006: ECON9 (Re-Use of Rural Buildings), ENV2 (Green Belt), ENV11 (Neighbour Amenities) and ENV13 (Building Design).

Other Relevant Material Considerations

Government Advice: Planning Policy Guidance 2 – Green Belts (PPG2), Planning Policy Statement 7 – Sustainable Development in Rural Areas (PPS7) and the draft National Planning Policy Framework (NPPF).

Consultations

Middleton Parish Council – note that this application is not for a conversion given the original barn has been demolished and a new “house” built, as well as noting the difference in materials and height.

Representations

Two neighbour representations have been received prior to the current amendments. One raises objection that the brickwork used fails to reflect the brickwork of the original barn, as well as noting that the works so far are not compliant with the original planning ‘brief’. Another supports the proposal in that it is making good use of a redundant farm building.

A copy of a letter circulated by the applicant has also been received, and a letter supplied by the agent at the February Board is at Appendix F.

Observations

a) The Starting Point

There has been much discussion between the applicant and officers regarding the status of the 2009 permission. Whilst not discussed in the previous report, it is necessary to expand on this matter in order establish what weight, if any, should be given to the status of that permission.

The applicant’s claim, following legal advice, is that it is still possible to implement that permission despite the demolition works. The Council’s Solicitor has considered the legal advice offered by the applicant; made reference to case law, and notes key errors and assumptions. The result is that the Council’s Solicitor disagrees with that advice, holding that the previous permission involved primarily a change of use with limited physical works (i.e. creation of some openings). Given the walls carrying those openings no longer exist; it seems anomalous to suggest that the permission can be implemented by way of physical works alone. Furthermore the claim that an absence of a condition preventing demolition results in an unconstrained permission is not supported. Case law holds that planning permission is defined by the decision notice, description and plans. No demolition is detailed by the description and plans.

Members also have benefitted from a site visit. They were able to see the two gable ends and the proportion of them which retains the original brickwork; the increased height, the cavity wall construction and the enlargement over the original ground floor slab. It is considered by fact and by degree that these works have led to the construction of a new building, and that which is on site

is not a building arising from the conversion of the original building. Members can take their own view on this, but it is the considered view of officers that this is a new building.

If this is agreed by the Board and the advice of the Solicitor accepted, then the 2009 permission has not been implemented and because of the demolition works undertaken, it can no longer be taken up and completed. As such it no longer carries any weight. The building seen on site at the time of the visit is thus a new building, and the current application should therefore be treated as an application to retain a new building. Consideration of the application thus follows from this conclusion.

The building is to be used as ancillary residential accommodation to the main house. Government advice in PPG2 makes no distinction between ancillary or incidental residential accommodation and full residential use. As such therefore, this application is for residential use.

The starting point here is that this application should be treated as an one for the retention of a new residential building in the Green Belt.

b) Principle

As a consequence of the above, the key issue is whether this is appropriate or inappropriate development in the Green Belt. It is inappropriate development by definition. There is no operational, land or site related reason why a new residential building is essential on this site or land holding, and its purpose is not one related to those set out in Government advice in PPG2. Moreover, as this is a new building, and because the 2009 permission carries no weight, it has to be treated as the construction of a new building on open land – in other words the land left open as a consequence of the substantial demolition of the original building. As such it must have a significant adverse impact on the openness of the Green Belt hereabouts, because a new building has been constructed on open land.

As a matter of principle therefore the application should be refused planning permission based on the presumption that the development is inappropriate development in the Green Belt.

c) Other Material Planning Considerations

Members will appreciate that this conclusion has to be “tested” to see if there are any material planning considerations which either individually or cumulatively would provide sufficient weight to amount to the “very special circumstances” necessary to override the presumption of refusal.

It is for the applicant to make the case for such circumstances. He provides two. The first is that there is no adverse impact on the openness of the Green Belt as a consequence of the latest amendments.

The latest plans show a building reduced in size from that seen on site at the time of the site visit. The height is reduced and the floor area and volume also reduced. The front and rear walls are now very largely on the lines of the original building. The applicant argues that this is a material change from that seen on site and that it now effectively brings the scale, size and mass of the new building back to what was there originally. As a consequence he says that there is no material adverse impact on openness, even if the building as now proposed does show a slight increase in its dimensions over the original. This conclusion is accepted. Indeed in terms of the floor area then it would be very difficult to discern any difference, and the increased height is only a matter of 15 centimetres, which again would be difficult to detect given the surrounding buildings.

Whilst this conclusion carries weight, it must be remembered that the comparison should be against open land and not against the original building because of the starting position as outlined above. However the applicant says that this argument is weakened by the fact that permission was, as a matter of fact, granted for the conversion of a building here, and thus the expectation was that there would be a building here. In visual terms, the applicant is saying that there is no material difference. Moreover he argues that there was no “open land” as such; no abandonment of the project and thus no interim period when openness was enhanced. It is agreed that these arguments all carry weight and add to his main conclusion that there is still no overall adverse impact here, even with the amendments now put forward.

The second consideration is that the use of the building can be controlled, and that an ancillary residential use has already been agreed here.

The background section of the previous report – Appendix A – indicates that the original building was almost certainly lawfully in use as incidental residential accommodation. This is not a formal determination but a reasoned conclusion by officers using the evidence available. Moreover, the 2009 consent was for a similar use and this was conditioned as such. At that time therefore, the applicant argues that the Council accepted such a use arising from the grant of that permission. The use of the current new building can be conditioned and the submission of a Section 106 Unilateral Undertaking to the same effect, in his view carries significant weight. In other words he is saying that there is no difference – the outcome is the same. This line of reasoning carries weight. Again the problem is that it is using the wrong starting position – recognition of the 2009 permission.

It is accepted that the two considerations put forward by the applicant are relevant and that they do individually carry weight and that together they carry significant weight. The issue therefore falls as to whether that is sufficient to outweigh the substantial weight of allowing inappropriate development in the Green Belt.

d) Conclusions

The applicant is saying that the latest proposals are now so close to the expected outcome from the 2009 permission as to make little difference both in terms of impact on the openness of the Green Belt and the use to be made of the building. This is accepted, as has been indicated above. The issue is whether it is substantial enough to override the retention of an inappropriate building in the Green Belt. Officers remain of the view that there is a matter of principle here. The 2009 permission has not been taken up for the reasons set out in the two reports, and it therefore in effect has been forfeited. It can not now be “put right” through the current application. This is an important point of principle as it affects other future applications and proposals – applications for conversions are not uncommon in the Borough, and the protection of the Green Belt is the Council’s most critical planning policy. It is because of the substantial weight placed on this principle that the recommendation of refusal is made below.

Members need to come to their own decision balancing the various matters as raised throughout these reports. It is open to them to come to a different conclusion particularly if they are of the view that the circumstances here are particular to this site alone; that the outcome, if approved, and based on the latest plans would effectively become the same development as that permitted in 2009, and if they are satisfied that the principles of Green Belt policy are not compromised.

e) Other Matters

Whilst this report has concentrated on matters of principle, consideration still needs to be given to detailed matters. There is however no design issue here such that the changes in appearance of the latest elevations are not objectionable as the openings all would face the courtyard. Additionally the re-grading of the land at the rear and the minor wall construction are not of importance given the nature of works that could be conducted here without the need to submit a planning application.

f) Implications

If the recommendations below are agreed then the building would need to be demolished. There is likely to be a cost to the landowner in demolishing the building, removing associated works and restoring the land. However the applicant has chosen to take this risk having undertaken development without the benefit of planning permission. Moreover, the proposed building affects the strategic aims of Local Plan policy and the purposes of including land within the Green Belt. Its intended residential use will further compound the harm to these aims. The refusal of permission as a matter of principle is considered to be proportionate and appropriate, as well as consistent with the Council's priority of defending the countryside and the openness of the Borough. The applicant would have a right of appeal and there is the opportunity to deal with any enforcement appeal concurrently. There is not considered to be a human rights issue at present.

Recommendation

(A) That the application be **REFUSED** planning permission for the following reasons:

- (i) It is considered as a matter of fact and degree that the 2009 planning permission for the conversion of the original outbuilding here has not been taken up and is now incapable of implementation. As such the building on site is a new building. This is considered to be inappropriate development in the Green Belt by definition which also harms the openness of that Green Belt. It is not considered that the planning considerations put forward by the applicant provide the very special circumstances to warrant overriding the presumption of refusal. Whilst it is accepted that these considerations carry weight individually, they do not provide even cumulatively, the substantial weight needed to

override the presumption. This is because as a matter of principle, the protection afforded to the openness of the Green Belt and thus the rural character of North Warwickshire, would be materially harmed. The proposals thus do not accord with saved policy ENV2 of the North Warwickshire Local Plan 2006 together with Government guidance in its PPG2.

(ii) Planning permission for the re-use of the original building was granted in response to it being demonstrated that the proposal accorded to the requirements of saved policy ECON9 of the North Warwickshire Local Plan 2006 – specifically that the building was capable of adaption and re-use without major or complete reconstruction, alteration or enlargement. As the original building has been demolished, variation of condition 2 would undermine the integrity of that host permission as well as being contrary to save policy ECON9 of the North Warwickshire Local Plan 2006 and national policy contained in PPG2.

(B) In light of the Board granting authority for enforcement action in August 2011, and the recommendation above, that an enforcement notice is now issued in respect of the unauthorised development requiring the removal of the building on site.

BACKGROUND PAPERS

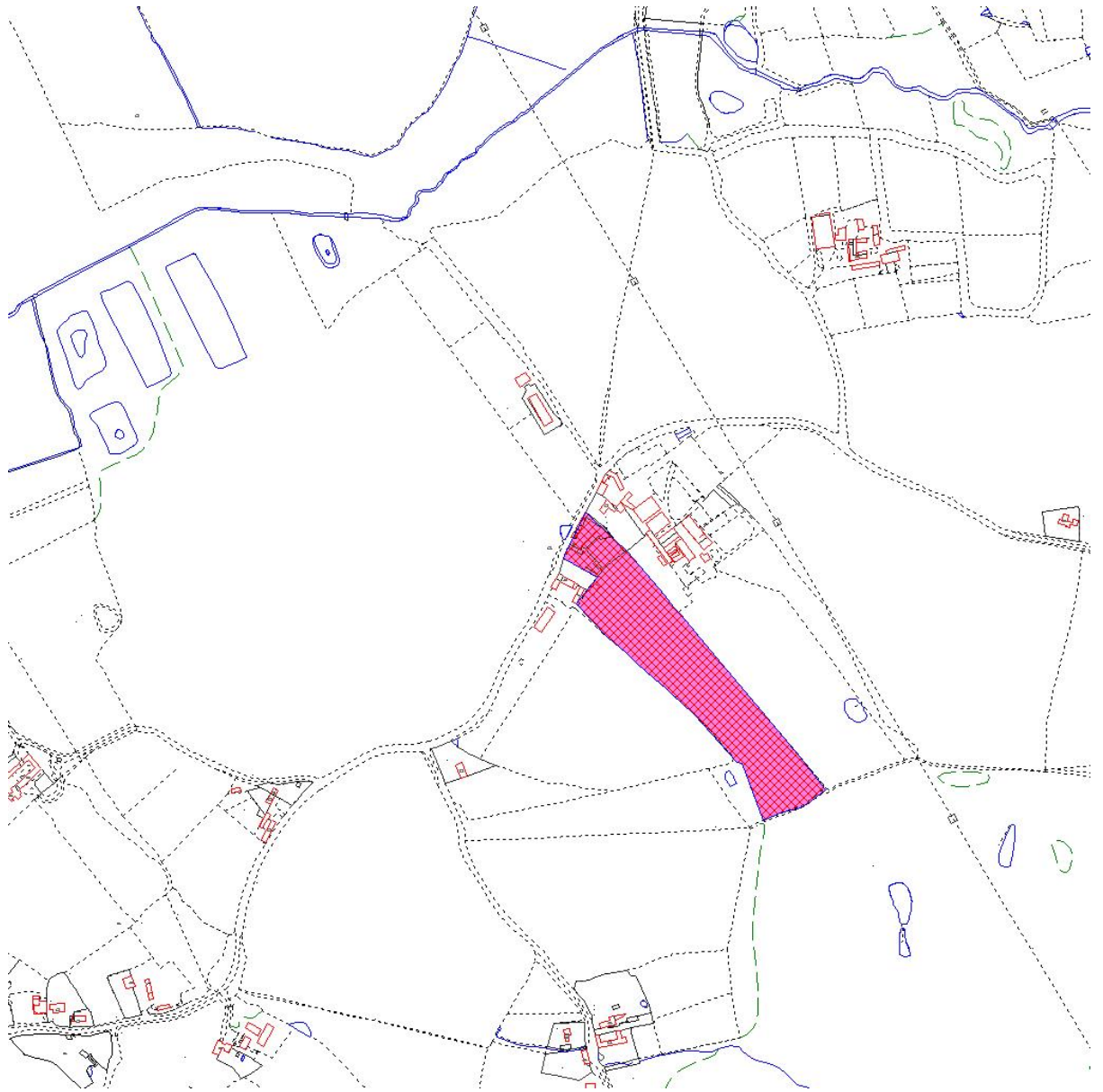
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2011/0670

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms and Plans	23/12/2011 & 3/1/2012
2	The Applicant	Letter to neighbours	16/1/2012
3	Cllr Lea	Email to Case Officer	19/1/2012
4	Middleton Parish Council	Representation	20/1/2012
5	Case Officer	Email to Agent	23/1/2012
6	Agent	Email to Case Officer	26/1/2012
7	B and P Birch	Representation	30/1/2012
8	Mr and Mrs R G Rawlins	Representation	31/1/2012
9	Agent	Letter to Case Officer	9/2/2012
10	Head of Development Control	Email to Councillors	10/2/2012
11	Agent	Draft Unilateral Undertaking	10/2/2012
12	Head of Development Control	Letter to Agent	14/2/2012
13	Agent	Email to Head of Development Control	14/2/2012
14	Head of Development Control	Notes of Site Meeting	20/2/2012
15	Agent	Email to Head of Development Control	20/2/2012
16	Head of Development Control	Email to Agent	21/2/2012
17	Agent	Amended Plans	27/2/2012
18	Agent	Email to Case Officer	28/2/2012

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

(8) Application No: PAP/2011/0670

Ash End Farm, Middleton Lane, Middleton, Tamworth

Variation of condition no. 2 of planning permission PAP/2009/0451 dated 7 December 2009 relating to development being carried out in accordance with specified plans in respect of conversion of redundant agricultural building to provide habitable dwelling,

for Mr Mike Byrne

Introduction

This application is reported to the Board following a request from a Ward member, because it has implications to an existing legal agreement, and at the discretion of the Head of Development Control following previous enforcement reports reported to the Board which relate to this development.

The Site

Ash End Farm lies to the south-east of Middleton Lane, in open countryside and the West Midlands Green Belt, close to the Ash End Children's Farm. It originally comprised a former farmhouse together with a range of outbuildings forming a courtyard adjoining the lane. To the south is agricultural land served by a field access to Middleton Lane. This is more particularly shown at Appendix A with the building, the subject of this case, outlined in red. This building was originally a single storey gable end barn with openings facing the courtyard. Brickwork and tiles matched the main farmhouse and other courtyard buildings. Photos and plans at Appendix B show this in more detail, whilst the table over summarises the dimensions

At the time of writing, this building had been demolished and a new building constructed with a larger footprint and of greater height. The brickwork used is different to the original and the walls carry cavities and insulation. The footprint is greater, and the ridge height and eaves have also increased. The table over summarises these dimensions. There is a small projection to the south (rear) elevation where there is also an area of hard standing some 3.65 metres deep, and a retaining wall which rises to 1.5 metres adjacent to the highway. Photos at Appendix C show this in more detail.

The site is some distance from the nearest main road, with access along a single track country lane. There is no public transport passing or close to the site with the exception of a 'call on request' service running once on a Thursday.

The Proposal

Is it intended to vary condition 2 of the planning permission ref: PAP/2009/0451 which originally allowed the conversion of the original building to provide a habitable dwelling (although limited to ancillary use by way of condition 3 and a Unilateral Undertaking). This variation seeks to substitute the approved plans for an alternative set, as shown at Appendix D and of dimensions summarised below; the rear projection to that building; the retention of the wall (albeit reduced in height adjacent to the highway); and for the retrospective grading of land levels to the south of the building.

Summary of dimensions

	Original	Existing	Proposed
Depth (m)	4.4	5.35	5.35
Length (m)	19.4	19.4	19.4
Eaves height (m)	2.1	2.4	2.4
Ridge height (m)	4.2	5.5 (approx)	4.35
Footprint (m ²)	85.36	104.44*	104.44*
Volume (m ³)	268.8	403.66*	351.52*

*including rear projection

Background

An application for the re-use of this building as an independent dwelling was refused in September 2007 as it was considered to be an unsustainable location. The plans submitted with that application to some degree resemble those now proposed, with an amenity area to the south, remodelled field access providing for vehicle parking, and projections to north and south elevations.

Following that refusal, it was established through pre-application discussions that the building had been used for purposes incidental to the residential use of the farmhouse for a number of years, although no Certificate of Lawfulness had been granted to regularise this use of the building and its footprint. Sworn affidavits accompanied a further application, providing a material consideration in lieu of a Certificate, and permission was granted in December 2009 allowing the residential re-use of the building subject to it being ancillary to the main farmhouse (thus overcoming sustainability concerns). This is the 'host' permission to which this variation of condition application relates.

Works commenced in Spring 2011 and officers were quickly made aware that the building had been demolished and a new building was being constructed in the same location. Site investigations concluded that whilst there are vestiges of the original building retained, the whole structure is clearly a new construction with different dimensions to the original (as described above). In addition an area of land to the rear of the building had been excavated with a retaining wall built to provide an area of hard standing. This wall also

extended to the boundary with Middleton Lane. The photos at Appendix C show this.

A temporary Stop Notice was served on the landowner on 20 May 2011. The cessation requirements of this notice have since fallen away, but the landowner has given a written undertaking not to recommence works. Observations indicate no further works have occurred. Members will recall reports from the Head of Development Control in May and July 2011 in respect of that temporary Stop Notice. Members will also recall a further report in August 2011 to discuss enforcement action. Throughout and beyond this period, discussions between the applicant, planning agent and officers have continued in respect of seeking a resolution to the matter.

A Section 96A application (seeking a non-material minor amendment to the 2009 permission) was turned away in November 2011 as the changes proposed (that now proposed under this application) were considered to be material.

Development Plan

Saved policies of the North Warwickshire Local Plan 2006: ECON9 (Re-Use of Rural Buildings), ENV2 (Green Belt), ENV11 (Neighbour Amenities) and ENV13 (Building Design).

Other Relevant Material Considerations

Government Advice: Planning Policy Guidance 2 – Green Belts (PPG2), Planning Policy Statement 7 – Sustainable Development in Rural Areas (PPS7) and the draft National Planning Policy Framework (NPPF).

Consultations

Middleton Parish Council – note that this application is not for a conversion given the original barn has been demolished and a new “house” built, as well as noting the difference in materials and height.

Representations

Two neighbour representations have been received. One raises objection that the brickwork used fails to reflect the brickwork of the original barn, as well as noting that the works so far are not compliant with the original planning ‘brief’. Another supports the proposal in that it is making good use of a redundant farm building.

A copy of a letter circulated by the applicant has also been received.

Observations

There has been much discussion between the applicant, his planning agent and officers regarding the status of the 2009 permission. The applicant’s

claim, following legal advice, that it is still possible to implement that permission, despite the demolition works. The Council's Solicitor has considered the legal advice offered to the applicant, noting key errors and assumptions, and made reference to Case Law. The result is that the Council's Solicitor disagrees with that advice. Nevertheless the status of implementation is not considered relevant to the determination of this application, given that an application to vary conditions can be lodged prior to, during, or following completion of, the development. Determination of this application does nothing to affect that – what matters is whether any approval could then be lawfully implemented, and that is for the applicant to consider. As such, it is not proposed to discuss the legal and technical arguments here.

There is some argument that the retention of 1 metre high 'stubs' (see photos at Appendix C) and the original floor plate does not mean that a new building is being proposed, or a change of use occurs. It is important to note just how little of the original building remains, and that in the absence of a Certificate of Lawfulness or implemented planning permission for residential use of the land concerned, that the lawful use of the land therefore remains in its previous agricultural use. The proposal to vary the condition thus facilitates the change of use of further land compared that that previous approved and the erection of a new building and associated development upon it.

An application to vary conditions, whilst constrained to consideration of the relevant condition(s), allows the consideration of the full planning merits of the application⁴. Given the background to this application it is clear that, in short, the application seeks to change use of land and retain a new building for residential use within the Green Belt.

a) Change of use of land

ENV2 relies on national policy set out in PPG2. The draft NPPF does not indicate any material change to that policy. Members will be aware the most important attribute of Green Belts is their openness, and *substantial* weight is attached to this. PPG2 sets out a general presumption against development within the Green Belt, stating it is inappropriate unless for agriculture or forestry, essential facilities for outdoor sport and recreation, or for limited extension, alteration or replacement of dwellings. It does allow for change of use of land subject to the end use not conflicting with the purposes of including land in Green Belts (i.e. to keep land open and free of development).

As outlined, the 2009 permission had the effect of granting a change of use from agriculture to residential. This variation application must again consider this, but also consider the effect of further land 'take' to retain the building as proposed. Whilst the change of use previously had an effect on openness by way of a building, that building was existing. The change of use now concerns a new building taking up a greater footprint – i.e. land which would have remained open had the 2009

⁴ Encyclopaedia of Planning Law and Practice p73.04 to p73.06

permission been implemented. This also represents encroachment into the countryside. There is thus a materially greater harm on openness here, such that the change of use as a whole is considered to be inappropriate development.

b) The new building

PPG2 makes no allowance for new residential buildings, and thus the applicant must demonstrate very special circumstances to outweigh the harm to openness.

The applicant provides a Note of Advice arguing as to why the 2009 permission has been implemented. As discussed, this has been considered by officers and the Council's solicitor and is not agreed. There is also argument that the 2009 permission merely authorises operational development and not a change of use. This is not agreed either, since the lawful use is agricultural and the proposed use is residential. Notwithstanding that, if the Council were to accept the argument that the lawful use was established as incidental residential use, it is a material change of use to take it to ancillary residential use. Beyond this, the building is not required to support a functional need (e.g. an agricultural worker); and the intention to provide ancillary accommodation for family members, investment in the property in recent years, and valuation impacts from HS2 are either personal circumstances or not considered relevant to this development.

The applicant also advances that a 'common sense' approach should be taken in that the building is largely similar to what existed before. However, Members will no doubt be aware that this is an opinion as opposed to very special circumstances. To allow the application on this basis would set a precedent for others to do the same. No special circumstances are considered to have been advanced here such that the proposal is considered to represent inappropriate development in the Green Belt.

c) Re-use of the original building

Without prejudice and notwithstanding the fact that the original building has been demolished, consideration still has to be given to whether permission should be granted for its re-use in the form now proposed.

PPG2 allows for re-use of buildings where it does not have a materially greater impact on the openness of the Green Belt. It also requires that the buildings are capable of conversion without major or complete reconstruction, thus ensuring there is some net gain to openness of the Green Belt as and when buildings become unsalvageable. ECON9 supports this approach, with one of the qualifying criteria requiring the building to be "*capable of adaption and re-use without major or complete reconstruction, alteration or enlargement*". The building now proposed fails to fulfil this policy requirement – it has been subject to

major or complete reconstruction (depending on the applicant's or officers' opinion); it carries significant alteration (differing eaves height, new elevational projections, a lower roof pitch, thicker walls); and it is materially larger in footprint and volume.

The 2009 application was presented with a Structural Report evidencing that the conversion could take place with just some minor corrective work; and with clear plans demonstrating that the building would simply remain as it stood whilst blocked up openings would be re-opened (as shown at Appendix B). This provided sufficient confidence that the above criterion could be fulfilled. Whilst it appears from the applicants builder offered poor advice, there is uncertainty as to whether the Structural Report was accurate or not. NWBC Building Control officers advise that if the sole issue identified in the Structural Report was accurate, it could be accommodated without the need to demolish. Nonetheless, whether the demolition was intended or just the result of poor advice does not affect the fact that the above criterion cannot be fulfilled. The application thus fails to meet the requirements of ECON9.

d) The hard standing and retaining wall

It is acknowledged the current hard standing and retaining wall would be largely removed and land graded back to the retaining wall. The height of the wall adjacent to the highway would also be reduced to a maximum of 1 metre on the highway side.

Whilst these retrospective actions would address much of the concern here, there remains a strip of hard standing along the east and south edges of the building. PPG2 allows for engineering operations where they maintain openness and do not conflict with the purposes of including land in Green Belts. Whilst the effect of this hard standing on openness would be marginal, it does not safeguard the countryside from encroachment. It is advanced that it is to facilitate access. However the land is open, free from obstruction and it remains in the same ownership. It is not considered that the hard standing is thus so necessary to outweigh the harm caused here.

In respect of the wall, it is noted the applicant has a material fallback in respect of permitted development rights for enclosures. Whilst the height does exceed 1 metre when measured from ground level within the site, the implications of this of are negligible when considering this fall back, and it does not exceed 1 metre elsewhere.

e) The legal agreement

The original permission was limited to ancillary use by way of a Unilateral Undertaking and condition 3. At the time of writing no Deed of Variation has been provided, although the agent has indicated this

would be. Hence the legal agreement remains specific to the 2009 permission only. The condition would still have effect however, although it does not preclude the creation of a separate access, vehicle parking area and taking of separate utilities at a later date (with or without the benefit of planning permission). It is noted that site observations indicate that separate utility connections are actually being installed, such that there is concern as to whether the condition would be sufficient here.

In summary, the application to vary condition 2 would provide an alternative route to achieving a new residential building and further residential encroachment within the Green Belt. It is clear from the above assessment that approval of the new plans would conflict with saved policies ENV2 and ECON9, not only as a matter of principle but also by the physical properties of this new building and associated works.

Implications

There is likely to be a cost to the landowner in demolishing the building, removing associated works and restoring the land. However the applicant has chosen to take this risk having undertaken development without the benefit of planning permission. Moreover, the proposed building affects the strategic aims of Local Plan policy and the purposes of including land within the Green Belt. Its intended residential use will further compound the harm to these aims. The refusal of permission is considered to be proportionate and appropriate, as well as consistent with the Council's priority of defending the countryside and the openness of the Borough. The applicant would have a right of appeal and there is the opportunity to deal with any enforcement appeal concurrently. There is not considered to be a human rights issue at present.

Recommendation

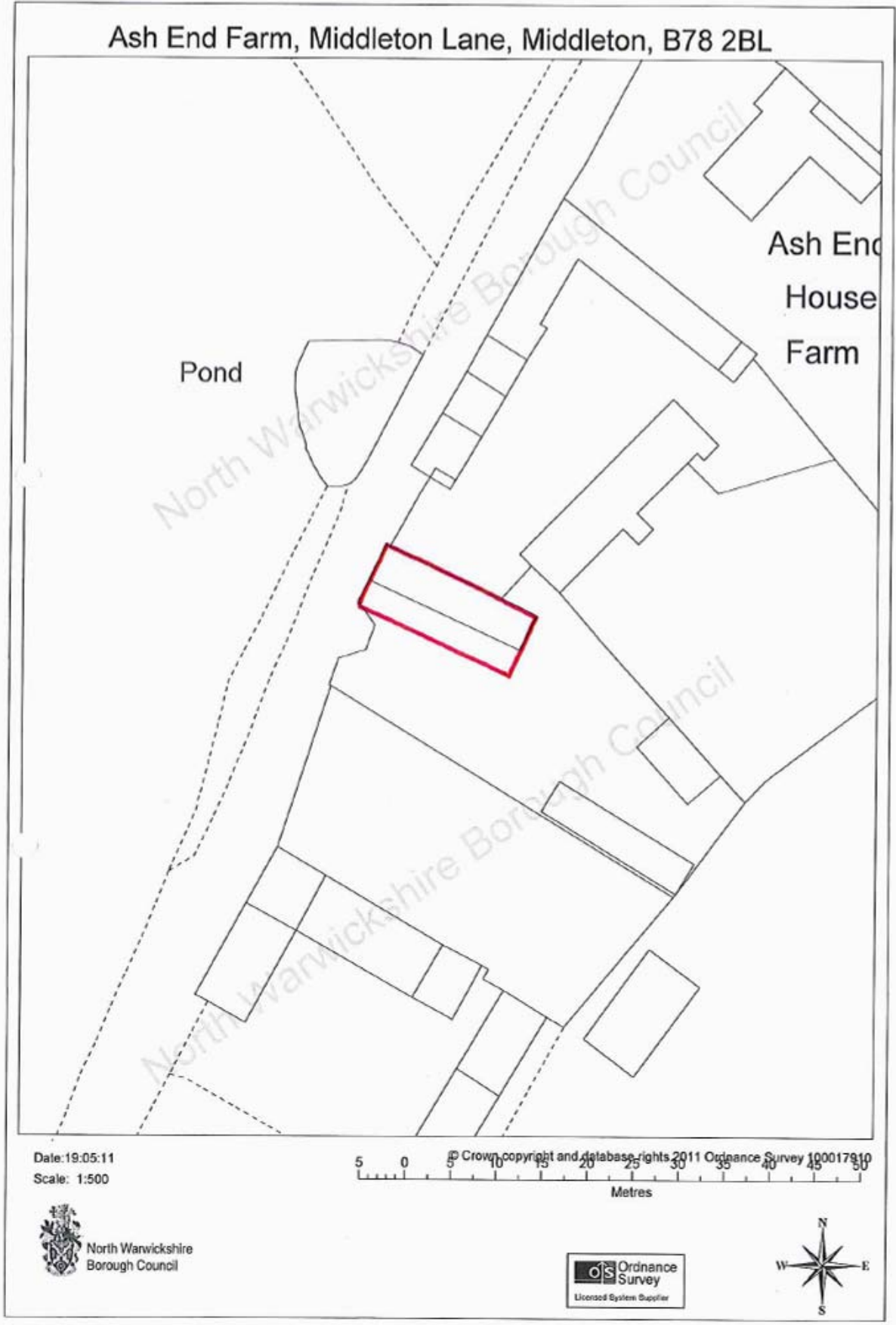
1. That the application be **REFUSED** for the following reasons:
 - (i) The proposed plans seek to utilise further agricultural land to provide for residential use and/or residential operational development. The change of land within Green Belts is tightly controlled and requires that the use does not conflict with the purposes of including land in Green Belts. This objective is not achieved under these proposals, with the built form and operational development representing harm to openness of the Green Belt and encroachment into the countryside. The proposal is therefore contrary to saved policy ENV2 of the North Warwickshire Local Plan 2006 and national policy contained within Planning Policy Guidance Note 2.

- (ii) The proposal plans seek to retain the erection of a new residential building within the Green Belt. Such development is considered to be inappropriate development, harmful to the openness of the Green Belt; and it is not considered that very special circumstances have been demonstrated which outweigh this harm. The proposal is therefore contrary to saved policy ENV2 of the North Warwickshire Local Plan 2006 and national policy contained within Planning Policy Guidance Note 2.

- (iii) Planning permission for the re-use of the original building was granted in response to it being demonstrated that the proposal accorded to the requirements of saved policy ECON9 of the North Warwickshire Local Plan 2006 – specifically that the building was capable of adaption and re-use without major or complete reconstruction, alteration or enlargement. As the original building has been demolished, variation of condition 2 would undermine the integrity of that host permission as well as being contrary to saved policy ECON9 of the North Warwickshire Local Plan 2006 and national policy contained within Planning Policy Guidance Note 2.

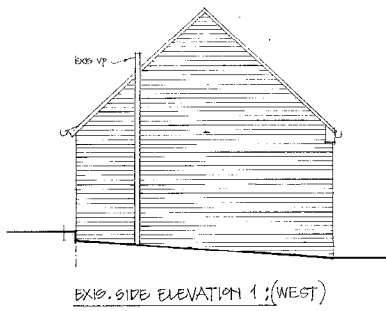
In light of the Board granting authority for enforcement action in August 2011, that an enforcement notice is now issued in respect of the unauthorised development.

Site location: **APPENDIX B**

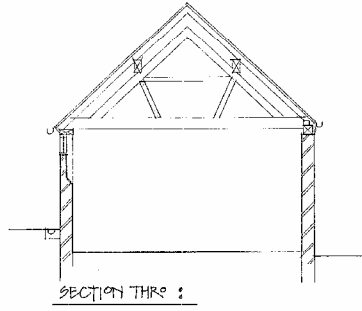


Original barn and plans: **APPENDIX C**

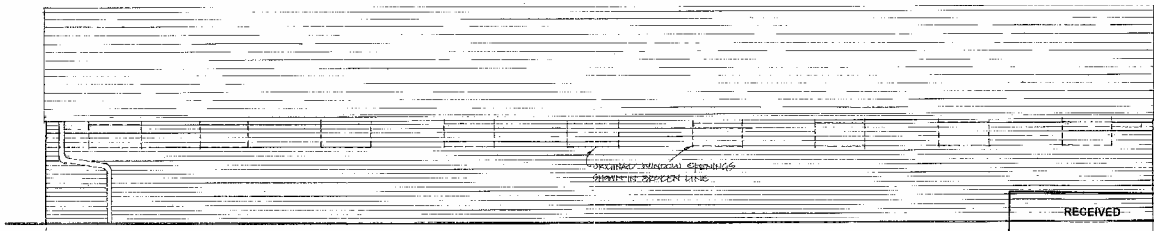




EXIST. SIDE ELEVATION 1 (WEST)



SECTION THRU :



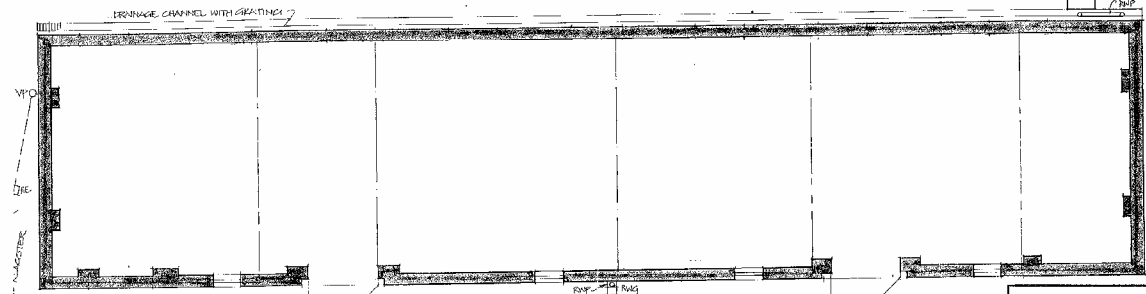
EXISTING REAR ELEVATION : SOUTH

NOTES:
FORMERLY DRG. NO 0600/05

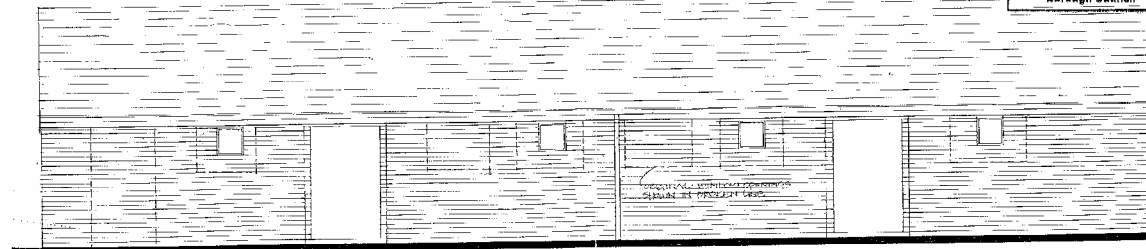
CONVERSION OF REDUNDANT AGRICULTURAL
BUILDING TO PROVIDE RESIDENTIAL
ACCOMMODATION AT ASH END FARM.

KENNETH C GETTING RIBA Architects and Designers
The Studio : 12 Norfolk Road : Sutton Coldfield : West Midlands B75 6SQ

RECEIVED	
28 SEP 2009	
North Warwickshire Borough Council	
Drawing no.	009/05
Drawn	24.07.2009
Scale	1:50
Revision	



EXISTING GROUND FLOOR PLAN:



EXISTING FRONT ELEVATION : NORTH (FACING COURTYARD)

NOTES:
FORMERLY DRG. NO 0600/04

CONVERSION OF REDUNDANT AGRICULTURAL
BUILDING TO PROVIDE RESIDENTIAL
ACCOMMODATION AT ASH END FARM.

KENNETH C GETTING RIBA Architects and Designers
The Studio : 12 Norfolk Road : Sutton Coldfield : West Midlands B75 6SQ

RECEIVED	
28 SEP 2009	
North Warwickshire Borough Council	

Drawing no.	009/05
Drawn	24.07.2009
Scale	1:50
Revision	

Tel / Fax 0121 355 5815

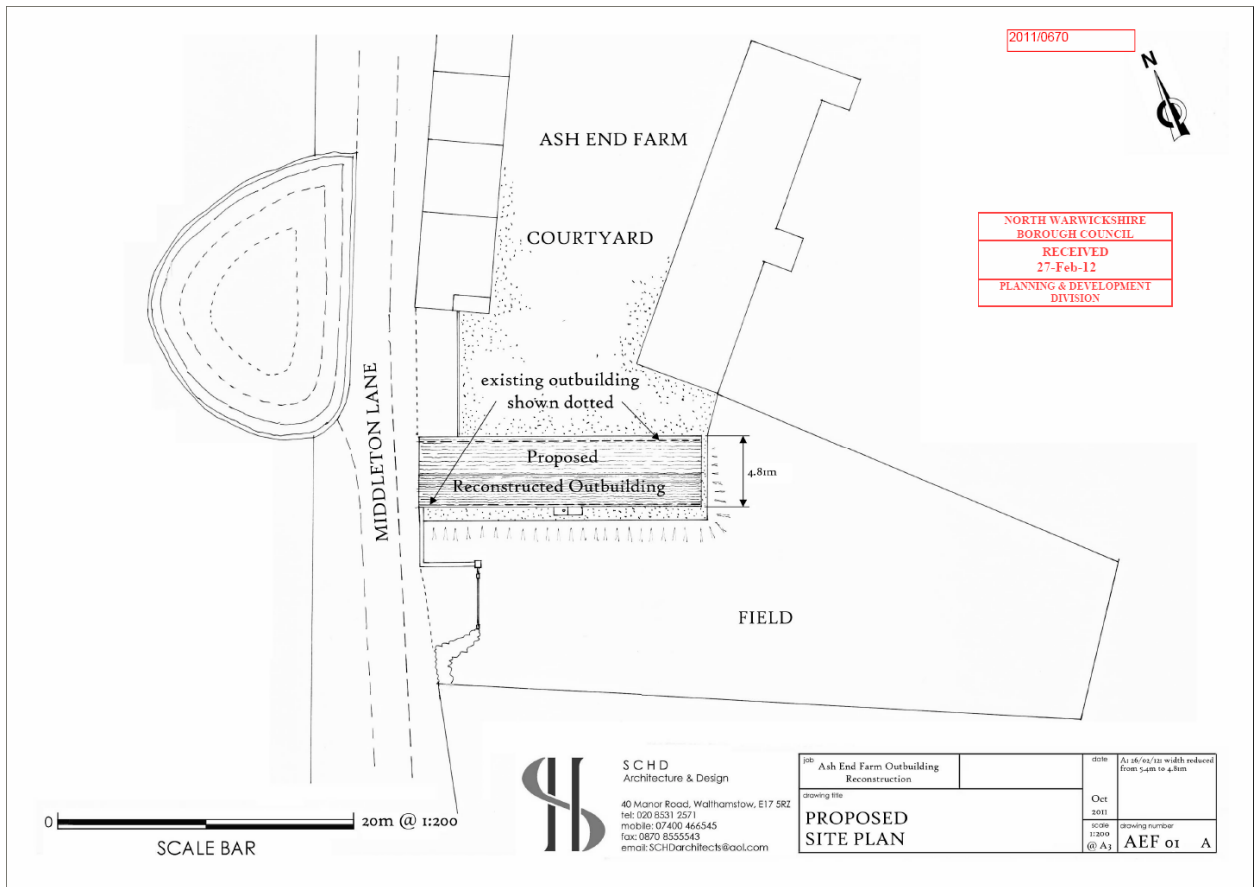
Existing site photos: **APPENDIX D**







Amended proposals: APPENDIX E



2011/0670



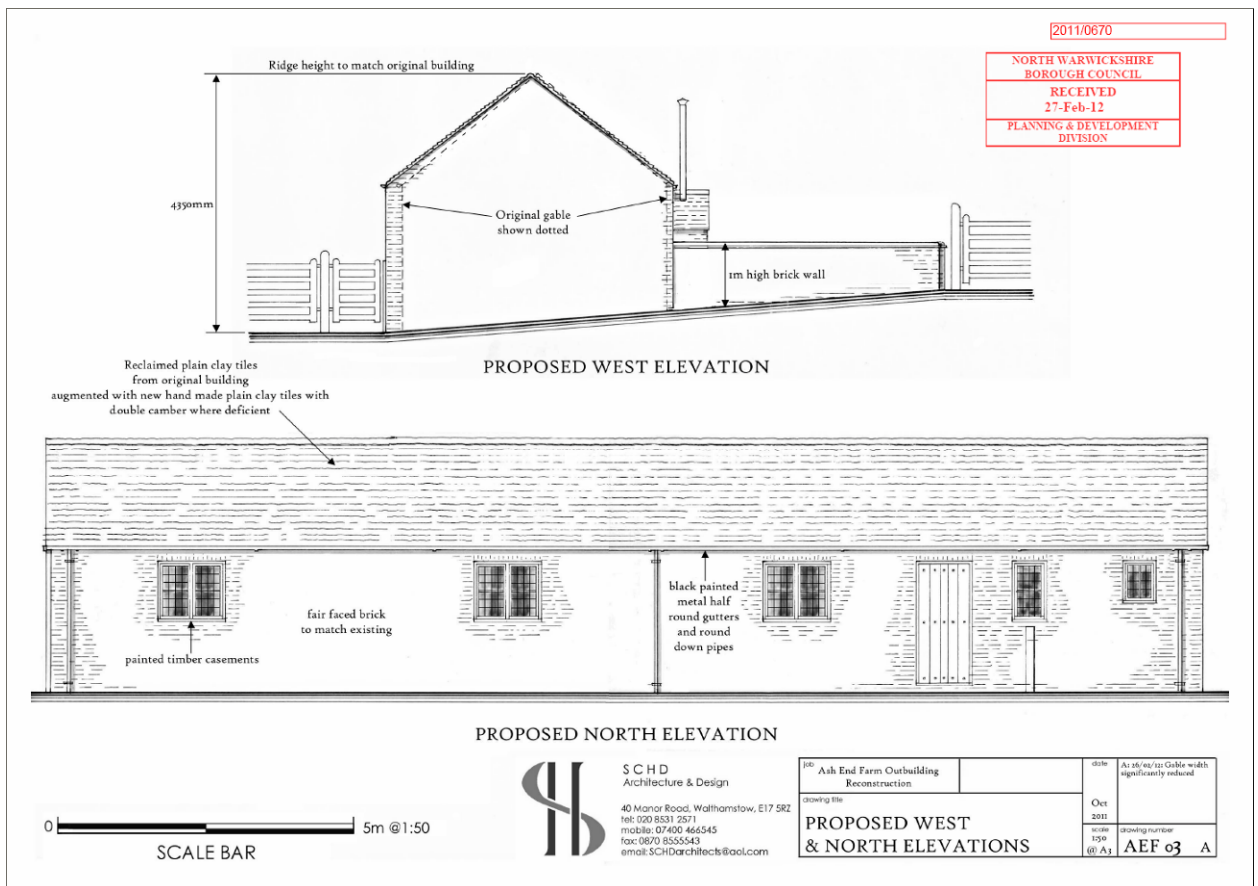
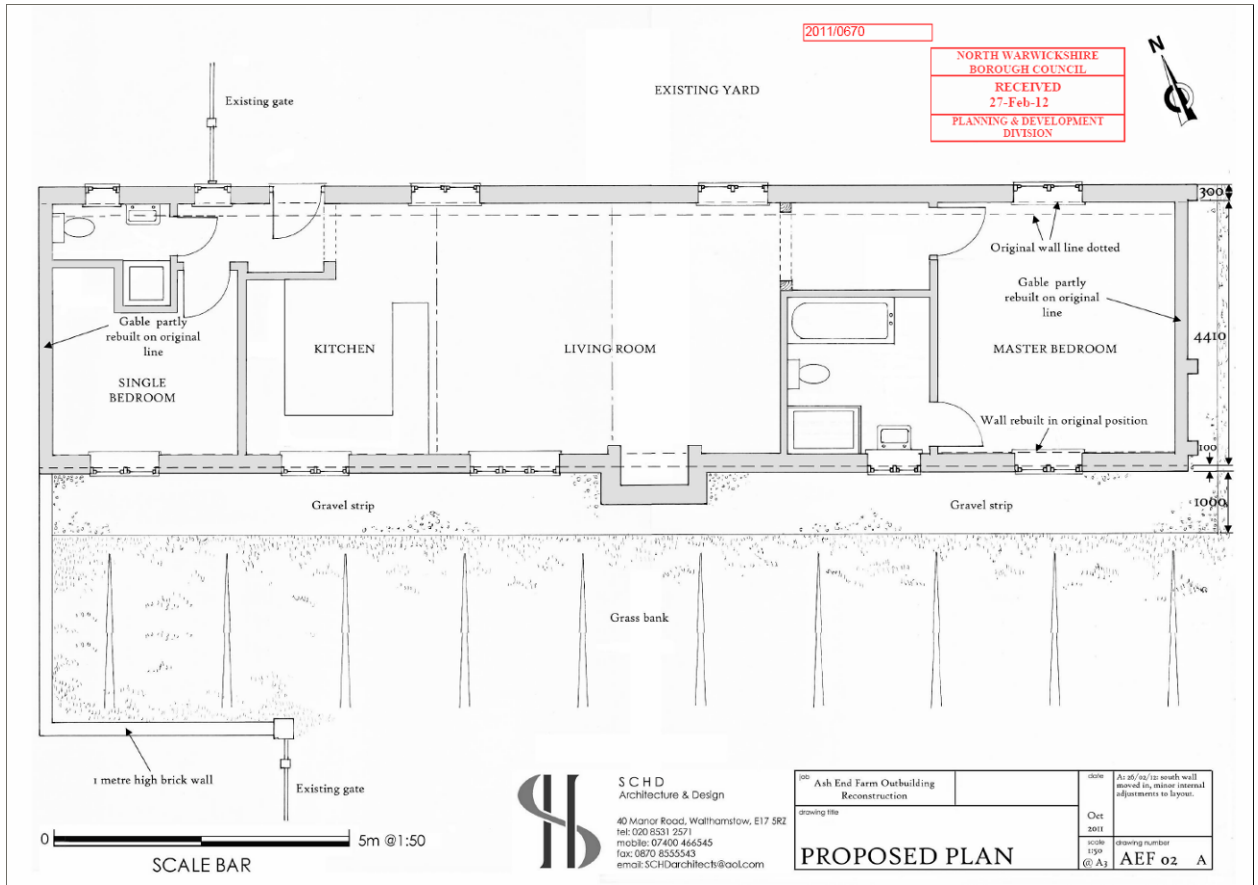
NORTH WARWICKSHIRE
BOROUGH COUNCIL
RECEIVED
27-Feb-12
PLANNING & DEVELOPMENT
DIVISION

0 20m @ 1:200
SCALE BAR



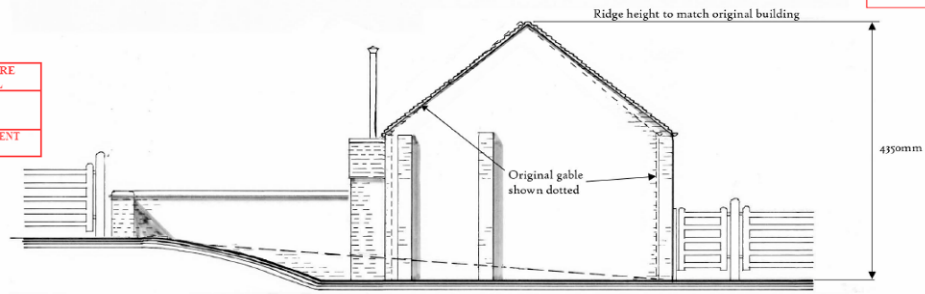
S CHD
Architecture & Design
40 Manor Road, Walthamstow, E17 5RZ
tel: 020 8531 2571
mobile: 07400 466545
fax: 0870 8555543
email: SChDarchitects@aol.com

job	Ash End Farm Outbuilding Reconstruction	date	A1 26/01/12 width reduced from 5.4m to 4.8m
drawing title	PROPOSED SITE PLAN	Oct 2011	
		scale 1:200 @ A3	drawing number AEF 01 A



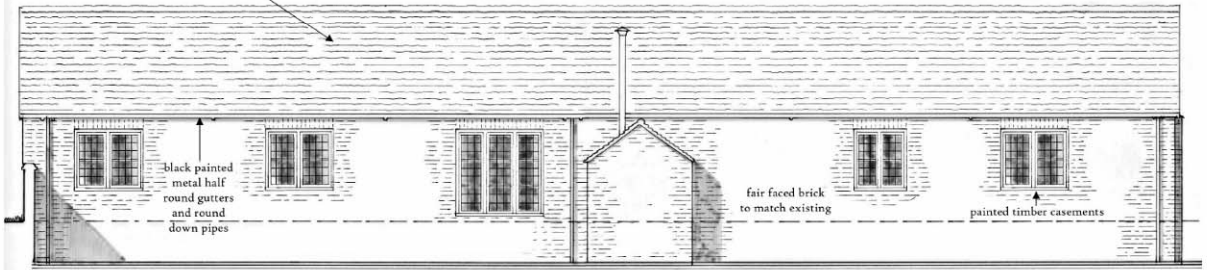
2011.0670

NORTH WARWICKSHIRE
BOROUGH COUNCIL
RECEIVED
27-Feb-12
PLANNING & DEVELOPMENT
DIVISION



PROPOSED EAST ELEVATION

Reclaimed plain clay tiles
from original building
augmented with new hand made plain clay tiles with
double camber where deficient



PROPOSED SOUTH ELEVATION



S C H D
Architecture & Design
40 Manor Road, Walthamstow, E17 5RZ
tel: 020 8531 2571
mobile: 07400 466545
fax: 02070 8555543
email: S.C.H.D.architects@aol.com

job: Ash End Farm Outbuilding
Reconstruction

drawing title
**PROPOSED EAST
& SOUTH ELEVATIONS**

date:	A: 26/02/12 Gable with aggressively reduced
2011	
1008	drawing number
1900	AEF 04 A
@ A3	

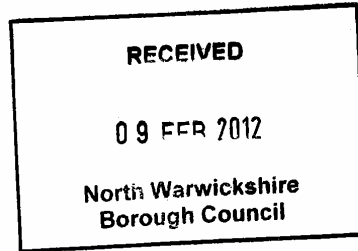


011/DS/cmw/BIR.3710

E-mail : david.stentiford@pegasuspg.co.uk

8th February 2012

Mr Chris Nash
Development Control Service
North Warwickshire Borough Council
The Council House
South Street
Atherstone
Warwickshire
CV9 1DE



Dear Mr Nash

Planning Application: PAP/2011/0670
Ash End Farm, Middleton Lane, Middleton

We are in receipt of a copy of your report to Planning Committee scheduled for Monday 13th February 2012 and write to express a number of fundamental concerns in relation to the approach which officers have taken to this application.

First and foremost you concern yourself within the evaluation of the application with issues pertaining to a change of use. It is explicit within the terms of the application that the development for which approval is sought relates to amendments to the approved plans detailed at condition 2 of planning permission PAP/2009/0451.

The issue of use which is detailed extensively in the Committee Report is not an issue which bears on this application. The use of the site for purposes incidental to the dwelling, though not subject to a Certificate of Lawfulness, is a lawful use by virtue of the passage of time and this was acknowledged when the decision was made to approve the 2009 application.

The use of the site is not material to this application and discussions concerning the former structural report to policy requirements relating to change of use are spurious and irrelevant.

It is therefore misleading of you to represent matters in the way which they are in the committee report by indicating that the lawful use of the application site is for agricultural purposes. The existence or otherwise of a Certificate of Lawfulness does not change the matter of fact which is that evidence existed at the time of the 2009 application to demonstrate that use of the building for purposes incidental to the enjoyment of the dwelling was adequately established and in the event there was no need to make a formal application for a Certificate of Lawful Use because the planning permission which was granted covered that matter.

5 The Priory
Old London Road
Canwell
Sutton Coldfield
B75 5SH



Also at:
Bracknell
Bristol
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Pegasus Planning Group is the trading name of Pegasus Planning Group Limited, registered in England and Wales under number 07277000

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Pegasus House,
Querns Business Centre,
Whitworth Road, Cirencester,
Gloucestershire, GL7 1RT

The essence of this application in relation to matters pertaining to the Green Belt is not one which relates to the use but one which relates to the affect of the physical alterations to the building on the openness and visual amenity of the Green Belt.

I must also register with you, and for the Members' benefit, that your observations in the third paragraph of your report, which will immediately register with and set the context of the consideration of the matter for readers, relating to demolition of the building is misleading.

The report states:

"this building has been demolished and a new building constructed with a larger footprint and of greater height."

You again state in the third paragraph of the section entitled 'Background';

"... the building had been demolished and the new building was being constructed in the same location".

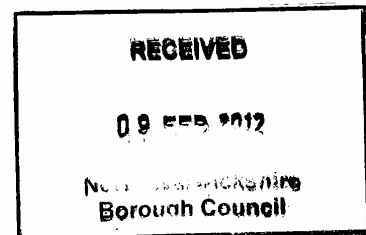
It is important that Members are made clear that this is the officers' assessment of the situation and to be fair you do record the detail of that debate later in the report.

"It is important to note just how little of the original building remains."

In the interests of fairness to my client I would request that Members are made aware more precisely of the nature of events that took place on site as the current representation of that in the committee report would lead a reader to conclude that the building was raised to the ground and it is only in the depths of the report that reference is made to the retention of parts of the original structure. Members could for example be made aware that the original gable ends of the building have not been repositioned at all and that the differences in the alignment of the front and rear walls as built vary only marginally, as described within our application from those which were approved in the first instance.

For the benefit of Members I would re-state that my client's application does not seek planning permission for a change of use but only for a minor re-configuration of the building which was approved in 2009. Issues discussed in the committee report in relation to any change of use are irrelevant to this application and consideration of Green Belt issues should correctly be limited to the effect which the revised structure has upon the openness and visual amenity of the Green Belt.

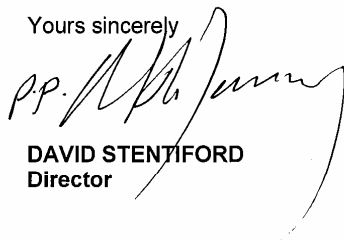
Those impacts differ negligibly between the approved structure and that for which planning permission is now sought. This is demonstrated by the minor alterations to the form of the building and the fact that those alterations would have no material effect upon views from significant surrounding vantage points.



For these reasons I would particularly request that Members limit their consideration of the issues to those which the application concerns and not to issues of principle which fall outside of my client's application.

I would be grateful to receive confirmation that these comments will be circulated to members of the committee in good time for them to be considered in combination with your own report.

Yours sincerely



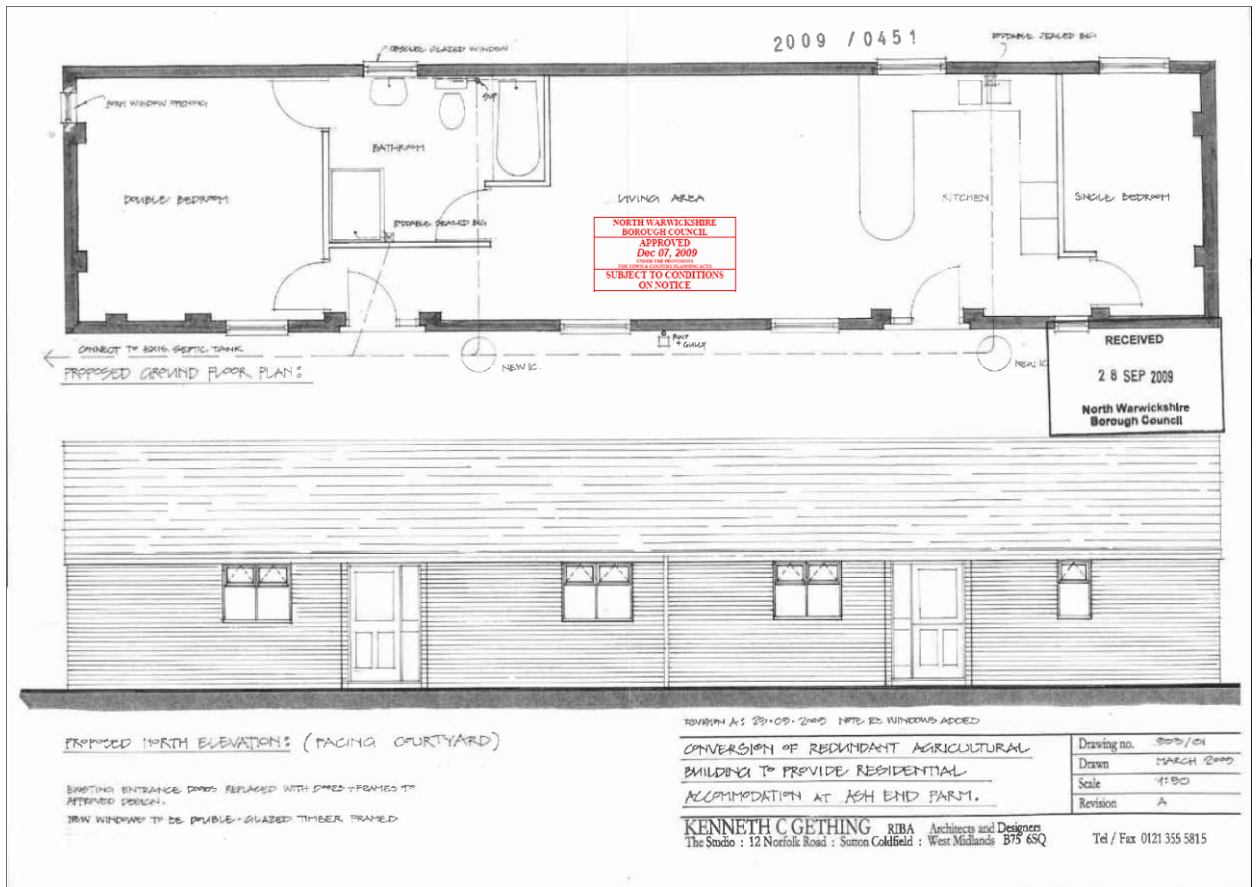
DAVID STENTIFORD
Director

RECEIVED

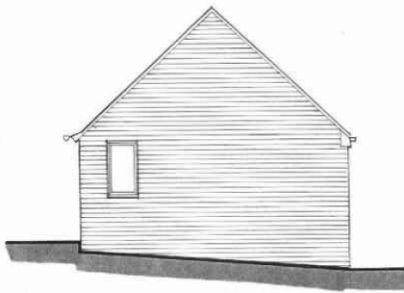
09 FEB 2012

**North Warwickshire
Borough Council**

2009 approved plans: **APPENDIX G**



2009 / 0451

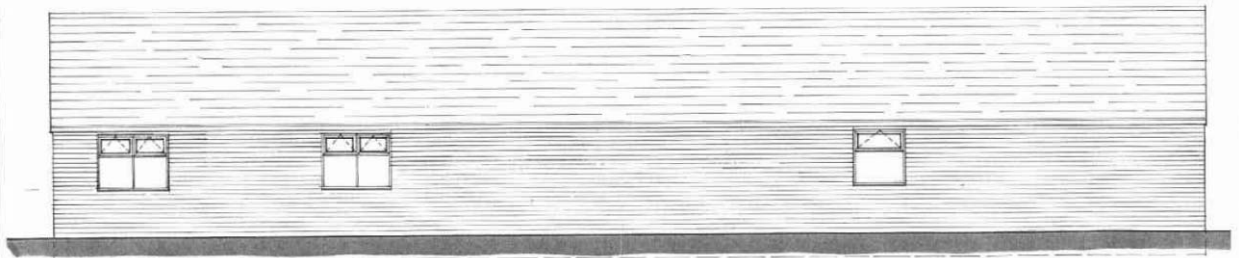


PROPOSED WEST ELEVATION:

FORM OPENING & INSTALL WINDOW IN THIS ELEVATION

NORTH WARWICKSHIRE
BOROUGH COUNCIL
APPROVED
Dec 07, 2009
UNDER THE PROVISIONS
OF THE TOWN & COUNTRY PLANNING ACTS
SUBJECT TO CONDITIONS
ON NOTICE

RECEIVED
28 SEP 2009
North Warwickshire
Borough Council



PROPOSED SOUTH ELEVATION:

REVISION A: 08-09-2009 WINDOWS ADJUSTED

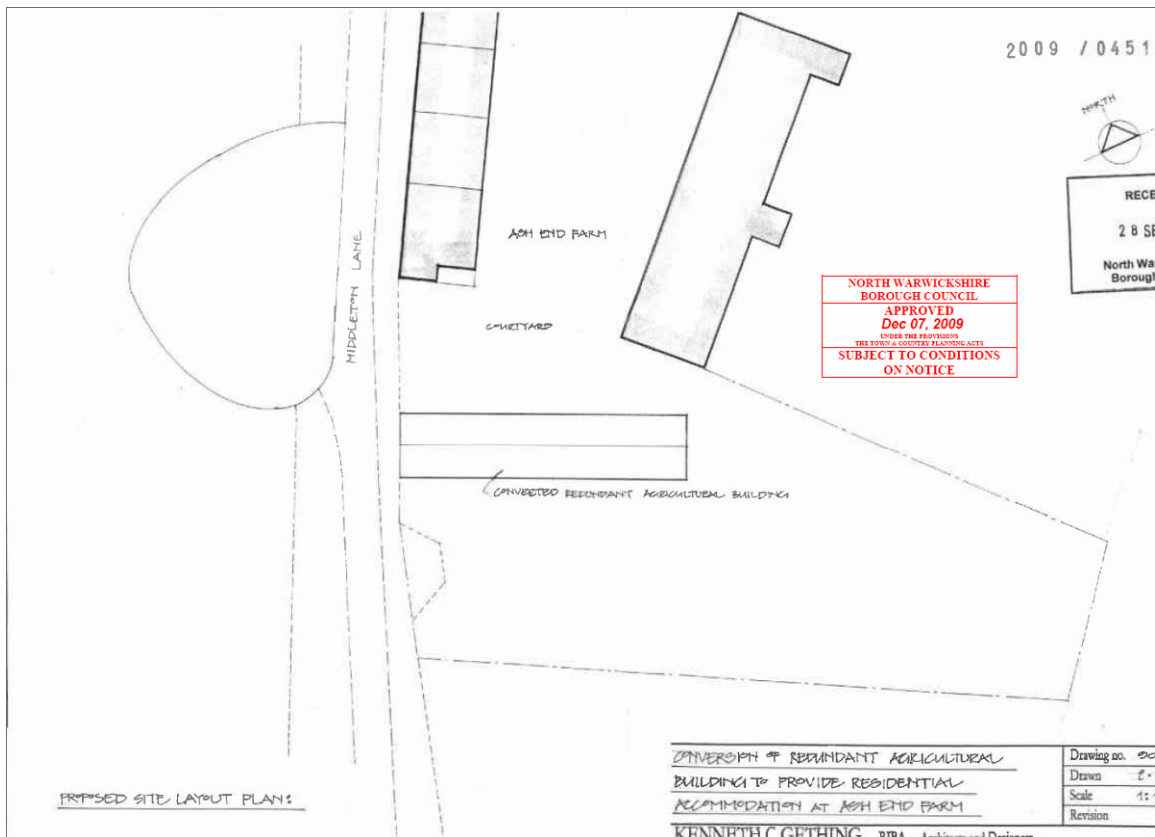
CONVERSION OF REDUNDANT AGRICULTURAL
BUILDING TO PROVIDE RESIDENTIAL
ACCOMMODATION AT ASH END FARM.

Drawing no.	008/02
Drawn	MARCH 2009
Scale	1:50
Revision	A

KENNETH C GETHING RIBA Architects and Designers
The Studio : 12 Norfolk Road : Sutton Coldfield : West Midlands B75 6SQ

Tel / Fax 0121 355 5815

2009 / 0451



PROPOSED SITE LAYOUT PLAN:

NORTH WARWICKSHIRE
BOROUGH COUNCIL
APPROVED
Dec 07, 2009
UNDER THE PROVISIONS
OF THE TOWN & COUNTRY PLANNING ACTS
SUBJECT TO CONDITIONS
ON NOTICE

RECEIVED
28 SEP 2009
North Warwickshire
Borough Council

CONVERSION OF REDUNDANT AGRICULTURAL
BUILDING TO PROVIDE RESIDENTIAL
ACCOMMODATION AT ASH END FARM

Drawing no.	008/07
Drawn	8-09-2009
Scale	1:200
Revision	

KENNETH C GETHING RIBA Architects and Designers
The Studio : 12 Norfolk Road : Sutton Coldfield : West Midlands B75 6SQ

Tel / Fax 0121 355 5815

DATED THE _____ DAY OF _____ 2012

**MICHAEL PAUL BYRNE
ELIZABETH JANE NICOLA BYRNE**

-AND-

SANTANDER PLC

UNILATERAL UNDERTAKING

Pursuant to Section 106 of the Town and Country Planning Act 1990

Relating to the proposed development at

Ash End Farm, Middleton Lane, Middleton, Tamworth

THIS UNDERTAKING is made the day of 2012

1. Parties

- 1.1 The Owner Michael Paul Byrne and Elizabeth Jane Nicola Byrne of Ash End Farm, Middleton Lane, Middleton, Tamworth, Staffordshire, B78 2BL
- 1.2 The Mortgagee Santander Plc whose Head Office is Abbey National House, 2 Triton Square, Regent's Place, London, NW1 3AN

2. Definitions and Interpretation

2.1 In this Deed

2.1.1 "the Council" means North Warwickshire Borough Council

2.1.2 "1990 Act" means the Town and Country Planning Act 1990 as amended by
 the Planning and Compensation Act 1991 and the Planning and
Compulsory
 Purchase Act 2004

2.1.3 "Deed" means this Deed

2.1.4 "Application" means application reference PAP/2011/0670 dated 5th January 2012 for varion of condition No.2 of planning permission PAP/2009/0451 dated 7 December 2009 to replace approved numbered plans

2.1.6 "Permission" means planning permission granted pursuant to the Application

2.1.7 "the Plan" means the plan annexed hereto

2.1.8 "Site" means the land situated at Ash End Farm Middleton Tamworth shown
 edged red on the Plan

2.1.9 "Building" means the building the subject of the Application and coloured
 blue on the Plan

2.2 In this Deed where the context so requires references:

2.2.1 to Clauses are references to Clauses in this Deed

2.2.2 to any Act of Parliament refers to the Act as it applies at the date of this Deed and any later amendment or re-enactment of it

3. Recitals

3.1 The Owner is the owner of the freehold of Ash End Farm, Middleton Lane, Middleton, Tamworth which is registered at H M Land Registry under Title Number WK 413914 subject to a Charge in favour of the Mortgagee and dated 15th November 2005 and registered as Entry Number 1 of the Charges Register of the said Title Number WK 413914 office copy entries of the said title are attached hereto.

3.2 The Council is the local planning authority within the meaning of the 1990 Council Act for the area within which the Site is situate and by whom the obligations on the part of the Owner herein contained will be enforceable

3.3 The Council has not determined the Application and the Owner enters into this obligation to the extent that any objections by the Council to grant Planning Permissions are overcome.

4. Legal Effect

4.1 This Deed is made pursuant to Section 106 of the 1990 Act to the intend that it shall bind the Owner and its successors in title to each and every part of the Site as provided in those Sections and the covenants contained in Clause 5 hereof are planning obligations for the purposes of Section 106 of the 1990 Act

4.2 This Deed and the obligations in Clause 5 shall come into effect upon the grant of Permission

4.2 This Undertaking is a local land charge and will be registered as such

5. The Owners Covenants

In the event of the Council granting permission the owners so as to bind the building hereby covenants with the Council as follows:-

- 5.1 To only use the building as a habitable accommodation and ancillary to the adjoining farmhouse coloured green on the plan
- 5.2 Not to take a separate postal address for the building
- 5.3 Not to provide a separate access to the building from Middleton Lane or to provide separate car parking provisions for the same

- 5.4 Not to provide separate utilities facilities for use by the building but to ensure that such facilities are shared jointly with the adjoining farmhouse
- 5.5 Not to sell, let or in any way dispose of the building separately from the adjoining farmhouse

6. Costs

- 6.1 The Owner hereby agreed to pay the Council's reasonable legal costs together with all disbursements incurred in connection with the preparation completion and registration of this Deed.

7. Rights of Third Parties

For the avoidance of doubt none of the provisions of the Contract (Rights of Third Parties) Act 1999 shall apply to this Deed

8. Consent

The Mortgagee hereby consents to the completion of this Undertaking and acknowledges that from the date hereof the Site shall be bound by the covenants restrictions and stipulations contained herein

EXECUTED and delivered as a Deed the day and year first hereinbefore written

SIGNED and delivered as a deed by
The said MICHAEL PAUL BYRNE
in the presence of:

SIGNED and delivered as a deed by
ELIZABETH JANE NICOLA BYRNE
in the presence of:

SIGNED and delivered as a deed by
SANTANDER PLC
in the presence of:

