

**To: The Deputy Leader and Members of the Planning and Development Board
(Councillors Simpson, Bowden, L Dirveiks, Fox, Jenkins, Lea, Morson, B Moss, Sherratt, M Stanley, Swann, Sweet, Winter and Wykes)**

For the information of other Members of the Council

This document can be made available in large print and electronic accessible formats if requested.

For general enquiries please contact David Harris, Democratic Services Manager, on 01827 719222 or via e-mail - davidharris@northwarks.gov.uk.

For enquiries about specific reports please contact the officer named in the reports

PLANNING AND DEVELOPMENT BOARD AGENDA

7 DECEMBER 2009

The Planning and Development Board will meet in the Council Chamber at The Council House, South Street, Atherstone, Warwickshire on Monday 7 December 2009 at 6.30 pm.

AGENDA

- 1 **Evacuation Procedure.**
- 2 **Apologies for Absence / Members away on official Council business.**
- 3 **Declarations of Personal or Prejudicial Interests.**
(Any personal interests arising from the membership of Warwickshire County Council of Councillors Fox, Lea, B Moss and Sweet and membership of the various Town/Parish Councils of Councillors Fox (Shustoke), B Moss (Kingsbury), Sherratt (Coleshill) and M Stanley (Polesworth) are deemed to be declared at this meeting.)

- 4 **Minutes of the meetings of the Board held on 17 August, 21 September, 19 October and 16 November 2009** - copies herewith to be agreed as a correct record and signed by the Chairman.

PART A – ITEMS FOR DISCUSSION AND DECISION (WHITE PAPERS)

- 5 **Planning Applications** – Report of the Head of Development Control.

Summary

Town and Country Planning Act 1990 – application presented for determination.

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

- 6 **Community Infrastructure Levy Consultation Paper** – Report of the Head of Development Control.

Summary

The Government has published further detail in the form of a consultation paper, about the introduction and working for the new Community Infrastructure Levy. Members are invited to comment on the paper.

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

- 7 **Tree Preservation Order – Beechwood House, Long Street, Atherstone** - Report of the Head of Development Control.

Summary

The Board resolved to issue an Emergency Tree Preservation Order in respect of this yew tree. This report recommends that this be made permanent notwithstanding an objection.

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

PART C - EXEMPT INFORMATION (GOLD PAPERS)

- 8 **Exclusion of the Public and Press**

Recommendation:

That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of

business, on the grounds that it involves the likely disclosure of exempt information as defined by Schedule 12A to the Act.

9 Breaches of Planning Control - Report of the Head of Development Control.

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

JERRY HUTCHINSON
Chief Executive

NORTH WARWICKSHIRE BOROUGH COUNCIL

MINUTES OF THE PLANNING AND DEVELOPMENT BOARD

17 August 2009

Present: Councillor Simpson in the Chair.

Councillors Bowden, L Dirveiks, Fox, Jenkins, Lea, Sherratt, M Stanley, Swann, Sweet, Winter and Wykes.

Apologies for absence were received from Councillors Morson and B Moss.

Councillor Phillips was also in attendance.

23 **Declarations of Personal or Prejudicial Interests**

Personal interests arising from the membership of Warwickshire County Council of Councillors Fox, Lea and Sweet and membership of the various Town/Parish Councils of Councillors Fox (Shustoke), Sherratt (Coleshill) and M Stanley (Polesworth) were deemed to be declared at this meeting.

Councillors Bowden, Jenkins, Lea and Winter declared a personal interest in Minute No 26 – Planning Applications (Application No 2008/0429 – Land Adjacent to 40 Kiln Way, Polesworth) by reason of being members of the Resources Board.

Councillor Swann declared a personal interest in Minute No 26 – Planning Applications (Applications No 2008/0482 and 0483 - Kingsbury Hall, Coventry Road, Kingsbury) by reason of his personal acquaintance with the applicant.

24 **Minutes**

The minutes of the meetings of the Board held on 18 May, 15 June and 20 July 2009, copies having been previously circulated, were approved as a correct record and signed by the Chairman.

25 **Budgetary Control Report 2009/2010 Period Ended 31 July 2009**

The Assistant Director (Finance and Human Resources) reported on the revenue expenditure and income for the period from 1 April 2009 to 31 July 2009. The 2009/2010 budget and the actual position for the period, compared with the estimate at that date were detailed, together with an estimate of the out-turn position for services reporting to the Board.

Resolved:

- a That the report be noted; and**
- b That the Assistant Director (Finance and Human Resources) be asked to report to the next meeting of the Board on the Building Control Partnership and the extent of appeal costs that have transpired together with year end forecasts.**

26 **Planning Applications**

The Head of Development Control submitted a report for the consideration of the Board. Details of correspondence received since the publication of the agenda is attached as a schedule to these minutes.

Resolved:

- a **That following the agreement of Resources Board that £2000 from the receipt of the sale of the land adjacent to 40 Kiln Way, Polesworth be used for the purposes set out in the report of the Head of Development Control, in lieu of a Section 106 Agreement, outline planning permission be granted in respect of Application No 2008/0249 subject to the conditions set out in Appendix A of the report;**
- b **That in respect of Kingsbury Hall, Coventry Road, Kingsbury, plan numbers 04/022/78E, 79F, 62E, 152 and 153 received by the Local Planning Authority on 28 July 2009, be approved as amendments to the Planning Permission reference 2008/0482, and the Listed Building Consent reference 2008/0483, both granted on 6 May 2009, subject to the conditions attached in both;**
- c **That Application No 2008/0513 (Manor House Farm, Green End Road, Green End, Fillongley) be approved subject to the amendment of conditions 14 and 19 to read as follows:-**

'14 No materials shall be delivered to or tipped on the site other than between 0800 hours and 1700 hours Mondays to Fridays. There shall be no such activity on Saturdays and not at all on Sundays, Bank Holidays or other public holidays.

Reason

In the interests of amenity.

19. The landscaping scheme as shown on plan number KL.073.003 and the lake bunding as shown on plan number 08/033/04 shall be implemented and maintained in accordance with the approved plans thereafter.

Reason

In the interest of the amenity.'

- d **That Application No 2009/0242 (Waverton Avenue Allotments, Waverton Avenue, Warton) be approved subject to the following additional condition:-**
- '5 All of the sheds hereby approved shall be maintained hereafter in a good structural condition and their appearance shall be maintained at all times to the written satisfaction of the Local Planning Authority."**

Reason

In the interest of the amenity.'

- e That Application No 2009/0248 (Whitacre Garden Centre, Tamworth Road, Nether Whitacre, Coleshill) be refused for the reasons specified in the report of the Head of Development Control; and**
- f That in respect of Application No 2009/2048 (Whitacre Garden Centre, Tamworth Road, Nether Whitacre, Coleshill) the Solicitor to the Council be authorised to issue an Enforcement Notice requiring the cessation of this use from this site and the removal of the office building from the site, for the reasons outlined in the report, with a compliance period of six months.**

27 The Butchers Arms, Filongley

The Head of Development Control reported on the current position in respect of the Butchers Arms, Fillongley, following the partial quashing of a Listed Building Enforcement Notice.

Resolved:

That the action taken by the Chief Executive under his emergency powers be noted.

28 Killian Pretty Review Further Consultations

The Head of Development Control reported that the Government had published the first of several consultation papers arising directly out of the Killian Pretty Review. Members were informed of proposals in respect of the "life" of planning permissions and secondly with new procedures to deal with amendments to planning permissions.

Resolved:

That the criticisms of the proposals as set out in the report of the Head of Development Control be referred to the DCLG.

29 Diversion of Footpaths Applications

The Board was informed of the amount of costs that could be reclaimed when processing public path orders to divert, extinguish and stop up footpaths and bridleways to allow development to proceed under Section 257 of the Town and Country Planning Act 1990 or to divert a footpath under Section 119 of the Highways Act 1980. Members were asked to agree a suggested course of action.

Resolved:

That charges as set out in the report the Head of Development Control be referred to Resources Board with a view to adding it to

the Councils scale of charges for the recovery of costs when making a public path diversion or extinguishment order.

30 Annual Performance Report 2008/9

The Head of Development Control reported on the annual performance over 2008/9 of the Development Control service comparing it with recent years. He also provided the first monitoring report following the recent Planning Review.

Resolved:

That the report be noted and the situation in respect of application numbers be reported when the half year figures are available.

31 Progress Report on Achievement of Corporate Plan and Performance Indicator Targets April 2009 – June 2009

The Chief Executive and the Director of Resources reported on the performance and achievement against the Corporate Plan and Performance Indicator targets relevant to the Board for the first quarter from April to June 2009.

Resolved:

That the report be noted.

32 Emergency Tree Preservation Order Beechwood House, Long Street, Atherstone

Under Section 100B(4)(b) of the Local Government Act 1972 ,the Chairman had agreed to the consideration of this matter by reason of the urgent need to confirm legal action.

The Board was asked to note the action of the Chief Executive in making an Emergency Tree Preservation Order in respect of a Yew Tree at Beechwood House, Long Street, Atherstone.

Resolved:

- a That the action of the Chief Executive in making an Emergency Tree Preservation Order in respect of a Yew Tree at Beechwood House, Long Street, Atherstone be noted; and**
- b That the matter be referred back to the Board once the consultation period has expired, so that the Board can consider whether to make the Order permanent or not.**

33 Exclusion of the Public and Press

Resolved:

That, under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following items of business, on the grounds that they involve the likely disclosure of exempt information, as defined by Schedule 12A to the Act.

34 Building Control Partnership

Ian Powell from Nuneaton and Bedworth Borough Council reported on the progress of the Building Control Partnership and Members were asked to agree a suggested course of action.

Resolved:

- a That the reporting arrangements are agreed and the report be noted; and**
- b That the dates proposed for Steering Group meetings in paragraph 3.3 of the report be agreed and that the Chairman of the Board continues to represent NWBC on the Steering Group with Councillor Sweet as deputy.**

35 Breach of Planning Control - Breach Brook, Square Lane, Corley

Under Section 100B(4)(b) of the Local Government Act 1972 ,the Chairman had agreed to the consideration of this matter by reason of the urgent need to take legal action.

The Head of Development Control reported on the current situation on the site at Breach Brook, Square Lane, Corley and the Board was asked to agree a suggested course of action.

Resolved:

That the Solicitor to the Council be authorised to issue an Enforcement Notice requiring the cessation of the mixed use of the small holding for agricultural and residential use through the cessation of the use of an existing former stable building as residential accommodation, for the reasons outlined in the report of the Head of Development Control, and that the compliance period be 6 months.

36 Heart of England Promotions Ltd Wall Hill Road Fillongley

The Head of Development Control reported verbally on the current situation in respect of the site at Heart of England Promotions Ltd, Wall Hill Road, Fillongley.

M Simpson
Chairman

**Planning and Development Board
17 August 2009
Additional Background Papers**

Agenda Item	Application Number	Author	Nature	Date
6	2009/0248	Mr Hughes	Objection	1/7/09
		Mr Hughes	Objection	13/8/09
		Applicant	Information	12/8/09 &4/8/09
		Mr Clifton	Objection	12/8/09
6	2008/0513	Internal	Site Visit Record	4/8/09

NORTH WARWICKSHIRE BOROUGH COUNCIL

MINUTES OF THE PLANNING AND DEVELOPMENT BOARD

21 September 2009

Present: Councillor Simpson in the Chair.

Councillors Bowden, L Dirveiks, Fox, Jenkins, Lea, B Moss, Sherratt, M Stanley, Swann and Winter.

Apologies for absence were received from Councillors Morson, Sweet and Wykes.

Councillor Phillips was also in attendance.

37 **Declarations of Personal or Prejudicial Interests**

Personal interests arising from the membership of Warwickshire County Council of Councillors Fox, Lea and B Moss and membership of the various Town/Parish Councils of Councillors Fox (Shustoke), B Moss (Kingsbury), Sherratt (Coleshill) and M Stanley (Polesworth) were deemed to be declared at this meeting.

Councillor M Stanley declared a personal and prejudicial interest in Application No 2009/0350 (Artworks – Poetry Trail, Land at and including High Street, Polesworth) and took no part in the discussion or voting thereon.

38 **Budgetary Control Report 2009/2010 Period Ended 31 August 2009**

The Assistant Director (Finance and Human Resources) reported on the revenue expenditure and income for the period from 1 April 2009 to 31 August 2009. The 2009/2010 budget and the actual position for the period, compared with the estimate at that date were detailed, together with an estimate of the out-turn position for services reporting to the Board.

Resolved:

That the report be noted.

39 **Planning Applications**

The Head of Development Control submitted a report for the consideration of the Board. Details of correspondence received since the publication of the agenda is attached as a schedule to these minutes.

Resolved:

- a **That Application No 2009/0306 (The Green, Post Office Row, off Nuthurst Lane, Astley) be approved subject to the conditions specified in the report of the Head of Development Control;**
- b **That the report in respect of the Applications relating to The Heart of England Ltd, Old Hall Farm, Meriden Road, Fillongley be noted;**
- c **That Application No 2009/0350 (Artworks – Poetry Trail, Land at and including High Street, Polesworth) be approved subject to the**

conditions specified in the report of the Head of Development Control; and

Recommended:

- d That in respect of the proposed new freight connection at Nuneaton Station, the Secretary of State for Transport be informed that this Council maintains its objection and requests that Network Rail works with the County Council and Highways Agency on the proposed routing and that this Council be consulted on the final arrangements before being made.**

40 Killian Pretty Review Further Consultation Papers

The Head of Development Control reported that the Government had published three further consultation papers relating to the Government's response to the Killian Pretty Review. Members were asked to agree a suggested course of action.

Resolved:

- a That the CLG be notified that this Council does not wish to see permitted development rights removed for non-domestic developments within Conservation Areas;**
- b That the CLG be notified that the Council wishes to see full planning control retained over alterations to shop fronts;**
- c That it is this Council's view that air conditioning units be brought into planning control; and**
- d That it welcomes the proposed changes to the statutory arrangements for giving publicity to planning applications.**

41 Draft Planning Policy Statement Number 15 - Consultation

The Head of Development Control reported that the Government had published a revised Planning Policy Statement (PPS) for consultation on Planning and the Historic Environment which would replace existing Guidance Notes. Members were informed of the content.

Resolved:

That the Consultation Paper be noted.

42 Monitoring of Section 106 Agreements

The Head of Development Control reported on a schedule of all the Section 106 Agreements. Members were asked to agree a system for regular monitoring.

Resolved:

That bi-annual reports are provided to the Board in respect of outstanding Section 106 Agreements.

43 **Exclusion of the Public and Press**

Resolved:

That, under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of exempt information, as defined by Schedule 12A to the Act.

44 **Proposed Tree Preservation Order Land at Dunns Lane, Dordon**

The Head of Development Control reported on a proposed Tree Preservation Order on land at Dunns Lane, Dordon and Members were asked to agree a suggested course of action.

Resolved:

That an Emergency Tree Preservation Order be made with immediate effect, in respect of four oak trees and a holly hedge on land at Dunns Lane Dordon, as identified in the report of the Head of Development Control, and that any representations received be referred to the Board for it to consider when it decides whether to make the Order permanent.

M Simpson
Chairman

**Planning and Development Board
21 September 2009
Additional Background Papers**

Agenda Item	Application Number	Author	Nature	Date
4/68	Nuneaton Chord	Warwickshire Police	Representation	18/9/09
		Network Rail	Letter	17/9/09

NORTH WARWICKSHIRE BOROUGH COUNCIL

MINUTES OF THE PLANNING AND DEVELOPMENT BOARD

19 October 2009

Present: Councillor Simpson in the Chair.

Councillors Bowden, L Dirveiks, Fox, Lea, Morson, B Moss, Sherratt, M Stanley, Swann, Sweet, Winter and Wykes.

An apology for absence was received from Councillor Jenkins.

Councillors Fowler, Phillips and Smith were also in attendance and with the consent of the Chairman Councillor Fowler spoke on Minute No 39 (Planning Applications – Application No 2009/0154 Car Park, Park Road, Coleshill).

45 **Declarations of Personal or Prejudicial Interests**

Personal interests arising from the membership of Warwickshire County Council of Councillors Fox, B Moss, Lea and Sweet and membership of the various Town/Parish Councils of Councillors Fox (Shustoke), B Moss (Kingsbury), Sherratt (Coleshill) and M Stanley (Polesworth) were deemed to be declared at this meeting.

46 **Planning Applications**

The Head of Development Control submitted a report for the consideration of the Board. Details of correspondence received since the publication of the agenda is attached as a schedule to these minutes.

Recommended:

- a **That in respect of Application No 2009/0154 (Car Park, Park Road, Coleshill)**
 - i) **planning permission be granted, subject to the conditions specified in the report of the Head of Development Control; and**
 - ii) **the applicant be requested to submit a car park management plan for information at the meeting of the Full Council on 18 November 2009.**

(At this point Councillor Simpson vacated the Chair and left the meeting – Councillor Lea in the Chair).

Resolved:

- b **That Application No 2009/0409 Garage Site, Eastlang Road, Fillongley be approved, subject to the following additional condition**

“Before development commences, criteria for a watching brief for contamination, shall be agreed in

writing with the Local Planning Authority. This shall be set out to ensure that any contamination found at any time when carrying out the approved development must be reported in writing immediately to the Local Planning Authority. Where contamination is found and remediation is considered as necessary by the local authority, a remediation scheme must be prepared containing an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', and is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority."

- c That Application No 2009/0410 Garage Site, Bromage Avenue, Kingsbury be approved, subject to the following additional condition

"Before development commences, criteria for a watching brief for contamination, shall be agreed in writing with the Local Planning Authority. This shall be set out to ensure that any contamination found at any time when carrying out the approved development must be reported in writing immediately to the Local Planning Authority. Where contamination is found and remediation is considered as necessary by the local authority, a remediation scheme must be prepared containing an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', and is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority."

- d That Application No 2009/0413 Garage Site, Sycamore Crescent, Arley be approved, subject to the following additional condition

"Before development commences, criteria for a watching brief for contamination, shall be agreed in writing with the Local Planning Authority. This shall be set out to ensure that any contamination found at any time when carrying out the approved development must be reported in writing immediately to the Local Planning Authority. Where contamination is found and remediation is considered as necessary by the local authority, a remediation scheme must be prepared

containing an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', and is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority."

- e That Application No 2009/0414 Garage Site, George Road, Water Orton be approved, subject to the conditions specified in the report of the Head of Development Control.

47 **Exclusion of the Public and Press**

Resolved:

That, under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of exempt information, as defined by Schedule 12A to the Act.

48 **Breach of Planning Control**

The Head of Development Control reported on an alleged breach of planning control at Hillfields, Ashby Road, Seckington and Members were asked to agree a suggested course of action.

Resolved:

- a That the Solicitor to the Council be authorised to issue an Enforcement Notice relating to the unauthorised change of use of this residential property to a mixed use, comprising a residential use, together with the repair/refurbishment, storage and transhipment of vehicles; and
- b That the Notice require the cessation of the repair/refurbishment, storage and transhipment of vehicles and that the compliance period be three months.

M Simpson
Chairman

**Planning and Development Board
19 October 2009
Additional Background Papers**

Agenda Item	Application Number	Author	Nature	Date
4/62	2009/0409	Environmental Health Officer	Consultation	19/10/09
		The Coal Authority	Consultation	15/10/09
4/70	2009/0410	Environmental Health Officer	Consultation	19/10/09
4/77	2009/0413	Environmental Health Officer	Consultation	19/10/09
		The Coal Authority	Consultation	19/10/09
4/84	2009/0414	Water Orton Parish Council	Objection	13/10/09
		Mrs Colledge	Representation	14/10/09

NORTH WARWICKSHIRE BOROUGH COUNCIL

MINUTES OF THE PLANNING AND DEVELOPMENT BOARD

16 November 2009

Present: Councillor Simpson in the Chair.

Councillors L Dirveiks, Fox, Lea, Morson, B Moss, Sherratt, M Stanley, Swann, Winter and Wykes.

Apologies for absence were received from Councillors Bowden, Jenkins and Sweet.

Councillors Davis and Smith were also in attendance.

49 **Declarations of Personal or Prejudicial Interests**

Personal interests arising from the membership of Warwickshire County Council of Councillors Fox, B Moss and Lea and membership of the various Town/Parish Councils of Councillors Fox (Shustoke), B Moss (Kingsbury), Sherratt (Coleshill) and M Stanley (Polesworth) were deemed to be declared at this meeting.

50 **Planning Applications**

The Head of Development Control submitted a report for the consideration of the Board. Details of correspondence received since the publication of the agenda is attached as a schedule to these minutes.

Resolved:

- (i) That in respect of Heart of England Ltd, Old Hall Farm, Fillongley**
 - a) Application 2009/0441 – The New Building - planning permission be REFUSED for the reasons set out in the report;**
 - b) Application 2009/0324 – Variation to Increase Imported Material - planning permission be REFUSED for the reasons set out in the report;**
 - c) Application 2009/0326 – Retention of Beach, Rockery and Building - planning permission be REFUSED for the reasons set out in the report;**
 - d) Application 2008/0607 – Variation of Condition to allow public access, and the use of the access for construction purposes - planning permission be REFUSED for the reason set out in the report;**
 - e) Application 2008/0571 - Alterations to the Access - planning permission be REFUSED for the reason set out in the report;**

- f) Application 2009/0322 – Sunday Use of the Lake and Surrounds - planning permission be REFUSED for the reason set out in the report;
- g) Application 2009/032 – Sunday Use of the Existing Buildings - planning permission be GRANTED subject to the conditions set out in the report;
- h) Application 2009/0327 – The Jetty - planning permission be GRANTED;
- i) Application 2009/0325 – The Pump House and Plant Room - planning permission be REFUSED for the reason set out in the report;

That the Solicitor to the Council be authorised to issue the following Notices and to take the action as set out below:

- j) To initiate proceedings in the Court under Section 179 of the 1990 Planning Act, following the failure of the owner to comply with the requirements of the Enforcement Notice relating to the removal of the two marquees dated 13 August 2009;
- k) To issue an Enforcement Notice under Section 172 of the 1990 Planning Act, requiring the removal of the beach; the rockery and the building within the rockery, for the reasons set out in the report; with the Notice requirements as set out in the report and with a compliance period of three months;
- l) To issue a Breach of Condition Notice under Section 187A of the 1990 Planning Act, in respect of condition number 7 of planning permission 2007/0503 dated 6 March 2008, requiring cessation of Sunday use of the site within a month of the date of the Notice;
- m) To issue an Enforcement Notice under Section 172 of the 1990 Planning Act, in respect of the unauthorised lighting installation, with a requirement for its removal within one month;
- n) To issue a Breach of Condition Notice under Section 187A of the 1990 Planning Act, in respect of condition 9 of the planning permission 2007/0503 dated 6 March 2008, requiring removal of the public address system at the site within one month of the date of the Notice;
- o) To issue an Enforcement Notice under Section 172 of the 1990 Planning Act, requiring the removal of the raised platform and balustrade, the children's play equipment, the volleyball court, the bouncy castle, the statue in the lake, and fairground rides as located on the Notice Plan, within a period of three months of the date of the Notice, for the reasons outlined in the report;

- p) That at the present time, it is not considered expedient to issue Enforcement Notices relating to the retention of the lake as existing; the pump house, the use of the second access and the engineering works undertaken to that access;
- q) That the applicant and his representatives be invited to meet the Chairman and Vice Chairman of the Board, together with the Shadow Planning spokesperson, in order to explore once again, the opportunity for seeking common ground on the future of the site; and
- r) That additional reports be brought to Board in light of the alleged breaches of planning control reported above.
- (ii) That in respect Application No 2009/0440 (Atherstone Station, Long Street Atherstone) Listed Building Consent be refused for the following reasons

"It is considered that the loss of this bridge would materially affect the setting of the Listed Victorian Station building at Atherstone, because of its historic value and association within the curtilage of the station, and it being on the edge of the Atherstone Conservation Area, and the Watling Street Bridge Conservation Area. Additionally it is considered that alternative access arrangements are unsatisfactory. As such the proposal does not accord with Saved Policies ENV15 and 16 of the North Warwickshire Local Plan 2006, and Government Guidance in the form of PPG15."

51 **Progress Report on Achievement of Corporate Plan and Performance Indicator Targets April 2009 to September 2009**

Members were informed of the achievement of the Council's Corporate Plan and Performance Indicator targets for 2009 during April to September 2009.

Resolved:

That the performance achieved for the Corporate Plan and Performance Indicator targets for April to September 2009, be noted.

52 **Exclusion of the Public and Press**

Resolved:

That, under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of exempt information, as defined by Schedule 12A to the Act.

53 **Breaches of Planning Control**

The Head of Development Control reported upon alleged breaches of planning control and Members were asked to agree suggested courses of action.

Resolved:

- (i) That in respect of Grendon Fields Farm, Warton Lane, Grendon**
 - a the Solicitor to the Council be authorised to issue an Enforcement Notice relating to the unauthorised change of use of the land to a mixed use of agriculture and the residential use of the land including the siting of residential mobile homes; and**
 - b the Notice to require the cessation of the residential use of the land by the removal of the mobile homes from the site and the land restored to its previous condition and that the compliance period be six months.**

Recommended:

- (ii) That in respect of the Heart of England Ltd – Old Hall Farm, Fillongley**
 - a) The Council be asked to approve a supplementary estimate of £10,000 to fund Counsel's Opinion in respect of the Heart of England Ltd site;**
 - b) The Solicitor to the Council be authorised to seek Counsel's Opinion on the prospects of seeking an Advance Injunction, preventing further developments at this site during 2010, beyond that within the lawful use of the land; and**
 - c) That the Opinion be reported to the Board prior to any further action being taken in respect of its recommendations.**

M Simpson
Chairman

**Planning and Development Board
16 November 2009
Additional Background Papers**

Agenda Item	Application Number	Author	Nature	Date
4/1	Heart of England	Agent	Correspondence	06/11/09
		Agent	Correspondence	09/11/09
		Agent	Correspondence	11/11/09
		Agent	Statement	12/11/09
		Mr & Mrs McHugh	Objection	10/11/09
		Mrs Smith	Objection	10/11/09
		Mr & Mrs Hooke	Objection	11/11/09
		Forestry Commission	Comments	12/11/09
		Warwickshire Ecology	Comments	13/11/09
		M Gibson	Objection	30/10/09
		Case Officer	Correspondence	04/11/09
		WCC Highways	Correspondence	4/11/09
		Agent	Correspondence	04/11/09
		Agent	Correspondence	05/11/09
		WCC Highways	Objection	02/11/09
		Case Officer	Correspondence	12/11/09
Case Officer	Correspondence	13/11/09		
Mr & Mrs Burrin	Objection	17/11/09		
4/2	2009/0440	Atherstone Town Council	Objection	12/11/09

Agenda Item No 5

Planning and Development Board

7 December 2009

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, 18 January 2010 at 6.30pm in the Council Chamber at the Council House.

Planning Applications – Index

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General Development Applications

(1) Application No PAP/2009/0424

Devitts Green Farm Devitts Green Lane Arley

**Retention of steel clad building for purpose associated with the applicant's trade as a stone mason,
For Mr Steve Mitchell C/O Pegasus Planning Group**

Mr S Mitchell

Introduction

This application is reported to the Board in light of previous enforcement action pertaining to the building the subject of the application.

The Site

These premises are at the junction of Woodside and Devitts Green Lane, and were formerly an active farmstead, consisting of a farmhouse, and various outbuildings. The agricultural land has been sold off and the former farmyard complex divided into two ownerships. The applicant owns the farmhouse; a collection of former agricultural buildings and some surrounding land. The location plan at Appendix A, illustrates these features. The nearest residential property is "Cyprus", to the east with further properties on the other side of Devitts Green Lane.

The present buildings within the application site are shown at Appendix A. They comprise the farmhouse and its extension through a new link at A; a barn that is in the course of reconstruction at B, dilapidated former agricultural buildings now mostly without roofs at C, and the building the subject of this application at D.

The Proposal

It is proposed to retain the recently erected green steel clad building for use for the applicant's trade as a stone mason. The existing access would be used along with parking and some outside storage on the land. The building measures 15 by 8 metres and is 4 metres tall. It has been complete for about two years.

Submitted with the application are a Design and Access Statement together with an outline of the masonry business, and a note outlining future intentions at the site. These are attached at Appendix B.

Also submitted is a Noise Assessment Report that was requested in order to establish whether there was any adverse noise impact arising from the use of the building.

Background

In late 2006, after acquiring the premises, the applicant gained planning permission to extend the farmhouse into an adjoining barn through the provision of a small link. This has now been completed.

The building the subject of this application was drawn to the Council's attention in late 2007. A retrospective application to retain the building was refused in June 2008, the reason being that the development was inappropriate within the Green Belt and that no very special circumstances had been forwarded sufficient to outweigh the presumption of refusal. This refusal was not appealed, and the building remained on site. As a consequence the Board authorised the issue of an Enforcement Notice requiring the removal of the building. This was served in August this year. An appeal has been lodged and this is due to be heard in

early February 2010. At about the same time as service of the Notice, the applicant submitted this current application. He considered that at the time of the earlier application, he had not supplied the Council with a full explanation of the background to the building, nor provided the Council with the arguments to show in his view, that there were very special circumstances of sufficient weight here to warrant a grant of planning permission. Hence these were supplied with this current application and are attached at Appendix C. Further representations are attached at Appendix D.

Development Plan

North Warwickshire Local Plan 2006 (Saved Policies) – Core Policy 2 (Development Distribution), ENV2 (Green Belt), ENV9 (Air Quality), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), ECON1 (Industrial Estates), ECON4 (Managed Workspace/Starter Units), TPT3 (Access and Sustainable Travel and Transport), TPT6 (Vehicle Parking)

Other Material Planning Considerations

Government Guidance: Planning Policy Guidance Note 2 (Green Belts); Planning Policy Statement Number 7 (Sustainable Development in Rural Areas)

Consultations

Highway Authority – No representations received

NWBC Environmental Health Manager – No objection having seen the conclusions of the noise assessment

Severn Trent Water – No objection

Representations

One letter of objection has been received stating that whilst the building represents no less harm to the Green Belt, a commercial use is now introduced, the use brings about concerns over noise, and the building is out of character.

One letter of support has been received, believing that the applicant's trade and the visual improvements that have been carried out at the site are an asset to the community.

Observations

a) Introduction

This building is inappropriate development in the Green Belt by definition – it being for a new industrial building. This is agreed by the applicant. Hence the presumption is that this application is refused planning permission. The applicant however argues that there are very special circumstances of such weight that they override this presumption. It is thus necessary to explore the circumstances put forward by the applicant and to assess their weight. Having done so it will be necessary as in all applications to look at the traffic, amenity, and in this case the potential noise impacts arising from the use of the building.

b) Impact on the Green Belt

The first circumstance put forward is that there is no or little impact on the Green Belt because the building is a replacement and constructed within a group of existing buildings. This is not accepted. It is considered that this development does impact on the main purposes of including land within the Green Belt – in this case, the development does not assist in safeguarding the countryside from encroachment, nor does it assist in urban regeneration. The Development Plan for the area contains Core Policy 2 which directs new developments towards the Borough's main settlements. New industrial development is

included. This is to prevent new development in unsustainable locations; to protect the rural character of the Borough, and so as to enhance the viability and vitality of those main settlements. This new building houses a B2 General Industrial use, one that by definition should not be accommodated in a residential area. Development Plan policy directs such uses to the main industrial estates. This use would be entirely appropriate on one the named estates in the Development Plan under Policy ECON1 .Furthermore, this use is not one that essentially has to be located within a rural area. There are no geographic, historic or other operational factors that mean this use has to be located in the countryside or indeed this site. Moreover there are no authorised industrial lawful uses on this site that can be said to have been taken up through this development, and certainly none that could be offered up in exchange for a lesser industrial use. In short, this is an inappropriate building in the Green Belt that has been constructed on land that has a lawful appropriate use in the Green Belt. Members will be aware that the significance of the Green Belt is that this is the only designation nationally that carries the presumption of refusal. It is considered that the factors put forward above rebut the claim by the applicant that this development has no harm on the principle of including land within the Green Belt.

c) The Size of Buildings on the Site

The applicant's second argument is that the built footprint now on site is less than when the applicant acquired the land and thus even with this new building, there has been a reduction in floor area, and if seen in context, this is an overall improvement, enhancing the openness of the Green Belt hereabouts. This is not accepted as a matter of fact.

Whilst it is agreed that buildings have been demolished by the applicant since his acquisition of the site, there are two reasons for not giving weight to the applicant's argument. Firstly, the applicant has reached his conclusion by referring to floor space lost not volume lost. This is significant. The most significant attribute of the Green Belt is its openness. Hence new development should not reduce that openness. Footprint does not create volume and thus there is very unlikely to be an adverse impact on openness as a consequence of footprint. Where there is a volumetric increase, then there is. Moreover the Development Plan policies that are designed to protect openness are defined in terms of limiting the percentage increase in new buildings – e.g. the 30% figure for householder developments. Volume is thus the preferred indicator.

Secondly, the applicant has produced his calculations that show an overall reduction in footprint from 604 square metres to 553 as a consequence of the applicant's demolitions – say an 8% reduction. It is agreed that there have been demolitions here, but the problem is that the applicant's figure includes a footprint for a "building" that officers do not accept was a building. In order not to complicate matters, Members are referred to Appendix E. This illustrates the buildings on site when acquired by the applicant. It is agreed that buildings 4, 5 and 6 have all been demolished. It is also agreed at building 2a has been demolished. The area denoted as 2b has also been removed. It is however disputed that the area 2b was a building. Officer's evidence points to this being a cattle pen or yard, and not a roofed building. That evidence includes historical maps; aerial photography, satellite photography both before and after 2006, together with OS maps. The building the subject of this application has been constructed on the site of 2a and 2b on Appendix E, so no historical evidence now remains, and this issue remains a disputed issue between the applicant and officers. The applicant as indicated above, considers that the new building has resulted in an 8% loss of footprint since acquisition. Officers are confident that, notwithstanding demolitions, and excluding the size of the disputed yard/pen and the existing residential buildings, then there would be a 7% increase in footprint and a 16% increase in volume. Using Appendix E as the reference, the volume of the new building on the site of 2a and 2b, increases volume by 16% over buildings 2a, 2c, 3, 4, 5 and 6. Consequently there has not been a material reduction in openness as defined by this measure.

d) Replacement

The applicant argues that this should be treated as a replacement building, and thus argues that as such, there is no further impact on openness than if the former building had been retained. He also suggests that by looking at Government guidance in respect of re-use of rural buildings, as well as Development Plan Policy on the same subject, the building here is generally compliant with the criteria set out therein. This is not accepted.

National guidance as reflected through Development Plan policy is that new buildings in the Green Belt are inappropriate developments, unless they fall within a select, and limited, list of cases. For instance, existing dwellings can be replaced within limitations. This is not a replacement house, and thus as a new industrial building, by definition, it remains inappropriate as it appears nowhere in that list. The applicant argues that the former buildings here may well have gained a planning permission for an employment use under Development Plan policy, and thus because the new building is of an equivalent size and in the same location, then there is little difference. This is not accepted. It can not be likened to a converted building, because it patently isn't, and as none of the former building remains, the criteria referred to by the applicant can not be fulfilled – the applicant himself removing the very buildings that might have been converted. It is, as a matter of fact, a new building. There is thus no “fall-back” as suggested by the applicant. Moreover it is a new building because it accommodates a new purpose – an industrial use. That new use is inappropriate in the Green Belt, and it replaces appropriate development in the Green Belt. As a consequence too, there is no opportunity to potentially look at “exchanging” a large inappropriate but lawful development in the Green Belt, for a lesser development that might have less impact. In short, a new industrial building has been constructed in the Green Belt.

e) Openness and Visual Amenity

The applicant argues that through demolishing buildings and improving the whole site as explained in Appendix B, and in section 4 of Appendix C, there will be a significant visual impact such that the whole area is improved. He continues that if the proposal is seen in this context, then the reasons for including land within the Green Belt are endorsed through this development. This is not accepted.

There is no doubt that the visual appearance of the site is in the course of improvement through the series of works undertaken by the applicant, or that improvements to the farmhouse and other buildings are of good quality. But these have been undertaken on the back of inappropriate development. It is the case that improvements could well have been secured by another owner, or indeed this owner too, without recourse to introducing unlawful and inappropriate development to the site. In other cases in the Borough where the Board has agreed to inappropriate development in the Green Belt, there have already been inappropriate but lawful developments present that have been “exchanged” for a lesser development; or that new development has “enabled” other beneficial and appropriate work to have been undertaken to meet Development Plan policy. Neither case applies here.

f) The Business

The applicant argues that the circumstances of his business meant that he could not have re-used existing buildings – section 4 of Appendix C. He therefore argues that the investment he has put into the site; the visual improvements made and the fact that his business is small and trading successfully, should outweigh the limited harm done of the Green Belt hereabouts. Officers would not place significant weight on this argument.

Development Plan policy and Government guidance supports the provision and encouragement of rural businesses, particularly through conversion and re-use of existing rural buildings. However it does not support new industrial buildings being built in the Green Belt. This business does not require a rural location; it is not dependant on this locality. The applicant's investment here was entirely at his own risk, and without consultation or advice from the Council. Whilst he argues that he could not afford to re-locate, he continues to undertake works at this site and is looking to acquire other buildings to the north. Moreover the business has moved several times within the past few years suggesting that it is not site specific and that it can continue to trade and provide employment. The circumstances set

out in his argument above are considered to be personal circumstances, not planning circumstances, and not operational or management circumstances that tie this business to this site.

g) Other Impacts

As can be seen from the consultation section above it is considered that there are no adverse highway or noise impacts that arise from this development sufficient to warrant a refusal reason.

h) Conclusions

The applicant's case is very much that the Board should look at the site as a whole, and not just at this particular building, and give weight to the improvements undertaken over that site which have been generally regarded as welcome. As there are no adverse highway or amenity impacts arising from the use, and because the building is of a size and location that one might accept in an agricultural setting, or that could be seen as being equivalent to a converted building, the applicant considers that the harm to the Green Belt is minimal. The applicant is thus asking the Board to give weight to these outcomes, with the prospect of further improvements to the setting of the site.

There is a robust defence of Green Belt policy in response because a new industrial building has been constructed in the Green Belt, outside of any settlement boundary and contrary to the Borough's core policy on development distribution. The outcomes on site do not require the essential presence of that industrial building, and they could have been undertaken without recourse to that building. The fall back position put forward by the applicant is not accepted as the developments are not "like for like" comparisons.

The Board will be invited to support a recommendation for refusal as a matter of principle.

Before doing so the Board should however give further consideration as to whether the harm done to Green Belt policy can be mitigated through the imposition of conditions attached to a planning permission. A temporary consent would enable the applicant to continue his business whilst he finds alternative industrial premises, prior to the removal of the building. As there is a current Enforcement Notice being appealed, it is considered that the compliance period for the removal of the building will be debated through that procedure, and thus a temporary consent is not appropriate in this case. Another option is to look at the possibility of a "personal" consent, and this is an approach that the applicant would endorse. This would result in a permission that requires the removal of the building upon vacation of the site by the applicant. This is not supported as it places personal circumstances over and above planning circumstances in respect of Green Belt policy where there is a national presumption against the grant of planning permission for inappropriate development. It is not considered that the outcomes on site, as described here by the applicant, are of such significance to warrant an exceptional approach. As a consequence, it is considered that a recommendation of refusal should still stand.

If a recommendation of refusal is supported, then clearly the Board will need to look at the expediency of a further Enforcement Notice. Given that there is an appeal to be heard in early February where the applicant is arguing that the building should be retained and planning permission be granted for his industrial use, it is not considered that it would be expedient to replicate this with a further Notice. If the present planning application is refused, then it would be logical for any appeal to be heard at the same time, at the same Hearing. If planning permission is approved, then the applicant can consider the withdrawal of his Enforcement appeal, with similar consideration by the Council in respect of the withdrawal of the Notice.

Recommendation

The development is inappropriate by definition within the Green Belt. In addition, the proposal brings forward an industrial use to a location that is outside of any defined

settlement boundary and contrary to the Council's approach towards development distribution. It is considered that the very special circumstances put forward by the applicant are of insufficient weight to override the presumption of refusal for this inappropriate development. This is because the development has no essential operational, geographic or historic reason to be sited in a rural location; it does not enable the removal of other inappropriate development in the Green Belt, it actually increases the amount of built development in the Green Belt, and the scale of the improvements undertaken on the site are not of such significance to warrant agreeing to inappropriate development in the Green Belt. As such the proposal is contrary to saved Core Policy 2, and saved Policies ENV2 and ECON4 of the North Warwickshire Local Plan 2006, as well as to Government Guidance in PPG2 and PPS7.

BACKGROUND PAPERS

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

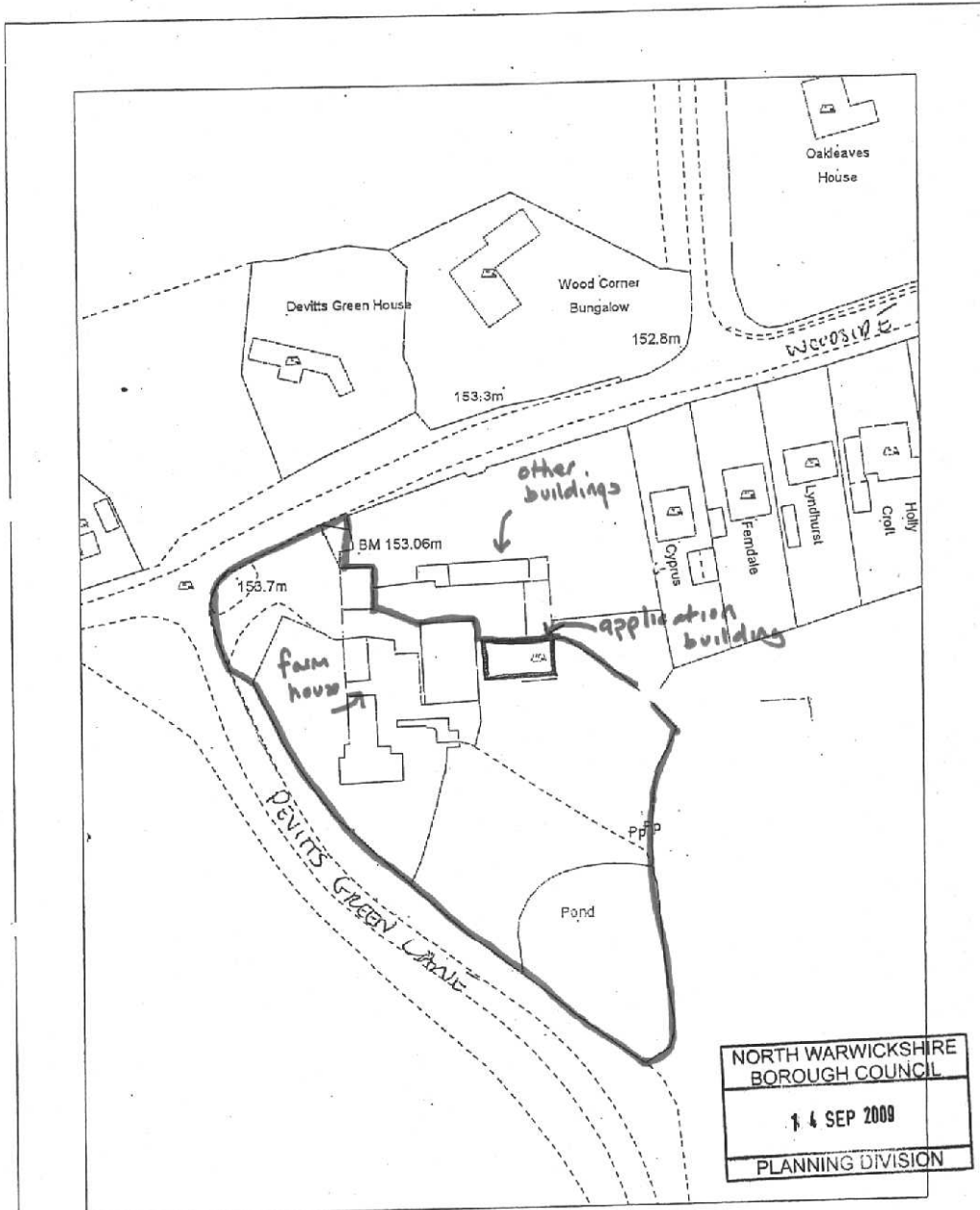
Planning Application No: PAP/2009/0424

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	17/9/09
2	Local Resident	Support	23/9/09
3	Environmental Health Officer	E-mail	29/9/09
4	Agent	Statement	30/9/09
5	Environmental Health Officer	E-mail	30/9/09
6	Severn Trent Water	Consultation	1/10/09
7	Mr Wainwright	Objection	6/10/09
8	Case Officer	E-mail	21/10/09
9	Case Officer	E-mail	22/10/09
10	Case Officer	E-mail	23/10/09
11	Agent	Letter	27/10/09
12	Agent	Noise report	13/11/09
13	Environmental Health Officer	Consultation	18/11/09

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.





Sterling Court
Norton Road
Stevenage
Herts SG1 2JY
UK

Tel: +44 (0)1438 747996
Fax: +44 (0)1438 747997
E-mail: info@cadcorp.com

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cadcorp SIS



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DESIGN AND ACCESS STATEMENT

USE

The existing steel clad building, the subject of this retrospective application, was constructed during 2006 in the position of an existing dilapidated tin clad building and is used for the cutting and forming of granite in connection with the applicant's trade as a Stone Mason. The construction of the steel clad building was undertaken as part of wide ranging improvements to Devitts Green Farm following the applicant's acquisition of the property. The steel clad building, the subject of this application is located to the south of Woodside Road and to the east of Devitts Green Lane. Within the parameters of the site the structure is located to the rear of the main residential farmhouse and the existing cow/milking shed.

The use of the steel frame building in association with the applicant's trade as a stone mason came about following the applicant's need to relocate his business and in part as a consequence of a desire from the applicant to provide a suitable building within which he could undertake some small scale stone masonry activities without disturbance to neighbours. This requirement primarily set out three criteria for the building:-

- that it incorporate acoustic attenuation in its design;
- that it have doors of sufficient height and width to accommodate access for stone;
- that the internal roof clearance be sufficient for the limited equipment required.

The existing buildings on site were unable however, to meet these criteria due to the narrow bayed multi pitch of these agricultural buildings. In addition the construction and fenestration of those buildings did not lend themselves to good quality acoustic control. Constructing a new building was therefore considered a more appropriate design solution than the refurbishment of the existing outbuilding. At the time of construction, the applicant's understanding was that the new building was a like for like replacement. Given the nature of the construction of the new building there is unlikely to be any prospect of disturbance as a consequence of noise for surrounding residential occupiers. In addition the use of the outbuilding represents a highly sustainable use as there is no need for transport to and from place of work with the applicant and his apprentice living at the main residence at Devitts Green Farm.

AMOUNT

The new steel clad building, the subject of this planning application, is an appropriate sized development for its associated use fulfilling the design criteria required for the applicant's stone masonry workshop. From the time of acquisition the applicant has removed a number of dilapidated outbuildings from the site. These have resulted in an overall reduction in the built footprint at the site and despite the construction of the new

BIR.3245

buildings it can be demonstrated that there is a net reduction in the built footprint of development, resulting in a considerable improvement to the openness and visual amenity of the Green Belt.

LAYOUT

The new steel clad structure is located in a position formerly occupied by a building and all but enclosed by other existing structures. It sits to the rear of the site to the south of Woodside Road and to the east of Devitts Green Lane, sitting behind the main residential farmhouse and existing barns. It does not compromise the openness of the Green Belt as it represents no encroachment beyond the built confines of Devitts Green Farm.

SCALE

The new building remains in keeping with the scale of the existing buildings found at the premises. The building measures 14.8m deep and 7.9m wide and has a height of 3.9m. The new building replaces a dilapidated brick built farm structure of very similar, albeit the original building consisted of a double pitched construction, dimensions.

LANDSCAPING

Where considered appropriate additional planting can be introduced enhancing an existing landscaping at the site. A number of trees and hedgerows can be found at the site boundaries.

APPEARANCE

The removal of various dilapidated outbuildings and the ongoing improvement and restoration of other buildings on the site has resulted in considerable improvement to the appearance of the site itself as well as the openness and visual amenity of the Green Belt. In particular, the former building which occupied the position of the new steel clad building was of particularly poor appearance.

Immediately adjacent to the application site is a range of further outbuildings which are in a dilapidated state. These buildings are substantially obscured from view from the wider Green Belt by the steel clad building and were formerly obscured from view by the former brick built barn structure. Removal of any building from this position within the application site would open views of those dilapidated structures. The courtyard is also used for vehicle parking and again this is obscured from view across the Green Belt by the new steel clad building which is the subject of this application.

The building itself has been constructed from a green steel clad frame and has been carefully designed to have minimal impact on the visual character of the site and its immediate surroundings whilst also minimising the impact on the amenities of neighbouring occupiers with regards the use of the building as a stone mason's workshop. The building has been designed with blank façades with no window openings

to ensure effective acoustic attenuation. The new building also enables the activities associated with the stone masonry to operate effectively, with sufficient door width and height as well as sufficient internal roof clearance for the use of any necessary equipment. The opening to the building consists of a slide door which is sealed closed during the operation of any activities within the building.

ACCESS

Access into the site is directly off either Devitts Green Lane or Woodside Road and the new steel clad building can be accessed directly from the internal courtyard which also provides access to the main residential farmhouse as well as other outbuildings within the site. The internal arrangement of the new building consists of a large open workshop space at one level, consistent with the ground level of the remaining site.

Operation of my business

I employ 2 people that work along side my self at Devitts Green Farm, and also another person who is based at our Kenilworth based office showroom. Employee Dave Malmesbury arrives each morning by car, Barry Hughes who is a relative stays with us in the farm house monday to friday.

With regard to deliveries, I receive 1 consignment of stone every 90 days, this arrives on a 7.5 meter flat bed lorry that carries 20 tonne this drives into our gateway and is then unloaded at our leisure and out of site it normally takes 2 - 3 hours. this works out more cost effective to order in bulk and means we dont have deliveries every week, with a maximum 4 deliveries per year.

Our Kenilworth showroom is where all our retail activity takes place and is the face of my business there is no point of sale at Devitts Green Farm any advertising or website info is directed at the Kenilworth showroom, this means we don't attract customers to the farm.

We try to produce 3 jobs per week at home whether it be a marble or granite worksurface, a fireplace or monument ect, we will then be offsite installing these so traffic movements of our vehicles is very low and whilst we are out there is obviously no activity at the farm although any activity is unseen by any onlookers anyway. We genrally work from 8 am till 5 pm in the workshop probably 3 days per week when we are not doing that we will either be out on an installation or working on the renovation of Devitts Green Farm some of the renovation work is done in the workshop maybe at the weekend.

The building in question is soundproofed we create no noise polution whatsoever, this is very important to me as I am trying to create the perfect family home tranquil and picturesque I obviously opted to re-instate the tin clad building with a building of the same structure, if required to I would be prepared to bear the cost of brick cladding the shed in a handmade brick as to make it more asthetically pleasing from the one road that it is visible from, this would also create a nice looking courtyard where our entrance is to the building.

As you know the building is situated next to the old dairy which unfortunately is unsuitable for use by me as a workshop, although it could make a huge worshop in which I could fit in some other machines but I want to stay working on the scale that I am currently as life for me is hectic enough. Unfortunately the design of the roof is such that it is too low to accomadate our sheets of stone carried on the forklift truck, the doorways are too low and the valley roof design means that the building requires 6 internal pillars to support the roof making what we do pretty imposible, Consideration of raising the height of this building and altering it from a triple pitched roof design to a 45 degree pitch would totaly compromise the beauty of this historic building, I am curently having re-placement trusses made for it I estimate the total cost for the roof to be somewhere in the region of £40,000 to do it right and be true to its design. This is going to have to be done as funds allow as with everthing else. (my stone business provides all of the income for the regeneration process of Devitts Green).

Future intentions

My future intentions with regards to Devitts Green Farm are simply to live here and raise my 2 young sons here with my wife, and run my stone business on the moderate scale that I currently do, and continue with my nephews training with this trade.

I wish to continue to restore the buildings and surrounding to the highest quality as I have displayed to date. I am in negotiations with the owners of the barns next to me that I didn't aquire with regard to exchanging contracts for the purchase of these. Subject to the relevent planning permission for these I would Idealy look toward office use with renovation these to the same standards as everything else, office use of these I think would be appropriate and would help with the sustainability of the site. The Dairy would make an exellent building to house leisure facilities for the offices thus creating a really up market complex.

Basically to create a high quality residential environment for family life enabling home working and suitable use for these redundant buildings and the land we have, and the continuation of the stonemasonry trade that makes all this possible.

2009 / 0424



**PLANNING STATEMENT
IN SUPPORT OF AN APPLICATION
FOR THE RETENTION OF A SINGLE STOREY
STEEL CLAD BUILDING AT
DEVITTS GREEN FARM, ARLEY**

Prepared by

David Stentiford

NORTH WARWICKSHIRE BOROUGH COUNCIL
15 SEP 2009
PLANNING DIVISION

Reference: BIR.3245

Date: August 2009

5 The Priory • Old London Road • Carwell • Sutton Coldfield • B75 5SH
Telephone: 0121 308 9570 • Fax: 0121 323 2215

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1. INTRODUCTION

- 1.1 This statement accompanies an application for planning permission for the retention of an existing steel clad building, 14.8 metres x 7.98 metres at Devitts Green Farm, Arley.
- 1.2 The building was constructed by the applicant, Steve Mitchell, in the position of an existing dilapidated tin clad building during 2008 and is used by the applicant for cutting and forming granite in connection with his trade as a stone mason.
- 1.3 The construction of the steel clad building was undertaken as a part of wide ranging improvements to Devitts Green Farm by Mr Mitchell following his acquisition of the property in December 2005.
- 1.4 This statement goes on to describe the circumstances of the site at the time the property was purchased including a full description of the various buildings and structures on the site and their condition at the time of acquisition. This statement will demonstrate the significant and important improvements undertaken to the various buildings and to the overall appearance of the site by Mr Mitchell and the resulting benefits to the visual amenity of the Green Belt.
- 1.5 The purpose of the statement is to provide evidence in support of the case for the grant of planning permission for the retention of the structure. An earlier application for planning permission for retention of the building for storage purposes was refused planning permission in June 2008. The prime reason for refusing planning permission was the absence of an exceptional circumstance justification for the retention of the building and hence a policy conflict with the provisions of ENV2 of the North Warwickshire Local Plan and PPG2.
- 1.6 This statement will explain various factors relevant to the consideration of this revised planning application including exceptional circumstances justifications. The circumstances of this application are entirely different to those which pertain to the application for the retention of a storage unit.

2. SITE DESCRIPTION

- 2.1 The application site comprises an area of approximately 1.26 acres acquired by Mr Mitchell and his family in December 2005.

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- 2.2 The plan attached at **Appendix 1** illustrates the area of land under the applicant's current ownership which was purchased for residential use. This area also constitutes the application site which forms the subject of this application submission.
- 2.3 In June 2006 a planning application (Reference PAP/2006/0468) was submitted for the construction of a link structure allowing expansion of the main farmhouse building into an adjacent barn. This application was granted planning permission subject to conditions in October 2006, a copy of the planning permission is contained at **Appendix 2**.
- 2.4 The ownership/location plan found at **Appendix 1** shows the main farmhouse building and a number of associated outbuildings.
- 2.5 **Appendix 3** contains a larger scale drawing which has been prepared by reference to historic ordnance survey plans and photographs of the site at the time of acquisition. This plan shows the range of buildings which existed on the site prior to the commencement of substantial improvement works by Mr Mitchell. **Appendix 4** contains various photographs which corroborate the building plans contained at **Appendix 3**.
- 2.6 **Appendix 5** contains a plan of the existing site incorporating the application building and other structures. **Appendix 6** contains a calculation of the site coverage in terms of building footprints at the time of acquisition and at the time of this planning application. Reference will be made later in this statement to a net reduction in built footprint on the site.
- 2.7 The photographs contained at **Appendix 4** include an aerial photograph. The various photographs demonstrate the dilapidation of the site and reference will be made later in this statement to the effect which the dilapidation of those buildings had upon the visual amenity of the Green Belt.
- 2.8 Considerable and noticeable improvements to the site have been undertaken by Mr Mitchell over the last 3 years. The principal farmhouse building has been totally refurbished and extended into the neighbouring barn in accordance with the 2006 planning consent (PAP/2006/0468). Great care and attention has been given to the detail of the refurbishment of the work including in particular the stonework and timberwork. All stonework has been undertaken by Mr Mitchell who is a stone mason and stone for the buildings has been cut and dressed on site, much of this work having been undertaken within the steel clad building. A number of the dilapidated outbuildings have been removed including a toilet building and pig sty, as well as another building associated with a well and duck houses. There was also a building which lay adjacent to the main cow shed building and a building to the rear of the cow shed in the position now occupied by the steel clad building.

-
- 2.9 Other ongoing repair work is currently being undertaken on site including the restoration of the cow shed and another small building, those works comprising repairs for which planning permission is not required.
- 2.10 Other landscape improvement works including small retaining walls and planting are being undertaken, the net effect being, on completion a meaningful and substantial improvement to the appearance of Devitts Green Farm.

3. STONE MASONRY

- 3.1 Mr Mitchell began his trade as a stone mason when he recognised there was a market within the UK for this area of skilled work, with particular demand within the West Midlands area. He has for some years operated from business premises at The Arches, Spon End, Coventry, however that premises was destroyed by fire in June 2006 when Mr Mitchell suffered substantial uninsured losses of equipment. Subsequently Mr Mitchell rented new premises at Hood Lane Farm, Ansley, which was located closer to his residential premises at Devitts Green Farm, however at 12 months, planning permission was granted by North Warwickshire Borough Council for the construction of a new school development and his tenancy agreement was cancelled. The two moves necessitated by circumstances beyond his control had a considerable impact on Mr Mitchell's business.
- 3.2 As has been described above, at that time Mr Mitchell was involved in the preparation of stone materials for the refurbishment of the farm and its outbuildings on site at Devitts Green Farm. With the downturn in trade and the costs of relocation, the business could not sustain the costs of a new premises and Mr Mitchell removed all his trade equipment to the new steel clad building at Devitts Green Farm where he continued with the refurbishment of the farm buildings and continued limited stone work for external contracts.
- 3.3 To this end, the current application seeks planning permission for such use subject to conditions and the following section of this statement seeks to demonstrate that such activities would be acceptable in planning policy terms.

4. OBSERVATIONS IN SUPPORT OF THE PLANNING APPLICATION

- 4.1 There have been a number of discussions between Mr Mitchell and the Local Planning Authority in relation to activities at the site. In the course of those discussions the informal comments from Planning Officers have been centred around the provisions of Policy ENV2 of the North Warwickshire Local Plan and the provisions of Planning Policy Guidance Note 2 relating to Green

Belts. In essence the view has been expressed that the construction of a new building is inappropriate development in PPG2 terms and as such should be prohibited unless an exceptional circumstance justification which outweighed the normal presumption against inappropriate development could be demonstrated.

- 4.2 Paragraph 3.2 sets out further advice in relation to such matters;

"Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development"

- 4.3 It is necessary therefore to consider both the extent of harm by virtue of inappropriate development and the nature of exceptional circumstance justifications in order to reach a conclusion in relation to whether those exceptional circumstances outweigh other considerations.

Harm by Virtue of Inappropriateness

- 4.3 It is the applicant's submission that there is no substantive harm to the purposes or functions of the Green Belt as a consequence of inappropriate development. The main purposes including land within the Green Belt are:

- to check unrestricted sprawl of large built up areas
- to prevent coalescence
- to assist in safeguarding the countryside from encroachment
- to preserve the setting and special character of historic towns and
- to assist in urban regeneration by encouraging the recycling of derelict and other urban land

- 4.4 None of these purposes are compromised by the retention of the existing building. It is located in a position formerly occupied by a building and all but enclosed by other existing structures. It does not compromise the openness of the Green Belt as it represents no encroachment beyond the existing built confines of Devitts Green Farm. The harm by virtue of inappropriateness is simply therefore a technical issue with no practical consequences.

- 4.5 There are however a number of significant and meaningful circumstances in favour of the retention of the building which represent exceptional circumstances which outweigh any technical breach as a consequence of inappropriateness.

Exceptional Circumstance Justifications

Built Footprint

- 4.6 It had been demonstrated earlier in this statement that prior to the commencement of the development to which this application relates, Devitts Green Farm incorporated a number of outbuildings which have been removed. Those buildings comprise:
- a) the toilet block/pig sty – 22.12 square metres
 - b) the range between the cow shed and main dwelling – 18.15 square metres
 - c) the well building/duck houses – 12.6 square metres
 - d) the barns to the rear of the cow shed – 137.43 square metres
- 4.7 All of those buildings have been removed and the new building constructed, the subject of this application has a footprint of 119 square metres. It is therefore clear that there has been a substantial reduction in the built footage of Devitts Green Farm as a consequence of the improvement works undertaken by the applicant.
- 4.8 It is therefore demonstrated that there is a net reduction in the built footprint of development as a consequence of the improvement works undertaken.

Openness and Visual Amenity

- 4.9 The photographs in **Appendix 4** show the state of the site at the time it was acquired by Mr Mitchell. It is evident that the removal of various dilapidated outbuildings and the ongoing improvement and restoration of other buildings on the site has resulted in a considerable improvement in the openness and visual amenity of the Green Belt.
- 4.10 In particular the former building which occupied the position of the steel clad building and the former toilet buildings were of particularly poor appearance albeit not necessarily structurally beyond repair.
- 4.11 Immediately adjacent to the application site is a range of further outbuildings which are in a dilapidated state. Those buildings are substantially obscured from view from the wider Green Belt by the steel clad building and were formerly obscured from view by the brick built barn structure. Removal of any building from this position within the application site would open views in to the courtyard area between the cow shed and adjacent derelict building resulting in views of those dilapidated structures. The courtyard is also used for vehicle parking which is currently obscured again from view across the Green Belt, the removal of the building the subject of this application would open views of the courtyard and any vehicles and equipment in that area. It is

the applicant's submission that the retention of the building has an overall improved impact upon the appearance of the Green Belt than that which would arise if it were removed.

Business Use

- 4.12 This application proposes use of the steel clad building for purposes associated with the applicant's trade as a stone mason. The circumstances through which Mr Mitchell commenced this activity have in part been described above whereby historically he has been displaced from two previous locations. The construction of the steel frame building came about in part as a consequence of those re-locations and in part as a consequence of a desire from the applicant to provide a suitable building within which he could undertake some small scale stone masonry activities without disturbance to neighbours. This requirement primarily set out three criteria for the building:
- a) that it incorporate acoustic attenuation in its design
 - b) that it have doors of sufficient height and width to accommodate access for stone and
 - c) that the internal roof clearance be sufficient for the limited equipment required
- 4.13 The existing buildings on site did not meet these criteria as they are essentially narrow bayed multi pitch agricultural buildings. The refurbishment philosophy has been to restore those buildings and the removal of the multi pitch roofs to obtain improved floor to ceiling height or formation of large gauge openings into those buildings would be alien to their architectural design. In addition the construction and fenestration of those buildings did not lend themselves to good quality acoustic control.
- 4.14 It is for these reasons that rather than refurbish the existing outbuilding which occupied the position of the steel clad building the subject of this application, a new building was constructed in its place. The applicant's understanding at the time having been that this represented a like for like replacement.
- 4.15 There has therefore been a considerable investment in the building in order that it make provision for the ongoing stone masonry use.
- 4.16 It would be the applicant's intention to utilise this structure solely in connection with the main use of the house and a condition tying any use of the building to the occupation of the site would be entirely acceptable.
- 4.17 Given the nature of the construction of the building there is unlikely to be any prospect of disturbance as a consequence of noise for surrounding residential occupiers. The applicant is however willing to offer further assurances in relation to such matters for instance by accepting

conditions in relation to hours of use and/or requirements for the acoustic doors to be closed when any mechanical work is being undertaken within the unit.

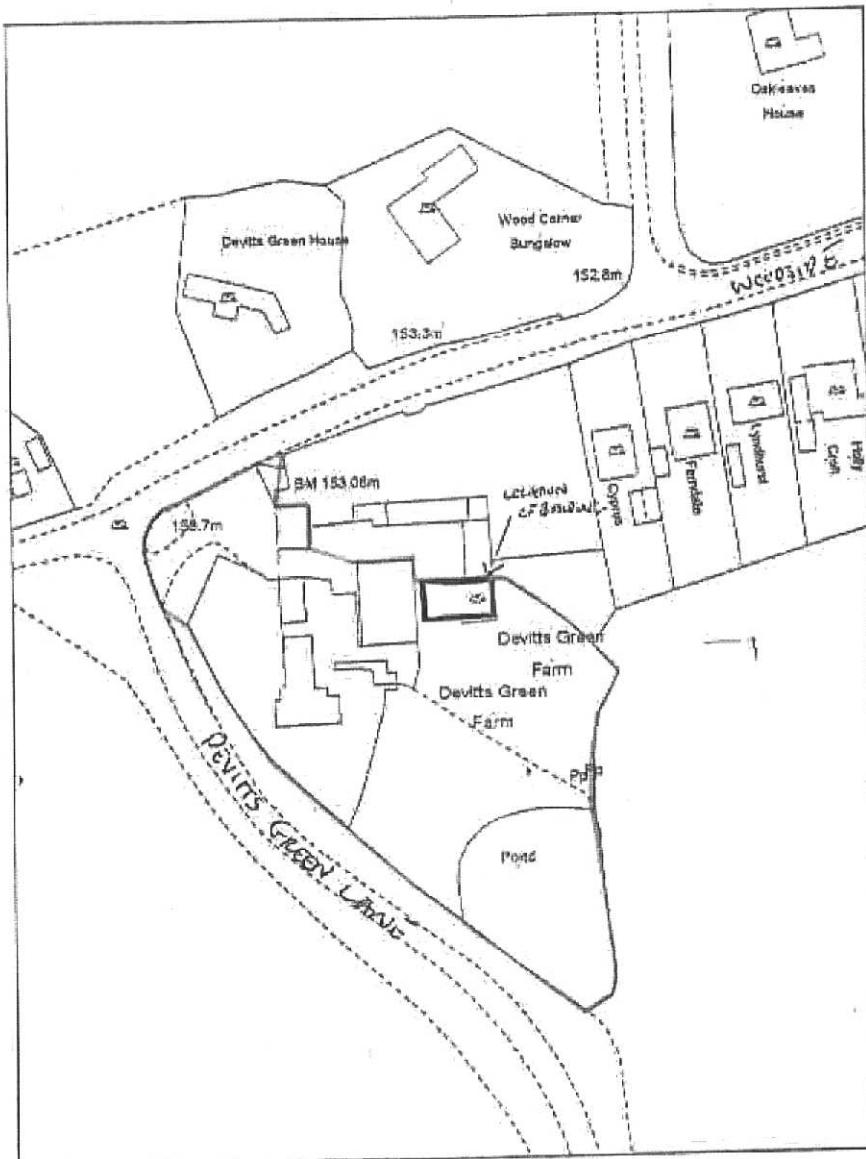
- 4.18 Mr Mitchell and his wife have two young sons. They also provide accommodation to Mr Mitchell's nephew who is working as an apprentice stone mason. The cessation of the use of the building for stone masonry purposes would have a devastating effect on the ability to continue this particular trade and to pass on the masonry skill through the family line.
- 4.19 The use of the outbuilding represents a highly sustainable use as there is no need for transport to and from place of work. The proposal is essentially a cottage-type industry which would enable the retention and indeed furtherance of a dying skill and enable it to be undertaken in a way which is not harmful to any surrounding occupiers.

5. CONCLUSIONS

- 5.1 The work undertaken by the applicant at Devitts Green Farm has resulted in a net reduction in the built footprint of outbuildings.
- 5.2 The former outbuildings were damaging to the visual amenity of the Green Belt.
- 5.3 The removal of the existing steel clad building would open up views of dilapidated building thereby causing harm to the Green Belt.
- 5.4 The retention of the building is important to the ongoing business of Mr Mitchell as a stone mason and its use can be tied to the occupation of Devitts Green Farm to ensure that there is no prospect of future use for general industrial purposes unassociated with the dwelling.
- 5.5 The works allied to the construction of the steel clad building have resulted in a net improvement in the openness and visual amenity of the Green Belt. The reduction in the built footprint and the economic consequences of the removal of the building are exceptional circumstances to be taken into consideration in the assessment of this application.
- 5.6 The only harm arising from the grant of planning permission would be a technical harm not a practical one.
- 5.7 The retention of the building would not harm the purposes and functions of the Green Belt and as has been demonstrated in fact would represent an improvement in the openness and visual amenity of the Green Belt in comparison to the circumstances which pre-existed.

-
- 5.8 These important matters are sufficient to outweigh any technical harm as a consequence of inappropriateness.
- 5.9 Furthermore the applicant is willing to accept conditions in relation to the use and indeed would be willing to make further improvements to the visual appearance of the structure for example the provision of a brick skin should the Planning Authority consider that appropriate.

APPENDIX 1



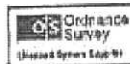
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Sterling Court
North Road
Strevigny
Wiltshire SN12 7Y
UK

Tel: +44 (0)1438 747998
Fax: +44 (0)1438 747997
E-mail: info@cadcorp.com



This map is for information only and does not constitute a contract. It is a product of the Ordnance Survey and is not to be used for any other purpose without the permission of the Ordnance Survey.

APPENDIX 2

**North Warwickshire
Borough Council**

Planning Division
PO Box 6
Council House
South Street
Atherstone
Warwickshire
CV9 1BG

The Town and Country Planning Acts
The Town and Country Planning (General
Development) Orders

DECISION
Full Planning Application

Application Ref : PAP/2006/0468

Michael Lambert, Dip TP, MRTPI, MIED
Assistant Director (Planning)

Mr Alan Pearson
R. C. I Design
156 Hawkes Mill Lane
Allesley
COVENTRY
CV5 9FN

Site Address

Devitts Green Farm, Devitts Green Lane, Arley CV7 8GF

Description of Development

Two storey side extension linked to conversion of barn into living accommodation

Applicant

Mr S Mitchell

Your planning application was valid on 31 October 2006. It has now been considered by the Council. I can inform you that:

Planning permission is GRANTED subject to the following conditions:

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

REASON

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

2. The accommodation hereby approved shall be occupied solely in connection with, and ancillary to the main dwelling at Devitts Green Farm, and shall not be sold off, sub-let or used as a separate unit of accommodation.

REASON

To prevent unauthorised use of the property.

Authorised Officer _____

Date 8 December 2006

Page 1 of 2

3. No development whatsoever within Classes A, B,C, or E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 shall commence on site without details first having been submitted to and approved by the Local Planning Authority, in writing.

REASON

In the interests of the amenities of the area.

REASONED JUSTIFICATION

The proposal is in accordance with policies ENV2 and ENV13 of the North Warwickshire Local Plan 2006. There are no material considerations that indicate against the proposal.

APPEAL INFORMATION

You are reminded that, in accordance with Section 78 of the Town and Country Planning Act 1990, you can appeal against conditions attached to an approval, or against a refusal, by contacting the Planning Inspectorate, Room 3/04 Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN, Telephone Number 0117 3728823, Fax Number 0117 3728443. Appeal forms may also be downloaded from the Planning Inspectorates website www.planning-inspectorate.gov.uk. You have 6 months to appeal from the date of this notice.

NOTE

This decision is for the purposes of the Town and Country Planning Act only. It is not a decision under Building Regulations or any other statutory provision. Separate applications may be required.

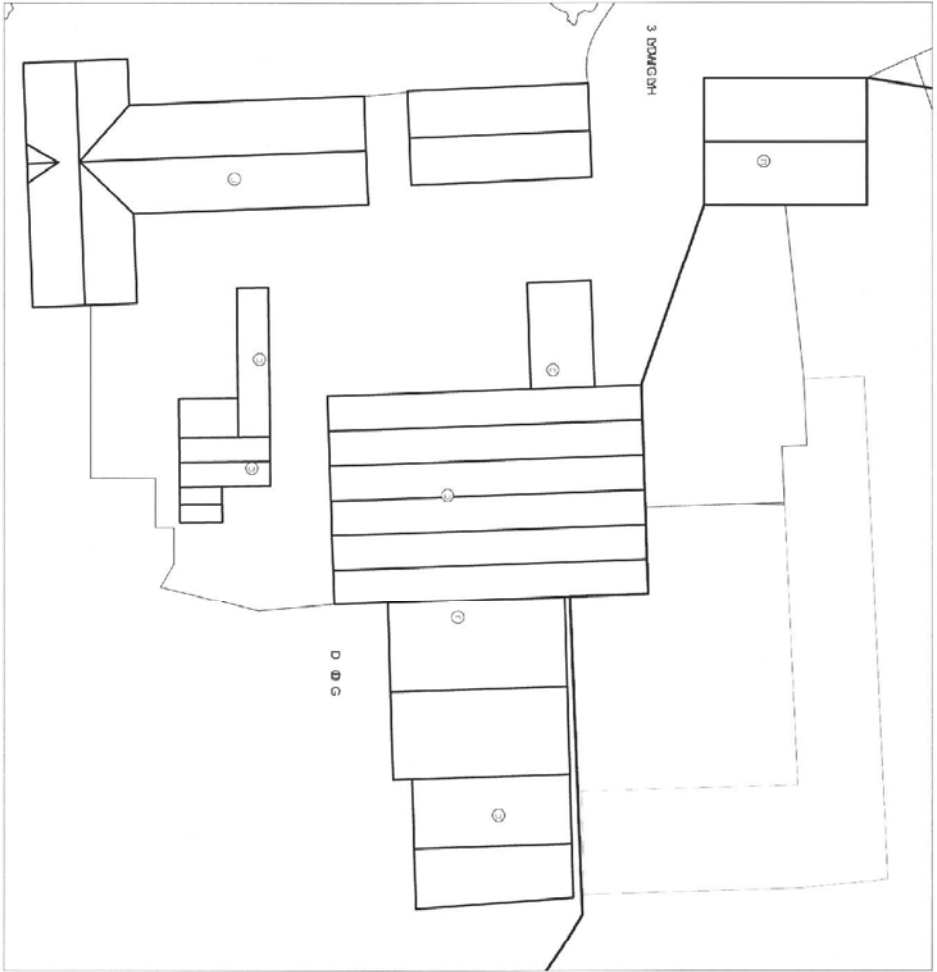
Authorised Officer _____

Date 8 December 2006

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APPENDIX 3



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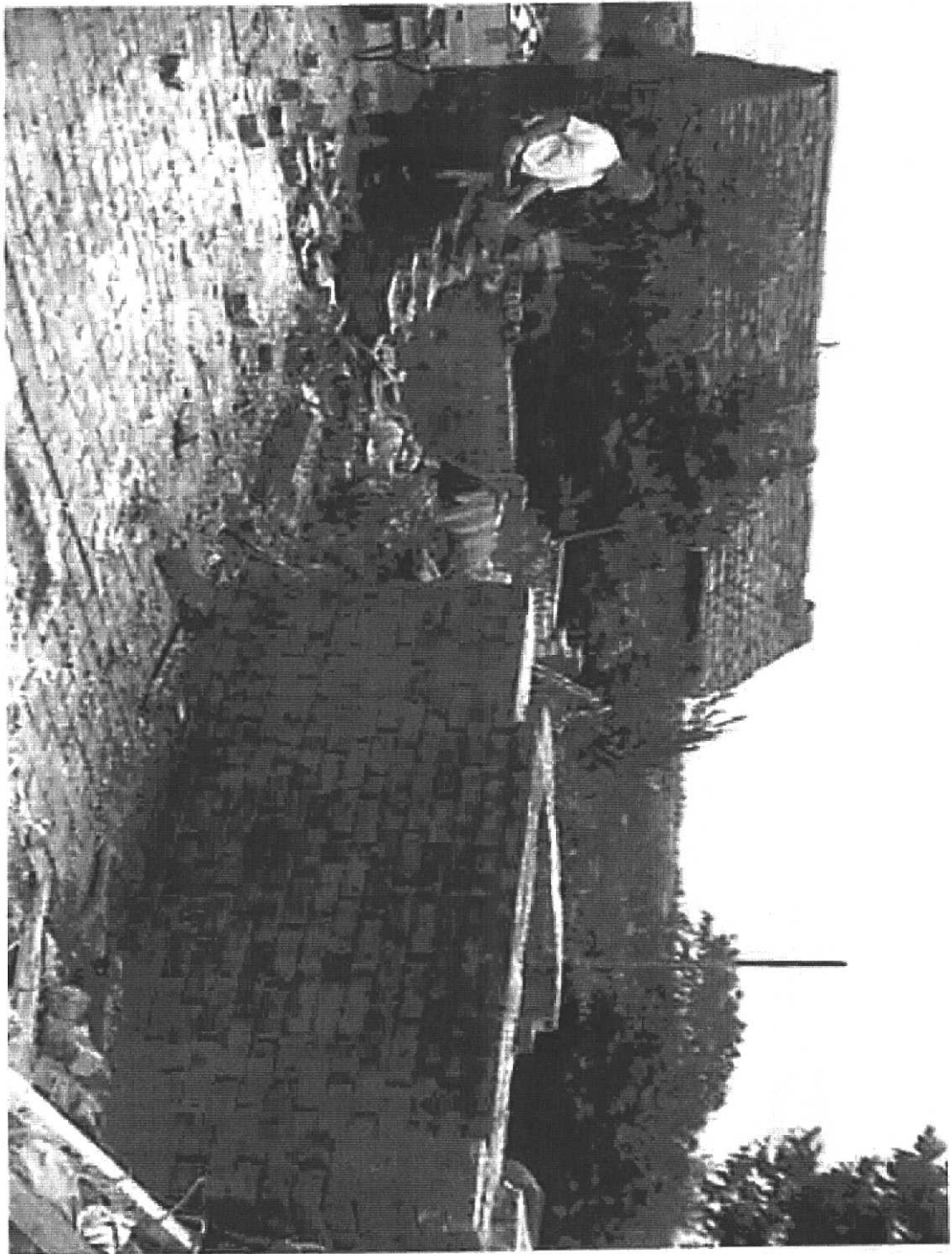
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APPENDIX 4



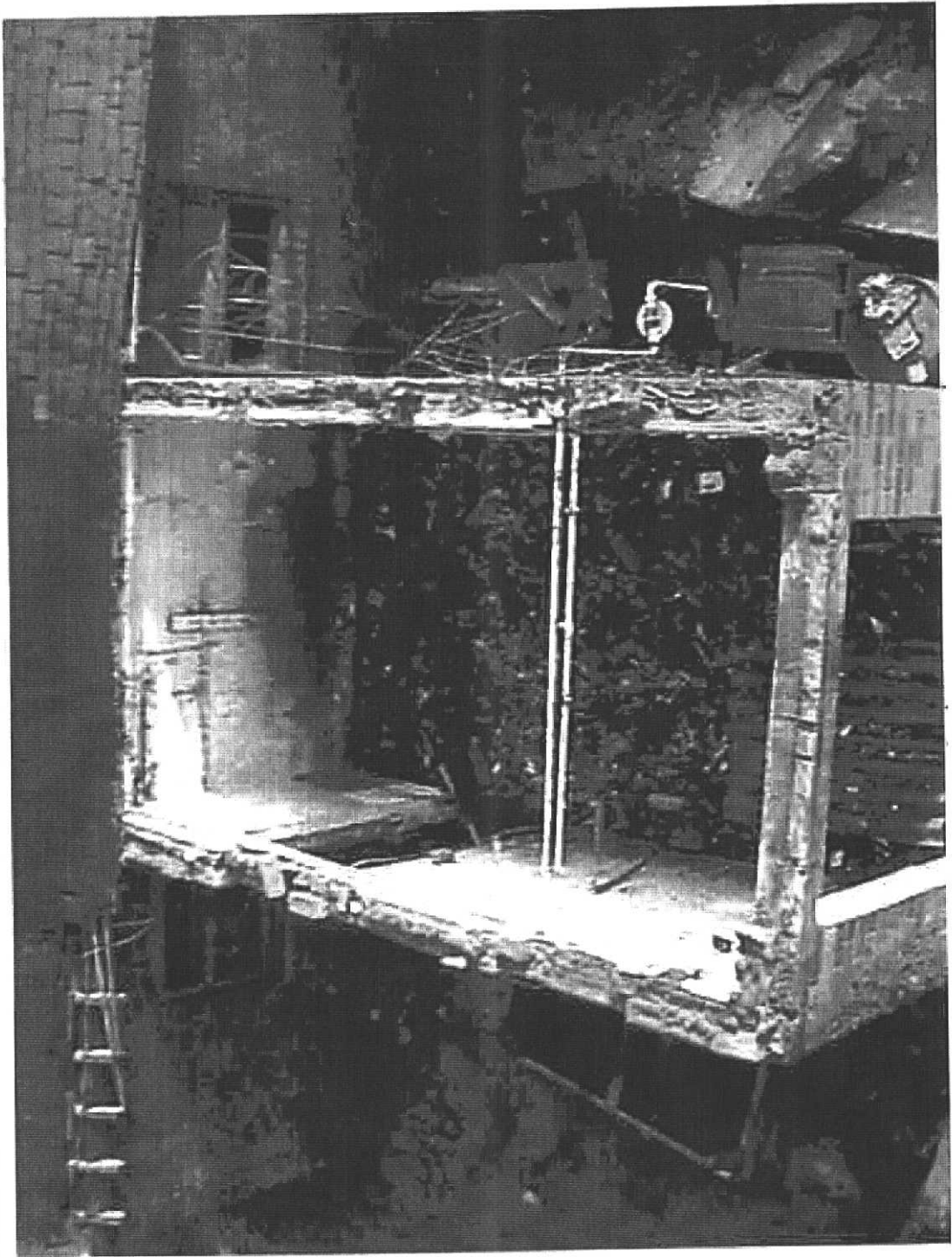


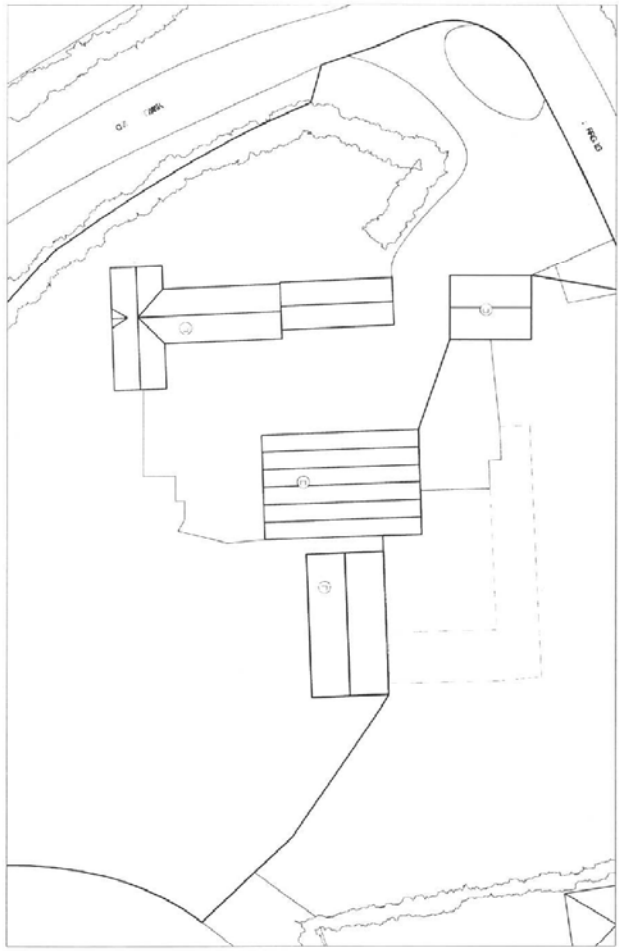




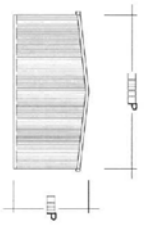
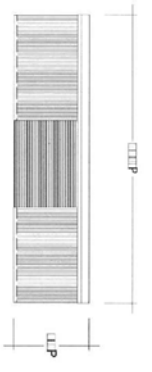
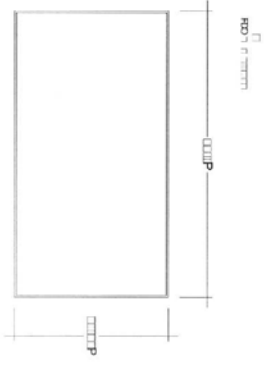








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APPENDIX 6

SITE COVERAGE CALCULATIONS

DEVITTS GREEN FARM

Site coverage at time of property acquisition

Barns	55.44 sqm	GARAGE
	137.43 sqm	TIN SHED + PEN
	45.91 sqm	CONVERTED INTO F/HOUSE
Main residence/farmhouse	137.32 sqm	✓
Toilet block/pig sty	22.12 sqm	NEW PEN
Well building/duck houses	12.60 sqm	NEW PEN
Cow/milking shed	175.84 sqm	✓
Range attached to cow shed	18.15 sqm	NEW PEN
Total site coverage	<u>604.18 sqm</u>	

519.54m² when
REMOVE 9.2x9.2
cow/housing
PEN

Site coverage at the time of this application

Barns	55.44 sqm	NEW GARAGE
Cow/milking shed	175.84 sqm	✓
Main residence	203.59 sqm	✓
Steel clad building (subject of this application)	118.97 sqm	
Total site coverage	<u>553.84 sqm</u>	

BIR.3245

DS/09tp2308/BIR.3245

E-mail: david.stentiford@ppg-llp.co.uk

27 October 2009

Chris Nash
 Planning Control Assistant
 North Warwickshire Borough Council
 Council House
 South Street
 Atherstone
 Warwickshire
 CV9 1BG

RECEIVED

28 OCT 2009

 North Warwickshire
 Borough Council

Dear Mr Nash

Planning Application Reference: PAP/2009/0424
Devitts Green Farm

Thank you for the opportunity to respond to your initial thoughts in relation to my client's application for the above site.

I understand you are keen to invite our further comments in relation to the matter in order that this information can be made available to Members when they consider the application in due course.

I do think it would be helpful to Members to set the context of this development proposal.

Devitts Green Farm fronts onto Devitts Green Lane close to the village of Arley. When the property was acquired by the applicant Mr Mitchell it was in a poor state or repair. Since acquisition Mr Mitchell has undertaken extensive repair and refurbishment of the buildings on site which have resulted in a significant visual improvement to the appearance of the site. The main farm house building has been repaired and refurbished and linked to the neighbouring building, various minor outbuildings and structures have been removed and extensive work undertaken to improve the grounds of the property including the formation of a formal driveway and entrance to replace the previous broken surfaced entrance.

Mr Mitchell has used his own stone masonry crafts to repair and refurbish existing buildings on site to a high standard and has demonstrated an exemplary approach towards the creation of a high quality site benefiting the overall appearance of the general area.

As part of his approach towards improvements of the site a dilapidated building was removed and a building of similar proportions constructed in its place.

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

T 0121 308 9570

F 0121 323 2215

Also at:
 Bracknell
 Bristol
 Cambridge
 Cirencester
 Leeds
 Nottingham

Pegasus Planning Group LLP is a
 limited liability partnership registered
 in England and Wales partnership
 number OC305645

Registered Office:
 Pegasus House,
 Queens Business Centre,
 Whitworth Road, Cirencester,
 Gloucestershire, GL7 1RF

Partners

Anthony Baleman
 Stephen Bawtree
 Mike Carr

Andrew Cook
 Menyn Dobson
 Nigel Harris

John Holden
 Gary Lees
 Martyn Smith

David Stentiford
 Jim Tarzey

www.ppg-llp.co.uk

Mr Mitchell intends to continue improvement to the site through the continued refurbishment of buildings and hard and soft landscaping works which will undoubtedly represent a significant benefit and improvement to the overall appearance of the site within the Green Belt.

Within the scope of the improvements to Devitts Green Farm, Mr Mitchell has constructed a new building on the site of a previous structure. The purpose of which is now to accommodate home working in the form of his stone masonry business.

Provisions of PPG2 do facilitate the reuse of buildings inside a Green Belt provided:

- That use does not have a materially greater impact than the present use on the openness of the Green Belt and the purposes of including land within it.
- Strict control is exercised over the extension of reused buildings.
- The buildings are of permanent and substantial construction.
- The form, bulk and general design of the buildings are in keeping with their surroundings.

It is recognised that the building which has been constructed is a replacement building however in other respects it is generally in compliance with the provisions of paragraph 3.8 indeed the applicant has indicated that he is willing alter the external facing materials to the building to reflect those used within the existing farm buildings.

The use proposed for the building is an employment use connected with the residential occupation of the property which is in accordance with the provisions of the North Warwickshire Local Plan Policy Econ 9 relating to the reuse of buildings in the open countryside.

It is noted also that paragraph 3.6 of PPG2 indicates that:

“the replacement of existing dwellings need not be inappropriate providing the dwellings is not materially larger than the one it replaces”.

Again it is appreciated that the building involved here is an ancillary building within the predominately residential complex. Nevertheless it is noteworthy that in terms of the impact which the development has upon the openness and amenity of the Green Belt it is a form of building which would have been tolerable if used for residential purposes under the provisions of paragraph 3.6.

The above circumstances demonstrate that in practical terms the degree of offence to the openness and visual amenity of the Green Belt and in circumstances where the structure the subject of this planning application was either a replacement for a residential use or an alteration and extension of the former building on the site, then it would be appropriated development in the Green Belt and compliant with Green Belt policy.

It is only as a consequence of the fact that in the course of his expeditious approach towards the improvement of the site that Mr Mitchell removed the former structure on the site that the issue of inappropriate development now arises.

We believe that these are materially circumstances which the Committee would wish to take into consideration and are not reported within the current recommendations.

Turning to the draft Report I am concerned that it relies selectively on anecdotal references to the former position and use of buildings within the site using those unsubstantiated representations as a basis for considering whether there is a net increase in floorspace/volume as a consequence of Mr Mitchell's overall activity within the site.

No reference in the report is made to the calculations put forward on behalf of the applicant which are based upon an evidenced assessment of the history of the configuration of buildings on the site substantiated by reference to plans and photographic evidence.

Furthermore the report makes spurious conclusions in relation to the proportion of increase in both footprint and volume concluding erroneously that the increase in size as a consequence of the development the subject of this application amounts to 71%. No indication is given as to how that calculation is arrived at but clearly it is inaccurate and whether or not there had been a roof on the former building, it would be illogical and unreasonable to discount any volume from within that building which plainly had vertical walls enclosing internal spaces, which in terms of their affect upon the openness and visual amenity of the Green Belt had a discernable volume.

The calculations provided within the applicants submissions relate to the footprint of various structures. Information in relation to the calculation of increases to buildings within the Green Belt is contained within the Development Control Practice Manual, for example in relation to additions to dwellings, the various quoted cases all relate to area not volume. Extracts from the relevant sections of the Development Control Practice Manual are enclosed for reference.

It is therefore demonstrated that it is entirely appropriate to consider the proportion of additional development on the basis of floorspace.

Notwithstanding the above observations, the applicant is willing to make moderate reductions in the size of the existing milking shed and to reconstruct the gable elevations using existing materials to form a smaller building in order to balance any perceived threat to the openness of the Green Belt.

No reference is made in the Committee Report to other exceptional circumstances justifications put forward in favour of the application.

The use proposed would facilitate home working with the associated sustainability advantages. No meaningful assessment of the practical implications of retention of the building on the openness and visual amenity of

the Green Belt has been undertaken in the Report. In some sense the removal of the building would have a negative impact upon the visual amenity of the Green Belt as it would remove enclosure of the existing storage yard area thereby opening views of that courtyard and the associated activities taking place therein which would otherwise be enclosed as was the case with the original configuration of buildings at the site. The practical implications of the retention of the building upon the purposes and functions of the Green Belt are that the original configuration of buildings would be retained incorporating the enclosure of the yard area in a manner commensurate with that which has pre-existed. The removal of the building would have a damaging impact therefore upon the appearance of the site within the Green Belt.

The applicants Supporting Statement sets out these observations in some details together with some evidence based presentation in relation to the existing and former configuration of buildings. It is surprising that no reference is made to this information within the report which perversely makes references to anecdotal unsubstantiated submission by Third Parties.

I would be grateful if Members could be provided with the full picture in relation to the applicant's circumstances and the various exceptional circumstance justifications advanced together with a practical analysis of the implications of the development on the openness and visual amenity of the Green Belt. I would be grateful for the opportunity to review matters with you and colleagues in the light of these representations. In the meantime I confirm our exchange of correspondence in relation to the acoustic situation concerning which I am taking instructions from the applicant on which I will revert to you in due course.

Kind regards,

Yours sincerely



DAVID STENTIFORD
Partner

assessment of the merits of the appeal were based only on the current planning framework for the area and accordingly it represented an inappropriate form of development which harmed the openness of the green belt (South Derbyshire DC 16/4/03 DCS No. 29472069).

Essential/small scale facilities As noted above PPG2 states that new buildings involving essential facilities for outdoor sport and recreation, for cemeteries and other uses of land which preserve the openness of the green belt and which do not conflict with purposes of including land within it, are appropriate. Examples are quoted as small changing rooms, unobtrusive spectator accommodation, or small stables. Outdoor sports and recreation facilities are dealt with at (18.2321) and stables at (23.2321). It should be noted that at this policy exemption does not apply to facilities within residential curtilages. This was demonstrated in *Case of ex parte Windsor & Maidenhead BC 2/5/2002* where a decision was quashed by consent where an inspector had concluded that floodlights used for recreational use within the garden and for the enjoyment of its occupants were appropriate development. On remit an inspector confirmed that the development the subject of the appeal was residential in land use terms and therefore inappropriate (Windsor & Maidenhead BC 3/1/03 DCS No. 30860748). This judgment should be compared with *Houghton v SOS & Bromley LB 12/1/1995*, noted at (4.2516), where it was held that there should be no distinction between public and private facilities. However the situation in *Houghton* may be distinguished in that the site was outside the curtilage of a house, although it was proposed to incorporate it into its curtilage.

A definition of the word "essential" was considered in *Wainsfort Corporation v SOS & Another 23/11/2000*. Here an inspector had rejected a green belt boathouse on the grounds that it was desirable but not "essential". The court upheld the decision noting that "essential" imposed a high standard and the inspector had properly considered all aspects of the matter.

This is a development control topic that has engendered some conflict due to the vagueness of the terms used by PPG2, and varying interpretations have been made. Decisions often demonstrate widely different positions taken on what constitutes essential or small scale facilities.

- Stables for 23 horses were proposed for private use. An inspector noted the relevant policies in PPG2 and felt that rearing and riding horses was an outdoor sport and recreation. She felt that given the "limited scale" of the proposed stables they were appropriate development. The buildings would be read as part of the existing farm complex and there would be no harm to openness (Warrington BC 8/8/01 DCS No. 32301271).

- Ten looseboxes were proposed in the grounds of a manor house. An inspector felt that the structure was well in excess of what could reasonably be described as a small building in a PPG2 context. In so doing he referred to a 1995 appeal decision from Sevenoaks where an inspector was dealing with a proposal for four stables and a fodder store. This inspector stated that "I am firmly of the opinion that four good-sized stables plus associated accommodation would go well beyond what I would regard as small, or even modest, facilities for outdoor sport or recreation (Woking BC 14/7/01 DCS No. 34013854) and (Sevenoaks DC 14/11/95).

- Two halfway houses at an established golf course were allowed on the basis that they were necessary for the playing of sport at the course and did not harm openness. The proposed buildings were modest in scale, well designed and appropriately sited. They would have a minimal impact on the character and appearance of an attractive rolling landscape (Sevenoaks DC 24/1/96).

- The retention of ball netting at a golf course was rejected

because it was not held to be essential equipment relating to the recreational use (South Bucks DC 21/1/04 DCS No. 57150292).

- A reception building to serve a natural burial ground in a green belt area was proposed. The building extended to 84m² and would be able to accommodate about 20 people providing toilet facilities, a small catering area and caretaker's room. The appellant claimed that the space was the absolute minimum required to provide for the effective operation of the site. In the event of inclement weather, the building would provide some shelter for friends and family to gather after the committal service. In assessing whether it represented an appropriate form of development in the green belt, an inspector agreed that the site's primary use as a cemetery represented an appropriate use of green belt land. Accordingly since the building would not be larger than was reasonably necessary to fulfil this function, it also represented an appropriate form of development (East Dorset DC 14/5/03 DCS No. 31054940).

- A change of use of farmland to playing fields and sports facilities in the Surrey green belt was proposed. The scheme consisted of two football pitches, a cricket square, six tennis courts, parking for 70 cars and a pavilion. An inspector agreed that the use was an appropriate form of development in the green belt, and felt that as the pavilion contained only two changing rooms, a tiny kitchen and social area, it was genuinely needed as an essential facility for the playing of sport and recreation on the land. However the use would generate considerable activity and would introduce suburban characteristics into the countryside. There was no evidence of a need for additional facilities and since the site was poorly served by a range of means of transport, this matter together with its landscape impact, justified dismissing the appeal (Tandridge DC 8/1/03 DCS No 40668889)

Disproportionate additions to dwellings: PPG2 states in relation to the limited extension and alteration of dwellings, that disproportionate additions over and about the size of the original building are "not inappropriate". In some cases local plan policies may indicate what is "disproportionate" in terms of rule of thumb percentages, but at appeal it is normally held that each case should be considered on its merits.

The following cases are of interest.

- An extension was proposed to a green belt house. This increased the size of the house by 18.25sqm from about 81sqm. It was agreed by the council that this was not a "disproportionate" enlargement but objection was made that a policy designed to safeguard the market supply of "small dwellings" was harmed. An inspector allowed the appeal and the High Court supported this decision *Guildford BC v SOS 12/10/2001*.

- It was proposed to extend swimming pool accommodation at a green belt house in the New Forest. An inspector reasoned that the 43 sqm extension would mean that the accommodation at the property as a whole would increase to nearly 100% over the original. This was very large indeed and would be disproportionate. There were no very special circumstances justifying a breach of green belt policy. This decision was challenged in the High Court as the status of the area was to change from green belt to National Park. On redetermination a second inspector who came to the same conclusion as his predecessor i.e. that the extension seen in conjunction with other previous extensions represented a disproportionate increase harming the character of the New Forest Heritage Area soon to become a National Park. This decision was further challenged but it was ruled that the second inspector's reasoning had been reasonable and logical (New Forest DC 3/7/00 DCS No. 34594384; New Forest

DC 16/7/01 DCS No. 35324120 *Case of Sinclair v SOS 15/2/2002*).

●A tree house was proposed at a green belt dwelling. The structure rested on a platform about 5.2m long and 3.5m wide. It was claimed that the tree house was not visually intrusive but an inspector viewed it as disproportionate in size to the original dwellinghouse and therefore inappropriate. It could not readily be screened and its temporary nature did not mitigate its harmful impact (Wycombe DC 4/9/03 DCS No. 30773556).



Excessive size of green belt tree house faulted

●Enforcement action was taken with regard to a house extension in a green belt area. An inspector ruled that the terms "original" did not apply to the date when the green belt was designated 1974, but referred to the date of original construction 1954. It was noted that in 1954 there was 115sqm of floorspace and in 1974 293sqm. At the time of the appeal allowing for certain demolitions the floorspace was 420 sqm and the appeal proposal would increase that to 648sqm. The inspector felt that an assessment of what was disproportionate should not be looked at simply in percentage but in this case the resulting house would be grossly disproportionate to the 1954 position, and disproportionate even to the 1974 position. The proposals diminished the openness or "unbuilt character" of the site (Windsor and Maidenhead Council 23/6/97 DCS No. 53829161).

●It was proposed to extend an existing residential care home. An inspector felt that the guidance in PPG2 relating to house extensions did not apply to Class C2 uses. In any case the floor area of the building was to be almost doubled and could not be described as "limited". The need to expand and the important community service that a large home would provide was not very special circumstances sufficient to depart from the thrust of green belt policy (West Lancashire DC 28/8/96).

See also the Sevenoaks case listed under "Non visibility of development". Many further green belt house extension cases are to be found at (12.631).

Very special circumstances

The "very special circumstances" test, which needs to be employed if it is found that there would be harm to green belt policy, is embodied PPG2. If not applied a decision could be struck down by the courts -see *South Bucks DC v SOS & Another 18/3/1992* at (4.2515).

Precedent for similar developments A "very special circumstance" will not normally be considered to create a precedent where a particular development, site characteristics or planning history is unique to an area. However, if there is a possibility that the very special circumstances could be replicated leading to a number of permissions, which would in turn degrade a stretch of green belt, this may be a potent reason for rejecting them.

Cases of interest which deal with the precedent point follow.

●The erection of a building at an equestrian centre in the green belt was allowed. Adjoining landowners sought judicial review and argued that the council's decision would adversely affect their land and established an undesirable precedent as to equestrian development in the green belt. They claimed that the council had been mistaken in concluding that the expansion of the equestrian business amounted to a very special circumstance. It was held that if expansion of a business was held to be a very special circumstance, green belt policy would be substantially undermined. He therefore quashed the planning permission *Samuel Smith Old Brewery (Tadcaster) v Selby DC 16/4/2003*.


●A local authority granted planning permission for a Gypsy family to remain on a site within a green belt. An inspector had concluded that the educational needs of the appellant's son and daughter justified retaining a mobile home and septic tank and quashed enforcement notices issued by the council. The council argued that the decision set an undesirable precedent and would be circulated widely amongst the gypsy community to be used against other councils in similar circumstances. The court stated that the educational needs of the family were not unusual and the concern about precedent was well founded. He warned that the rules requiring very special circumstances to be demonstrated to justify inappropriate development should not be "watered down" by decision makers. The matter was remitted back to the *SOS Doncaster MDC v SOS 12/4/2002*.

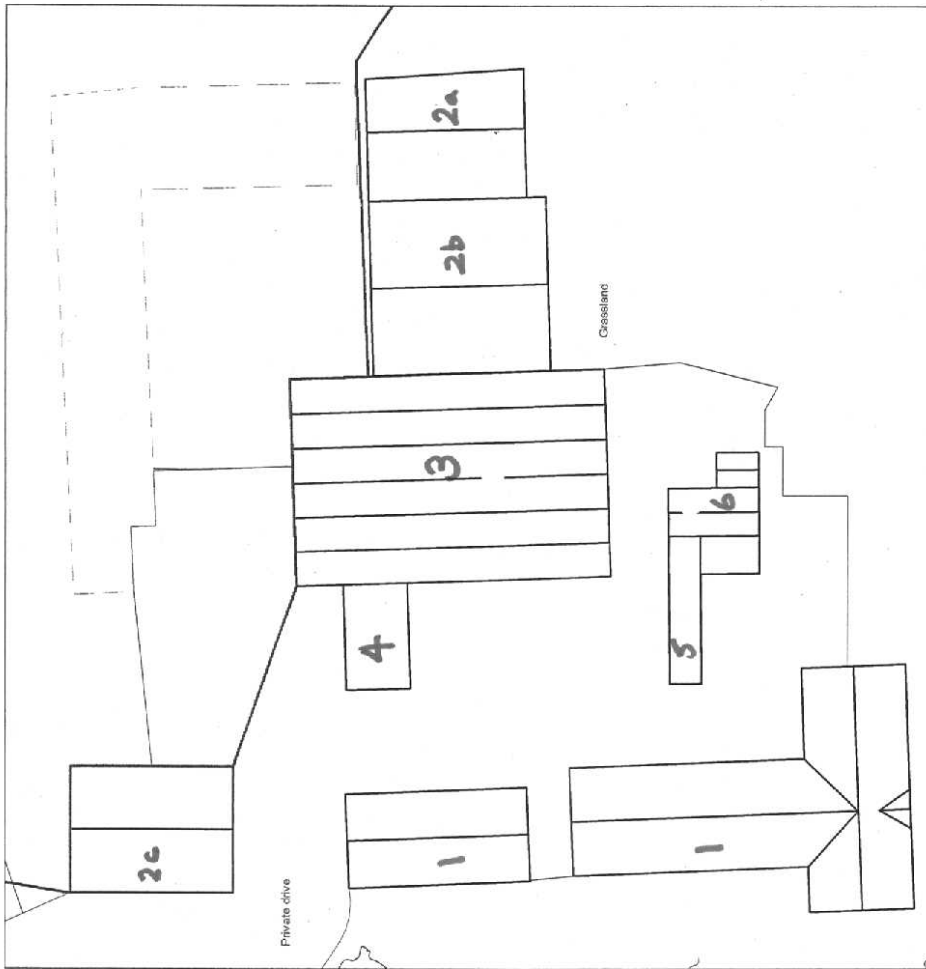
●A new factory was proposed for JCB. An inspector gave weight to the precedent factor as he thought that this firm's special economic pleading could be replicated, but his recommendation to refuse the development was overturned by the *SOS (Staffordshire Moorlands DC 12/3/93)*.

●A proposal to extend a green belt nursing home was considered. It was argued that new standards required the extension without which the business as a whole was imperilled. An inspector agreed that the home could not continue to operate at a loss and closure would create great trauma and disturbance to existing residents. This constituted very special circumstances and the appeal was allowed. The inspector added that the decision should not be used as a basis justifying other inappropriate proposals (Walsall MBC 7/10/03 DCS No. 42954029).

The following cases illustrate various examples of "very special circumstances" which have been argued, and in practice it is often a combination of several of these that may prove persuasive. It is also of note that where no harm, or very little harm, is identified despite "inappropriateness" this may be added to the very special circumstances in the decision making process. This was the conclusion in the Wendyfair case described at (4.2515).

2009 / 0424

- KEY**
-  Site boundary
 - 1. Main residence
 - 2. Barn
 - 3. Milking shed
 - 4. Range between cow shed and main residence
 - 5. Well building/duck houses
 - 6. Toilet block/pig sty



NORTH WARWICKSHIRE
BOROUGH COUNCIL
14 SEP 2009
PLANNING DEPARTMENT

Devitts Green Farm, Arley,
North Warwickshire
Historic Site Layout

Steve Mitchell

www.ppg-eb.co.uk
Team AMUK
03 Sept 2009
Scale 1:200 g/a3



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Appendix E

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(2) Application No: PAP/2009/0451

Ash End Farm, Middleton Lane, Middleton

Conversion of redundant agricultural building to provide ancillary residential accommodation, for Mr M Byrne

Introduction

The application is being reported to Board due to the presence of a Unilateral Undertaking submitted with the application.

The Site

The site is located immediately adjacent to Middleton Lane, close to the Ash End Children's Farm. The farmhouse and courtyard buildings are no longer associated with an agricultural use. It is some distance from the nearest main road, with access along a single track country lane.

The building is a single storey end gable design with a number of openings already present in its fabric, with traditional materials used. It faces into the courtyard of Ash End Farm, and is located close to the farmhouse.

The Proposal

It is proposed to convert this redundant agricultural building to provide habitable accommodation ancillary to Ash End Farm in perpetuity. The proposal will share the existing access, courtyard, and amenity space.

Background

A previous application to convert the building to a separate dwelling (PAP/2007/0441) was refused in 2007. This was refused on the grounds that it was an unsustainable location to provide an independent unit of accommodation.

Following this refusal, site meetings and pre-application discussions established that the building had in fact, been used for purposes incidental to the residential use of the farmhouse, and this has been evidenced through the submission of sworn affidavits.

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) and Planning Policy Statement 7 (Sustainable Development in Rural Areas)

Sworn Affidavits from the current owner of Ash End Farm and neighbour (owner of Ash End House)

Observations

The application is accompanied by two sworn affidavits providing evidence that supports the continuous use of the building for purposes incidental to the residential use of the farmhouse for a period well in excess of 10 years. Normally, a Certificate of Lawfulness application would be necessary to first regularise this use as lawful, before it could be considered part of the residential curtilage. However, it is not considered prudent to first ask for this application, when the evidence supplied is not contested by Council or third party records. In light of this information, it is therefore considered that the building forms part of the residential curtilage, and hence the application is seeking to change the use to ancillary residential accommodation.

The main consideration relates to re-use of the rural building. ECON9 seeks that such buildings have direct access to the rural distributor road network. In light of the above information, this criterion is considered irrelevant to this application, as access to and inhabitants of property will not materially change. A structural report confirms that the building is sound and capable of re-use without reconstruction or significant alteration. The subsequent cascade of economic objectives either cannot be achieved or are felt inappropriate immediately adjacent the farmhouse, and the housing objectives do not conform to the unsustainable location for independent accommodation. The above material circumstances are therefore considered to largely outweigh the policy.

Impact on openness of the Green Belt remains unaltered. The building is to be re-used in its present form, with the existing courtyard and amenity areas shared with the farmhouse. The alterations to the openings are considered acceptable, with formerly bricked up openings reinstated where required. There is no harm to neighbouring amenity either.

Further consideration is given to the future use of the accommodation. Both PPG2 and PPS7 seek to prevent inappropriate development in such a location, which would include an independent dwelling without benefit of a functional need. In order to address this, a Unilateral Undertaking has been provided binding the current and future owners to use it as ancillary to Ash End Farm only. This includes obligations to share the postal address, vehicular access and parking, utilities provision, and to prevent the sale of the building separately to the farmhouse. A condition shall also reflect this tie.

Recommendation

That the application be Granted Subject to 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 permission.

2. The development hereby approved shall not be carried out otherwise than in accordance with the plans numbered 903/01A and 903/02A received by the Local Planning Authority on 28 September 2009.

REASON

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

3. The accommodation hereby approved shall be occupied solely in connection with, and ancillary to, the main dwelling at Ash End Farm, Middleton Lane,

Tamworth, B78 2BL; and shall not be sold off, sub-let or used as a separate unit of accommodation.

REASON

To prevent unauthorised use of the property.

Notes

1. This Decision Notice must be read in conjunction with a Unilateral Undertaking completed under the terms of Section 106 of the Town and Country Planning Act 1990 (as amended). You are advised to satisfy yourself that you have all the relevant documentation.
2. The Development Plan policies which are relevant to this Decision are as follows. North Warwickshire Local Plan 2006 (Saved Policies): ECON9 (Re-Use of Rural Buildings), ENV2 (Green Belt), ENV11 (Neighbour Amenities) and ENV13 (Building Design).

Justification

The proposal is considered to not harm the openness of the Green Belt through conversion works or subsequent use, nor is it likely to harm visual or neighbouring amenity, such that it is in accordance with saved policies ENV2, ENV11 and ENV13 of the North Warwickshire Local Plan 2006. The proposal strictly conflicts with saved policy ECON9 of the North Warwickshire Local Plan 2006. However, the supporting documentation, verifying the building is already of incidental residential use, is material to outweigh elements of the policy and is sufficient to be in favour of the proposal.

BACKGROUND PAPERS

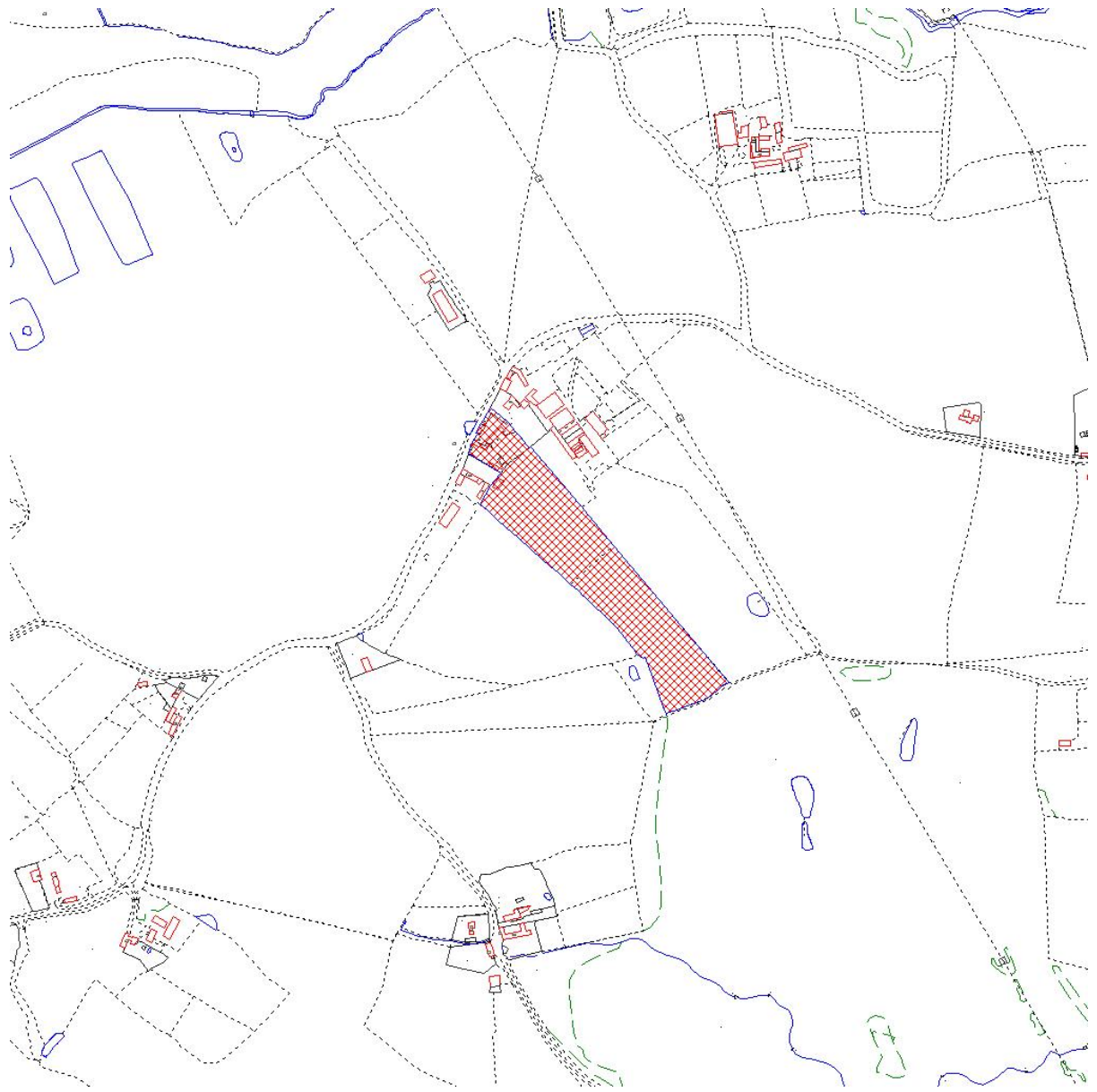
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2009/0451

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	28/9/2009 & 12/10/2009
2	M P Byrne	Statutory Declaration (Sworn Affidavit)	28/9/2009
3	R G Rawlins	Statutory Declaration (Sworn Affidavit)	28/9/2009
4	N Legal Solicitors	Draft Unilateral Undertaking	22/10/2009
5	Planning Officer	Letter to N Legal Solicitors	23/10/2009
6	N Legal Solicitors	Letter to Planning Officer	2/11/2009

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.



Agenda Item No 6

Planning and Development Board

7 December 2009

Report of the Head of Development Control

Community Infrastructure Levy Consultation Paper

1 Summary

- 1.1 The Government has published further detail in the form of a consultation paper, about the introduction and working for the new Community Infrastructure Levy. Members are invited to comment on the paper.

Recommendation to the Board

That the observations set out in this report be referred to the LDF Group for consideration, before referral to Executive Board.

2 Background

- 2.1 The Government has published its detailed proposals for the introduction of the Community Infrastructure Levy (CIL). This is a levy that Local Authorities will be empowered, but not required, to charge on most types of new development in their area. Members will recall from earlier reports that this Levy is seen as a potential major source of income to fund public infrastructure services that are required as a direct consequence of the grant of planning permission for that development, and in order to deliver that development.

... 2.2 A Summary of the Consultation Paper is attached at Appendix A.

3 Key Features

- 3.1 The process of collecting and setting CIL is wholly linked to the development plan process. Only those Authorities that have up to date plans, and ones that are supported by an Infrastructure Delivery Plan and Charging Schedule will be allowed to introduce the levy. The Delivery Plan and Charging Schedule will identify what infrastructure will be needed to support and implement development planned in the Development Plan; when it is needed and at what cost. It is clear that the Levy is to be spent on infrastructure needs arising directly from new development, and that it can not be used to tackle existing deficiencies. The charge would be calculated with simple formulae which relate to the size and character of the development paying it – effectively a tariff system. The Levy can be pooled between Authorities in order to make contributions to sub-regional infrastructure in the case of cross boundary developments, as well as for local infrastructure in order to make new development happen. The Borough Council would act as the charging authority even if the money may be earmarked for use by other organisations including the County Council, as it is this Council who prepares the Core Strategy for North Warwickshire.
- 3.2 Core Government funding will still carry the main burden of the cost of new infrastructure, and CIL would be used alongside other funding streams to help “fill the

gap” so as to deliver infrastructure plans. The long-standing system of securing developer contributions from Section 106 Agreements will be pared right back as a consequence of CIL. However, it is very clear from the consultation paper, that CIL can not be used to provide affordable housing. This will still be provided, where appropriate, through the Section 106 route.

- 3.3 The Charging Schedule identifies the actual level of charge. It first has to go through the same testing as all other Development Plan Documents. It is logical and proper that they be prepared together. The Schedule will also be the subject of public consultation, and subject to query at the Examination in Public, together with any modifications being made through a binding report from the Inspector. The Schedule will identify how much is to be raised by each class of development, expressed as a cost per square metre of floor space and indexed to inflation. There will be national definitions set by Government, together with exemptions and indices in order to ensure consistency. For example, householder developments are likely to be exempted; there is also likely to be a “threshold” under which other new development would be exempt – perhaps for example omitting single houses, and the calculation of floor space would be defined. Charges are set on the grant of planning permission, but paid on commencement of the development. Liability for the charge, if not paid within 28 days, runs with the owner of the land.
- 3.4 The Planning Act 2008 ring fences the payment of CIL to “infrastructure”. This is defined in the Act as including, “roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open space”. Local Authorities however do have the ability to justify other facilities through their Development Plan Documents and Infrastructure Plan if they are required to implement and sustain new planned development. For instance the Government sees CIL as assisting in the provision of broadband connections in areas where new development is planned but where there is no current access. Similarly it could be used to meet the low carbon and renewable energy agendas through providing district heating systems; sustainable drainage facilities and renewable energy systems.

4 Sub-Regional Working

- 4.1 The Authorities from the sub-region have been working together in order to assess the impact of growth arising from the current RSS review, on the infrastructure requirements for the sub-region as a whole. To this end, a company called EDAAW has been commissioned to undertake a project to draw this information together. This was reported to Executive Board in May 2009 (Agenda Item 12 – “Coventry, Warwickshire, Solihull Forum – Action Plan for Future Joint Working”). The information from this study may lead to a proposal for a sub-regional CIL requirement that is placed on all development permitted within the whole of the sub-region.

5 Observations

- 5.1 This is a major change in the way that infrastructure is to be funded, and is thus significant. It is assumed that the Council will wish in principle to become a Charging Authority in order to benefit from this funding opportunity. However there are a number of general matters associated with this, that need to be fully considered.
- 5.2 Firstly, the Council has to have an adopted Core Strategy that fully identifies infrastructure needs; costs those needs, times their provision, and justifies the level of the new charge. The Schedule and Delivery Plan has to be monitored regularly and thus adjusted according to implementation and to the wider economic situation.

- 5.3 Secondly, the Council has to have the administrative and audit systems in place, together with the resource to collect the Levy; to pay it in order to secure the timely delivery of that infrastructure, co-ordinating it with the development, and monitoring that delivery. There is no indication in the paper if the operational and administrative costs associated with CIL can be funded from the Levy itself, and no recognition as to whether Councils have the appropriate skills in-house to be able to continually monitor and update infrastructure and development costs, and thus adjust the Levy to prevailing economic conditions.
- 5.4 Thirdly, not being a Unitary Authority, the greatest proportion of the CIL collected will automatically be transferred to other Agencies to be spent – notably the County Council, Severn Trent Water, Highways Agency and the Environment Agency. Because of the potential for a sub-regional element, this would mean that part of the CIL collected by the Council, may not actually be spent in the Borough. The provision of vital new infrastructure however does assume that these Agencies also have the capacity and capability of delivering that infrastructure in a timely way.
- 5.5 Fourthly, the land values in North Warwickshire are historically lower than elsewhere in the County and the level of charge here will need to balance these local circumstances with the more general level of construction costs that tend to be regional in character.
- 5.6 Fifthly, there is a significant omission from the consultation paper, and that is how to forward fund new infrastructure, if CIL is only paid on commencement of development. Members will realise that there is infrastructure that in some cases has to be provided off-site before development on site can commence eg- a new roundabout or road connection. The Levy would only be payable when development on site commences. It is not yet known if it can be used to forward fund the pre-commencement infrastructure. There needs to be assurances that sources of forward funding can be predicated on CIL revenues, and/or that it can assist in paying interest charges on the capital cost of that infrastructure.
- 5.7 As far as this Council is concerned, then the delivery of its Core Strategy will be highly dependant on infrastructure delivery provided by other Agencies; to their priorities, their programmes and their capacity to deliver. It is inevitable that there has to be a coordinated approach, and it is welcome that Warwickshire County Council and other Agencies are already advocating this. However this too will be fraught, as Local Authorities themselves will become Charging Authorities at different times, thus making delivery very difficult to programme. This may be where in the future a joint sub-regional Core Strategy is produced to try and overcome some of these difficulties.
- 5.8 However, what is important to the Council is to ensure that the local element here is not overridden by more strategic infrastructure provision. Therefore the proposition that the definition of infrastructure can be wide and also be related to local issues is encouraging. It is thus important that the Core Strategy's Infrastructure Plan recognises these local requirements. For instance, Parish Plans could certainly assist here to ensure local community involvement; the Green Space Strategy will also be significant, as could links to the Leader project, if CIL is seen as match funding. However, because of all of the concerns raised above, the Borough Council may wish to explore the potential of only using CIL for off site or essential pre-commencement infrastructure, but retain the use of Section 106 Agreements for local and on-site infrastructure provision.

5.9 The Core Strategy, and its associated Infrastructure Delivery Plan and Charging Schedule are outside of the remit of this Board. However it is suggested that the observations as set out above should be referred to the Executive Board and also to the LDF Advisory Panel in order to assist their consideration of how CIL and its relationship with Section 106 Agreements, can best be managed to the Council's advantage.

6 Report Implications

6.1 Finance and Value for Money Implications

6.1.1 Depending on the charging schedule and the national thresholds, the CIL could provide a significant income stream to fund new infrastructure required to deliver new planned development.

6.1.2 It is not yet known how this might impact on central support costs.

6.2 Environment and Sustainability Implications

6.2.1 The CIL could have a substantial impact in ensuring that new development is delivered on time with the necessary infrastructure in place to secure sustainable development in appropriate locations.

6.3 Human Resources Implications

6.3.1 There will be implications in terms of administrative, audit and professional capacity to administer and monitor the CIL. These presently can not be identified.

6.3.2 Similarly, it is not known if there are the appropriate skills in the Council to monitor the delivery of CIL, and importantly to formulate and monitor its Charging Schedule.

6.4 Links to Council's Priorities

6.4.1 The provision of associated infrastructure in a timely way would meet many Council objectives.

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

Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date
1	CLG Community Infrastructure Levy	Consultation	July 2009

Summary

Introduction

1. The Community Infrastructure Levy (CIL) will be a new charge which local authorities in England and Wales will be empowered, but not required, to charge on most types of new development in their area. CIL charges will be based on simple formulae which relate the size of the charge to the size and character of the development paying it. The proceeds of the levy will be spent on local and sub-regional infrastructure to support the development of the area.
2. CIL will improve predictability and certainty for developers as to what they will be asked to contribute; will increase fairness by broadening the range of developments asked to contribute; will allow the cumulative impact of small developments to be better addressed; and will enable important sub-regional infrastructure to be funded.
3. Part 11 of the Planning Act 2008 provides the legislative basis for CIL. The Act enables the Secretary of State to lay regulations before Parliament establishing CIL. Developer representatives have welcomed this enabling approach to legislation, which will help to ensure CIL is a flexible instrument which can evolve and develop over time in the light of practical experience.
4. This consultation document sets out the Government's detailed proposals for CIL, and is accompanied by draft regulations. Comments are invited throughout this document on both.

Spending CIL: infrastructure

5. The Government is investing substantial additional funds to support housing growth and economic development. CIL will also provide further new resources. Estimates as to how much CIL will raise are heavily dependent on the number of local authorities that elect to charge CIL, and the rates that they charge. However, CIL is expected initially to raise hundreds of millions of pounds of extra funding per year towards the infrastructure that local communities need. While CIL will make a significant contribution to infrastructure provision, core public funding will continue to bear the main burden, and local authorities will need to utilise CIL alongside other funding streams to deliver infrastructure plans locally.
6. The Planning Act is clear that CIL may only be spent on infrastructure. The Government believes that CIL should be used to fund the infrastructure needs of development contemplated by the development plan for the area, not to remedy existing deficiencies.

7. The Government is taking action to improve both infrastructure planning and infrastructure delivery. Communities and Local Government is working with other Government departments to align funding streams and improve coordination of delivery at the local level.
8. The Government proposes that the definition of infrastructure for CIL purposes should be wide enough to enable local authorities to decide what infrastructure is appropriate for their local areas. Development can be unlocked and made sustainable by the provision of very different types of infrastructure. However, affordable housing provision should continue to be provided through the existing system of negotiated planning obligations, not through CIL.
9. A key benefit of CIL is that it can more easily fund sub-regional infrastructure – that is, larger pieces of infrastructure typically benefiting more than one local authority area. The Government proposes that local authorities should have the freedom to work together to pool contributions from CIL within the context of delivering their local development plans.
10. Timely delivery of infrastructure is also assisted by the introduction of CIL – not simply because it is a new source of income, but because it is a more predictable one. The Government considers that public sector bodies such as the Regional Development Agencies could provide funding for infrastructure and be reimbursed from a CIL income stream by the benefiting local authorities thereafter: known as “forward funding”.

Setting CIL

11. The Government proposes that those authorities who prepare development plans should be charging authorities. This includes district and unitary authorities, the London boroughs, the National Park Authorities and the Broads Authority. In Wales, the county councils, the county borough councils and the National Park Authorities will have the power to charge CIL. The Mayor of London will also have a power to charge CIL to fund certain types of strategic infrastructure. Charging authorities can choose whether or not to implement CIL.
12. There should be an up to date development plan for an area before CIL may be charged in that area. The Government has recently updated *Planning Policy Statement 12: Local Spatial Planning*, which indicates that the development plan should be supported by an infrastructure planning process to identify what infrastructure will be needed to deliver the plan. The process of setting CIL should also start with the development vision for the area set out in the development plan, and infrastructure planning should identify the likely cost of infrastructure coming forward. Taking other funding sources into account, the charging authority should identify gaps in funding

to arrive at a proposed amount to be raised from CIL, subject to an assessment of local development viability at the plan level.

13. The charging authority should at the same time prepare a draft charging schedule, which will be a new type of document within the Local Development Framework. The Government proposes that the charging schedule will not formally be part of the development plan, though in three key respects the Government proposes that the treatment of the charging schedule will be the same as that for development plan documents. These are: firstly, that the charging schedule will enjoy the same level of rigorous testing as development plan documents, including a requirement to consult and a public inquiry before an independent person; secondly, that the report of the independent person will be binding upon the charging authority, and thirdly, that the charging authority would not be under an obligation to adopt the final schedule but could instead submit revised proposals to a fresh examination if it was unhappy with the independent person's proposed changes. Ideally the independent person will be drawn from the Planning Inspectorate.
14. The charging schedule should allocate the proposed amount to be raised from CIL to each main class of development envisaged by the development plan. Charges will be expressed as a cost per square metre of floor space. Charges will be indexed to an index of inflation. In drawing up the charging schedule, the charging authority will need to be careful that CIL should not be set at such a level that it risks the delivery of its development plan, because development is rendered unviable by the charge proposed. There will therefore need to be a feedback loop between the process of developing the charging schedule and the process of infrastructure planning, and indeed the Government proposes that the two can occur together and be tested at the same time.
15. The Government is striking a careful balance between national consistency and local flexibility. To ensure consistency and simplicity the Government is minded to define at national level the descriptions of the unit of development that may be charged (or 'metrics'). It also proposes to set out exemptions, inflation indices and other similar matters at national level. However, the Government is also proposing a number of flexibilities aimed at ensuring that charging schedules can be tailored to local circumstances. These include a facility to set differential rates geographically (for example, in order not to prevent development in regeneration areas). The Government is also considering whether to make provision for exceptional circumstances where a developer cannot afford to pay the rate set out in the charging schedule. In such circumstances the Government is considering whether there could be an administrative procedure which enables a lower amount to be paid. However, the Government is clear that this route would only be available in a very limited number of genuinely very special circumstances.

16. The Government proposes that CIL will be levied on buildings rather than development more generally. For non-residential development there will however be a 'de minimis' threshold of 100 square metres below which CIL will not be payable. Householder development by homeowners will not be liable. A combination of these factors means that in practice most development permitted under the General Permitted Development Order (GPDO) will not be liable for CIL – though some will.
17. The draft regulations implement the requirements in the Planning Act 2008 for an exemption for development by charities for a charitable purpose; and the Government is also exploring in this consultation proposals for a discount for affordable housing developments.

Calculation, payment and enforcement

18. The amount of CIL due will be calculated with reference to the charging schedule when a planning permission is granted. The planning permission will determine the number of chargeable units and the charging schedule will determine the rate per square metre, so the liability will simply be one multiplied by the other, plus any indexing for inflation. Developers would be advised of the amount of liability when planning permission is granted.
19. However, payment would not be due until commencement. For simplicity and to take advantage of familiarity with the existing legislation, the definition of commencement would be the same as that set out in the Town and Country Planning Act 1990. Developers would be required to notify the charging authority of their intention to commence, as is usually the case for planning obligations currently. Developers would also be encouraged to provide details of the person who will pay CIL in advance of commencement. If no details are provided, landowners would become liable in default.
20. Payment would typically be required within a fixed time from commencement. The Government is minded to propose a 28 day 'payment window'. However, the Government is exploring the possibility that payment by instalments might also provide useful flexibility and would improve cash flow. Where development is phased (on the basis of an outline planning permission followed by reserved matters approvals), it is proposed that each phase would pay CIL separately. The Government is also exploring the possibility of payment in kind, though this presents some technical and fairness issues.
21. The Government has developed enforcement measures to ensure that CIL legislation is followed, drawing wherever possible on existing legislation. A key tool will be the potential to register CIL liability as a Local Land Charge, to ensure that subsequent purchasers of developed land and property are aware of the existence of an

outstanding liability. To ensure that those paying CIL promptly do not suffer because of late payment by others, charging authorities will also have powers to add interest and surcharges to CIL. Levels and rates will be specified nationally. The Government also expects that charging authorities will have the power to stop development, in a similar way to planning Stop Notice powers, plus other enforcement tools.

Planning obligations

22. The facility to enter into a negotiated planning obligation using section 106 of the 1990 Town and Country Planning Act will remain when CIL is introduced. This is because planning obligations can be a useful tool to ensure that the specific impacts of a development can be mitigated, allowing it to be granted permission where permission would otherwise be refused.
23. Planning obligations will also continue to be used to secure affordable housing. The Government's policy is that, in order to secure mixed communities, affordable housing should where possible be provided in kind and on the development site. Planning obligations provide the facility to tailor affordable housing contributions to the particular circumstances of the site.
24. The Government is considering whether restrictions on the use of planning obligations should be made once CIL is introduced. The Government proposes that its existing policy tests governing planning obligations should be made statutory to provide more clarity about the respective purposes of CIL and planning obligations.
25. The Government is also inviting views on whether or not there should be a further new test that all planning obligations should meet which require that a planning obligation can only be required to the extent that it solely mitigates the impact of the development in question. This would have the effect of preventing 'tariff' schemes from being based on section 106 on future. CIL would need to be used to secure contributions which have hitherto been secured through such tariffs. There would be a transitional period of at least 2 years before any such restriction would take effect.
26. The Government is also seeking views on how the planning obligations regime could be improved in its own right, including in areas such as supporting the delivery of affordable housing and skills.
27. The Government will continue to encourage local planning authorities to use planning conditions in preference to planning obligations wherever possible.

Implementation

28. Regulations implementing CIL will come into force on 6 April 2010. After that date charging authorities will be able to bring charging schedules into effect having completed the statutory procedures. However, charging authorities can already start preparatory work to ensure that they are ready to undertake formal processes when CIL becomes available.
29. CIL will demand new skills in local authorities and the Government will work with other organisations to ensure that staff have the necessary skills in good time to allow a smooth implementation of CIL. Existing work on increasing skills in local authorities can also play an important role.

Agenda Item No 7

Planning and Development Board

7 December 2009

Report of the
Head of Development Control

Tree Preservation Order –
Beechwood House, Long Street,
Atherstone

1 Summary

- 1.1 The Board resolved to issue an Emergency Tree Preservation Order in respect of this yew tree. This report recommends that this be made permanent notwithstanding an objection.

Recommendation to the Board

That the Order as described in this report be made permanent, ensuring that the Schedule to the Order specifies the correct address as at the rear of 211a and 215 Long Street, adjacent to the boundary of 217 Long Street.

2 Background

- 2.1 In August this year, the Board confirmed the making of an Emergency Tree Preservation Order in respect of a Yew tree at the rear of numbers 211a and 215 Long Street. The tree is located within a Conservation Area and notice had been received to fell the yew tree. The Board resolved that the tree be the subject of an Emergency Order. That Order was subsequently made, and representations invited. This consultation period has expired and the Board has now to consider whether or not the Order be made permanent.

- 2.2 Following the making of the Emergency Order, the applicant was advised of works to the tree that could help alleviate some of the concerns that led him to seek the felling of the tree, and these works have now been approved.

- ... 2.3 A copy of the previous report is attached at Appendix A, and a copy of the County Forester's arboricultural appraisal is attached at Appendix B.

- 2.4 One letter of objection has been received and this is from the occupier of number 217 Long Street. He supported the application to fell because he said that the tree was some 600mm from the rear of his converted garage; that the branches overhang and brush the roof of that building, and that drains are blocked. In response to the Emergency Order, the occupier objects saying that the tree is causing stress to his family, because it is close to the house, and that its seeds often block the guttering, causing dampness inside the building. He also considers that it will cause damage, as the branches hang over his roof and it is likely that roots are underneath too.

3 Observations

3.1 Any Order has to be made “in the interests of public amenity”. The County Forester considers that the yew tree here is in good condition with little sign of structural damage to the buildings. He considers that it is worthy of protection in the interests of public amenity. The concerns of the neighbour have been taken up through remedial work to the tree and this kind of maintenance should be on-going. In the circumstances it is considered that the Order should be made permanent. If this is agreed, the Schedule will need amending ensuring that tree is correctly located.

4 Report Implications

4.1 Finance and Value for Money Implications

4.1.1 There are limited circumstances when the refusal of works to a tree protected by an Order can lead to compensation being paid.

4.2 Environment and Sustainability Implications

4.2.1 The Order will protect a mature and healthy yew tree, ensuring its longevity in the interests of public amenity in the town’s Conservation Area.

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

Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date
1		Emergency Order	
2	K Simons	Appraisal	12/8/09
3	Mr Jones	Objection	8/9/09

Agenda Item No 11A

Planning and Development Board

17 August 2009

**Report of the
Head of Development Control**

**Emergency Tree Preservation
Order**

**Beechwood House, Long Street,
Atherstone**

1 Summary

- 1.1 The Board is asked to confirm the making of an Emergency Tree Preservation Order in respect of a Yew Tree, given the circumstances as outlined in the report.

Recommendation to the Board

- a That in the circumstances outlined, the Emergency Tree Preservation Order at this address be confirmed; and**
- b That the matter be referred back to the Board once the consultation period has expired, so that the Board can consider whether to make the Order permanent or not.**

2 Background

- 2.1 An application was submitted to fell a Yew Tree in the Atherstone Conservation Area. The Council's options in these circumstances are either to allow the tree to be removed, or to make a Tree Preservation Order in order to protect the tree. This decision has to be made within six dates of the submission of the application. This was submitted by the owner of Beechwood House, Long Street, Atherstone, but as can be seen on the attached plan (Appendix 1) the tree is to the rear of Hilton House (215), Long Street, to the rear of 217 Long Street and at the rear of 211a Long Street. The tree is sited within the Conservation Area. Photographs of the tree have attached to this report (Appendix 2).

- 2.2 The issue was whether or not to make an emergency Tree Preservation Order. Any Order has to be made in the interests of public amenity. The Yew Tree is large, and mature and is surrounded by residential development. As part of the application the Forestry Officer of Warwickshire County Council has visited the tree. He considers that the tree is in good condition, and apart from the lower branches sweeping the roof of the former garage and number 211a, he could not determine any other damage to the buildings. No evidence was provided by the applicant or neighbouring properties to confirm that the Yew Tree was causing damage. The neighbour at 217, to which the trunk of the tree is 600mm from the rear of a converted garage, did write in providing photographs of the overhanging to the roof and how drains have been blocked. The Country Forestry Officer considers that though the tree is growing in close proximity to the rear wall of the building, its rate of growth should allow its retention for 40 plus years.

- 2.3 The Yew Tree is considered to be worthy of protection. It can be viewed from Long Street, and due to the amenity value of the tree and the good condition reported by the Forestry Officer, an emergency measure was deemed justified. The County Forester has carried out a Tree Evaluation Method for Preservation Orders

(T.E.M.P.O) and considered that the score was high enough to deserve a preservation order.

- 2.4 It was considered by the County Forester that this amenity benefit could be maintained and its effect on the adjacent buildings mitigated through pruning. It was suggested that pruning the crown to give a 1 metre clearance with a radical reduction of 20% to retain its lateral growth over the former garage, would benefit neighbours yet still retain the amenity value of the tree.
- 2.5 Following agreement with the Chairman of the Board and the Councils Solicitor, the Order was made on 6th August 2009, and the Notice was served by hand to the owner and occupiers on 7th August 2009. They have until 11th September 2009 to make representations / objections. A further report will then be brought before the Board before 6th February 2010, for members to consider whether the Tree Preservation Order should be made permanent.

3 Report Implications

3.1 Crime and Disorder Implications

- 3.1.1 The action described above should protect a mature and healthy Yew Tree and ensure its longevity.

3.2 Legal and Human Rights Implications

- 3.2.1 The owner and adjoining owners / occupiers have the ability to make representations concerning the tree.

3.3 Portfolio Holder and Ward Members Consultation⁴

- 3.3.1 Due to the short time period the Chair of the Planning and Development Board was informed of the Emergency Order.

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

Background Papers

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

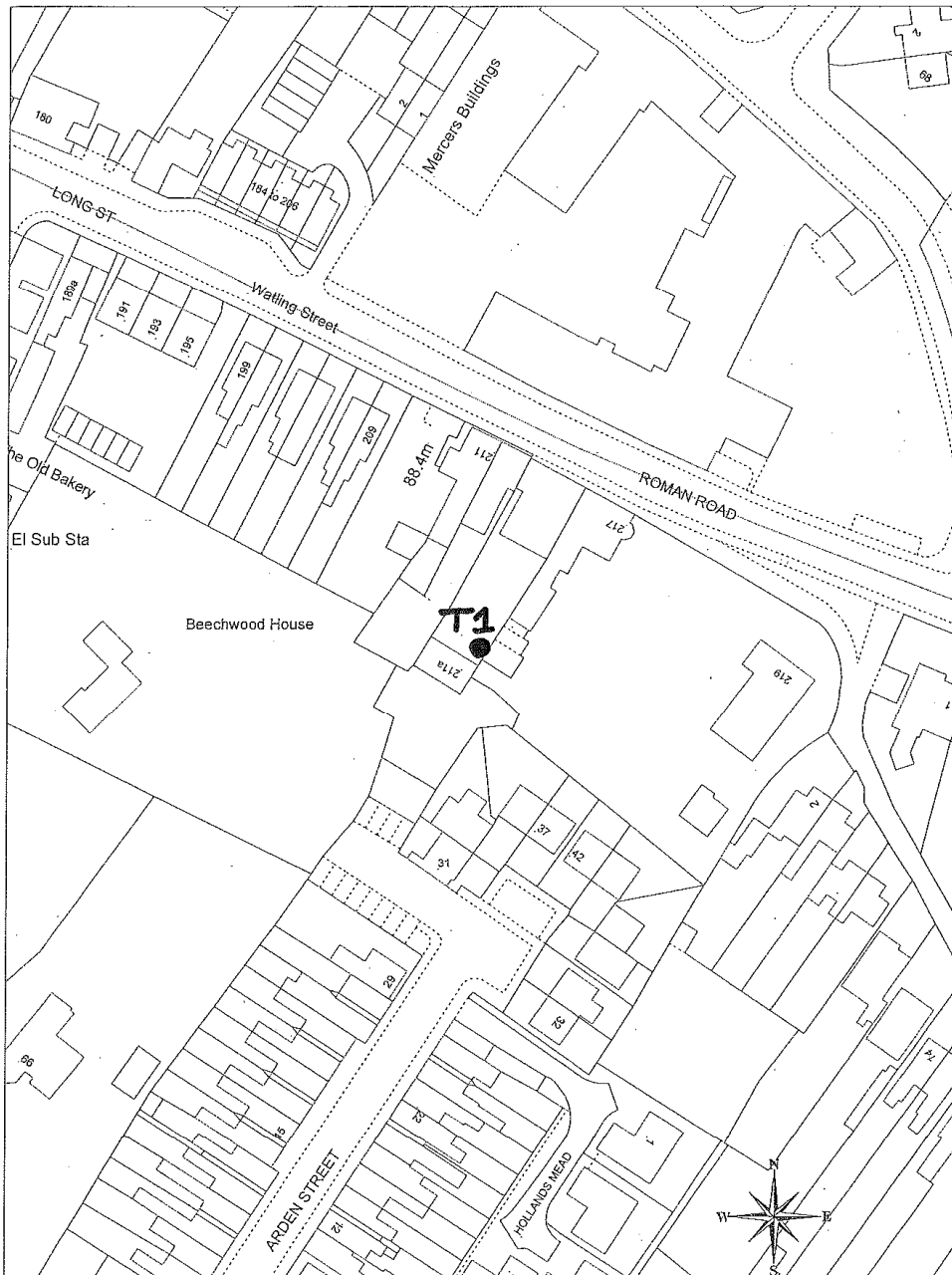
Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	25/6/09
2	Ian Griffin	Letter to applicant	1/7/09
3	Ian Griffin	Email to Ken Simons	17/7/09
4	Ken Simons	Email to officer	21/7/09
5	Ian Griffin	Email to Ken Simons	21/7/09
6	Atherstone Town Council	Consultation Response	21/7/09
7	Neighbour	Consultation response	29/7/09
8	Ken Simons	Email to officer	3/8/09
9	Ian Griffin	Email to Principal Solicitor	4/8/09
10	Principal Solicitor to NWBC	Email to officer	4/8/09
11	Principal Solicitor to NWBC	Email to officer	4/8/09
12	Ian Griffin	P & D Board Chair, NWBC Solicitor	5/8/09
13	Chair P & D Board	Email to officer	5/8/09
14	NWBC Solicitor	Email to Officer	5/8/09
15	Principal Solicitor	TPO Notice	6/8/09
16	Principal Solicitor	TPO Served	7/8/09

17	Development Control	Decision Notice sent	7/8/09
18	Ken Simons	Arboriculture Appraisal	12/8/09
19	Principal Solicitor	Revised Letter to applicant	12/8/09
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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.

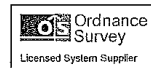
A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.

TPO Long Street, Atherstone



Sterling Court
Norton Road
Slavenage
Herts SG1 2JY
UK

Tel : +44 (0)1438 747996
Fax : +44 (0)1438 747997
E-mail: info@cadcorp.com



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Ian Griffin
North Warwickshire Borough Council
Development Control
Council House
South Street
Atherstone
CV9 1DE
F.A.O. Ian Griffin

Environment and Economy

Forestry Section
Unit 7
Montague Road
Warwick
CV34 5LW

Tel: (01926) 736491
Fax: (01926) 413408
kensimons@warwickshire.gov.uk
www.warwickshire.gov.uk

12 August 2009

Dear Sir

ARBORICULTURAL APPRAISAL – PAP 2009/0297

DATE OF VISIT: 31ST July 2009.

SITE: Atherstone – Beechwood House – Long Street.

DESCRIPTION: Felling of Yew tree in conservation area.

I have inspected the above site on the 31st July 2009 and spoken to the owner and applicant Mr T Smith.

Observations:

The tree referred to is a mature tree in good condition growing approximately 600 m to the west of a single storey former garage.

The garage has been converted into living accommodation and belongs to a neighbour, not the owner of the tree. The canopy of the tree extends over this building and its lower branches are sweeping the roof tiles. No other evidence of damage to the building was observed.

Beechwood House. Date: 31st July 2009. Weather Temp: 23° Cloud cover %: 60%
 Rain? Sun. Wind speed:3/4

Tree No & species	Diam. At 1.5m (mm)	Height m	Crown spread (m)				Crown clearance (m)	Age class & category	Estimated Remaining contribution (years)	Comments including physiological & structural conditions	Preliminary Management recommendation
			N.	E.	S.	W.					
A. Yew (Taxus Baccatta)	42	10	6	5	5	5	3.8	Mature tree A	40	Good physiological condition. Good structural condition.	Prune to give 1 m clearance of adjacent buildings.

Conclusion:

Though the site is growing in close proximity to the building, I was not made aware of any structural damage to the converted garage. The issue regarding the lower branches affecting the roof could be addressed through pruning. Though the tree is growing in close proximity to the rear wall of the building its rate of growth should allow its retention for many years.(40+).

Recommendation:

It is considered that the felling of this tree is unnecessary at this present time. The tree has been assessed using T.E.M.P.O and scores high enough to deserve a preservation order. However its benefit could be maintained and its effect on the adjacent buildings mitigated through pruning.

I would therefore advise that consent be given for crown lifting to give 1 m clearance with a radial reduction of 20% to retain its lateral growth over the former garage.

Yours sincerely

Ken Simons
 County Forestry Officer