

PARISH Blackwell

APPLICATION Change of use to an Open Storage Yard (B8) with access from Berristow Lane, siting of portable building and gatehouse, erection of boundary fences and formation of screen mounds and associated works including improvements along access road

LOCATION Former Blackwell Tip 500M North East Of Amber Park Berristow Lane Berristow Lane Industrial Estate South Normanton

APPLICANT Mr Paul Leverton

APPLICATION NO. 14/00188/FULMAJ **FILE NO.**

CASE OFFICER Mr Peter Sawdon

DATE RECEIVED 4th April 2014

This planning application was originally reported to the Planning Committee on the 14th January 2015 and recommended for refusal of planning permission. The matter was deferred by the Planning Committee pending exploration of access provisions to Berristow Lane, to include detailed surveyed drawings along the full length of the access road to the site and installation of the green route.

The original report is included in italics below, with details regarding additional submissions, additional publicity, and further assessment included below that, including the discussion of the planning considerations relating to the recently announced HS2 route that passes through this site.

SITE *The site area of the planning application extends to approximately 3.6hectares in size, including the access track. The site rises gently in an easterly direction; from its lowest point at the access the site rises by approx. 4m.*

The Application Site sits within a former railway clinker and ballast tip, which is bounded by open fields to the north and south, with existing industrial developments generally to the south west and east. The nearest residential development is 500m to the northwest. A Trail/Cycle path (former railway line), runs to the north west of the Application Site. The northern section of the main part of the application site is bordered largely by woodland and scrub.

The site is generally a plateau of unmade ground formed by discarded railway materials. Along the plateau's northern, southern and western boundaries are steep slopes down to surrounding agricultural land. The eastern boundary of the Application Site is drawn along the Bolsover and Ashfield District Council's administrative boundary.

There is an existing rough access track that leads to the main site from Berristow Lane to the west. This is currently closed with a low metal gate.

The application indicates that the site is located on the non-statutory designated Cambro Tip and Lane Potential Wildlife Site (PWS). The New Hucknall Disused Railway Site of Interest for Nature Conservation (SINC) is located to the east of the application site. The proposed development will not extend over the area of the New Hucknall SINC. The sites are designated for their grassland, woodland, scrub and wetland habitats. Adjacent to the eastern

boundary is New Hucknall Sidings (SINC). This area has also been designated for its grassland communities and watercourse (brook) and is separated from the Application Site by a large bank. The Brierly Forest Park site is the closest statutory designated site. The site is a designated Local Nature Reserve (LNR) and is designated for its habitat and wildlife value and is located 1.8 Km to the north of the Application Site.

PROPOSAL This is full planning application for the change of use of land from former railway tip to a (B8) open storage area. It is stated that the site would only be used for the storage of caravans and also 'lock and leave' style storage, in shipping style containers, that would have a permanent security presence. The application form also refers to the site being used for the storage of goods similar to new vehicles and products manufactured in the local area; the only machinery on site being a forklift truck. Whilst security would be present 24hours general operating times would be 8am to 6pm (Planning Statement) or 6am to 10pm (application form)

The proposed development primarily consists of the re-grading of the existing material on the site, the provision of a parking area, gatehouse and portacabin erection of secure boundary treatment (2.5m high), CCTV, low level LED lighting and drainage. A concrete area would be provided at the point where the main site is entered from the access track.

The surface is proposed to be re-graded so that appropriate drainage infrastructure and a level storage surface can be provided. The surface would be laid with the recovered hardcore material, which will be subject to screening and washing.

The LED lighting would be movement activated (by the breaking of a beam). The low-level and zonal manner of the lighting is stated to prevent light spill onto the surrounding area.

It is stated that the site will be separated from the surrounding land with ecological interest by a perimeter bund to be constructed around the northern and western boundaries. It will minimise visual impact of the development. The bund will be constructed from surplus material obtained after the re-grading of the surface, and will be 3m in height. The bund will be landscaped once constructed.

It is stated that it is anticipated that the majority of caravans will be delivered to the site by individual users. The estimated capacity is 700-800 caravans.

The 'lock and leave style' storage would comprise adapted steel shipping-style containers measuring 12m long by 3.5m wide by 3.75 m tall. It is stated that 100 containers would be transported to the site during set up operations for the proposed storage use that would be laid out around the perimeter of the site. It is stated that the side by side positioning of the containers will provide additional security as they, in conjunction with a mix of bunding, planting and security fencing, will form the Application Site boundary.

This application is the resubmission of planning application 13/00147/FULMAJ, which was withdrawn on 23rd July 2013. It is stated that the application now solely relates to the area within the administrative boundary of Bolsover District Council; the earlier withdrawn planning application formed part of a larger scheme that included land within Ashfield District Council.

It is stated that there are no plans to develop the area of land that sits in Ashfield and that the reduced site area will enable valued biodiversity assets to be retained.

The access road will be retained as existing, in terms of its location and its junction with the B6406 Berristow Lane. The existing junction will be concreted for a 10m section along the access track in order to provide a durable surface to withstand HGV movements. The track will then be surfaced with grade 1 hardcore material along the remainder of its length to the concreted entrance point. The access track is shared with the existing bridleway. The track will be extended (widened) to the south through filling the adjacent ditch, to be provided with drainage and to provide space for segregation of traffic and bridleway users; to create this separation, railway sleepers will be laid along the length of the track.

It is indicated that ecological enhancements would be provided as follows: -

- The development will incorporate ecological enhancements in the form of a Great Crested Newt pond, and a planted earth bund to be located to the north of the development area.*
- There will also be 10 Great Crested Newt hibernacula provided within the wider land ownership area.*
- The development will also enable the retention and management of the ecological assets at Blackwell Tip outside the Application Site.*

AMENDMENTS

- Highway Impact Statement Addendum submitted on 23rd June 2014;*
- Further Biodiversity information submitted on 14th July 2014;*
- Response to Highway Authority and Derbyshire Wildlife Trust comments submitted on 13th August 2014; and*
- Response to planning issues dated 25th November 2014.*

For information, Members may wish to note that the applicants in their submission on the 14th July has indicated that “In the event that the site is sterilised due to its wildlife interest, the applicant will have no alternative but to serve a Purchase Notice under the Town and Country Planning Act 1990 on the basis that ‘the land is incapable of reasonably beneficial use’.”

The Purchase Notice regime is contained within the Town and Country Planning Act 1990 (As Amended), but is considered to be a separate process to the consideration of this planning application. For the Council to have to accept the notice, then the applicant would have to demonstrate that the land is incapable of beneficial use.

HISTORY

- 13/00147/FULMAJ – This similar planning application for change of use to an Open Storage Yard (B8) was withdrawn on 22nd July 2014.*
- An associated planning application to 13/00147/FULMAJ within the adjacent Ashfield District Council (ADC Ref. (ref V/2013/0197) on the area to the east was refused planning permission by that Council on the basis of the development being contrary to policy EV2 ‘The Countryside, policy EV6 ‘Local Nature Reserves’ and general impact upon biodiversity.*
- 06/00622/DCCON4 – Bolsover District Council was consulted by the Mineral Planning Authority (Derbyshire County Council) on a proposal to change the use of a former railway tip to provide facility for the storage and shredding of biodegradable waste and storage and chipping timber waste, including the erection of a building (DCC reference CW5/1006/109).*

This application was not progressed through to a decision.

- 97/00131/DCCCON – Derbyshire County Council granted itself planning permission on 21st August 1997 to reclaim and change the use of the former mineral branch railway and sidings to enable the creation of a recreation route for pedestrian, pedal cycle, equestrian and disabled use by members of the public. Part of that approved line runs along the line of the proposed access that forms part of this planning application.

- There is no other apparent planning history relating to this site prior to this date, although it is understood that the land had been used as a landfill tip by British Railways from 1959-1986 where deposits of waste comprising of inert waste from construction/demolition operations was tipped.

CONSULTATIONS Natural England – *No objection in respect of statutory nature conservation sites based on submitted information. Refers to its standing advice in respect of protected species and discusses consideration of the potential for biodiversity and landscape enhancements. 25/4 (N.B. Had previously stated on earlier withdrawn planning application that the development is likely to affect Great Crested Newts, but were satisfied that avoidance or mitigation measures proposed would be sufficient to maintain the favourable conservation status of the species and requested a condition)*

Crime Prevention Design Advisor – *Recommends amendments in the interests of crime prevention along with a condition requiring a security measures 8/5*

Coal Authority – *No objections subject to the imposition of a condition to locate a mine entry and its resultant zone of influence and to fence off that area to prevent encroachment and works within that area. 9/5*

Archaeologist - *Satisfied that the proposals will have no archaeological impact. 28/4*

Environment Agency – *No objections subject to conditions 23/5*

Environmental Health Officer – *Some concerns over the extent of the submitted information in respect of contamination, but raised no objections subject to conditions 7/7*

Environmental Health Officer (Noise) – *No objections in principle to the proposal in relation to noise issues 27/6*

DCC (Highways) – *Re-iterates its previous comments and again recommends refusal of planning permission 16/5 and 22/7; confirmation that the highway position hasn't changed as a result of further submissions made 30/9 Re-confirmation that the highway position hasn't changed as a result of further submissions made 27/11*

Derbyshire County Council (Flood Risk Management Team) – *Have not provided specific comments on this proposal but provide general advice on flood risk issues 12/5*

Derbyshire County Council (Countryside Section) – *Affects strategic link in the County's Greenway Network that connects the Blackwell Train with the Trail network in Nottinghamshire. Doesn't make provision for a safeguarded route for the development of the Greenway (segregated route). Would prevent future development of the Greenway network. 2/6*

Blackwell Parish Council – *Refused – Traffic issues – more HGV's on Berristow Lane*

Ashfield District Council – *Objects on the grounds of unacceptable encroachment into an important open break that is not considered to be outweighed by any economic benefits of the scheme, and harm to biodiversity interests. No consideration of ecological impact from surface water run-off. Greenfield run-off rate should be secured. Further detail on HGV routing should be provided. 2/6*

Derbyshire Wildlife Trust – *Object. Site supports substantive nature conservation interest, including at least 9 UK BAP priority species. Some areas of survey work are either limited or*

have not been carried out. Loss of UK BAP priority habitat, impacts on priority species and ecology network have not been sufficiently resolved. Consider application should be refused as it does not accord with NPPF paras 109 and 117-118, as there will be a net loss of biodiversity and adverse impacts to the proposed ecological network. Applicant has not presented evidence that alternative sites have been considered. 2/6 & 22/7

PUBLICITY *By press advert, site notice and 2 neighbour letters. A letter of representation has been received from a nearby business, along with several letters that have been received from the owners of land adjoining the site to the north. These letters raise the following issues: -*

The existing access road would seem inadequate to both the HGV's, required to develop the land, and also for any movements of caravans on and off the site. The writer would need assurances that any improvement to the access road would not have an impact on their property which lie on both sides of this road. The applicant suggests that there would be no need to straddle the centre of the road except during the development phase. The writer would suggest that the movement of caravans would also require the full width as they negotiate the entrance to the access road. The entrance is almost adjacent to the existing entry to the writer's site on Berristow Lane and they have concerns that this development could cause congestion on Berristow Lane.

Concerns regard the items to be stored on the site given the sensitive nature of the goods stored within writer's existing warehouses. Any suggestion that pollutants, either water or air borne, could spread to those premises would be catastrophic to the business. Concerns that the site could become any area where toxic goods are stored and then subsequently incinerated.

Access to the new storage yard would mean removal of security barriers at the end of the private track on to Berristow Lane; this could encourage fly tipping, access by travellers & general nuisance by motorised vehicles. Would Mr. Leverton take responsibility for any clean up or legal actions required?

It is our belief the land we own is grade 5 agricultural & only fit for grazing purposes, which is why the previous owner had cattle in the field & why we have put horses on it, so comments made by Mr. Leverton about increased pedestrians, horses etc. are quite tenuous as cattle have been moved up & down the lane since this change of use. Surely the most sensible option for Mr. Leverton would be to access his site from Export Drive at the Huthwaite end of his property, as the roadways are already in place from an industrial estate.

Two of the proposed "Passing Bays" look like they cross the boundary to the adjacent property that is owned by the writer who requires unobstructed access at all times; feel the position of this bay would interfere with this, along with the pedestrian & equestrian traffic which uses the trail. (Following confirmation that the land is owned by that writer and formal notice being served on them) the owner of that land has indicated that they do not give consent as landowners to the applicant to use their land for the purposes of the development and passing bays.

POLICY

Bolsover District Local Plan (BDLP): Policies GEN1 (Minimum Requirements for

Development); GEN2 (Impact of Development on the Environment); GEN4 (Development on Contaminated Land); GEN5 (Land Drainage); GEN6 (Sewerage and Sewage Disposal); GEN8 (Settlement Frameworks); GEN11 (Development Adjoining the Settlement Framework Boundary); TRA1 (Location of New Development); TRA10 (Traffic Management); TRA12 (Protection Of Existing Footpaths and Bridleways); Policies CON13 (Archaeological Sites and Ancient Monuments); ENV3 (Development in the Countryside); ENV5 (Nature Conservation Interests throughout the District) and ENV8 (Development Affecting Trees and Hedgerows).

National Planning Policy Framework Paragraph 14 of the NPPF sets out a presumption in favour of sustainable development that for decision-taking where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: -

Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole; or specific policies in the framework indicated development should be restricted.

Paragraph 17 lists several core planning principles, including that planning should:

Proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs.

Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Contribute to conserving and enhancing the natural environment and reducing pollution.

Encourage the effective use of land by reusing land that has been previously development (brownfield land), provided that it is not of high environmental value.

ASSESSMENT

The main considerations regarding this planning application are the principle of development outside of the defined settlement framework, the impacts on the character and appearance of the area, highway safety, ecology and amenity considerations.

In accordance with the National Planning Policy Framework paragraph 215, due weight can be given to relevant policies of the Bolsover District Local Plan, according to their degree of consistency with the National Planning Policy Framework. (The closer the policies in the Plan are to the policies in the Framework, the greater the weight that may be given).

The site is outside of the defined settlement framework where in accordance with policy GEN8 (Settlement Frameworks), general open countryside control policies will apply.

PRINCIPLE OF DEVELOPMENT

Policy ENV3 states:

“Outside planning permission will only be granted for development which:

1. Is necessary in such a location; or
2. Is reused for the exploitation of sources of renewable energy; or
3. Would result in a significant improvement to the rural environment; or
4. Would benefit the local community through the reclamation of re-use of land.

Permission will only be granted in such cases provided it is demonstrated that:

- A. The location of the development outside of the settlement framework is environmentally sustainable; and
- B. The proposed development, either individually or cumulatively with recently completed developments and outstanding planning permissions, would not seriously undermine the

- vitality and viability of existing town and local centres; and
- C. *The proposed development would not materially harm the rural landscape and avoid unnecessary urbanisation and sprawl;*
 - D. *the proposed development would avoid the coalescence of district settlements.*

In respect of policy ENV3, the development:

- *Is not considered to require a countryside location, such that it is not necessary to develop for this use in such a location.*
- *Is not for the exploitation of sources of renewable energy*
- *Whilst on brownfield land, has partially naturalised such that it does not form a particularly unsightly feature in the landscape, such that its development for business purposes will not result in a significant improvement to the rural environment*
- *Would result in the re-use of land, although with only limited employment created and no demonstrable need for additional industrial land in the immediate locality, it is not considered to be of any substantive benefit to the local community.*
- *Harm to biodiversity (see later assessment) would weight against environmental sustainability,*
- *Would clearly harm rural landscape by the introduction of built development that is not considered to be of a high quality visual appearance and would urbanise countryside and add to urban sprawl.*
- *Would erode open areas maintained between settlements and does not therefore avoid the coalescence of settlements across District and County Council boundaries.*

For these reasons the development is considered to be contrary to policy ENV3. However, given the out of date nature of the Bolsover District Local Plan, it needs to be considered whether any adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.

In terms of the impacts on the countryside, the site has partly naturalised and in longer views of the site, it blends in to the overall countryside setting and appearance as a result. The NPPF at para.12, discusses recognising the intrinsic character and beauty of the countryside (and supporting thriving rural communities within it). Whilst the proposed boundary bunds and landscaping would mitigate the visual impacts to some extent, the nature of the proposal (storage containers, caravans, works to the driveway and bunds and security fencing and security lighting) would materially alter the character and appearance of this site that would still be visible in the wider landscape, especially from longer views from elevated positions generally to the north. In those views the development would form an isolated and intrusive feature in the landscape contrary to the requirements of policy GEN1 and GEN2. Bunds of sufficient size to adequately screen the size of items stored on the site would in themselves form an unnatural feature in the landscape. Whilst the applicants state that they consider that existing woodland will screen views of the site, this is not considered to be the case and views of the site exist. The applicant also indicates that the perimeter of storage containers could be painted Juniper Green that would contribute to screening the caravans. However, given the extent of the site and the views of it from elevated positions, it is not considered that these features of the scheme would sufficiently mitigate the proposal. Whilst acknowledging the backdrop of industrial developments referred to in the applicants submissions, these do not

relate comfortably with the application site and form distinctively separate features in their own right, clearly separated by intervening land that visually and physically separate those industrial areas, and thereby the settlements and district areas that the edges of those industrial areas demarcate.

It should also be noted that the proposal is for the use of the land for an open storage yard. As such there would be no limitation on what goods can be stored and the manner in which the site operated. The visual impact could be significantly different from the currently indicated storage units and caravans as could the traffic generated.

The nature of the proposals is not considered to demonstrate good design as advocated in planning policy and the NPPF.

Whilst the application documents indicate that the site is bounded by industrial developments, this is only the case to the south of the line of the proposed access track. Whilst land to the south of part of the main body of the site was included as a site for large scale industrial developments in the Bolsover District Local Plan, that policy (EMP9 – Employment Site for Large Firms) is not a saved policy. The land is therefore outside of the settlement framework and is open countryside protected from development except farming and forestry. As such, the development of the application site would in fact, form an isolated piece of development that would not relate well to the built form of the nearby industrial development.

Even assuming that development were to go ahead on that land formerly allocated for large scale industry, it should also be noted that alongside part of the southern boundary of the site is an area that is allocated as an important open break, designed to maintain an open area between the adjoining settlements to maintain their identities, and also maintain in this case a definable break between settlements adjacent to the County boundary as well. Given that the land on this application site is within open countryside in planning policy terms, there would have been no need to extend that open break designation at the time that the Bolsover District Local Plan was drafted and adopted. The need to retain settlement separation and identity is considered important and it is considered that this proposed scheme would not sufficiently achieve this given the amount of land proposed to be developed.

Whilst noting the proactive nature of the NPPF in terms of supporting sustainable economic growth, the proposal would not generate large employment levels and as such, the economic benefits of the scheme are limited. Given the large amount of consented land in the vicinity of the planning application site, most notably on the Castlewood Business area that is within both Bolsover and Ashfield District areas, the weight that can be attributed to any economic activities associated with this proposal are considered to be limited.

ECOLOGY/BIODIVERSITY

The application includes an Arboricultural and Ecological Assessment and the Derbyshire Wildlife Trust has provided advice in respect of those documents and has advised that in its opinion, planning permission should be refused in respect of this issue.

The Trust concludes that the site supports substantive nature conservation interest and supports sufficient habitat diversity and floristic diversity to meet at least two selection guidelines (post-industrial grassland and open mosaic habitat). This has to some extent been

recognised by the ecological report as they have also concluded that the site meets Local Wildlife Site (LWS) selection guidelines.

*The site supports populations of at least nine UK BAP priority species including great crested newt, grass snake, dingy skipper, small heath, cinnabar, yellowhammer, linnet, song thrush and reed bunting. Other notable features include a significant population of narrow-leaved everlasting pea (*Lathyrus sylvestris*) a Derbyshire Red List plant classed as Locally Scarce. There are only two other possible sites in Derbyshire where this plant has been found since 1986. Whilst the ecological report has identified some of these species features (notably great crested newt and grass snake) it has not fully evaluated the value of the site for birds and invertebrates and as such the impact on these groups has not been fully assessed. These species features may also be a sound basis for LWS designation.*

Much of the ecological focus at this site has been on great crested newt and the reports indicate that the mitigation strategy proposed for this species is acceptable to Natural England. The applicant will need to apply for a licence from Natural England to proceed with the work.

However, the outstanding issue that has not been fully resolved is the loss of 3.5 ha of UK BAP priority habitat (open mosaic habitat on previously developed land), impacts on the associated priority UK BAP and Red List bird species and impacts on the proposed ecological network in this part of Bolsover comprising an important green corridor and connection with Nottinghamshire.

Assumptions made in the ecological assessment and Biodiversity Planning Statement regarding impacts on other species including dingy skipper and birds are not substantiated by any data and in Derbyshire Wildlife Trust's view under-estimate the impacts.

The Trust do not consider that the semi-natural habitats in Nottinghamshire or the habitats found along the Blackwell Trail will support the same assemblage of species as the area that will be lost by the development. The Nottinghamshire habitats include areas of wetland, rough grassland and marsh and only small areas of open mosaic habitat.

The Trust note that on the Nottinghamshire side both of the Sites of Importance for Nature Conservation (equivalent to Local Wildlife Site in Derbyshire) have been reduced in size due to development in the past 10 years or so. New Hucknall Disused Railways has lost 5.29 ha (38%) and New Hucknall Sidings Grasslands has lost 10.69 ha (78%) respectively. Collectively almost 60% of these two sites have already been lost to development.

The additional loss of 4 ha of some of the best remaining habitat will severely reduce the overall value and linkages between these sites.

In conclusion The Trust advise that the application should be refused as it does not accord with NPPF (para 109, 117 – 118) as there will be a net loss of biodiversity and adverse impacts to the proposed ecological network including across local authority boundaries. In addition the applicant has not presented any evidence that alternative sites have been considered.

OTHER AMENITY IMPACTS

The nature of the proposal and proximity of the site to nearby residential properties is such that no harmful impacts are likely to result to the amenities of residents from the proposals. No objections have been raised by the Environmental Health Officer.

HIGHWAY ISSUES

The Highway Authority has objected to the proposal. It refers to its objection to the previous withdrawn application and state that the current application involves a smaller area of land and the applicant encloses a letter referring to a previous use on the site. However, the land currently has no planning use, being described in the application as vacant on the application form and, as such, the Highway Authority consider that it would not generate any significant level of traffic movements. Approval of the proposal would result in the introduction of vehicular movements at the junction of the access track and Berristow Lane and an increase in the use of the track itself, all the detriment of highway safety. Therefore, for the reasons contained in the earlier letter dated 24 June 2013, refusal of the application is recommended. Those reasons included:

- the intensification in use of a junction, the geometry of which would result in inappropriate turning manoeuvres whereby left-turning vehicles entering or leaving the site would regularly cross the centre-line into the opposing carriageway on Berristow Lane and the bell mouth of High View Road prejudicial to the safe and free flow of traffic on a busy classified road and industrial estate road junction and the applicant is not in control of land at the junction on which to make the required improvements.*
- The access is gated and vehicles would be forced to wait on the adjacent busy classified road causing an obstruction for overlong periods of time whilst awaiting the gates to be opened prejudicial to the safe and free flow of traffic on a busy classified road. The applicant is not in sole control of the gates (and the suggestion that they will be relocated back from the highway cannot be guaranteed- although in the Planning Statement para 3.6.18 it is stated that the applicant does have full control over the gates).*
- The track is not wide enough for two-way traffic and a segregated route for pedestrian/cyclist/equestrian traffic along its entire length and the proposed passing places are too far apart leading to potential sudden braking manoeuvres within the public highway, vehicles reversing out onto Berristow Lane and/or overlong reversing manoeuvres within the track prejudicial to the safe and free flow of traffic on a busy classified road and leading to pedestrian/cyclist/equestrian and vehicular conflict within the track. The applicant is not in control of land at the junction or adjacent to the track on which to make the required improvements.*

On the latter point it is worth noting the comments of the owner of the land over which consent would be needed to provide the proposed passing bays, who have stated that they are not prepared to agree to such a use of their land. Consideration could be given to a "Grampian" style condition to address this issue. In this case, however, it is considered that there appears to be little chance of the applicant being able to secure compliance and therefore such a condition would not be effective in delivering an acceptable scheme.

The supporting information (Planning Statement para 1.3.13) also states that an existing ditch would need to be culverted to form the segregated route; this appears to be outside of the application site (detailed plans of the whole length of the roadway and segregated path have

not been requested in view of the other issues being raised).

Given the Highway Authority's concerns it is considered that the proposal would be harmful to highway safety interests, contrary to the requirements of policies GEN1 and GEN2 insofar as they relate to highway matters.

The Highway Authority has also drawn attention to the fact that the site is affected by the initial preferred route of the Birmingham to Leeds section of HS2. However, this has no weight in planning terms at the present time and is not therefore a material planning consideration in the determination of this planning application.

Derbyshire County Council Countryside section has raised comments in respect of the access track, including comments about that Council's ownership and its use by the public, despite it not being a designated right of way. It states that the proposal affect a Strategic Link in the County's Greenway Network that connects the Blackwell Trail with the Trail network in Nottinghamshire and that the proposed route of the link utilises the majority of the existing access track and through the applicant's landholding. It states that the application makes no provision for safeguarding the green way route. Notwithstanding this comment, the proposed Greenway has no planning policy basis and as such cannot be afforded any significant weight in the consideration of this application. An alternative route is currently available approximately 150m to the north of the application site track that links Berristow Lane to the industrial areas in Nottinghamshire. Also Derbyshire County Council has not secured any rights over the main body of the application site that is in the ownership and control of the applicant's, who have clearly indicated an unwillingness to permit such an access. On this basis it is not considered that this issue raises any material planning issues of weight in this case.

CRIME AND DISORDER

The Crime Prevention Design Advisor has advised that having reviewed the above application and noted the comments made in the previous application 13/00147, he would support as earlier recommended security measures in relation to CCTV, lighting and a security plan which I would ask is made a condition if approval is granted. His one concern is that the site layout drawing shows the containers positioned against the boundary fence which not only provides cover for anyone attacking the site but also aids in breaching the boundary fences integrity by creating a natural ladder. He therefore recommends that the containers are positioned at least 5 metres away from the boundary to prevent security being breached. As this is a remote location he also recommends that the security fencing is at least to a standard of LPS 1175 level 3. The applicant indicated a willingness to comply with the requirements of the Crime Prevention Design Advisor and had indicated that a revised plan would be submitted, however, this has not been received. Notwithstanding that point, it is considered that if permission were to be given, conditions could be included to address this point, such that there are no objections to the proposal from a crime prevention perspective.

Other issues

As the site is included in the Derbyshire Historic Environment Record, the Archaeological Advisor has been consulted who has stated that he is satisfied that the proposals will have no archaeological impact. The proposal is therefore considered to comply with the requirements of policy CON13 (Archaeological Sites and Ancient Monuments) in this respect.

Based on a Coal Mining Risk Assessment submitted with the planning application, The Coal Authority has recommend the inclusion of a planning condition on any consent granted requiring the location of the mine entry on the northern edge of the site to be plotted and its resultant zone of influence identified. The mine entry zone of influence as it extends into the application site should be required to be fenced to prevent any encroachment into this area and no works, including storage or bunds, should be carried out and the fencing retained for the life of the development.

The Environment Agency has raised no objections to the proposal subject to conditions and advisory notes relating to the contamination identification and control where necessary.

Also in respect of contamination, the Environmental Health Officer has advised that additional survey work is required over that already undertaken, but has raised no objection subject to the inclusion of a condition to require such additional work and any necessary mitigation in respect of any contamination identified.

CONCLUSION

On balance there are considered to be substantive reasons in terms of countryside impact, ecology impact and highway safety impact why this proposal fails to comply with policies of the adopted Bolsover District Local Plan and for the same reasons it is not considered to represent sustainable development in terms of national planning policy contained in the NPPF. In considering the NPPF regard has been had to the potential economic benefits of the scheme, but these are considered to be minor and do not outweigh the likely harm arising from this development. In view of this it is recommended that planning permission be refused.

Other Matters

Listed Building: N/A

Conservation Area: N/A

Crime and Disorder: See assessment

Equalities: No significant issues arise

Access for Disabled: No significant issues arise

Trees (Preservation and Planting): See assessment

SSSI Impacts: N/A

Biodiversity: See assessment

Human Rights: No significant issues arise

RECOMMENDATION *REFUSE permission for the following reasons:*

1. *The proposal is contrary to adopted Bolsover District Local Plan Policy ENV3 (Development in the Countryside) which identifies that permission will only be given for appropriate development in the countryside and the proposal that are the subject of this planning application are not considered to satisfy those criteria.*

2. *The proposal would form an isolated and intrusive feature that would adversely affect the landscape, character and openness of the countryside and would not integrate with existing development forms and the form of the development is not considered to be good*

design, contrary to the requirements of policy GEN1(4) and GEN2(1) of the Bolsover District Local Plan and the National Planning Policy Framework Part 7 'Requiring Good Design', paragraph 58. It would also impact on the open area between settlements in both Derbyshire and Nottinghamshire, eroding their separate identities.

3. The proposal is contrary to be contrary to Bolsover District Local Plan Policy ENV 5 in that there will be a net loss of biodiversity and adverse impacts to the proposed ecological network including across local authority boundaries. Insufficient survey information has been submitted to fully determine all impacts on biodiversity and the application does not demonstrate that alternative sites have been considered. Whilst some mitigation measures are proposed these do not address all the possible impacts identified. This is also considered to be contrary to Part 11 of the NPPF: 'Conserving and Enhancing the Natural Environment' paragraphs 109 & 118) by virtue of the failure to minimise impact on biodiversity.

4. Approval of the proposals would result in the intensification in use of a junction with the public highway (Berristow Lane), the geometry of which would result in inappropriate turning manoeuvres whereby left-turning vehicles entering or leaving the site would regularly cross the centre-line into the opposing carriageway on Berristow Lane and the bell mouth of High View Road prejudicial to the safe and free flow of traffic on a busy classified road and industrial estate road junction. The applicant is not in control of land at the junction on which to make the required improvements.

5. The access is gated and vehicles would be forced to wait on the adjacent busy classified road causing an obstruction for overlong periods of time whilst awaiting the gates to be opened prejudicial to the safe and free flow of traffic on a busy classified road. The applicant is not in sole control of the gates and therefore cannot guarantee that they could be set back sufficiently to address this issue or that they can be left open at all times the site is in operation.

6. Additionally the track is not wide enough for two-way traffic and a segregated route pedestrian/cyclist/equestrian traffic along its entire length and the proposed passing places are too far apart leading to potential sudden braking manoeuvres within the public highway, vehicles reversing out onto Berristow Lane and/or overlong reversing manoeuvres within the track prejudicial to the safe and free flow of traffic on a busy classified road and leading to pedestrian/cyclist/equestrian and vehicular conflict within the track. The applicant is not in control of land at the junction or adjacent to the track on which to make the required improvements.

Statement of Decision Process

The Council has maintained a dialogue with the applicants and enabled the submission of additional information to seek to address concerns raised. Detailed plans of the access road alterations have not been sought in view of the likely concerns arising in relation to the proposal. The Council has considered the status of the Bolsover District Local Plan and considered whether any adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or specific policies in the Framework indicated development should be restricted. However, it was concluded that insufficient benefits arose to outweigh the concerns contained in the reasons for refusal.

ADDITIONAL INFORMATION RECEIVED SINCE THE CONSIDERATION OF THE PLANNING APPLICATION BY PLANNING COMMITTEE IN 2015:

- E-mail dated 13th March 2015 showing measurements along the access track.
- E-mail dated 9th May 2016 and accompanying documents including: junction improvement plan; plans to demonstrate that the improvements are included on land either in the planning application site or within the public highway; and copies of deeds and conveyance to show that the applicant has a right to make the improvements on the Derbyshire County Council owned land.
- E-mail dated 4th July 2016 with an updated plan showing two proposed passing bays along the access track “of sufficient size to accommodate the HGV vehicles that will deliver the containers to the site and thus appropriate to service all aspects/phases of the development.”
- E-mail dated 10th November 2016 with revised site location plan; updated ownership certificate (including confirmation that land not owned by Derbyshire County Council had been omitted from the application site boundary); and access and track plan showing proposed widening and passing bays. Also confirmed that the applicant was declining a request to submit additional ecology information.

CONSULTATIONS

Derbyshire Wildlife Trust - The additional information does not alter our earlier comments on this application and the Trust still maintains an objection to the proposal due to the adverse impact it will have on wildlife and biodiversity as detailed in earlier correspondence 3/1/17

Parish Council – Object to this planning application citing increased traffic on an already crowded Berristow Lane, South Normanton 13/12/16

HS2 Ltd. – Site is in the safeguarding area for HS2 and HS2 Ltd believes it would be inappropriate in planning terms for permission to be granted for this application on a permanent basis, but given that the land would not be required until at least 2023, recommend that permission could be granted on a temporary basis until that time. 21/12/16

DCC (Highways) – Revisions to the proposed access are considered to be acceptable and provided that these can be achieved and controlled by appropriate conditions, raises no objections to the scheme as revised. Conditions and advisory notes are recommended. 12/01/2017

DCC Countryside Officer – The Estate Valuers have asked their property lawyer whether the deeds give the successors in title (the current applicant) the right to undertake the improvements or alterations to this track, as they do not believe that the applicant has that right; Countryside Officer would also like such a legal opinion. 20/12/2016

No further comments had been received at the time of preparing this report. Should any comments be received, these will be reported to the Planning Committee when it meets.

ADDITIONAL PUBLICITY

Additional publicity, including a further site notice and letters to the original neighbours notified, along with letters to those that had made representations on the original planning application has been carried out.

A further 4 letters of objection have been received since this matter was last considered by Planning Committee, 3 of which were received prior to re-publicity with the one further letter being received in response to that publicity; these raise the following issues:

Will mean even more heavy goods vehicles using our Parish as a rat-run. Blackwell, Hilcote, Westhouses and Newton are already dangerous, groaning under the weight of HGV's which are ruining our communities by causing pollution to air quality, destroying road surfaces, having a detrimental effects to listed buildings in Conservation Areas, causing a hazard to pedestrians by mounting the curb on pavement corners not suitable for vast vehicles and litter which seems to be tossed out by some drivers (not all HGV it must be said) which is not only ugly but presents a hazard to farm and wild animals and field crops. It is well known that many facilities are built for their ease of access to M1 J28 but that stretch of the M1 is notorious for slow traffic issues so drivers use the Blackwell, Hilcote, Westhouse and Newton as rat-runs to avoid it.

High volume of traffic, including large lorries, at each hour, including at night.

The village is already subjected to the lorries and other traffic coming through from Fordbridge Lane, a situation the village is not designed to sustain. Trying to leave the village in the direction of the A38 can at times be extremely difficult as Berristow Lane becomes a bottle neck. To consider adding to this by another ten vehicles per hour in the vicinity of the High View Road junction is madness.

Understand the site is an anti-social behaviour black spot so some kind of development such as, for instance, offices would eradicate that. A constraint on HGV users travelling through Hilcote, as you mentioned, would very likely be flouted. Can see that some form of development could control this problem. Indeed if done with all due consideration it may have no further impact on the villagers and the site itself has already been spoilt from the wildlife haven it used to be.

Our Parish has a long history of agricultural and mining traditions; it would be heart-rending to see it destroyed by commerce with no history or connection to the place we call home. This is even more poignant when we read about the young men of our Parish who perished in the The Great War as detailed in Tony Mellors article in the Spring 2015 edition of the Blackwell Parish magazine.

Our views haven't changed on this application. We will not give permission to use our access point for a pull in bay and also lorries going up and down the lane would ruin our grazing from dust created by this. Not to mention the noise pollution and effects and wild life.

POLICY UPDATE

Emerging Replacement Local Plan

Although the emerging Local Plan only carries limited weight prior to publication, examination in public and subsequent adoption, it is relevant and material to the determination of this application. The site remains outside of the settlement framework limits and is not allocated as a development site. Draft policies of that plan are proposed to continue to protect open countryside from unnecessary developments not requiring a countryside location.

Of note is that land to the south west that was historically covered by a policy for large farms (Policy EMP9), a policy that was unsaved in the local plan and so carried no weight, is proposed to be replaced as a general industrial allocation in the replacement local plan.

Safeguarding the HS2 route

On 15th November 2016 the government formally announced the preferred route for Phase 2b of High Speed 2 (HS2) and simultaneously issued Safeguarding Directions in order to protect the preferred Phase 2b route of HS2 from conflicting development that and aims to ensure that new developments along the route do not impact on the ability to build or operate HS2 or lead to excessive additional costs. Under this direction, the Council is not bound by the advice of HS2 Ltd, but if the Council resolves to go against the advice received from HS2 Ltd, then the Council has to provide details of the application to the Department for Transport. On receipt of the requisite information, the Department for Transport will, within 21 days of that date, either notify authorities that there are no objections to permission being granted, or issue Directions restricting the granting of permission specifically for those applications.

FURTHER ASSESSMENT

The change in the further submissions relates primarily to the access details, in response to the reasons for deferral, although mention of ecology is made in response to questions raised of the applicants by officers in this respect given the amended details and issues about the age of the ecology reports given the lengthy delays in submission of suitable information to address the Committees deferral reason; in this respect it was confirmed that no further information is to be submitted in respect of ecology/biodiversity considerations.

The revised details now clearly demonstrate the extent of alterations to the junction and access track, including widening of the first 200m of the track, tapering from 10m at the junction down to 8.7m 200m into the site, reverting to the existing track after that. Two passing bays are proposed approximately 300m and 475m along the track.

No further updated information has been submitted, including no updated ecology information that has been requested.

It can be seen from the summary of consultation responses that the additional access information has satisfied the concerns of the Highway Authority that has withdrawn its earlier objections and has recommended conditions accordingly.

It is noted that no resolution has been found to the difference of opinion between the applicant and Derbyshire County Council as landowner in respect of the rights of the applicant to undertake the improvement works. Whilst it has been indicated that further submissions in this respect may be made by Derbyshire County Council's Countryside Officer and/or Property Services, ultimately this is a private property matter to which little weight can be given in planning terms. If this was the only outstanding matter, it would be possible to include a 'Grampian' style condition that would prevent any development being undertaken until the highway improvements have been delivered.

In terms of the countryside impacts of the proposal, these remain unchanged from the assessment in the original report. Of note however, is that there is a proposed change in policy on land to the south west as an industrial allocation, as well as the current development of a solar farm on land to the north of the planning application site that will impact on the openness and character of the countryside in this location.

Notwithstanding the construction of the solar farm, of note is the materially different requirements for the erection of a solar farm compared to that of other development types and the general policy thrust of facilitating green energy supply, such that the policy, such that the existence of the permission for that development does not change the general policy considerations that relate to the protection of the countryside for its intrinsic value, as advocated in paragraph 17 of the NPPF.

Additionally, the proposed policy change to allocate nearby land for industry still does not include this land in such an industrial allocation, proposing that it remains outside of the settlement frameworks where development would not normally be permitted without overriding justification; furthermore development does not currently exist on the site and whether the policy is ultimately adopted and/or the site developed remain unknown, such that it is considered that little weight can be afforded to that proposed policy amendment. The site also still extends east beyond the adjoining line of the area allocated as a protected open space that would erode the principle of maintaining settlement identities and still fails to relate well to settlement form.

On this basis, despite the acknowledged changes in circumstances, the amended application is still considered to result in harm to the countryside and conflict with the relevant policies in this regard.

Officers are aware from the original Planning Committee meeting that there have been issues relating to anti-social behaviour on this site. Whilst it is acknowledged that an alternative and active use for the site is likely to diminish or even remove such activity, it is not considered that this issue should be provided significant weight in the overall consideration of the planning application.

ECOLOGY/BIODIVERSITY

Nothing further has been submitted in terms of addressing the earlier identified concerns of the Derbyshire Wildlife Trust in respect of ecology considerations. In this respect, the applicants were requested to update the submitted information to reflect the amendments to the application site boundary, but also to ensure that the survey data and associated reports are up to date given the length of time that has passed since the initial preparation; this is as the transitory nature of wildlife means that the content of such surveys will require update and amendment (the original survey was completed in February 2013) as the Council needs to ensure that the information it bases any decision on is suitably up to date to ensure that any decision is suitably robust.

Notwithstanding that request, the applicant has specifically declined to submit any additional information stating the following: -

“The applicant, at this point, will not be submitting any further ecological information in relation to the application. It is considered that there is sufficient information to show that the development will not have an adverse impact upon ecological species and habitats and that the ecological assets present at the site do not prevent the delivery of the development. Sufficient mitigation measures have been incorporated into the scheme and amount to the delivery of a substantial amount of ecological protection and management. The extent of the ecological provision is set out below:

- The safeguarding and management of over 9.5 hectares of land with diverse habitat and ecological value (application site is 3.6 hectares). The development site is roughly 27.5% of the overall area of the Blackwell Tip.
- The provision of other ecological enhancements in the form of a Great Crested Newt pond, construction of a planted earth bund and 10 Great Crested Newt hibernacula
- The client has also committed to pre-construction surveys in relation to Badgers, Bats, reptiles and nesting birds to make sure that adverse impacts are avoided.

The potential impact of the additional passing bays, and their construction, on ecological assets should be considered in the context of the wider scheme and its delivery of the stated ecological provision. As stated, the ecological information submitted to date identifies that ecology is not a fundamental constraint to the delivery of the development as sufficient ecological management and mitigation can be provided to offset potential harm. Further to this, a pre-commencement condition can be included on any planning permission to require an Ecological Management Plan to be produced prior to the commencement of development and the clearance of the site to ensure that ecological assets are managed appropriately. The management plan can be written so that further survey work is carried so that construction operations are informed by the most recent ecological information. The development will also be subject to ecological licensing by Natural England due to the presence of protected species. This further raft of regulation will see that the development will not generate harm in this regard.”

Whilst noting the above comments, the Derbyshire Wildlife Trust as the Council’s advisor on such issues does not agree with this conclusion and considers that this “does not alter our earlier comments on this application and the Trust still maintains an objection to the proposal due to the adverse impact it will have on wildlife and biodiversity as detailed in earlier correspondence.”

The offer of a pre-commencement condition to further consider the nature conservation impacts and mitigation is noted, this does not however provide any certainty as to the nature of the impacts of the development, nor over the extent and nature of any potential mitigation, such that it cannot be properly considered whether this is considered to appropriately mitigate the impacts in question.

For these reasons it is not considered that the amended submission provides any additional information to address nature consideration considerations identified in the original report. Furthermore, The absence of up to date information also means that the Council is unable to demonstrate that it has adequate information on European Protected Species (i.e. Great Crested Newt) such that the Council would be unable to discharge its duties in respect of Regulation 5(9) of the Habitat Regulations that requires the impacts on such species to be understood in reaching its decisions.

HS2

HS2 Ltd has advised that it would be inappropriate in planning terms for permission to be granted for this application on a permanent basis. However, as the part of the site within the

Safeguarded area may not be required until at least 2023 to deliver the proposed railway scheme in that location, HS2 Ltd proposes that only a temporary planning consent should be granted for the proposal and has requested the inclusion of a condition to require this in the event that planning permission is granted. HS2 Ltd considers that planning permission should be refused for the application in its present form if it is not granted for a temporary period.

As advised earlier, if the Council is minded to permanently approve the scheme against the advice of HS2, there is a formal notification procedure that must be followed.

From the overall assessment it is still considered that planning permission should be refused for this development, notwithstanding the advice of HS2.

However, if members are minded to approve the scheme, this raises the question as to whether it would be reasonable to make such consent temporary, given the necessary financial outlay to the applicants to implement the permission. Clearly the implementation of any development should planning permission be granted would necessitate a financial outlay in respect of the engineering operations to level the site, create bunds and necessary landscaping and ecology mitigation, to undertake the access improvements and to import the storage containers. Such costs are unlikely to be insignificant in respect of a planning permission that would last a little under 6 years. For this reason it is considered that the inclusion of such a condition would fail the test of reasonableness for the inclusion of such a condition, such that the issue of a temporary consent is not considered to be appropriate.

Where permission is refused due to a conflict with the HS2 project, the decision notice should include that conflict in the reasons for refusal.

CONCLUSIONS

Members deferred a decision on this planning application to enable the applicants to better demonstrate their ability to deliver access improvements.

There have been significant delays in the submission of this material to the Council and it has been necessary to also re-consider some material planning issues given that time delay where physical and policy matters have changed.

Considering those issues, whilst the concerns of the Highway Authority have been satisfactorily addressed, it is not considered that other issues of concern highlighted in the original report have been impacted by the amended details, policy updates and/or local change in the physical surroundings of the proposed scheme. Delays in submission of the information have also meant that the ecology information submitted with the original planning application is now out of date and the applicants have not agreed to make further submissions to address this. Finally, the site is also directly affected by the proposed routing of HS2 and is subject to the related Safeguarding Directions for this site.

Balancing all of the issues in the original report and the updates discussed above, it is considered that the proposal would result in material harm to issues of acknowledged importance.

Whilst this can be balanced against the social and economic benefits of the scheme, the economic benefits are considered to be limited and the social benefits of addressing the anti-social behaviour activities on the site are not considered sufficient to outweigh the objections in principle to carrying out this development in the open countryside and the ecology impacts that would also result from it. Additionally, the impacts of the HS2 safeguarding directions have also been considered and the development is proposed to conflict with the aims of safeguarding the proposed route for the new railway. On a balance of planning considerations, it is therefore considered that planning permission should be refused for this development.

RECOMMENDATION REFUSE permission for the following reasons:

1. The proposal is contrary to adopted Bolsover District Local Plan Policy ENV3 (Development in the Countryside) which identifies that permission will only be given for appropriate development in the countryside and the proposal that are the subject of this planning application are not considered to satisfy those criteria.
2. The proposal would form an isolated and intrusive feature that would adversely affect the landscape, character and openness of the countryside and would not integrate with existing development forms and the form of the development is not considered to be good design, contrary to the requirements of policy GEN1(4) and GEN2(1) of the Bolsover District Local Plan and the National Planning Policy Framework Part 7 'Requiring Good Design', paragraph 58. It would also impact on the open area between settlements in both Derbyshire and Nottinghamshire, eroding their separate identities.
3. The proposal is contrary to be contrary to Bolsover District Local Plan Policy ENV5 in that there will be a net loss of biodiversity and adverse impacts to the proposed ecological network including across local authority boundaries. Insufficient survey information has been submitted to fully determine all impacts on biodiversity and the application does not demonstrate that alternative sites have been considered. The information that was submitted is now also considered to be out of date. Whilst some mitigation measures are proposed these do not address all the possible impacts that have been identified and are not considered to be robust, in particular given the uncertainties over impact resulting from the inadequate and out of date nature of the studies that have been submitted. This is also considered to be contrary to Part 11 of the NPPF: 'Conserving and Enhancing the Natural Environment' paragraphs 109 & 118) by virtue of the failure to minimise impact on biodiversity.
4. The proposal is considered to conflict with the need to safeguard the proposed route for the Highspeed Two rail project on which the site lies. Whilst consideration has been given to the potential to grant a temporary consent for the development (notwithstanding reasons for refusal 1 – 3 above), it is not considered that the inclusion of such a condition restricting the development to 2023 would be reasonable, given the necessary financial outlay necessary to enable the implementation of the proposed development.