

**PLANNING COMMITTEE
AGENDA**

Wednesday 13th March 2019 at 1000 hours in the Council Chamber, The Arc, Clowne

Item No.		Page No.(s)
	PART 1 – OPEN ITEMS	
1.	<u>Apologies for Absence</u>	
2.	<u>Urgent Items of Business</u> To note any urgent items of business which the Chairman has consented to being considered under the provisions of Section 100(B) 4(b) of the Local Government Act 1972	
3.	<u>Declarations of Interest</u> Members should declare the existence and nature of any Disclosable Pecuniary Interest and Non Statutory Interest as defined by the Members' Code of Conduct in respect of: a) any business on the agenda b) any urgent additional items to be considered c) any matters arising out of those items and if appropriate, withdraw from the meeting at the relevant time.	
4.	To approve the minutes of a meeting held on 16 th January 2019.	3 to 5
5.	Notes of a Site Visit held on 11 th January 2019.	To Follow
6.	Applications to be determined under the Town & Country Planning Acts;	
	(i) 18/00411/OUT - Low density residential development (5 dwellings), Greenacres, Budget Lane, Scarcliffe, Nr Bolsover.	6 to 27
	(ii) 18/00413/FUL - Residential development comprising 31 two-bedroom bungalows and associated access, car parking, ground level changes and landscaping (revisions to previous approval of planning permission 16/00510/FUL), Jacques Brickyard, Water Lane, South Normanton, Alfreton	28 to 40
7.	Draft Local Enforcement Plan.	41 to 72

PLANNING COMMITTEE

Minutes of a meeting of the Planning Committee of the Bolsover District Council held in the Council Chamber, The Arc, Clowne on Wednesday 16th January 2019 at 1000 hours.

PRESENT:-

Members:-

Councillor T. Munro in the Chair

Councillors T. Alexander, J.A. Clifton, T. Connerton (during Minute No. 0600), C.P. Cooper, M.G. Crane, S.W. Fritchley, D. McGregor, B.R. Murray-Carr, S. Peake, K. Reid, P. Smith, R. Turner (until Minute No. 0601), D.S. Watson and J. Wilson

Officers:-

C. Fridlington (Planning Manager (Development Control), J. Fieldsend (Team Leader (Non Contentious) Solicitor) and A. Brownsword (Senior Governance Officer)

0595. APOLOGIES

Apologies for absence were received from Councillors P.M. Bowmer, P.A. Cooper, and B. Watson.

0596. URGENT ITEMS OF BUSINESS

There were no urgent items of business.

0597. DECLARATIONS OF INTEREST

There were no declarations of interest.

0598. MINUTES – 19TH DECEMBER 2018

Moved by Councillor D. McGregor and seconded by Councillor P. Smith

RESOLVED that subject to Councillor Turner's name being removed from those present, the minutes of a meeting of the Planning Committee held on 19th December 2018 be approved as a true and correct record.

PLANNING COMMITTEE

0599. SITE VISIT NOTES – 14TH DECEMBER 2018

Moved by Councillor R. Turner and seconded by Councillor P. Smith

RESOLVED that the notes of a Planning Site Visit held on 14th December 2018 be approved as a true and correct record.

0600. APPLICATIONS TO BE DETERMINED UNDER THE TOWN AND COUNTRY PLANNING ACTS

1. 18/000623/FUL - Construction of new dwelling, construction of new barn, conversion of existing barn to microbrewery/ kitchen with associated office at Land to the West of Bridge Close, Hollin Hill Road, Clowne

Further details were included within the Supplementary Report.

The Planning Manager (Development Control) presented the report which gave details of the application and highlighted the history of the site and key issues set out in the report.

Mr. D. Salt and Mrs. E Salt attended the meeting and spoke in support of the application.

The Committee considered the application having regard to the Bolsover District Local Plan, the Publication Version of the Local Plan and the National Planning Policy Framework.

Moved by Councillor D. McGregor and seconded by Councillor S.W. Fritchley

RESOLVED that application no. 18/00623/FUL be REFUSED for the following reasons:

In the absence of exceptional circumstances that would justify the erection of a new house outside of the settlement framework, the proposed house is not considered to be development that is necessary in this countryside location. Therefore, the application is contrary to saved Local Plan Policy ENV3.

Statement of Decision Process

Officers have sought to work positively and pro-actively with the applicants and their agent prior to the submission of this application seeking to address the policy issues set out in full in the officer report. However, amended plans would not address the fundamental reasons for refusal of this application.

(Planning Manager (Development Control))

PLANNING COMMITTEE

0601. UPDATE: SECTION 106 AGREEMENTS

The Planning Manager (Development Control) presented the report which provided Members with information regarding the status of current Section 106 Monies to ensure that the District Council had a robust procedure for recording and monitoring Section 106 obligations.

A recent Internal Audit report had found that the reliability of controls was assessed as Substantial which was the highest rating it could receive. Members asked whether there was a mechanism to remind the relevant bodies that monies were available when deadlines were getting close. The Planning Manager (Development Control) noted that the Monitoring Group met quarterly and those close to the deadline were referred to the Strategic Director – People for action.

The information was contained within a simplified spreadsheet which was approved by Members.

Moved by Councillor D. Mcgregor and seconded by Councillor P. Smith
RESOLVED that the report be noted.

(Planning Manager (Development Control))

0602. REPORT: APPEAL DECISIONS APRIL 2015 – DECEMBER 2018

The Planning Manager (Development Control) presented a report which gave Members information regarding the Planning Service's performance on appeal against the Government's quality of decision making targets.

This was the first such report and it contained a summary of appeal decisions for information and would be brought every six months in the future. Members asked whether any cost decisions had been awarded against the Council and it was noted that only one had been awarded partial costs which had not been pursued.

Moved by Councillor T. Munro and seconded by Councillor D. McGregor
RESOLVED that (1) the report be received,

(2) appeal decisions and performance against the performance targets be reported to Planning Committee every 6 months.

The Chair noted that this would be the last Planning Committee attended by the Senior Governance Officer as she had taken employment elsewhere. He thanked her for professional way in which she had conducted and managed Planning Committee meetings over the years.

The meeting concluded at 1040 hours.

PARISH Scarcliffe

APPLICATION Low density residential development (5 dwellings)
LOCATION Greenacres Budget Lane Scarcliffe Chesterfield
APPLICANT Mr Stuart Hill Glapwell Nurseries Glapwell Lane Glapwell Chesterfield
 S44 5PY
APPLICATION NO. 18/00411/OUT **FILE NO.** PP-07164556
CASE OFFICER Mrs Kay Crago (Tues, Fri)
DATE RECEIVED 27th July 2018

DELEGATED APPLICATION REFERRED TO COMMITTEE BY: Planning Manager
 REASON: Policy Considerations

SITE

The application site forms part of a broadly triangular shaped area of land situated between Rotherham Road to the west, Budget Lane to the east, sloping down from northwest to the southeast corner. Previously the site was in use as a nursery. The land is bounded by hedgerows along the western and eastern edges and the rear boundaries of neighbouring residential properties back onto the northern and southern boundaries.

Site Location



The existing properties on the boundary of the land also form the boundary of the settlement framework and the application site is located in the countryside outside of the settlement framework. The site is also outside of but adjacent to the designated Scarcliffe Conservation Area.

Application Site



The application site itself is confined to an area to the south of the triangular shaped area of land on part of which there are disused glasshouses and a small storage building/barn of modern construction. A bungalow known as 'Greenacres' is situated on the south east edge of the site, fronting Budget Lane and was originally granted permission to assist the management of the former nursery on this land but further residential development to the west of the site has been refused planning permission in the past.

PROPOSAL

Outline application with *Layout* and *Landscaping* reserved for subsequent consideration. The matters to be considered in the determination of this application include the principle of the development and the details of access, scale and appearance.

The amended plans (see overleaf) show the proposals for residential development comprising five dwellings within relatively generous plots. Three of the plots are close to or on land currently occupied by existing buildings. The development is shown to be accessed via the existing access onto Budget Lane which runs in a west east direction through the southern third of the site. Three of the plots are shown to be sited to the south of the access directly opposite existing residential properties.

Drawing Number 1707-AA412 Floor Plans House Type B
Drawing Number 1707-AA111 Rev A Block Plan
Drawing Number 1707-AA411 Floor Plans House Type A
Drawing Number 1707-AC111 Details of existing access and proposed treatment.

HISTORY

This application is a resubmission of an earlier application withdrawn prior to determination (application no. 17/00386/OUT). Amongst other things, there were objections to these proposals on highway safety grounds and officers were unable to support the principle of the proposed development in the countryside outside the settlement framework.

Previously, there have been several application relating to residential development on the triangular piece of land at Greenacres, including the applications for the existing bungalow. As follows:

1061/26 Planning permission in outline for one dwelling in association with use of land as smallholding (21/03/62).

BLA/862/22 Permission granted for one dwelling on site in association with the use of the site as a smallholding (1/10/62)

1079/531 Residential development on land to the west of the application site refused planning permission (30/11/79).

290/66 Planning permission refused for 4 dwellings to west of application site (4/07/90)

However, there does not appear to be any planning history on file relating to the former nursery and existing buildings on the application site.

CONSULTATIONS

Bolsover District Council (Heritage Conservation Manager): Objects to the proposal because it is considered that it would harm heritage assets. 21/01/19

Bolsover District Council (Senior Urban Designer) Objects because in its current form it is not considered that the design quality of the proposals is of a sufficiently high standard, such that it would outweigh the policy of restraint applying to residential development in the countryside. In addition, the outline nature of the application and the limited information supplied would provide little confidence that, if an outline permission were to be approved, that the reserved matters would reflect the aspiration of this scheme as currently submitted. 21/01/19

Derbyshire County Council (Archaeologist): No need for archaeological involvement under the policies at NPPF chapter 16. 14/08/18

Derbyshire County Council (Highways): No objections subject to conditions relating to visibility in the critical direction, provision of space for manoeuvring and parking per dwelling,

no gates or other barriers to be erected onto the access, gradient to be no steeper than 1 in 20 for the first 20m from the nearside highway boundary and 1:12 thereafter. Various highway advisory notes suggested. 16/01/19

Derbyshire Wildlife Trust No objections subject to conditions. 22/08/18

Parish Council No objections 21/08/18

PUBLICITY

Advertised in the press, site notice posted and 15 properties notified by letter. 6 representations received.

On receipt of the additional information, additional publicity was undertaken including advertisement in the press, posting of site notice and re-notification by letter of neighbouring properties.

The 6 representations received in total following both rounds of publicity raised the following issues:

Grounds of objection:

Will potentially lead to further applications on the site

New residents and existing residents will have no privacy

Development is in close proximity to the Bolsover Tunnel

Existing developments with planning permission are being progressed slowly, site could be a building site for years

Adverse impact on infrastructure such as highway network, highway safety and capacity at the primary school

Will impact on the historic form of the village

Adverse impact upon the historic dispersed settlement

Adverse impact upon Budget Lane, picturesque entrance to the village

The new development would be visible from most angles of upper Main Street and would diminish the views of the villages historic setting

Does not meet any criteria for residential development in the countryside

Council has a five year supply of housing

Vehicle movements were significantly less when in horticultural use, very limited access to the public

Existing hedgerow has been removed

Direct impact on privacy between existing development and proposed new houses due to close proximity to properties on Main Street,

Waste material from Coalite may have been stored within the tunnel running below the site.

The waste if in containers may be leaking and dioxin is known to be harmful to public health. This would need full investigation.

Statement of support

The site has deteriorated over time and looks a mess. Development will add some character to the village.

POLICY

Bolsover District Local Plan (BDLP)

- GEN 1 – Minimum Requirements for Development
- GEN 2 – Impact of Development on the Environment
- GEN 5 – Land Drainage
- GEN 6 – Sewerage and Sewage Disposal
- GEN 8 – Settlement Frameworks
- GEN11 – Development adjoining the Settlement Framework Boundary
- HOU 2 – Location of Housing Sites
- HOU 9 – Essential New Dwellings in the Countryside
- TRA 1 – Location of New Development
- TRA 15 – Design of Roads and Paths to Serve New Development
- CON 4 – Development Adjoining Conservation Areas
- ENV 2 – Protection of the Best and Most Versatile Agricultural Land and the Viability of Farm Holdings
- ENV 3 – Development in the Countryside
- ENV 5 – Nature Conservation Interests throughout the District
- ENV 8 – Development affecting Trees and Hedgerows

Publication Local Plan for Bolsover District (May 2018)

The application site is shown to be outside the development envelope of Scarcliffe.

- SS1 Sustainable Development
- SS3 Spatial Strategy and Distribution of Development
- SS9 Development in the Countryside
- SC1 Development within the Development Envelope
- SC2 Sustainable Design and Construction
- SC3 High Quality Development
- SC7 Flood Risk
- SC8 Landscape Character
- SC9 Biodiversity and Geodiversity
- SC10 Trees, Woodlands and Hedgerows
- SC14 Contaminated and Unstable Land
- SC16 Development Within or Impacting upon Conservation Areas
- ITCR10 Supporting Sustainable Transport Patterns

National Planning Policy Framework

The new National Planning Policy Framework (NPPF, July 2018) continues the presumption in favour of sustainable development (paragraph 10) that was introduced in the 2012 NPPF. Paragraph 11 goes on to set out what this means for decision-taking: “approving development proposals that accord with an up-to-date development plan without delay”. Footnote 7 on page 6 explains that for applications involving housing, out-of-date policies include situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Bolsover District Council has relevant ‘saved’ policies from the 2000 Local Plan and can demonstrate a five year supply of deliverable housing

sites. Therefore, the presumption in favour of sustainable development does not apply in this case.

Other relevant paragraphs in the NPPF include:

Paragraphs 2 & 12: Applications to be determined in accordance with the development plan.

Paragraph 9: “Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area”.

Paragraph 15 “The planning system should be genuinely plan-led”.

Paragraph 48: Weight to attach to emerging plans

Paragraph 124. Good design is a key aspect of sustainable development.

Paragraph 127, which states planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁴⁶; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Paragraph 131: great weight should be given to outstanding or innovative designs.

Paragraph 170: Planning policies and decisions should contribute to and enhance the natural and local environment.

Paragraphs 189 – 194 & 197 provide advice on assessing the impacts of proposals affecting designated and non-designated heritage assets.

Paragraph 196 says where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Other

Planning (Listed Buildings and Conservation Areas) Act 1990 – section 72 requires that “special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.”

Historic Environment SPD 2006

Scarcliffe Conservation Area Appraisal and Management Plan 2010

Supplementary Planning Document Successful Places: A Guide to Sustainable Housing Layout and Design (2013).

ASSESSMENT

Principle of Development

The site was previously used as a small holding and nursery with some remains of glasshouses and other temporary structures remaining on part of the site. The majority of the site appears to have been used for the growing of plants or crops and would not appear to have been occupied by permanent buildings. The agent describes the site as brownfield but the previous use falls within the definition of agriculture and the site is not considered to be a brownfield site.

Describing the site more properly as a greenfield site is also consistent with the revised NPPF (July 2018), which defines brownfield sites (also described as previously developed land) as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.

This definition excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

This is important because if the application site is considered to be greenfield then there are different planning considerations in this case compared to the circumstances at

Glapwell Nurseries, for example, which was deemed to be a garden centre and therefore previously developed land in an A1 retail use.

The current application site like the majority of the land at Glapwell Nurseries, also lies outside the settlement framework as defined in the adopted Bolsover District Local Plan (2000) and as defined in the publication Local Plan. The bungalow on site was allowed on the site because it was approved in association with the working of the land as a smallholding. The decline in the condition of the buildings has been over many years and there is no evidence that the new houses are required to support the nursery or any other rural based business.

This is also important because Policy HOU2 (Location of Housing Sites) would only permit housing development within the settlement framework to which policy GEN8 (Settlement Frameworks) refers. In this case, saved countryside protection policies, notably ENV3 (Development in the Countryside) and HOU9 (Essential New Dwellings in The Countryside) do apply and these policies would not normally allow residential development on this greenfield site in the countryside except in special circumstances.

HOU9 allows for dwellings for agricultural workers but this is not relevant here. To accord with the criteria set out in policy ENV3; development outside the settlement framework must be necessary (for example to house an agricultural worker), or it must result in a significant improvement to the rural environment, or it must benefit the local community through the reclamation or reuse of land. It is considered that the proposal does not meet these criteria and the proposal is contrary to these policies and in the current circumstances; any approval for the current application would be a departure from the development plan.

In light of the Council being able to demonstrate a 5 year supply of deliverable housing sites, objections to the proposals because the site in question is not allocated for housing within the adopted Local Plan and is situated in the countryside carries significant weight. In addition, the Council's housing policies are consistent with national policies relating to housing in rural areas set out in paragraphs 77, 78 and 79 of the NPPF.

Notably, the Publication Local Plan (May 2018) also does not distribute any residential development to Scarcliffe in its Spatial Strategy and Distribution of Development, and instead focuses development on the larger and more sustainable settlements as set out in the settlement hierarchy. This is mainly because Scarcliffe has very few key services and therefore, development of the site may also be contrary to policy TRA 1, which directs new development to areas which minimise the need for travel and are highly accessible by means other than private car.

The plan titled Site Movement and Access within the Design and Access Statement gives times for walking, cycling and driving modes of travel to various destinations. Secondary schools, supermarkets and a railway station are between 2 and 6km from the application site, (28-72 minute walk)

In recent appeal decisions inspectors have held that 2km is not an easy or convenient walking distance, especially for the elderly and children or for anyone in poor weather.

Cycling to these facilities is only likely to appeal to some people but will not be a suitable or attractive option for all, especially the young or elderly. Public transport serves the village and provides access to further away destinations such as Sheffield and Mansfield.

However for the very many short journeys to local shops and services it is likely that most journeys would be undertaken by private car and the development would not lend itself very well to sustainable travel choices. This would conflict with Paragraph 103 of the Framework which indicates that the planning system should actively manage patterns of growth in support of objectives, which include opportunities to promote walking, cycling and public transport.

Therefore, the proposed housing at Scarcliffe would not be in a sustainable location for residential development, which supports the policy position that the development proposed in this application in the countryside outside is not acceptable in principle because it is contrary to Local Plan Policies GEN8 and ENV3. These policies are also considered consistent with the Framework and its three overarching objectives of achieving sustainable development.

Additionally, the Council can demonstrate it has a 5 year supply of deliverable housing so the tilted balance set out at Paragraph 11 of the Framework does not therefore apply and the development should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the potential impact of the proposed development on the nearby Conservation Area and the surrounding countryside are especially relevant considerations in the determination of this application.

Impacts on the character of the area and heritage considerations

Although the site currently has a boundary of mature planting to the western boundary, there are open views of the site from the east. There is no guarantee that the planting to the western boundary could be retained. The site is generally elevated and any development for residential development would be prominent from certain locations. There is a strong boundary to built development along the southern boundary to the rear of properties along Main Street. Public footpath routes from Budget Lane to Fox Hill allow direct views of the site.

Currently there are views of the dilapidated buildings although due to their mass and form these appear quite recessive as seen in the illustration below.

View from Fox Hill



The illustration also shows that the site is very rural in character with open countryside to the north, west and east. The majority of the site is undeveloped and free from buildings. The buildings formerly used for plant growing are being overtaken by vegetation and beginning to blend into the landscape. Redundant rural buildings are not uncommon. The site whilst bounded by roads to the west and east has an agricultural feel and reads as part of the wider agricultural landscape.

Paragraph 170 of the Framework advises that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. This proposal would not do that because it introduces housing into the rural setting of Scarcliffe, as shown in the illustration below, which gives rise to further conflict with Policy ENV3 and conflict with policy GEN2 that seeks to protect the character and appearance of the District's countryside and the rural setting of its villages.

Proposed view from Fox Hill



In terms of heritage assets, the site is in close proximity to several unlisted buildings of merit, listed buildings and the boundary of the conservation area. The section of the village along Main Street which sits outside the conservation area is linear in plan form and the

main core of the village within the conservation area is more nucleated in plan form. Development of this site would therefore alter the current plan form of the village.

Paragraph 126 of the Framework says local planning authorities and decisions on planning application should take into account the desirability of new development making a positive contribution to local character and distinctiveness in the context of conserving and enhancing the historic environment.

Policy CON 4 (Development adjoining Conservation Areas) states that planning permission will be refused for proposals adjacent conservation areas which do not preserve or enhance the special character and setting of the conservation area including views into or out of it.

In this case, the proposed dwellings may in part be visible from Main Street and visible from locations within the conservation area particularly Fox Hill and would result in a suburban incursion into what is an agricultural landscape.

The conservation area retains a strong rural character and the relationship between the built environment and the wider landscape is integral to the character of Scarcliffe. The Scarcliffe conservation area appraisal and management plan (CAAMP) recognises that there has been a significant amount of infill, of varying quality, within and adjacent to the conservation area (para 5.27) and as a result identifies a potential threat as, “further intensification of built development within the conservation area would generally be considered to detract from the character and appearance of the conservation area. Any proposed new development should be designed to relate to the existing scale and style of building in the conservation area.” It also refers to development immediately outside the conservation area potentially having a detrimental impact on the character and appearance of the conservation area.”

The conservation officer is not supportive of the proposed development due to the impact upon views from within and outside the conservation area, the introduction of a suburban form of development to the entrance of the village and consequently its impact upon the rural character of the village, the inclusion of an alien (two story) form of development that does not reflect the existing low level constructions on the site (greenhouses and sheds and a single bungalow).

She also considers that insufficient detail has been provided which would fully enable the potential impacts of the development upon heritage assets to be assessed. Such detail would include more information with regards to views into and out of the application site, elevation drawings and height comparisons/adjacent building lines in order that a comparison of building heights could be undertaken. The conservation officer concludes that residential development on this site would not be appropriate and would harm heritage assets.

Guidance within the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate its

optimum viable use. It is not considered that any public benefit in this case would outweigh the policy conflict.

In particular, the opportunity to 'tidy up' the site would be offset and outweighed by the impacts of the development. In summary, the extension northwards to the rear of properties on Main Street would eliminate an existing definitive gateway into Scarcliffe and would create a harmful, uneven and irregular visual relationship between the built form and the wider countryside. In addition, the development would appear as an ad hoc intrusion within the agricultural landscape. It would be very difficult to achieve a form of development which would have a comfortable relationship with the existing development to the south and this would be the case whether considering single or two-storey developments.

Therefore, it is concluded that development of the site would represent a prominent intrusion into the countryside which would have an adverse impact upon the rural character of the area and would cause harm to the countryside in its own right and the rural character of the entrance to the village and would also be harmful to heritage assets for which there is no special justification or sufficient public benefit. This would be contrary to policies ENV 3, GEN 2 and CON 4 of the Bolsover District Local Plan which seek to protect the countryside from inappropriate development and requires developments to preserve or enhance the special character and setting of the conservation area.

Design

Throughout the application process the applicant and agent were fully aware of the policy constraints relating to residential development in the countryside. However, the agent wanted to provide more detail and supporting information to enable greater weight to be given to the design quality of the scheme. For example, within the Framework paragraph 79 may exceptionally support housing in the countryside if development - *is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and* - *would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*

Whilst layout is not included for consideration at this time, drawings are provided to show a layout which broadly seeks to redevelop some of the land currently occupied by a storage building and low level glass house buildings.

Illustrative Block Plan



The illustrative layout (above) shows a low density of development with generous sized plots. It is intended that the houses would be attractive to higher income residents. The houses would be two storey. A mixed palette of materials is proposed which would reflect the materials used within Scarcliffe and those used in the brick and glass greenhouses which would be replaced. The design of two of the dwellings takes cues from the form and layout of the greenhouses with linear styling and glazed elements proposed to the roofs. The other three houses are more traditionally styled two storey houses.

Additional information has been submitted by the agent to describe the design context of the scheme. The additional information shows a 3 dimensional drawing of the proposed dwellings, long views into the site and an enhanced design and access statement which provides illustrative elevational (not to scale drawings) of the proposed houses.

However, as submitted, the proposed schematic layout would result in a substandard separation distance between the proposed and existing properties below the 21m generally required. The relationship between the proposed and existing houses is not helped by the restricted nature of the application site and the very limited rear garden depth to some of the properties on Main Street.

Whilst the application is showing a 2m strip of land along the southern boundary of the application site which is to be gifted to adjacent residents, this would not alleviate the issues with separation. The close proximity of the proposed new houses and the existing dwellings (many of which are single storey) creates a somewhat overbearing relationship. It would also result in potential overlooking of private garden space of existing and proposed dwellings between the properties. By reserving layout for later consideration it is not

possible to ensure that an acceptable layout can be achieved and the restricted application site area further compounds the difficulties of achieving this.

The Urban Design Officer has commented on the additional detailing. He has concerns regarding whether an acceptable layout can be achieved which resolves the issues outlined above and considers that without full details of appearance and layout being provided at this time there would be no robust mechanism which would ensure delivery of a high quality scheme.

It is therefore not considered that the design quality of the scheme outweighs policies which seek to restrict residential development in the countryside. It also has not been demonstrated that a scheme could be designed which achieved general compliance with policies GEN 2 and guidance contained within Successful Places in respect of overlooking and space around buildings. Therefore, the proposed scheme would also be unneighbourly despite the applicant's offer to gift additional garden land to adjacent properties.

These conclusions exacerbate the identified conflict with housing policy because the site is in countryside outside the settlement framework and supports the conclusions that the proposals would have a harmful impact on the setting of the designated Scarcliffe Conservation Area and the surrounding countryside. In this case, it is not considered any other relevant planning considerations weigh heavily for or against the proposals for the following reasons:

Site Stability (Bolsover Tunnel)

The former Bolsover Tunnel runs in a north west to south east line to the north of the red edge of the site. The schematic layout shows that only plot 1 would be partially sited over the tunnel. The impacts of development cannot fully be understood without the undertaking of further investigation. It is likely that the site could in part be safely developed and such a report could be required by condition. The Council's Consulting Engineers confirmed during consultation on the previous application (17/00386/OUT) that this approach would be prudent. Subject to inclusion of a condition to deal with this issue, it is considered that the proposal would comply with the requirements of policy GEN 7 of the Bolsover District Local Plan.

Archaeology

The Archaeologist states that the site lies just to the east of a historic routeway (Derbyshire HER 99025), now Rotherham Road, postulated to be of Roman origin, though without excavated evidence. However as a significant part of the site has been impacted by the existing nursery development, it is unlikely that anything of archaeological significance lies within this footprint and it has been advised that there would be no archaeological impacts, such that the proposal would comply with Policy CON13 (Archaeological Sites and Ancient Monuments) of the Bolsover District Local Plan.

Biodiversity

The site is currently not in use although it's possible that a grass crop has been taken off

the site. Part of the site is occupied by vacant greenhouse buildings and outbuildings. The western part of the site near the buildings is becoming overgrown and gradually the green houses are being overcome by vegetation. There are various habitats within the site including, open ground, vacant buildings, trees and hedgerows.

An extended Phase 1 habitat survey was undertaken in October 2017 by Arc Ecology. No ecological constraints were identified, with the exception of nesting birds. Derbyshire Wildlife Trust raised no objections and recommends that the area is maintained as short vegetation to reduce the suitability for reptiles and recommends the inclusion of a condition requiring the submission of a Biodiversity Enhancement Strategy to achieve a net gain in biodiversity in accordance with the NPPF 2018.

It is considered that the proposed development could meet the requirements of policy ENV5 of the Bolsover District Local Plan.

Contamination

The site has previously been used as a plant nursery which is considered to be a potentially contaminative land use. As detailed in the Design and Access Statement the site is now derelict although the remains of some of structures associated with the previous use are still present. There is also the possibility there may be Made Ground present on the site which can be a source of contamination. A representation from a neighbouring resident has raised the issue that potentially contaminated material (specifically dioxin from Coalite) may be stored in barrels inside the tunnel. Discussions with the Environmental Health Officer indicate that this can't be confirmed or denied but would need to be considered within the scope of any investigation. Due to the proposed sensitive end use, the Pollution Control Officer recommends that a full phased contaminated land condition be included in any permission.

It is likely that subject to the inclusion of an appropriately worded condition, the proposed development could meet the requirements of policy GEN 4 of the Bolsover District Local Plan.

Highway Considerations

The agent provided some additional information with regards to the former use of the site as a nursery in relation to previous vehicular movements. Following receipt of this the local highway authority has no objection to the proposed development subject to the inclusion of conditions. Other than a condition relating to the visibility in the critical direction at the junction of the access and Budget Lane, conditions relating to the provision of parking and maneuvering, access gradient, space for storage of plant and machinery and no gates to vehicular access would not need to be included on an outline planning permission. The proposed development can meet the requirements of policy GEN1 of the Bolsover District Local Plan.

The Planning Balance

In conclusion, the above sections of this report set out how a number of technical matters could be overcome by planning conditions but also that the development proposed is

considered contrary in principle to Local Plan Policies GEN8 and ENV3. These policies are considered to be consistent with the Framework and carry significant weight in the determination of this application. To overcome this objection, it would be necessary to demonstrate there would be substantial benefits of granting planning permission for a departure from the development plan.

In this case, it is considered the main benefits of the proposals are a currently vacant site with buildings in disrepair would be redeveloped to create a small number of homes. It is also acknowledged an approval of the current application could provide minor economic benefits in the short term through local employment opportunities during the construction phase. These benefits however are diminished somewhat because the location of the proposals would be relatively car dependent, the delivery benefits are not immediately required to address any under provision and the number of dwellings is so small as to not be significant. Broader housing benefits and short term employment aspects mentioned could be achieved by other planned for housing developments in closer association to main sustainable settlement services. Overall when taken together, the benefits of the development are considered to convey a 'minor positive' planning benefit.

However, setting aside the development plan conflicts, the likely significant adverse impacts of the proposals have to be weighed in the planning balance. As noted above, the adverse impacts of the proposals weigh substantially against approval of this application because the proposed housing would cause harm to the character of the countryside and to heritage assets. This harm would arise from the provision of a development form that does not accord with the natural form of the existing settlement, which would be prominent from public vantage points and from within the conservation area. In addition, the development, as submitted, would not achieve general compliance with guidance contained with Successful Places in respect of neighbourliness and the design of the proposals would fall short of the high quality required to justify an exceptional approval.

It is therefore concluded overall, in tandem with the substantial weight against the proposals offered by the conflict with adopted policies GEN8 and ENV3, there are no sufficient overriding factors that would weigh so heavily in favour of the proposals such as to offset the adverse impacts of the development. As set out in the previous sections of this report, it is considered the current application proposes an unsustainable form of development that would not only be a departure from the Development Plan but the proposed development would also conflict with national planning policies in the Framework when taken as a whole. Therefore, the current application is recommended for refusal.

Other relevant considerations

In reaching a recommendation of refusal, it is acknowledged that consistency in decision making is important and decisions should be made in accordance with policies of the development plan unless other material considerations dictate otherwise. In these respects, as noted in the above report there are some aspects of these proposals that are reminiscent of the circumstances of an appeal for residential development, which was allowed at Glapwell Nurseries.

However, the scale of development at that site was significantly greater and the inspector held that the site already had a “developed” appearance. Weighing significantly in the favour of the application was that development would result in public benefits as a result of the restoration of the unlisted Bothy within the site and from S106 obligations. The scheme the subject of this application is not really comparable and its development would not result in significant public benefit.

Equally, in other appeal decisions Inspectors have given weight to policies which seek to prevent harm to the countryside and have given limited weight to the economic benefits from the construction of houses or the support to services additional residents can provide when such benefits could be accrued from developments within the settlement framework. Therefore, it is considered that a recommendation of refusal for the current application is consistent with the development plan and takes into account how Inspectors have viewed the planning balance in similar circumstances at appeal.

Finally, officers have met with the applicant and the agent to discuss the officer recommendation prior to the application going before Planning Committee. Following this meeting a letter has been submitted whereby the agent would be willing for consideration to be given to the development of the site for single storey dwellings with scale and appearance to be matters reserved for later consideration.

However, it is not considered that single storey development could overcome this recommendation for refusal. Any residential development would be contrary to the policies of the local plan with there being no justification and very limited public benefit. The development for single storey dwellings would still result in a permanent impact upon the countryside which would cause more harm to the immediate area and village form than the present vacant buildings which will ultimately decay into the landscape.

Therefore, whilst officers acknowledge the applicant’s desire to work with officers to reach a positive outcome, the location and nature of the development proposals means that unfortunately; further negotiations or design amendments are highly unlikely to address the fundamental policy issues set out in the above report or overcome the following reasons for refusal.

RECOMMENDATION

The application be REFUSED for the following reasons:

1. The site lies outside the settlement framework as defined in the saved policies of the Bolsover District Local Plan (2000). Policies ENV3 and HOU9 apply which do not normally allow residential development except in special circumstances such as where dwellings are required for agricultural workers or where it results in a significant improvement to the rural environment. The proposal does not meet these criteria and the application is contrary to policies ENV3 and HOU9. The proposal is also contrary to the publication Local Plan which aims to foster sustainable development and it does not support the allocation of this site for residential development as part of the planned delivery of the plan’s housing target for the period up to 2033. As a result, it is considered that the proposal would be contrary to the Framework also given its emphasis on a plan-led system. Insufficient other

material considerations exist to offset this conflict and approval would therefore be an unjustified departure from the development plan.

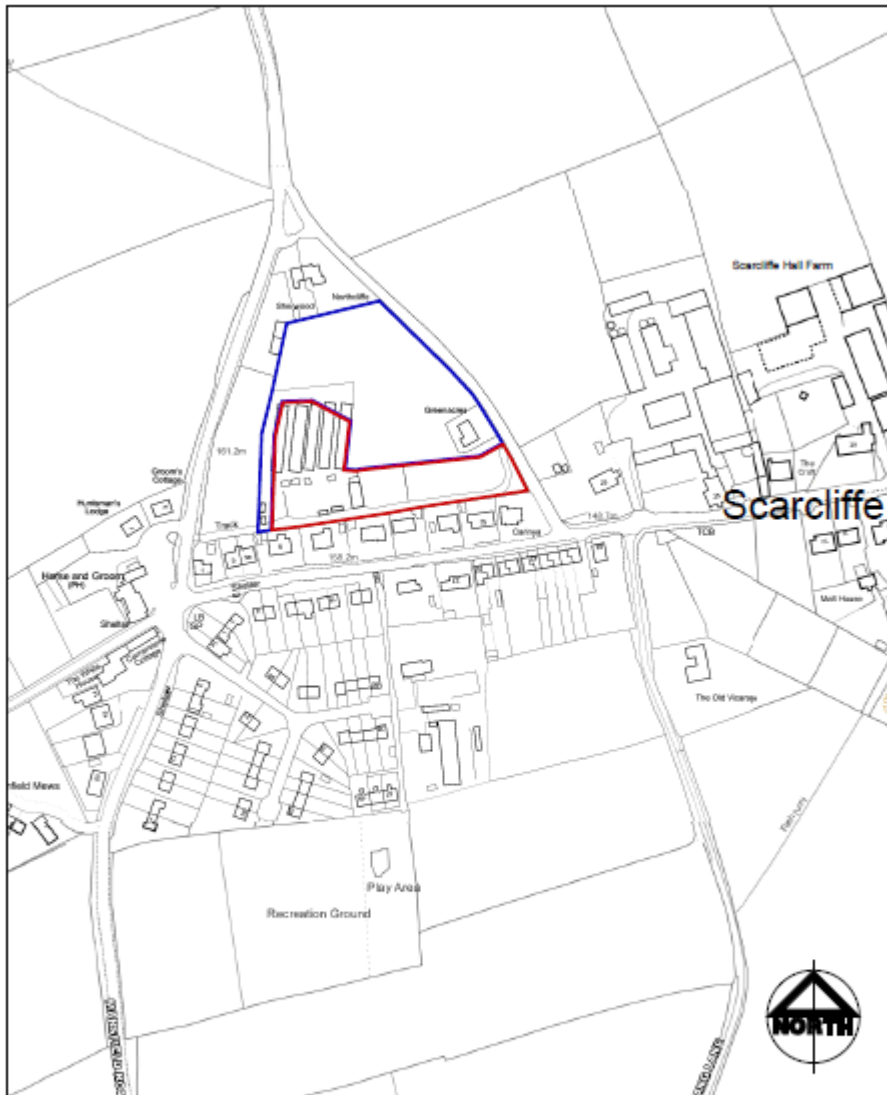
2. The proposed development would not form a logical extension to the settlement of Scarcliffe and would be poorly related to the existing pattern of development resulting in an encroachment into the countryside which would have a detrimental urbanising effect on the appearance and character of the landscape contrary to saved policies ENV 3 and GEN 2 of the Bolsover District Local Plan and also guidance contained within the Framework which advises that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
3. The proposed development would result in a permanent urbanising alien form of development which would be visually prominent and would alter the current plan form of the village. It would introduce urbanising development in views to and from the conservation area and would have a less than substantial harm on heritage assets with no significant public benefit. Development would be contrary to saved policy CON4 of the Bolsover District Local Plan and paragraph 196 of the Framework.
4. In reserving layout for future consideration it cannot be adequately demonstrated that the proposed development can achieve general compliance with the Council's Supplementary Planning Document Successful Places A Guide to Sustainable Housing Layout and Design. The proposed development as shown on drawing number 1707-AA111 REV A would not achieve general compliance with the guidance contained within the Council's design document in respect of space around buildings which would result in overlooking between 1,2 and 3 and 7-15 Main Street. As submitted the proposal would not meet the requirements of policy GEN 2 of the Bolsover District Local Plan.

Human Rights:

The specific Articles of the European Convention on Human Rights (ECHR) relevant to planning include Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

The planning system by its very nature respects the rights of the individual whilst acting in the interest of the wider community. It is an inherent part of the decision-making process that the effects that a proposal will have on individuals will be weighed against the wider public interest in determining whether development should be allowed to proceed. Equally, the applicant has a right of appeal if they are aggrieved by a decision made by the local planning authority. Therefore, it is considered the relevant human rights issues have been addressed in the above report.

Site Location Plan



REVISIONS <table border="1"> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </table>																					 wilder.com Architects Kingston Hall, Nottingham NG11 0DU 01617 005655	CLIENT Mr Stuart Hill		
PROJECT Residential development at Greenacres Nursery, Budget Ln, Scarcliffe.		DATE 01/08/10	SIZE 210m x 251m	SCALE 1:2500																				
DRAWING Location plan (revised redline)		DATE 01/08/10	BY J.S.	CHECKED J.S.																				
		JOB - DRAWING NR. 1707-AV110		REV. 02																				

Illustrative Layout



Block Plan



PARISH South Normanton

APPLICATION Residential development comprising 31 two-bedroom bungalows, and associated access, car parking, ground level changes and landscaping (revisions to previous approval of planning permission 16/00510/FUL).

LOCATION Jacques Brickyard Water Lane South Normanton Alfreton

APPLICANT Mr David Cross Jacques Brickyard, Water Lane South Normanton Alfreton

APPLICATION NO. 18/00413/FUL **FILE NO.** PP-07163369

CASE OFFICER Mr Steve Phillipson

DATE RECEIVED 27th July 2018

DELEGATED APPLICATION REFERRED TO COMMITTEE BY: Planning Manager
 REASON: Previous permission on site was a Committee Decision. The recommendation to approve that application was finely balanced. The current application seeks amendments to the approved scheme.

SITE

Approximately 0.83 ha brownfield site formerly known as Jacques Brickyard. It is within the settlement framework to the rear and north side of dwellings on Water Lane, South Normanton. The site has recently been cleared to implement planning permission for residential development.

There are some significant level changes on site and in relation to the adjacent land but generally levels fall from north west down to south east.

The main access into the site would be taken from Water Lane where there is a notable gap in the terraced dwellings. There are bus stops in both directions close by on Water Lane.

There is residential development adjacent to all sides of the site although to the east side there is an intervening water course. The older 2 storey dwellings on Water Lane are mostly finished in render or red brick but there are several gaps in the street scene due to demolition with stretches of undeveloped land fronting the street. The overall impression of this part of Water Lane is that it is run down and in need of further investment and redevelopment. However, there are areas of well designed new development close by, such as off Knitters Road, which have successfully begun to lift the character of the area.

A Parish recreation ground is located about 150m walk to the south west across Water Lane off South Street and Lansbury Drive which has children’s and youth/adult facilities. Brigg Infants School is also close by some 200m from the site.

PROPOSAL

Application for full planning permission for residential development comprising 31 two-

bedroom bungalows, and associated access, car parking, ground level changes and landscaping.



The proposal is very similar to the scheme which has recently been granted planning permission 16/00510/FUL. That permission was for the erection of 32 two-bedroom dwellings comprising 23 single storey bungalows and 9 two storey houses. Notably the previous scheme included five 2 storey houses on the frontage to Water Lane (2 pairs of semi's and one detached), whereas the current proposal is for 3 terraced bungalows on the frontage.

Further back into the site the changes sought are less noticeable but it does include amendments to the ground levels previously approved. At the north east corner of the site adjacent to 61 Sough Road plots 22 – 25 are now proposed at a higher ground level than previously approved by about 1.5m – 2m.

A viability report has been provided by the Applicant which concludes that the development in the previously approved scheme did not generate a sufficient profit (6%) and was considered not commercially viable for the developer. A value engineering exercise was carried out which established that the proposed 31 unit scheme was more profitable

despite fewer units.

Amending the design from 23 bungalows and 9 townhouses to 31 bungalows resulted in a larger reduction in the build costs when compared to the reduction in revenue and so the potential revenue of the scheme was increased. However despite the increased profitability on the 31 unit scheme (8%), the profit margin is still far below the level that most developers would consider viable.

With regard to the site frontage the Applicant states that the 5 houses previously approved would generate £49,332 profit whereas the three bungalows now proposed would generate £77,129 profit i.e.£27,797 more (*about 1% more profit*).

AMENDMENTS

30/08/18 Geo Environmental Report parts 1 and 2.

23/01/19 Revisions include new privacy screen fence location to plots 23-25, french drain to northern boundary and use of TensarTech Natural Green Earth Retaining System for steep slopes.

23/01/19 Proposed Site Sections 2505-015 Rev K

23/01/19 Proposed Site Sections 2505-037 Rev A

23/01/19 Sections Key Plan 2505-001 Rev AL

23/01/19 Viability Statement

12/02/19 Visuals of site frontage provided.

26/02/19 Viability Appraisal

HISTORY (if relevant)

05/00631/FULMAJ	WDN	Residential development for 34 dwellings
06/00201/OUTMAJ	WDN	Residential development with access from Water Lane
07/00753/OUTMAJ	GC	Residential development for up to 39 houses with access off Water Lane
08/00184/OUTMAJ	GC	Erection of 39 residential houses and associated estate road off Water Lane
11/00335/VARMAJ	GC	Extension of time for start of previously approved scheme 07/00753/OUTMAJ - Residential development for up to 39 houses
15/00541/OUT	REF	Residential development for up to 39 dwellings
16/00510/FUL	GC	Erection of residential development comprising 32 two-bedroom dwellings (a mix of single storey and two storey) and associated access, car parking and landscaping.

18/00262/DISCON	PTDIS	Discharge of Conditions 4 (Hedge retention), 5 (biodiversity mitigation), 6 (Ground Remediation Scheme), 7 (Risks from Past Coal Mining), 8A (Foul Drainage Plans), 8B (Surface Water Management and Maintenance Plan), 20 (Japanese Knotweed Management Plan) of Planning Permission 16/00510/FUL
18/00412/DISCON	NOTDIS	Discharge of Condition 3 (Scheme to secure the relocation of the bus stop on the site frontage) of Planning Permission 16/00510/FUL
18/00413/FUL	PCO	Residential development comprising 31 two-bedroom bungalows, and associated access, car parking, ground level changes and landscaping (revisions to previous approval of planning permission 16/00510/FUL).
19/00024/DISCON	DISCH	Discharge of Condition 10 (Materials Plan and Schedule) of Planning Permission 16/00510/FUL

CONSULTATIONS

Urban Design Officer

Recommends revisions.

The previously proposed two-storey houses were intended to replicate the scale and enclosure of the existing streetscene in order to reinstate the continuity of the built frontage, which has been undermined by the presence of large gaps between groups of houses and the generally unmanaged appearance of these spaces.

The character and appearance of this part of Water Lane is clearly defined by two-storey terraced houses close to the street. Although a large proportion of bungalows were previously accepted within the scheme, adjacent to Water Lane, the two-storey houses were intended to replicate the scale and appearance of the existing townscape. This represented an appropriate design response that would help assimilate the approved scheme into the existing streetscene.

Bungalows on the site frontage in lieu of two-storey houses are considered likely to appear at odds with the appearance of this part of Water Lane. Although the bungalows would be positioned close the edge footway and follow the building line, their low height and scale would represent an incongruous addition to the streetscene, weakening the previously approved relationship between the site and the street and appearing at odds with the character and appearance of the area.

It is recommended that this aspect of the current application is revisited and the scheme amended to better reflect the scale and character of the adjacent streetscene.

DCC Highways

No objections subject to previous highway comments and conditions for application 16/00510/FUL

BDC Drainage Engineers

SuDS management details needed if relevant.

Temporary Drainage arrangements during construction should be in place.

Severn Trent Water

Details of foul and surface water drainage disposal should be approved prior to commencement.

Environmental Health Officer

Recommends a contaminated land condition.

Economic Development Officer

Requests a condition to secure local opportunities for skills, training and employment within the District.

Senior Valuer

Consulted on viability information only recently received. Response awaited.

PUBLICITY

Advertised in the press and on site. 24 Properties consulted.

One objection received regarding the increase in levels at the north east corner of the site and the effect on overlooking. Concern as to proposed boundary treatment.

POLICY

Bolsover District Local Plan 2000 (BDLP)

The site is not specifically allocated but the plan shows the site to be within the settlement framework where residential development is acceptable in principle. Due weight should be attached to the saved policies depending on the degree of consistency with the NPPF.

Relevant policies:-

GEN 1 – Minimum requirements for development

GEN 2 – Impact of development on the environment

GEN 4 – Development on Contaminated Land

GEN 5 – Land Drainage

GEN 6 – Sewerage

GEN 8 – Settlement Frameworks

GEN 17 - Public Art

HOU2 – Location of Housing Sites

HOU5 – Outdoor Recreation and Play Space Provision for New Housing Development

HOU6 – Affordable Housing

TRA1 – Location of new development

TRA15 – Design of roads and paths
ENV 5 – Nature Conservation Interests
ENV8 – Development affecting trees and hedges

Local Plan for Bolsover District – Publication Version May 2018

The plan has progressed through examination and so its policies should be given weight depending on the level of objection to specific policies. In general the weight to be given to these policies is now increased.

The site is not allocated in the Publication Version Local Plan, although it is within the development envelope where residential development is acceptable in principle.

SC1 Development within the Development Envelope

Normally permitted if the development is appropriate in scale, design and location to the character and function of the area...and environmental impacts would not be unacceptable.

SS1 Sustainable Development...

- b) Promote the efficient use of land and the reuse of previously developed land in sustainable locations...
- c) Locate development in close proximity to trip generators to reduce the need to travel by non-sustainable modes of transport.
- k) Support the provision of essential public services and infrastructure.

SS2 Scale of development

SS3 Spatial Strategy and Distribution of Development

Directs development towards the towns and larger settlements.

SC2 Sustainable Design and Construction.

Will permit development where it....

- i) Protects the distinctiveness, character, townscape and setting of settlements.
- k) Supports the provision of essential public services and infrastructure.
- n) Ensures contamination is remedied.

SC3 High Quality Development

Will permit development provided they:-

- a) Create good quality places that will integrate into its setting
- b) Respond positively to context and contribute to local identity in terms of height, scale, massing, density, layout and materials
- e) Provide a positive sense of place through well designed streets appropriate to their context.
- f) Ensure a good standard of amenity in terms of privacy, light avoiding overbearing etc.

ITCR5 Green Space and Play Provision
Applies to developments over 25 dwellings.

ITCR11 Parking Provision

II1 Developer Contributions

LC2 Affordable Housing through Market Housing
10% on site affordable required for developments of 25 or more dwellings

National Planning Policy Framework

Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration with a presumption in favour of sustainable development, decisions should secure development which will improve the economic, social and environmental conditions of the area. As the Bolsover District Local Plan was adopted prior to 2004 due weight should be given to its policies according to their degree of consistency with the Framework.

Development should make effective use of land while safeguarding and improving the environment and ensuring safe and healthy living conditions. Good design is a key aspect of sustainable development. Development should add to the overall quality of the area; be visually attractive; sympathetic to local character and history; establish or maintain a strong sense of place; optimise the potential of the site; and, create places that are safe, inclusive, and accessible, with a high standard of amenity for existing and future users.

Para's 127 and 130 on Design

130. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

Other (specify)

Successful Places: A Guide to Sustainable Housing Layout and Design (2013)
A Building for Life 12 (BfL12) - The sign of a good place to live
National Planning Practice Guidance (NPPG) – Design (ID: 26)

ASSESSMENT

Planning permission has recently been granted for a similar development proposal on this site (16/00510/FUL granted 20/12/2017) hence there is an extant planning permission and the principle of residential development has already been established.

However, due to marginal economic viability, in resolving to grant planning permission for

16/00510/FUL the Council had to make compromises in order to facilitate the delivery of a scheme which would help regenerate and improve the character of the area.

Firstly the density and layout of the approved scheme has compromised a number of normally applied urban design principles, in order to facilitate a viable development. This includes quite a car dominated street scene, quite small gardens and so the layout feels tight as a result. In addition the scheme could not stand financial contributions or S106 obligations normally sought for infrastructure such as 10% affordable housing and a contribution to increase junior school capacity and so the sustainability of the proposal was also compromised.

The recommendation to approve was therefore very finely balanced but ultimately the opportunity to regenerate this long term vacant and problem site and improve the character of the area was considered to outweigh the shortcomings of the scheme.

The main issues to consider for the current application relate to the revisions to the approved scheme which are now being sought. These include the omission of two storey houses from the scheme in favour of bungalows and the increase in ground levels at the north east corner of the site.

The Omission of 2 storey Houses to the frontage

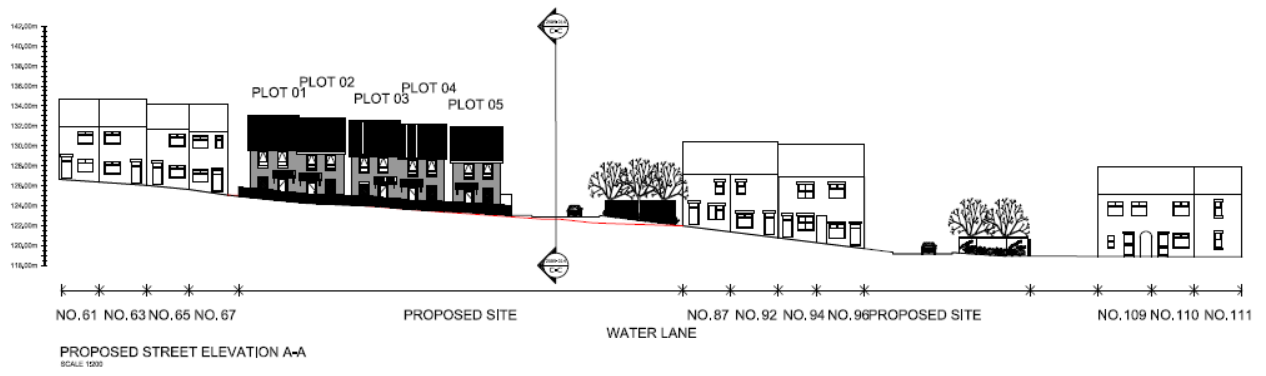
The omission of four 2 storey houses and replacement with bungalows within the heart of the site is not a concern. The majority of dwellings previously approved were bungalows.

The omission of the five 2 storey houses to Water Lane frontage is however considered to be a negative step with regard to urban design and how the site integrates with the existing form of development.

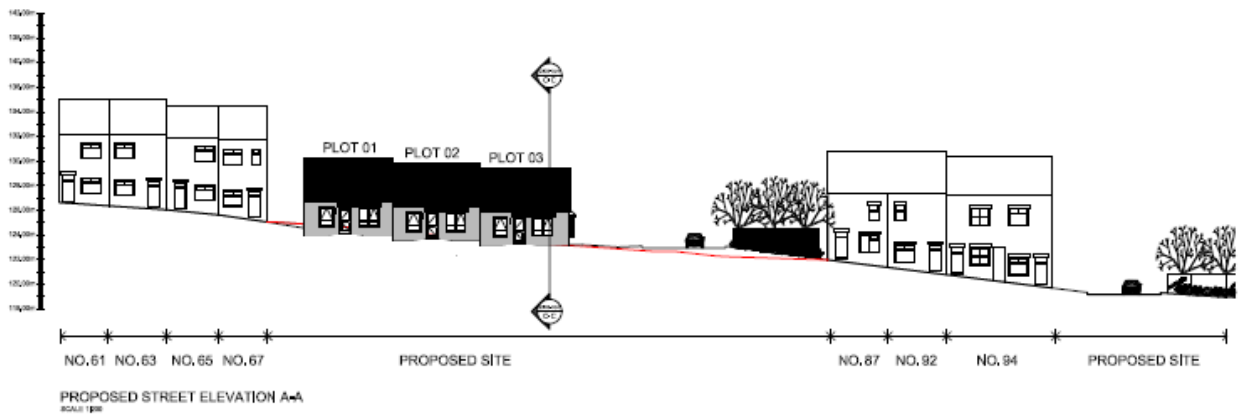
The character and appearance of this part of Water Lane is clearly defined by two-storey terraced houses close to the street. The previously approved two-storey houses adjacent to Water Lane were intended to replicate this including the scale and enclosure of the existing streetscene in order to reinstate the continuity of the built frontage, which has been undermined by the presence of large gaps between groups of houses.

The current proposal includes the replacement of the five 2 storey frontage houses in favour of 3 bungalows. Bungalows on the site frontage are considered likely to appear at odds with the appearance of this part of Water Lane. Although the bungalows would be positioned close the edge footway and follow the building line, their low height and scale would represent an incongruous addition to the streetscene, weakening the previously approved relationship between the site and the street. This aspect of the proposal does not accord with saved policy GEN2 (1) of the Adopted Local Plan or to Publication Version Local Plan Policies SC1(a), SC2(i), and SC3(a, b and e). Furthermore the NPPF supports good design and advises that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Street scenes of the previously approved scheme (top image) and what is now proposed (below) are copied below:-



16/00510/FUL



18/00413/FUL

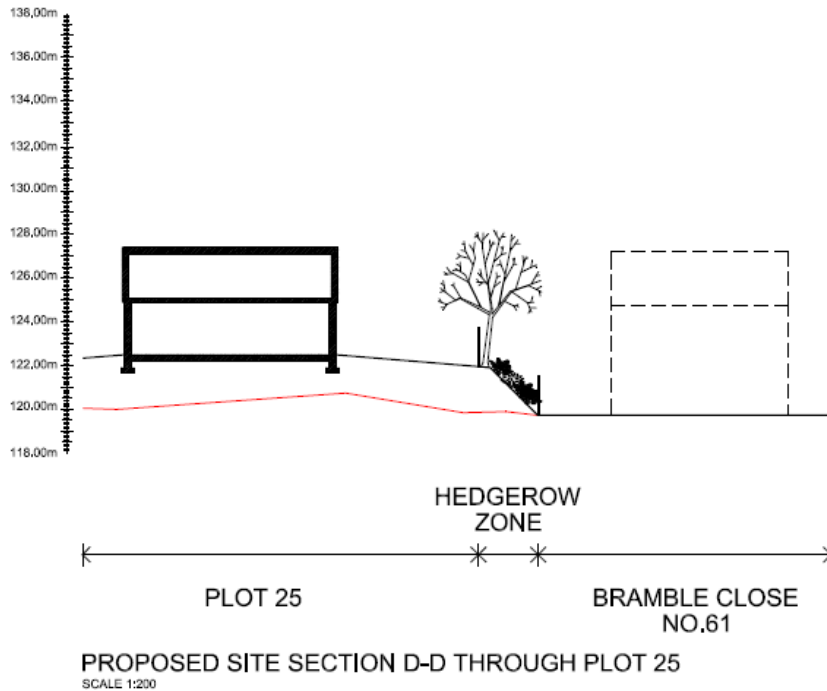
The Applicant has also supplied a visualisation of the proposed bungalows to support the application. This is shown below.



The Applicant has also supplied a viability appraisal to evidence the reason why the scheme cannot afford to include a small quantity of 2 storey housing on the Water Lane frontage. This had only just been received at the time this report was written and so a consultation response on it from the Council's Senior Valuer was awaited. Committee Members will be updated on this matter before the meeting.

Increase in Ground Levels at the North East Corner of the Site.

The new application also shows a difference in ground levels to that previously approved. This can be summarised in that the scheme now shows a bit more cut and fill across the site moving the earth to the east. The red line shows existing ground level.



The most significant change is at the north east boundary where levels are now shown up to 2m higher than original ground level. This would affect amenity at 61 Sough Road because the garden to proposed plot 25 will be elevated by 2m above the garden to that property raising concerns about loss of privacy. The steep slope will also need to be adequately constructed to protect against land slip and surface water runoff.

The scheme has been amended to address Planning Officer concerns to include 1.8m fencing at the top of the garden plateaux, Tensar Tech earth retaining system, and a french drain to the base of slope. The additional fencing will have some negative effect on daylight and sunlight received at No 61 being to the south side of that property but this is not at a level that would fail the Council's design guidelines and this impact is considered to be a preferable solution to being significantly overlooked from the higher garden area.

It is considered that these mitigation measures will adequately address the difference in levels proposed without an unacceptable level of impact on amenity.

Other Matters

There are no other significant material changes in circumstances from the previous grant of planning permission. However, if Committee Members are minded to grant planning permission then planning conditions will be needed to deal with other technical issues as was applied to the previous planning permission 16/00510/FUL. Where conditions have already been discharged for that permission or partially discharged, then the requirements of any new conditions will need to account for this.

Conclusions

Planning permission has previously been granted for a very similar scheme which

comprised mostly of bungalows but with 2 storey housing required on the Water Lane frontage as an appropriate design response to the character of the area and the existing urban form.

However, due to marginal economic viability, in resolving to grant planning permission for the previous scheme the Council had to make compromises on design and S106 infrastructure obligations normally required in order to facilitate the delivery of a scheme which would help regenerate and improve the character of the area.

The current proposal seeks to amend the scheme to substitute the 2 storey housing on Water Lane frontage with more bungalows. It is considered that this would result in a dilution of the approved design that would lesson effectiveness of the interface between the proposed development and the existing streetscene, appearing at odds with the character and appearance of the area.

The previous recommendation for approval was finely balanced with compromises being made in favour of improving the character of the area. If the scheme is changed as is now proposed, such that it would not secure an adequate degree of improvement to the character of the area then it is considered that the planning balance tips the other way towards refusal. However this remains a finely balanced recommendation.

RECOMMENDATION

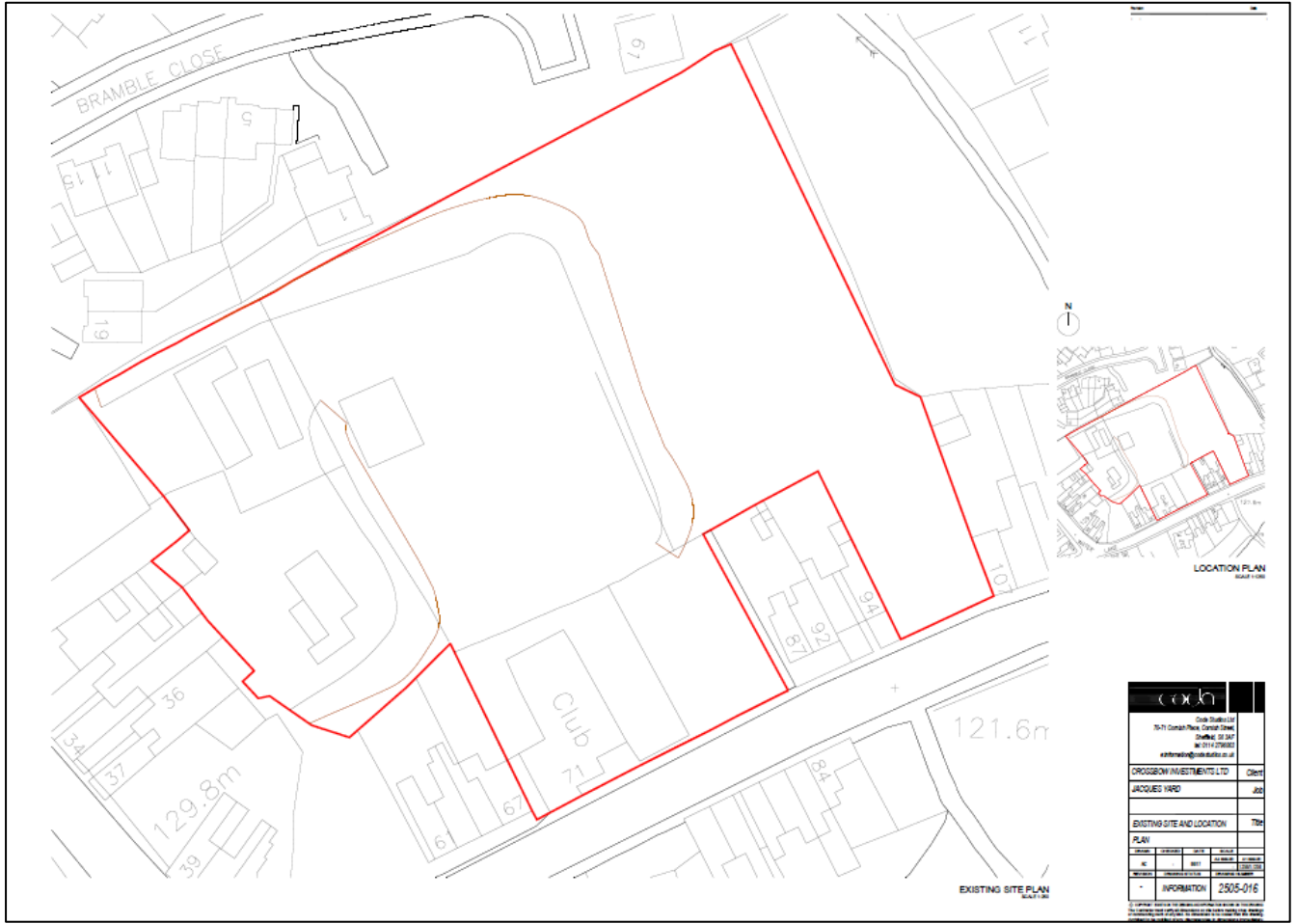
Refuse

Bungalows on the site frontage to Water Lane in lieu of two-storey houses as previously approved (planning permission 16/00510/FUL) will appear at odds with the appearance of this part of Water Lane. Their low height and scale would represent an incongruous addition to the streetscene, weakening the previously approved relationship between the site and the street and appearing at odds with the character and appearance of the area.

The proposed development would no longer result in sufficient improvement to the character of the area as to justify the approval of a development which is not able to address policy requirements for social infra-structure including the provision of affordable housing and to expand the local junior school.

Under these circumstances approval of the proposal would be contrary to Adopted Bolsover District Local Plan saved policies GEN2 (1), and HOU6; and to Publication Version Local Plan Policies SC1(a), SC2(i), and SC3(a, b and e), and II1 and LC2.

Site Location Plan



Bolsover District Council

Planning Committee

13th March 2019

Draft Local Enforcement Plan

Report of the Planning Manager

This report is public

Purpose of the Report

- To allow the Planning Committee to the adoption of a Local Enforcement Plan.

1 Report Details

Background

- 1.1 The final draft of the local enforcement plan for Bolsover District is included as Appendix A to this report.
- 1.2 Paragraph 207 of the National Planning Policy Framework says: effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.
- 1.3 This paragraph goes on to say: local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.
- 1.4 Therefore, a Local Enforcement Plan is not a statutory requirement, would not form part of the Local Plan, and would not be a development plan document or supplementary planning document. It is also not clear whether the Local Enforcement Plan (as drafted) would be classed as guidance rather than a 'strategy' or 'policy' as defined in the Council's Constitution. However, publication of a local enforcement plan would be consistent with Government guidance on best practice in respects of planning enforcement, the Regulator's Code and the Council's existing and emerging corporate enforcement policies.

Key Points

- 1.5 The draft Local Enforcement Plan sets out
 - how we will prioritise suspected breaches of planning controls;

- how to report a suspected breach of planning controls;
 - how we will deal with suspected breaches of planning controls;
 - who is responsible for implementing these policies; and
 - how we will monitor planning enforcement.
- 1.6 In terms of service standards, the nature of planning enforcement means that it is not possible to target a timescale in which to close a case. For example, if an enforcement notice is served, officers have no control over how long the Planning Inspectorate will take to deal with any subsequent appeal against that enforcement notice and cannot guarantee the outcome of that appeal.
- 1.7 It is also not possible for officers to meaningfully control how many complaints the Planning Department receive about suspected breaches of planning controls or how many breaches occur within the District at any particular time although it is hoped this document will help reduce both.
- 1.8 However, the draft Local Enforcement Plan sets out the following service standards that officers consider are specific, measurable, achievable and realistic:
- The site of a high priority case will be visited in the same day the suspected breach of planning control has been identified, wherever possible, and a decision on what further action is required will be taken with 24 hours of that site visit.
 - A site visit will be undertaken within two weeks of identifying a suspected breach of planning controls that is likely to be a medium priority case. A decision on what further action to take will be made within four weeks of that site visit.
 - A site visit will be undertaken within six weeks of identifying a suspected breach of planning controls that is likely to be a low priority case. A decision on what further action to take will be made within six weeks of that site visit.
- 1.9 These service standards have been designed to facilitate prompt investigation of suspected breaches of control and encourage making timely decisions on how to progress individual cases.

2 Conclusions and Reasons for Recommendation

- 2.1 Firstly, it is not a criminal offence to carry out unauthorised development (unless an enforcement notice is in place) and there are many different ways that the Council can tackle unauthorised development and other breaches of planning control including taking no further action because planning enforcement is discretionary.
- 2.2 The Government also says that the Council should act in a proportionate way when tackling breaches of planning control. This means the Council cannot normally justify taking formal enforcement action against minor breaches of planning control and formal enforcement action should be used as a last resort in most cases.
- 2.3 The Council also has to prioritise cases to ensure there are sufficient resources to make sure serious breaches of planning control are dealt with urgently and to

ensure other cases are dealt with effectively and efficiently. This means cases will be dealt differently depending on the individual circumstances of the case but the Council still needs to demonstrate it takes a consistent approach to planning enforcement.

2.4 In these respects, effective planning enforcement is important to:

- tackle breaches of planning control that have an unacceptable adverse impact on the character and appearance of the local area, or have an unacceptable adverse impact on the living conditions of local residents;
- maintain the integrity of the decision-making process by tackling unauthorised development that would not normally get planning permission; and
- maintain public confidence in the Council's decision-making processes by ensuring conditions and planning obligations needed to make development acceptable in planning terms are complied with.

2.5 Therefore, the preparation and adoption of a local enforcement plan is equally important because it:

- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- provides greater transparency and accountability about how the Council will decide if it is expedient to exercise its discretionary powers;
- provides greater certainty for all parties engaged in the development process.

2.6 Consequently, officers consider the adoption of a Local Enforcement Plan is not only best practice from a planning perspective; adoption of a local enforcement plan is also closely aligned with the Council's priorities including promoting sustainable development and growth, transforming our organisation, promoting healthy and safe communities and delivering excellent customer service.

3 Consultation and Equality Impact

3.1 Following consideration of the draft Local Enforcement Plan by the Corporate Enforcement Officer's Group, SAMT, Scrutiny Committee and the Planning Committee, public consultation was carried out by way of the Council's website, Parish Councils were consulted on the document and the Local Enforcement Plan was presented to the Parish Forum. The Planning Department has not received any objections to the Plan, which has generally been welcomed by those who have made representations.

3.2 It is not considered that the publication of a local enforcement plan would have any direct impacts on any person with a protected characteristic or any group of people that share a protected characteristic.

3.3 However, the local enforcement plan is written in plain English to make our processes more accessible. The local enforcement plan also explains how we will deal with enforcement cases fairly and consistently and how we will fulfil the public sector equality duty when we carry out planning enforcement.

4 Alternative Options and Reasons for Rejection

4.1 Members of the Planning Committee have oversight of planning enforcement and it is considered adoption of a local enforcement plan will provide the Planning Committee with greater certainty of how officers will carry out this function within the District. The adoption of a local enforcement plan is also consistent with Government guidance on best practice and accords with the Council's priorities. Therefore, no alternative options were considered.

5 Implications

5.1 Finance and Risk Implications

5.1.1 There are no significant cost implications involved with publication of a Local Enforcement Plan because it is intended to be a web-based resource. Publication of a Local Enforcement Plan should also reduce the risk of complaints about planning enforcement and the risk of abortive action because it sets out clearly how we intend to carry out planning enforcement fairly and consistently across the District and how we intend to follow best practice when we carry out this work.

5.2 Legal Implications including Data Protection

5.2.1 The Local Enforcement Plan would not contain any personal data and therefore does not raise any issues in respects of the GDPR. There are no particular legal implications in respects of a decision not to publish a Local Enforcement Plan because publication is discretionary. However, a publication version of a Local Enforcement Plan will need to be monitored and reviewed to ensure it remains consistent with case law and/or any subsequent changes in national guidance or legislation.

5.3 Human Resources Implications

5.3.1 The adoption of a Local Enforcement Plan does not give rise to any additional staffing costs but adoption of a Local Enforcement Plan should help officers make the most efficient and effective use of resources by setting clear priorities and establishing a clear framework to work within.

6 Recommendations

6.1 The final draft of the Local Enforcement Plan is accepted as the Council's adopted policy on planning enforcement.

- 6.2 The planning department's performance against the Service Standards in the Local Enforcement Plan and updates on planning enforcement following adoption the Local Enforcement Plan is reported to Planning Committee on a half-yearly basis.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p><i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the relevant Portfolio Holder been informed</p>	Yes
<p>District Wards Affected</p>	All
<p>Links to Corporate Plan priorities or Policy Framework</p>	All

8 Document Information

Appendix No	Title
A	Draft Local Enforcement Plan
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
n/a	
Report Author	Contact Number
Chris Fridlington	EXT: 2265

Local Enforcement Plan (Planning)

March 2019



We speak your language

Polish

Mówimy Twoim językiem

Slovak

Rozprávame Vaším jazykom

Chinese

我们会说你的语言

If you require this publication in
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CONTROL SHEET FOR [policy title here]

Policy Details	Comments / Confirmation (To be updated as the document progresses)
Policy title	Local Enforcement Plan
Current status – i.e. first draft, version 2 or final version	Publication Version
Policy author (post title only)	Chris Fridlington
Location of policy (whilst in development) – i.e. L-drive, shared drive	
Relevant Cabinet Member (if applicable)	
Equality Impact Assessment approval date	
Partnership involvement (if applicable)	
Final policy approval route i.e. Executive/ Council	
Date policy approved	
Date policy due for review (maximum three years)	Three years
Date policy forwarded to Improvement (to include on Intranet and Internet if applicable to the public)	

1.0 Introduction

What is a local enforcement plan?

- 1.1 A local enforcement plan should provide information on how the Council will respond to suspected breaches of planning control, tackle unauthorised developments, and monitor the implementation of planning permissions.

What is a breach of planning control?

- 1.2 There are many different types of breaches of planning control, including:
- the development of a building without the correct planning permission;
 - changes to the external appearance of a building without the correct planning permission;
 - changes of the use of the land or buildings without the correct planning permission;
 - engineering operations that change the existing levels of land or create new land forms that are carried out without the correct planning permission; and,
 - the demolition of a non-listed building within a Conservation Area.
- 1.3 We normally refer to these types of breaches of planning control as 'unauthorised development' because they are dealt with under powers in the Town and Country Planning Act 1990, as amended ('the 1990 Act').
- 1.4 The 1990 Act also covers other breaches of planning control, including:
- non-compliance with conditions attached to a planning permission, which is normally referred to as a 'breach of condition';
 - non-compliance with a planning obligation contained in a s.106 legal agreement attached to a planning permission; and
 - untidy land or buildings that has an unacceptable impact on the character and appearance of the local area.
- 1.5 In addition to unauthorised developments, there are other types of breaches of planning control that are normally dealt with under powers in different legislation, including:
- unauthorised alterations to a listed building or demolition of a listed building;
 - unauthorised works to trees in a designated Conservation Area
 - unauthorised works to or removal of a tree protected by a Tree

Preservation Order, or trees located in a conservation area; and

- unauthorised removal of important hedgerows.

Why is a local enforcement plan important?

- 1.6 The National Planning Policy Framework states that the Council should act in a proportionate way when tackling breaches of planning control and formal enforcement action should be used as a last resort. In addition, it is not a criminal offence to carry out unauthorised development (unless an enforcement notice is in place), and there are many different ways that the Council can tackle unauthorised development and other breaches of planning control. This means the Council cannot normally justify taking formal enforcement action against minor breaches of planning control and may decide not to take formal action against some cases.
- 1.7 Therefore, in some cases, the Council may seek a retrospective planning application to resolve a breach of planning control instead of taking action whilst in others the Council might determine not to take any further action because the works that have been carried out do not cause any harm. However, in other cases the Council may take formal enforcement action to resolve a breach of planning control and it is important that we can show how we decide when we will take formal enforcement action.
- 1.8 The Council also has to prioritise cases to ensure there are sufficient resources to make sure serious breaches of planning control are dealt with urgently and to ensure other cases are dealt with effectively and efficiently. This means that whilst we will take a consistent approach to planning enforcement: different cases may well be dealt with differently depending on the individual circumstances of the case. In these respects, it is important that we can show how we decide to deal with some issues urgently and how long we will normally need to deal with less urgent cases.
- 1.9 Therefore, the preparation and adoption of a local enforcement plan is important because it:
- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
 - sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
 - provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers; and,
 - provides greater certainty for all parties engaged in the development process.

What is the scope of this Local Enforcement Plan?

1.10 The following sections of this document will set out:

- how we will prioritise suspected breaches of planning control;
- how to report a suspected breach of planning control;
- how we will investigate suspected breaches of planning control;
- how we will take formal enforcement action against breaches of planning control; and,
- who is responsible for implementing and monitoring these policies.

2. Priorities

How will the Council prioritise planning enforcement?

- 2.1 For planning enforcement to work effectively and efficiently it is important to prioritise cases so we have sufficient resources available to tackle the most serious cases quickly. It is also important that we have sufficient resources to properly investigate suspected breaches of planning control to make sure we take the most appropriate action in the most reasonable amount of time.
- 2.2 Therefore, the first thing we will normally do when we identify a breach of planning control is decide whether the case is classed as high, medium or low priority to make sure planning enforcement is carried out effectively within the District.

Why is effective planning enforcement important?

- 2.3 Effective planning enforcement is important to:
- tackle breaches of planning control that have an unacceptable adverse impact on the character and appearance of the local area, or have an unacceptable adverse impact on the living conditions of local residents;
 - maintain the integrity of the decision-making process by tackling unauthorised development that would not normally be granted planning approval; and
 - maintain public confidence in the Council's decision-making processes by ensuring planning conditions and planning obligations needed to make development acceptable in planning terms are complied with.

What is a high priority case?

- 2.4 High priority cases are cases where there is an immediate and serious risk of harm or irreparable damage resulting from the unauthorised works that might be taking place. We will aim to investigate these cases on the same day that

they are reported to the Council. We will then decide what further action to take, if any, within 24 hours. Examples of high priority cases are as follows:

- Demolition in a Conservation Area;
- Destruction of an important hedgerow;
- Hazardous substances;
- Unauthorised works to protected trees;
- Unauthorised works to listed buildings; and
- Unauthorised development in Green Belt

What is a medium priority case?

2.5 Medium priority cases will not normally require immediate action to prevent serious harm. They will include suspected breaches of planning control that would not normally get planning permission because they are contrary to local planning policies and/or have a harmful impact on the amenity of the area.

2.6 We will aim to start investigating cases that are likely to be a medium priority by visiting the site within two weeks of receiving a complaint. We will then decide what further action to take, if any, within four weeks of the site visit. Examples of medium priority cases are as follows:

- Unauthorised development that contravenes local planning policy;
- Unauthorised development that significantly impacts on local amenity and public safety;
- Unauthorised development that results in harm to the character of a Conservation Area; and
- Unauthorised development that results in harm to the setting of a listed building.

What is a low priority case?

2.7 Low priority cases will be minor breaches of planning control. We will aim to start investigating cases that are likely to be a low priority by visiting the site within six weeks of receiving a complaint. We will then decide what further action to take, if any, within six weeks of the site visit. Examples of low priority cases are as follows:

- Running a small business from a residential property;
- Unauthorised advertisements;
- Unauthorised fences and walls;

- Unauthorised householder developments; and,
- Untidy land and buildings.

How will we monitor implementation of planning permissions?

- 2.8 The Council does not have sufficient resources to monitor every planning permission that is implemented across the District. Some ad-hoc monitoring of development by case officers may take place but we will normally need to rely on reports of suspected breaches of planning conditions to be able to identify problems.
- 2.9 When we receive a report of a suspected breach of planning conditions or we identify a breach of planning conditions on a development site, we will approach the case in the same way as other breaches of planning control depending on whether the breach of condition is considered to be a high, medium or low priority case.
- 2.10 However, we will monitor sites where permission has been granted subject to a s.106 legal agreement. Typically, these types of legal agreements will have a 'trigger point' when payments are required to be made or when affordable housing or other infrastructure should be delivered.
- 2.11 In many cases, a trigger point will be related to the number of new houses that have been built and/or occupied. Planning officers are responsible for monitoring the trigger points for obligations including payments of commuted sums.

3. Reporting a suspected breach of Planning Control

How should a suspected breach of planning control be reported?

- 3.1 We publish a form on the Council's website that asks for all the information we need to allow us to investigate a suspected breach of planning control. We have also included a copy of this form in this document (see Appendix A), which can also be used to report a suspected breach of planning control. It may delay our investigation if the form is incomplete or missing some information t.
- 3.2 To report a suspected breach of planning control the form should be completed and emailed to dev.control@bolsover.gov.uk or posted to the Planning Department at Bolsover District Council, The Arc, High Street, Clowne S43 3JY.
- 3.3 Once we have received a completed form we will send an acknowledgement. At the conclusion of our investigations we will let the person who has reported a suspected breach know what action we have taken. We will not normally provide any other updates on our investigations but we will aim to work to the timescales we have set out in Section 2 of this document for high, medium and low priority cases.
- 3.4 We do not normally need photographs to be submitted with a completed form because we cannot use these photographs as evidence. However, we do need the address of the person reporting a suspected breach of planning control and

that person's contact details. We do not accept anonymous complaints and we may need to discuss the case with the person who has reported it as part of our investigations.

How will we use personal data included on a completed form?

- 3.5 We will only share the address and private contact details of a person reporting a suspected breach of planning control with officers dealing with the case, unless the case involves a matter that cannot be dealt with by planning enforcement.
- 3.6 If a case should be dealt with by another department in the Council, we will share the details of the case with relevant officers in that department so they can take appropriate action. However, the Council will not share personal contact details with any external third parties without that person's consent.
- 3.7 We do not publish your personal contact details and we treat these details in confidence because we recognise many people will not have the confidence to report a suspected breach of planning control if their identity were to be made public.
- 3.8 For these reasons, the Council would not normally provide information about the details of a person who has reported a suspected breach of planning control if we receive a request for this information made under the freedom of information act or the environmental information regulations.
- 3.9 However, we may have to share your personal details with the police or the courts if, in very exceptional circumstances, the suspected breach of planning control actually amounted to a criminal offence subject to prosecution.

What types of complaints cannot be dealt with by planning enforcement?

- 3.10 Before reporting a suspected breach of planning control, it is important to check that the matter is for the Council's Planning Department to deal with so we can avoid any unnecessary work or delay in taking the most appropriate action. The most common issues that are incorrectly reported to the Council's Planning Department are listed below:

Approved development or works

- 3.11 In some cases, we receive reports of suspected breaches of planning control about development or works that have been granted planning permission. We publish details of most planning applications on the Council's website including details of approved plans, planning conditions and planning obligations.
- 3.12 If it is found that works or a development has already got consent and is being carried out in accordance with the permission, then we will not take planning enforcement action. However, a complaint can still be made to the Council's Complaints Department about the way we dealt with an application for planning permission but not about the decision itself.

Boundary disputes

- 3.13 The planning department cannot deal with boundary disputes. These types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter. We may be able to provide extracts from plans or details of application site boundaries on request but these details will also normally be available on the Council's website.

Damage to private property

- 3.14 Similar to the above, the planning department cannot deal with reports about damage to private property. These types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter or the matter may need to be reported to the police.

Dangerous Structures

- 3.15 The Planning Department cannot deal with reports of dangerous structures, which should be reported to Derbyshire Building Control Partnership who can be contacted on 0333 880 2000 or by email at info@dbcp.co.uk

Empty Properties

- 3.16 The Planning Department cannot deal with empty properties, which should normally be reported to the Council's Empty Property Officer by telephoning 01246 242424.

Fly-tipping

- 3.17 The planning department cannot deal with reports of fly-tipping, which should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Fracking

- 3.18 All issues related to fracking should be discussed with Derbyshire County Council who can be contacted on 01629 580000.

Highways Land

- 3.19 The planning department cannot deal with complaints about any structures, advertisements, A-boards or any other operations, such as cars sales for example, that have taken place on land within the boundaries of a highway, which will normally include grass verges, footpaths and pavements and other highway infrastructure like barriers, lampposts and bridges, as well as the road itself.
- 3.20 Complaints about activities taking place on highways land that is connected to the local road network should be reported to the Highways Department at Derbyshire County Council by telephoning 01629 580000. Complaints about activities taking place on highways land connected to the strategic road network should be

reported to Highways England by telephoning 0300 123 5000.

Invasive non-native plants and harmful weeds

- 3.21 Unless a breach of a planning condition has been identified, complaints about non-native invasive species or harmful weeds cannot be dealt with by the Planning Department and should be reported to the Council's Streetscene Department on 01246 242424 if the land belongs to the Council. In all other cases, complaints about non-native invasive species or harmful weeds should be referred to the Environment Agency and more information can be found on their website at www.gov.uk/government/organisations/environment-agency

Light Pollution

- 3.22 Unless a breach of a planning condition has been identified, complaints about light pollution cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Noise Nuisance

- 3.23 Unless a breach of a planning condition has been identified, complaints about noise nuisance cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Odour Nuisance

- 3.24 Unless a breach of a planning condition has been identified, complaints about odour nuisance cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Parking Restrictions & On-Street Parking

- 3.25 Derbyshire County Council Civil Parking Enforcement (CPE) are responsible for the enforcement of parking restrictions in Derbyshire. Civil enforcement officers (CEOs) have replaced traditional traffic wardens and enforce a range of restrictions. Further information can be found on Derbyshire County Council's Website via the following link:

https://www.derbyshire.gov.uk/transport_roads/roads_traffic/parking/parking_enforcement/default.asp

- 3.26 CEOs are responsible for enforcing:
- limited waiting bays
 - double/single yellow lines
 - on street pay and display bays
 - residents' parking zones
 - Blue Badge bays
 - loading bays

- bus stops
- taxi bays
- school keep clears
- clearways
- dropped kerb access (also police)
- double parking (also police)
- pedestrian crossings (also police)
- car parks (with orders).

3.27 The police are responsible for enforcing:

- double white lines
- obstruction – for example, pavements with no parking restrictions
- dangerous parking where there are no restrictions in place, for example, on bends, brows of hills and junctions
- dropped kerb access (also CEOs)
- double parking (also CEOs)
- one-way traffic
- box junctions
- access only
- white-hatched areas
- pedestrian crossings (also CEOs).

3.28 In summary, problems about contravention of parking restrictions should normally be reported to Derbyshire County Council on 01629 533190 or email: contactcentre@derbyshire.gov.uk

3.29 For police related offences, please call 101 or 999 in an emergency.

Quarry Sites and active Mineral Extraction

3.30 All issues related to quarrying or mineral extraction should be discussed with Derbyshire County Council who can be contacted on 01629 580000.

Trespass

3.31 Reports about private individuals trespassing cannot be dealt with by the planning department and these types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter or reporting the matter to the police.

Vermin

3.32 The planning department cannot deal with reports of vermin or other types of infestation, which should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Waste sites.

- 3.33 Any complaints about the operation of a waste transfer site including public amenity waste disposal sites and scrapyards should be directed to Derbyshire County Council who can be contacted on 01629 580000.

4. Investigating suspected breaches of Planning Control

How will we investigate suspected breaches of planning control?

- 4.1 Effective enforcement action relies on the Council having accurate information about a suspected breach of planning control. This means that the first part of our investigation is arranging a site visit. This can often involve contacting the owner of the land where the suspected breach of planning control has taken place and/or the person that appears to be responsible for the breach to arrange a site meeting.
- 4.2 We prefer to organise a site meeting because this gives us the opportunity to discuss the case with the people involved and it will help us with our investigations if we have a better understanding of what has happened and why. In addition, a breach of planning control may be the result of a genuine mistake where, once the breach is identified, the person responsible may take immediate action to remedy it.
- 4.3 However, we will not delay starting our investigations if we are not able to arrange a site meeting or are refused entry to a site. If we are unable to arrange a site visit or are refused entry to the site then we will consider using our rights of entry. If we use our rights of entry, we will inform anybody on site who we are and the purpose of our visit. Our officers will also be carrying their staff cards as proof of identity.

Rights of Entry

- 4.4 The Council can authorise named officers to enter land specifically for enforcement purposes (sections 196A, 196B and section 196C of the Town and Country Planning 1990 Act). This right of entry is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control. The Act specifies the purposes for which entry to land may be authorised (section 196A(1) of the 1990 Act), namely:
- to ascertain whether there is or has been any breach of planning control on the land or any other land;
 - to determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
 - to determine how any such power should be exercised; and
 - to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any

other land.

- 4.5 The phrase “or any other land” means that, if necessary, neighboring land can be entered, whether or not it is in the same ownership or is being occupied by the person whose land is being investigated.
- 4.6 Section 196A of the 1990 Act state there must be reasonable grounds for entering the land for the purpose in question. This is interpreted to mean that entering the land is the logical means of obtaining the information required by the local planning authority when investigating a suspected breach of planning control. It is also an offence to willfully obstruct an authorised person acting in exercise of a right of entry under section 196C(2) of the 1990 Act.
- 4.7 Where there are reasonable grounds for entering land for enforcement purposes, and a right of entry is refused or is reasonably likely to be refused, or there is a need for urgency, then it is possible for a Justice of the Peace to issue a warrant to allow entry (section 196B(1) of the 1990 Act). However, entry to a building used as a dwelling house cannot be demanded as of right unless 24 hours advanced notice of intended entry has been given to the occupier.

Assessing the Evidence

- 4.8 In many cases, we can collect enough relevant information from our historic records of the site, as well as information collected on a site visit and other publicly available information to be able to properly assess whether an actual breach of planning control has taken place and what further action we need to take.
- 4.9 On some occasions we might need to obtain further information to make an assessment of whether there are any legal grounds that mean we cannot take formal enforcement action. In these circumstances, a planning contravention notice may be issued under section 171C of the 1990 Act and can be used to do the following:
- allow officers to request any information they need for enforcement purposes about any operations being carried out; any use of; or any activities being carried out on the land; and
 - invite its recipient to provide officers with constructive suggestions about how any suspected breach of planning control may be remedied satisfactorily.
- 4.10 One proportionate way to tackle suspected breaches of planning control is to negotiate an acceptable solution with interested parties. Issuing a planning contravention notice can be one way to achieve this, allowing officers to collect the information they need to help progress a case. However, it is an offence not to return a planning contravention notice within the time specified for its return and it is an offence for a recipient to provide false information when completing a planning contravention notice.

When might the Council be unable to take formal enforcement action?

- 4.11 One reason the Council may not be able to take formal enforcement action is when an investigation of a suspected breach of planning control reveals that a breach of planning control has not actually taken place.
- 4.12 For example, we will not take any further action if we find that development or works taking place or completed on a site already has the appropriate planning permission and is being carried out or has been completed in accordance with the permission
- 4.13 We will also not take any further action if we find that development or works taking place or completed on a site benefits from 'deemed consent' because it is permitted development under the Town and Country (General Permitted Development)(England) Order 2015, as amended, or when we find that a sign or advertisement has 'deemed consent' under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- 4.14 In addition, the 1990 Act and Town and Country Planning (Use Classes) Order 1987 (as amended) set out various activities and operations that cannot be considered to be development and does not require planning permission as a matter of law. We will not take any further action if we find that a suspected breach of planning control falls within these statutory provisions and is not development that requires planning permission.

Time limits for enforcement

- 4.15 In most cases, development becomes immune from enforcement if no action is taken:
- within 4 years of substantial completion for a breach of planning control consisting of operational development;
 - within 4 years for an unauthorised change of use to a single dwellinghouse;
 - within 10 years for any other breach of planning control (essentially other changes of use or breaches).
- 4.16 These time limits are set out in section 171B of the 1990 Act and we will not normally take any further action if we find out that an unauthorised development is immune from enforcement because we are too late to take action.
- 4.17 However, these statutory time limits do not prevent enforcement action after the relevant dates where there has been deliberate concealment of a breach of planning control.
- 4.18 Deliberate concealment may be considered to have occurred when deliberate attempts have been made to hide or disguise a breach of planning control to prevent its discovery, or deliberately misleading statements or information have been provided to the Council to prevent a

breach of planning control being discovered.

- 4.19 In cases of deliberate concealment, officers may decide to proceed with formal enforcement action that would normally be considered 'out of time' or apply for a planning enforcement order to gain more time to consider whether formal enforcement action should be taken.

When might formal enforcement action not be appropriate?

- 4.20 Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of planning control may be the result of a genuine mistake where, once the breach is identified, the person responsible will take immediate action to remedy it.

- 4.21 We will generally not take further formal enforcement action when action is taken to remedy a breach of planning control within 3-6 months of that action being agreed. The amount of time needed to put things right will depend on what actions are required to remedy the identified breach of planning control, but officers will not normally agree to a period longer than 6 months unless there are exceptional circumstances.

- 4.22 In deciding, in each case, what is the most appropriate way forward, the Council should also usually avoid taking formal enforcement action where:

- there is a minor or technical breach of planning control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- the submission of a formal retrospective planning application is the appropriate way forward to regularise the situation, for example where planning conditions may need to be imposed to make an unauthorised development acceptable in planning terms.

- 4.23 In most cases, only a minor breach of planning control will fall within the above criteria and these types of breaches will normally be low priority cases. However, if the Council decides not to take further action when it has completed its investigation of a low priority case this should not be taken as condoning a willful breach of planning law.

- 4.24 A decision to take no further action will be a proportionate response when the retention of an unauthorised development or works will not result in any demonstrable harm. Nonetheless, it is in the landowner's own best interests to regularise unauthorised development by applying retrospectively for the relevant planning permission or consent even when the Council decides not to take any further action.

When do we invite retrospective planning applications?

- 4.25 We will always invite the submission of a retrospective application for low priority cases and other minor breaches of planning control because it is likely these types of applications will be granted permission. The right planning permission will normally be needed by the landowner when it comes to selling the property to reduce any conveyancing and legal issues.
- 4.26 We will also normally invite a retrospective planning application for some medium priority cases where planning conditions could be used to make the unauthorised development or works acceptable in planning terms and the person responsible for the breach of planning control has expressed a willingness to submit a retrospective application within 3 months of the breach being identified.
- 4.27 However, it is highly unlikely that we will invite an application if the breach of planning control we are investigating is significantly contrary to planning policies and/or has resulted in or continues to significantly detract from the living conditions of local residents or the character and appearance of the local area in a way that cannot be dealt with satisfactorily by planning conditions or amendments to the development.
- 4.28 In these circumstances, we will consider taking further action and this will normally involve commencing formal enforcement action to tackle some medium priority cases and all high priority cases.

5. Formal Enforcement Action

When will we start formal enforcement action?

- 5.1 Formal enforcement action should only be taken where the Council is satisfied that there has been a breach of planning control and it is expedient to take enforcement action, taking into account the provisions of the development plan and any other material considerations. Formal enforcement action should only be taken as a last resort.
- 5.2 Therefore, we will normally only start formal enforcement proceedings when we have thoroughly investigated the suspected breach of planning control and explored and exhausted every opportunity to agree a timely resolution to a breach of planning control with the person responsible for that breach and/or the landowner if they are not the person who has carried out the breach of planning control.
- 5.3 However, we cannot defer enforcement action indefinitely and some breaches of planning control require immediate action. So, we will consider taking formal enforcement action without giving further notice when we are tackling the most serious breaches of planning control, when the time limits for enforcement are close to running out, when we cannot negotiate an acceptable solution or when the actions needed to remedy a breach of planning control have not been carried out in an agreed timescale.

- 5.4 It is therefore important that any person contacted by the Council about a suspected breach of planning control that they are responsible for, or that has been carried out on their land gets in contact with officers to discuss the case as a matter of urgency. It is also important that if a way to put things right has been agreed with officers to prevent further enforcement action being taken by the Council then it is important the actions needed to put things right are completed within the agreed timescale.

What types of formal enforcement action can the Council take?

- 5.5 There is a range of ways of tackling breaches of planning control available to the Council through formal enforcement action. In each case officers not only have to determine which of the options would be the most effective way of dealing with the breach but also which would be the most proportionate way of securing a resolution.
- 5.6 In these terms, in most medium priority cases and in some high priority cases, issuing an enforcement notice will normally be the right approach for officers to take when it appears to them that there has been a breach of planning control and it is expedient to take formal enforcement action when taking into account the provisions of the development plan and any other material considerations (including the guidance in this document).

Enforcement Notices

- 5.7 An enforcement notice should enable every person who receives a copy to know:
- exactly what, in the local planning authority's view, constitutes the breach of planning control; and
 - what steps the local planning authority require to be taken, or what activities are required to cease to remedy the breach of planning control.
- 5.8 There is a right of appeal against an enforcement notice, however it is an offence not to comply with an enforcement notice once the period for compliance has lapsed.
- 5.9 Therefore, it is important that the recipient of an enforcement notice takes immediate action to lodge an appeal against the notice if they think there are good grounds to do so or take immediate steps to comply with the notice.

Stop Notices

- 5.10 A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in a related enforcement notice, ahead of the deadline for compliance in that enforcement notice. Therefore, a stop notice might be issued shortly after an enforcement notice because it is important to prevent a development from continuing before the enforcement notice comes into effect.

- 5.11 There are very strict limitations on the use of a stop notice so it is unlikely officers will consider issuing a stop notice unless there are very serious risks of irreparable harm from on-going development. For example, a stop notice may be considered where an unauthorised development involves the demolition of an unlisted building in a designated Conservation Area and an agreement to stop demolition with immediate effect has not been reached.

Temporary Stop Notices

- 5.12 A temporary stop notice requires that an activity which is a breach of planning control should stop immediately. A temporary stop notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening it may be prosecuted for an offence.
- 5.13 The Council does not need to have served an enforcement notice before it issues a temporary stop notice and officers may consider issuing a temporary stop notices in some high and medium priority cases when it is essential to take immediate action to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.
- 5.14 A temporary stop notice expires after 28 days, so officers will consider what further action is required within this period if an alternative way of dealing with the breach which would overcome the objections to it in an environmentally and legally acceptable way cannot be agreed with the recipient of the temporary stop notice.

Breach of Condition Notice

- 5.15 A breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of condition. Officers will consider issuing a breach of condition in addition to an enforcement notice, as an alternative to a stop notice, where officers consider it is expedient to stop the breach of conditions quickly and before any appeal against the enforcement notice is determined.
- 5.16 A breach of condition notice is therefore most likely to be used in some high or medium priority cases when immediate action is required to stop a continuing breach of conditions in the interests of safeguarding amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. There is no right of appeal to the Planning Inspectorate against a breach of condition notice.

Injunction

- 5.17 The Council can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control. However, starting proceedings for an injunction is one of the most serious types of enforcement action that the Council can take because if a person fails to comply with an injunction (once it has been granted) they may be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a

significant change of circumstances since the order was made.

- 5.18 Therefore, officers will only consider applying for an injunction if there have been persistent breaches of planning control such as failure to comply with the requirements of an enforcement notice over a long period and/or other enforcement options have been, or would be, ineffective in the event of a serious breach of planning control that would cause substantial and/or immediate harm to the local area.

Prosecution

- 5.19 When officers are dealing with high priority cases, many of the breaches of planning control may constitute a criminal offence subject to prosecution including unauthorised works to protected trees, removal of important hedgerows, unauthorised works to listed buildings and where hazardous substances are involved.
- 5.20 Officers will take further legal advice in these cases with a view to pursuing a prosecution in the event of a serious breach of planning control that has resulted in substantial harm to the local area. It is therefore important that a person that is contacted by officers about a high priority case makes every effort to stop any unauthorised works or activities on site immediately.
- 5.21 Officers will also take further legal advice with a view to pursuing a prosecution in the event of non-compliance with the requirements of an enforcement notice, breach of conditions notice, stop notice, temporary stop notice, listed building notice, community protection order or a section 215 notice.

Listed Building Enforcement Notice

- 5.22 Although broadly similar, there are a number of important differences between planning enforcement notices and listed building enforcement notices including the fact that there are no time-limits for issuing listed building enforcement notices.
- 5.23 Officers will consider issuing a listed building enforcement notice in medium and high priority cases where works have been carried out without the necessary listed building consent, or a condition attached to that consent has not been complied when such works materially detract from the historic or architectural significance of the building and there is no agreement to put those works right in any other way.

Community Protection Notices

- 5.24 Officers have the power to issue a Community Protection Notice under the Anti-Social Behaviour, Crime and Policing Act 2014 and these Notices can be used to tackle a wide range of issues including:
- untidy land / buildings;
 - unauthorised use of land; and

- unauthorised buildings / structures.
- 5.25 Where any of the above problems are causing ongoing detrimental effects to the living conditions of the local community, a Community Protection Notice can contain reasonable requirements:
- to stop doing specified things;
 - to do specified things; or,
 - to take reasonable steps to achieve specified results.
- 5.26 Officers will consider issuing a Community Protection Notice if an earlier written warning that a Notice may be issued has been ignored and may be used as an alternative to a section 215 Notice.

Section 215 Notices (Requiring proper maintenance of land)

- 5.27 Section 215 of the 1990 Act provides the Council with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears to officers that the public amenity of part of the District is being adversely affected by the condition of neighbouring land and buildings, they may consider serving a section 215 notice on the owner requiring that the situation be remedied.
- 5.28 These notices will set out the steps that need to be taken, and the time within which they must be carried out. The Council also have powers under s219 of the 1990 Act to undertake the clean-up works itself and to recover the costs from the landowner.

Other default powers

- 5.29 The Council can prosecute for a failure to comply with an enforcement notice but it can also consider using its default powers under s.178 of the 1990 Act to enter enforcement notice land and carry out the requirements of the notice itself.
- 5.30 It is an offence to willfully obstruct anyone who is exercising those powers on the Council's behalf and Council can recover from the person who is then the owner of the land any expenses reasonably incurred by them in undertaking this work.
- 5.31 Officers will only consider using these default powers when all other methods to persuade the owner or occupier of land to carry out any steps required by an enforcement notice have failed.

Advertisements and fly-posting

- 5.32 The Council will not take action against any adverts or fly-postings on the local road network, which would normally be dealt with by the local highway authority (Derbyshire County Council). Highways England would be expected to deal with adverts and fly-posting on the strategic road network.

5.33 In other cases, where signs, adverts or fly-posting are unauthorised and is damaging the character and appearance of the local area, officers will normally serve advance written notice to anyone who can be identified as the person responsible, that:

- in the Council's opinion the advert or sign is displayed illegally; and
- the Council intends to remove it after the expiry of a period specified in the notice.

Officers can then remove the sign or adverts 2 clear days after the notice was served.

5.34 However, the Council need not give any notice to remove fly-posters where a placard or poster does not give the address of the person displaying it and officers do not know that address and are unable to ascertain the relevant address after making reasonable enquiries.

How will human rights be taken into account in planning enforcement?

5.35 The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action should be taken, officers, where relevant, will have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

5.36 When considering commencing formal enforcement action, officers must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped within the time limits set for compliance or by action to be taken through the courts in the wider public interest. In compliance with Article 6 of the Human Rights Act 1998, a recipient of a formal enforcement notice will also have the right of appeal or the right to a fair trial in the event of non-compliance with a formal enforcement notice or on receipt of a summons.

How will the public sector equality duty be taken into account in planning enforcement?

5.37 In deciding whether enforcement action should be taken, officers, when the relevant information is publically available or has been made available to officers, will have regard to the potential impact on any person with a protected characteristic or group of persons that share a protected characteristic that are either likely to be affected by the proposed action or likely to be affected by a breach of planning control.

5.38 Officers will also make any reasonable adjustments that have been requested and in particular, will make the process of planning enforcement as accessible as possible by ensuring all written communication is in plain English, can be produced in bigger text or different languages if appropriate, and where

necessary, by visiting people at their home to discuss any breach of planning control that directly affects their living conditions or any action that will have a material effect on their quality of life.

Unauthorised Encampments

- 5.39 An absence of authorised sites does not mean that the Council cannot take enforcement action against unauthorised encampments. There are also extensive powers available to help the Council deal with illegal and unauthorised sites.
- 5.40 However, officers will only proceed with action against unauthorised encampments following liaison with the Council's Corporate Enforcement Officer Group, the equalities officer and other interested parties including the police, particularly because of the need to balance the potential of taking urgent action to remedy a serious breach of planning control whilst dealing with sensitive issues around human rights and compliance with public sector equality policy.

6. Implementation and Monitoring

Who will be responsible for implementing the Local Enforcement Plan?

- 6.1 The Joint Head of Planning, the Planning Manager and the Principal Enforcement Officer will be responsible for implementing the plan and ensuring the guidelines in this document are followed by officers.
- 6.2 The Principal Enforcement Officer, Enforcement Officers and Planning Officers, where appropriate, will be responsible for a pro-active approach to reporting suspected breaches of planning control, investigating suspected breaches of planning control, and monitoring large housing sites.
- 6.3 The Joint Head of Planning, the Planning Manager and the Principal Enforcement Officer will assist, where appropriate, with deciding what action should be taken when an investigation into a suspected breach of planning control has been completed, and the Council's solicitors will be consulted before any formal enforcement action is commenced.
- 6.4 The Council's solicitors will also be consulted before any legal action is commenced and the Council's solicitors will assist with any legal proceedings including instructing a QC to represent the Council in any court proceedings.
- 6.5 The Planning Manager and/or the Principal Enforcement Officer will normally be expected to prepare a statement of case and/or represent the Council at an informal hearing or public enquiry in the event of an appeal to the Planning Inspectorate where an enforcement notice has been served in particularly complex or high profile enforcement cases
- 6.6 The Planning Manager and the Principal Enforcement Officer will assist the Enforcement Officer or Planning Officers, where appropriate, to prepare a statement of case in other more straightforward cases.

- 6.7 The Council's Corporate Enforcement Officer Group will also have a role to play in planning enforcement if a case requires joint working across Council departments. Unauthorised encampments will therefore always be referred to this Group before any decisions are made on how to progress these cases.

How will District Councilors be involved?

- 6.8 Ward Councilors will normally be informed before officers take formal action in respects of any suspected breach of planning control in their local area where the case is sensitive or contentious.
- 6.9 On a quarterly basis, District Councilors will also receive a list of suspected breaches of planning control that have been reported to the Council or that have been identified by officers over the last three months so they have the opportunity to discuss these cases or check progress with officers if necessary. A half yearly report will also be produced, giving reference to performance standards associated with the varying case priority levels (see section 6.13).

What service standards will be monitored?

- 6.10 The nature of planning enforcement means that it is not possible to target a timescale in which to close a case. For example, if an enforcement notice is served, officers have no control over how long the Planning Inspectorate will take to deal with any subsequent appeal against that enforcement notice and cannot guarantee the outcome of that appeal.
- 6.11 It is also not possible for officers to meaningfully control how many complaints the Planning Department receive about suspected breaches of planning control or how many breaches occur within the District at any particular time, although it is hoped this document will help reduce both.
- 6.12 However, as previously highlighted, this document sets out the following service standards that officers consider are specific, measurable, achievable and realistic:
- The site of a high priority case will be visited in the same day the suspected breach of planning control has been clearly identified. Wherever possible, a decision on what further action is required will be taken within 24 hours of that site visit. Investigations will not take place over the weekends or Bank Holidays
 - A site visit will be undertaken within two weeks of identifying a suspected breach of planning control that is likely to be a medium priority case. A decision on what further action to take will be made within four weeks of that site visit.
 - A site visit will be undertaken within six weeks of identifying a suspected breach of planning control that is likely to be a low priority case. A decision on what further action to take will be made within six weeks of that site visit.

- 6.13 We will monitor our performance against these standards and publish the results on a half-yearly basis. These results will be assessed to see whether this Plan is working or needs to be reviewed. Achieving a culture of compliance would be one key measure of whether the Plan has been successful.
- 6.14 The Local Enforcement Plan will also be reviewed if there are any substantial changes to relevant legislation, national policy or national guidance or within three years after publication depending on whichever is the sooner.
- 6.15 In addition, planning enforcement officers will attend regular training events to ensure that their continuing professional development is appropriate and that planning enforcement is carried out across the District with regard to the most up-to date guidance and in accordance with best practice.

Appendix A:

Planning Enforcement Enquiry Form

Please note that Bolsover District Council does not normally accept anonymous complaints. Therefore, all fields of the Enquiry Form should be completed. If insufficient details are provided the information will be placed on file and the matter will not be investigated.

Your details are kept confidential at all times and are protected by the Data Protection Act 1998. This information is required so that we can contact you if we need further information and to let you know what progress we are making with your enquiry. We will not use your personal information for any other purpose.

Once you have completed the form please send it to us via email; you can also print off the form and post it to us or put it in an envelope addressed to 'Planning Department' and hand it in at one of our contact centres.

Contact details:

Planning Enforcement
Bolsover District Council
The Arc
High Street
Clowne
Chesterfield
Derbyshire
S43 4JY

Telephone: 01246 242424
E-mail: dev.control@bolsover.gov.uk

Your details:

Name:

Address:

Postcode:

Telephone Number (Day):

Telephone Number (Mobile):

E-mail address:

Details of the alleged breach

Please give full details of the development you are reporting. The more information you provide at this stage the sooner we can investigate and take any necessary action.

Address/location of site:

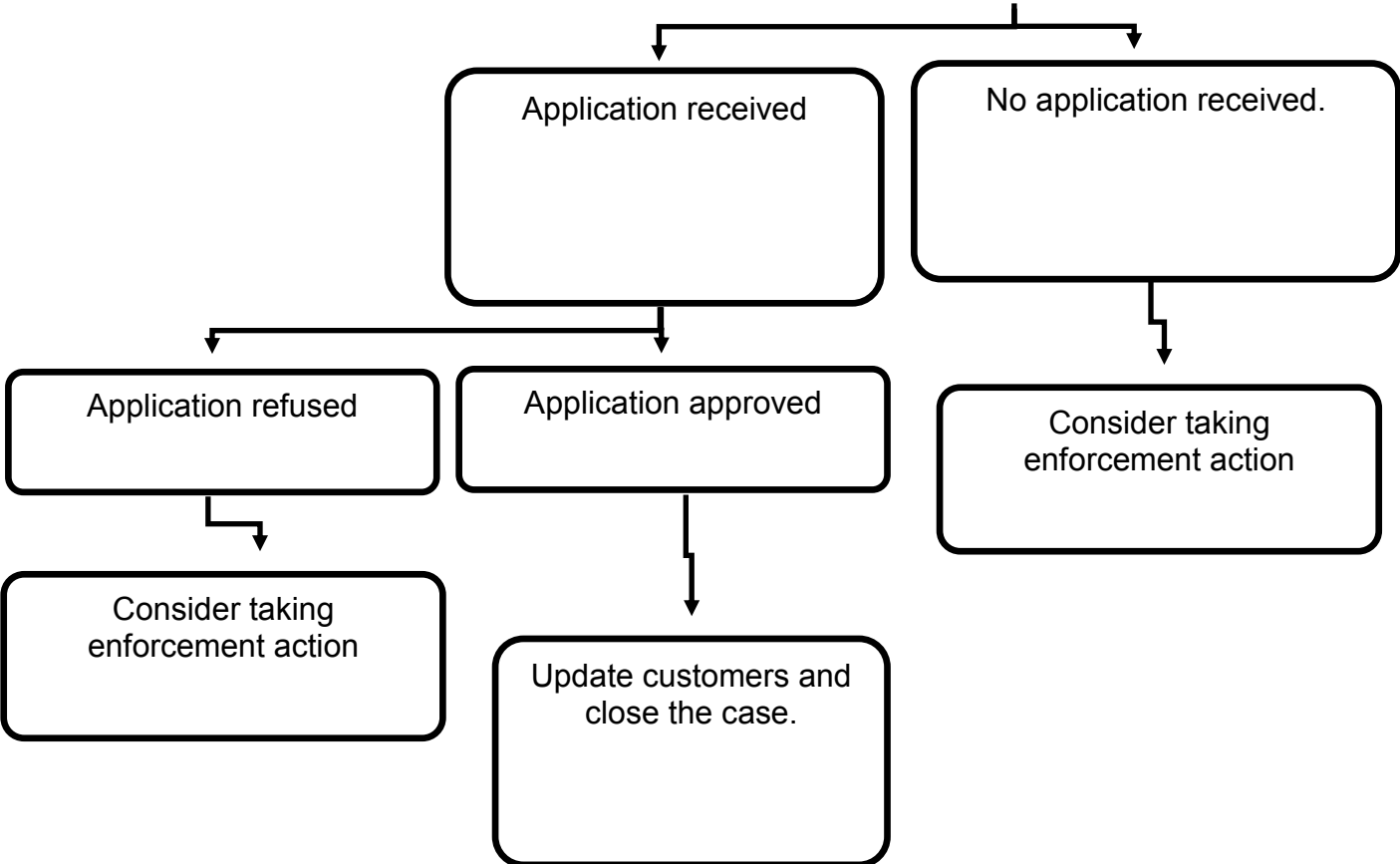
Name of the owner or occupier (if known) or any other useful contact:

Please describe in as much detail as possible the nature of the development being carried out, including approximate dimensions, dates and times of activity and when development began.

Please explain what problem this is causing you.

Using your personal information

Your personal information will be used to progress your enquiry and to keep you informed. It may be shared with other council departments as necessary. It will not be shared with any external third parties without your consent unless required to do so by law. For more information on how we use personal data please see the Planning Privacy Statement on our website www.bolsover.gov.uk.



COMMITTEE UPDATE SHEET

SUPPLEMENTARY REPORT OF THE PLANNING MANAGER

This sheet is to be read in conjunction with the main report.

Agenda Item No: 6 Planning Applications to be determined

Planning Site Visits held on 8 March 2019 commencing at 10:00hours.

PRESENT:-

Members: Councillors PM Bowmer, J Clifton, Pat Cooper, Paul Cooper, T Munro (Chair), B Murray-Carr, P Smith, D Watson and J Wilson.

Officer: Chris Fridlington

APOLOGIES

Apologies were received from Councillors T Alexander, D McGregor, K Reid, S Peake and R Turner (Vice Chair),

SITES VISITED

1) Greenacres, Scarcliffe (18/00411/OUT)

2) Jacques Brickyard, South Normanton (18/00413/FUL)

The meeting concluded at 11:30 hours

Updates:

Agenda Item 6.1: Greenacres, Scarcliffe (18/00411/OUT)

Following the publication of the officer report, the applicant has made further representations based on information presented in the officer report, which are attached as Appendix A.

Officer Report

The applicant comments on various aspects of the officer report and refers back to an appeal decision relating to Glapwell Nurseries.

The relevance of the Glapwell Nurseries appeal decision is set out in some detail in the officer report and it is considered that the facts are different in each case. Therefore, the current application will need to be dealt with on its individual planning merits. Similarly, other cases referred to by the applicant will have been dealt with on their individual planning merits.

However, the applicant has, perhaps inadvertently, misrepresented what was said by the Inspector in respects of classification of brownfield land at Glapwell Nurseries; the application site is not previously developed land in this case. Similarly, whether or not Scarcliffe is a 'sustainable' or 'accessible' location (as per the appeal decision on Glapwell Nurseries) is discussed in the report but 'car dependency' is not suggested as a reason for refusal of this application in the officer report.

In addition, we would not normally request financial contributions from proposals for 12 dwellings because they fall below the policy threshold for planning obligations, which is a point the applicant has now accepted. However, the current condition of the buildings and the desirability of tidying up this land by granting permission for this application can be taken into account in the determination of the application.

In the officer report, it was considered that the benefits of removing buildings would not offset or outweigh the visual impact of the new housing or amount to the special circumstances necessary to justify new market housing outside of the settlement framework.

Conservation Area

The officer report sets out how and why the Heritage Conservation Manager considers the current proposals would result in less than substantial harm to the setting of the Conservation Area. If members agree there would be less than substantial harm then in accordance with national policies; the public benefits of the proposal should be weighed by the Planning Committee against this harm in the determination of this application.

Design Matters

The housing proposals would be unneighbourly even if the adjacent properties were provided with the additional land and this point is reflected in both the officer report and suggested reasons for refusal of this application. Officers consider the only way to deal with this particular objection would be to limit the height of the new housing to single storey because of the restrained nature of the application site.

However, the application seeks detailed approval of external appearance but the submitted plans are not to a recognised scale so it is not possible to approve these plans in any event.

Public Objections

The applicant comments on various third party representations but the matters raised in representations on this application have already been dealt with in the officer report and it is not considered necessary to comment further on these points.

Conclusions

It is therefore concluded that the applicant's representations do not raise any points that alter the original officer recommendation of refusal. Officers have also sought to work positively and proactively with the applicant despite clearly stating concerns about the principle and potential impact of the development from the outset. It is these concerns that now form the

principal reasons for refusal of this application as set out in the original officer report and immediately below:

RECOMMENDATION

The application be REFUSED for the following reasons:

1. The site lies outside the settlement framework as defined in the saved policies of the Bolsover District Local Plan (2000). Policies ENV3 and HOU9 apply which do not normally allow residential development except in special circumstances such as where dwellings are required for agricultural workers or where it results in a significant improvement to the rural environment. The proposal does not meet these criteria and the application is contrary to policies ENV3 and HOU9. The proposal is also contrary to the publication Local Plan which aims to foster sustainable development and it does not support the allocation of this site for residential development as part of the planned delivery of the plan's housing target for the period up to 2033. As a result, it is considered that the proposal would be contrary to the Framework also given its emphasis on a plan-led system. Insufficient other material considerations exist to offset this conflict and approval would therefore be an unjustified departure from the development plan.
2. The proposed development would not form a logical extension to the settlement of Scarcliffe and would be poorly related to the existing pattern of development resulting in an encroachment into the countryside which would have a detrimental urbanising effect on the appearance and character of the landscape contrary to saved policies ENV 3 and GEN 2 of the Bolsover District Local Plan and also guidance contained within the Framework which advises that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
3. The proposed development would result in a permanent urbanising alien form of development which would be visually prominent and would alter the current plan form of the village. It would introduce urbanising development in views to and from the conservation area and would have a less than substantial harm on heritage assets with no significant public benefit. Development would be contrary to saved policy CON4 of the Bolsover District Local Plan and paragraph 196 of the Framework.
4. In reserving layout for future consideration it cannot be adequately demonstrated that the proposed development can achieve general compliance with the Council's Supplementary Planning Document Successful Places A Guide to Sustainable Housing Layout and Design. The proposed development as shown on drawing number 1707-AA111 REV A would not achieve general compliance with the guidance contained within the Council's design document in respect of space around buildings which would result in overlooking between 1,2 and 3 and 7-15 Main Street. As submitted the proposal would not meet the requirements of policy GEN 2 of the Bolsover District Local Plan.

Agenda Item 6.2: Jacques Brickyard, South Normanton (18/00413/FUL)

Since the publication of the officer report, we now have a consultation response from the Council's Senior Valuer received 06/03/19 regarding the viability of the scheme.

He advises that the development costs and land value stated appear to be reasonable. The predicted sales returns stated for bungalows and houses also appear reasonable.

However he notes that properties are already being marketed on Rightmove for more than the asking prices set out in the submitted viability appraisal and, in his view, for new build property there is not usually much room for negotiation and the asking price is normally the selling price. Hence he advises that profitability is likely to increase to in excess of 10% for the bungalow only scheme.

In response the Applicant says that they have put the prices higher on Rightmove to ensure that there is negotiation room and that all buyers attempt to bid on price or want extras such as carpets, landscaping, fittings, appliances etc.

Planning Officer Comment:

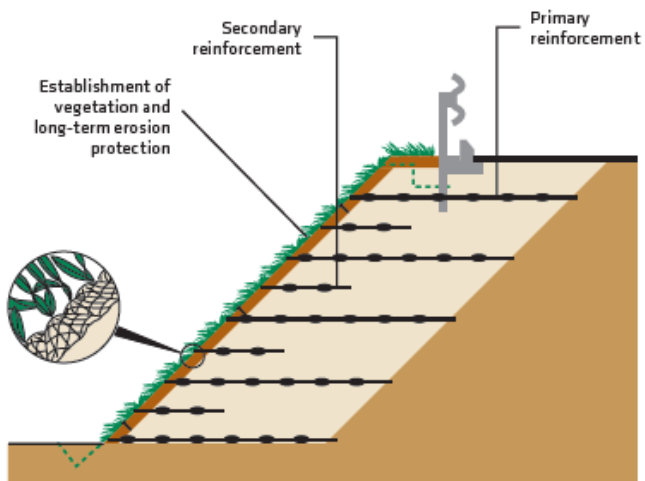
The viability of the development is low whatever scheme is implemented. Planning Practice Guidance accepts that for schemes to be worthwhile a minimum profit of 15-20% is reasonable.

The viability appraisal does not show categorically that the scheme cannot stand to provide housing as oppose to bungalows to Water Lane frontage because no threshold level for the scheme to proceed has been set. Rather it shows that the scheme will be a bit more profitable if frontage bungalows are allowed (by about 1 or 2%).

The Embankment

Clarification has been sought on the means of retaining the steep embankment to step down ground levels at the north east corner of the site.

The developer proposes the use of a Tensartech Narturalgreen earth retaining system for slopes. The system is used for building soil structures with a slope face up to 45°. The system consists of Tensar geogrids, which reinforce the soil mass providing long-term structural stability. The stability of the structure is provided by the horizontal layers of geogrid within the reinforced soil mass. There is no rigid or formal face on the structure up to the recommended maximum angle. An illustrative diagram of this system is shown overleaf.



A composite erosion control mat at the surface helps establish and maintain a vegetative cover.

The Flying Buttresses

A further issue arising was around whether the buttresses to 109 Water Lane could be removed to help improve the appearance of the area. These are partly remaining walls of 107 Water Lane. A property which was once attached to No 109 but has been substantially demolished save for the 3 brick buttresses retained.

However, what remains of No 107 is outside the application site and presumably outside the ownership and control of the Applicant. The buttresses appear to have been retained for structural support since the owners of No 109 will have a "Right to Support". Hence it does not appear to be possible to resolve this issue through the current application.

Recommendation and Reasons for Approval

In light of the above information, officers consider that the original reasons to refuse this application have still not been addressed. However, given the finely balanced nature of the recommendation, if Committee Members are of the view that the development as now proposed would still deliver benefits and adequate improvements to the character of the area, sufficient to continue to outweigh the failure to provide 3 affordable houses and to account for a proportionate increase in junior school capacity then planning permission could be granted for the current application.

If members were minded to approve the application, officers would suggest the following conditions:

1. The development shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:-
 - 23/01/19 Proposed Site Sections 2505-015 Rev K

- 23/01/19 Proposed Site Sections 2505-037 Rev A
- 23/01/19 Site Layout Plan 2505-001 Rev AL
- Location Plan 2505-016
- House Types:- type 04 2505-005 B, type 07 2505-013 B, type 08 2505-017 A, type 15 Elevations 2505-032, 15 GF plan 2505-031, 2505-002 C.

3. Prior to the occupation of any of the dwellings hereby approved, the existing bus stop and shelter on the Water Lane site frontage shall have been relocated in accordance with the detail approved for planning permission 16/00510/FUL and Discharge of Condition Application 18/00412/DISCON.

4. (a). Implementation of Approved Remediation Scheme:

The ground remediation scheme approved to discharge condition 6A of planning permission 16/00510/FUL and Discharge of condition application 18/00262/DISCON **shall be carried out** in accordance with its terms prior to the commencement of development (other than works required to carry out remediation), unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

4 (b). Reporting of Unexpected Contamination:

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared which 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.

4 (c). Importation of soil:

In the event that it is proposed to import soil onto site in connection with the development, the proposed soil shall be sampled at source and analysed in a laboratory that is accredited under the MCERTS Chemical testing of Soil Scheme for all parameters requested (where this is available), the results of which shall be submitted to the LPA for consideration. Only the soil approved in writing by the LPA shall be used on site.

5. Notwithstanding the surface water drainage information submitted to discharge condition 8 of planning permission 16/00510/FUL (with application for Discharge of Condition 18/00262/DISCON), development on site must not continue until a

detailed model of surface water drainage has been submitted to, and approved in writing by, the Local Planning Authority, to show that the proposed system will not surcharge during the 1 in 1 year event, flood in the 1 in 30 year event or flood buildings or leave the site in the 100 year + climate change event. The approved scheme shall be implemented.

6. Ground level changes shall be implemented in accordance with the approved plans and sections: Proposed Site Sections 2505-015 Rev K; Proposed Site Sections 2505-037 Rev A and Sections Key Plan 2505-001 Rev AL.
7. The external building materials to be used in the development shall be as approved for 19/00024/DISCON (Ibstock Balmoral red brick and Marley Eternit Edgemere smooth grey tile) unless an alternative has first been approved in writing by the Local Planning Authority.
8. Prior to the first occupation of any new dwelling hereby permitted, the new access road junction shall be provided to Water Lane, laid out in accordance with application drawing 2505-001 rev L, drained and lit and constructed to an adoptable standard, having a 4.8m wide carriageway, 2 x 2m footways, 6m radii and visibility sightlines of 2.4m x 47m in each direction, the area forward of which shall be level, constructed as footway and not form any plot or other sub-division of the site.
9. Unless otherwise approved in writing by the local planning authority, the gradient of the access shall not exceed 1:30 for the first 10m into the site from the existing highway boundary and no more than 1:20 thereafter.
10. The new dwellings shall not be occupied until the proposed new estate streets, between each respective plot and the existing public highway, have been laid out in accordance with the approved application drawings and constructed to base course level and drained.
11. Prior to the occupation of any of the dwellings its associated external off-street parking spaces, access drives and turning areas shall have been provided in accordance with the revised layout drawing **Site Layout Plan 2505-001 Rev AL** (or any subsequently approved variation to it) and thereafter maintained for their intended use.
12. Visitor parking as shown on the approved layout drawing **2505-001 Rev AL** shall be provided before the 25th dwelling on site has been occupied, surfaced in a solid bound material and drained and lit and shall thereafter be maintained for its intended use in accordance with a scheme which beforehand has been submitted to and approved in writing by the local planning authority.
13. Prior to the first occupation of Plot 30, the new access to it from Water Lane shall be constructed and the driveway and parking laid out in accordance with the application drawing **2505-001 Rev AL**, surfaced in a solid bound material and maintained throughout the lifetime of the development free of any impediment to its designated use.

14. Prior to first occupation of any dwelling, the fronting footway on Water Lane shall be reinstated as footway with full face kerbs to adoptable standard.
15. Prior to occupation of any of the dwellings a detailed scheme of boundary treatments shall have been submitted to and approved in writing by the local planning authority. The scheme shall include the provision of metal railings to the front of plots 1 - 3 and to the side of plot 3, and shall include the provision of 1.8m close boarded fencing to the rear of plots 15-19 and 22-25 in the location shown on the revised site layout plan 2505-001 AL and at the level shown on drawings 2505-015 Rev K and 2505-037 A. The approved scheme shall be implemented before any related dwelling is occupied and thereafter the boundary treatments shall be retained as approved.
16. No building shall be occupied until a scheme of both hard and soft landscape works including a programme for implementation have been submitted to and approved in writing by the Local Planning Authority and the works shall be carried out as approved.
17. If within a period of five years from the date of the planting of any tree or shrub in accordance with the landscaping scheme, that tree or shrub may die, be removed, uprooted or become seriously damaged it shall be replaced by another of the same species during the first available planting season, unless a variation of the landscaping scheme is approved in writing with the Local Planning Authority.
18. Unless an alternative system has been approved in writing by the local planning authority, where proposed embankment gradients on site exceed 25% they shall be reinforced using the proposed Tensartech Narturalgreen earth retaining system for slopes. In addition a french drain shall be provided along the northern boundary of the site in accordance with the approved site layout plan *2505-001 AL which shall be designed to discharge to an appropriate outfall for surface water.*