

The Arc  
High Street  
Clowne  
Derbyshire  
S43 4JY

Date: 25<sup>th</sup> June 2019

Dear Sir or Madam

You are hereby summoned to attend a meeting of the Planning Committee of Bolsover District Council to be held in the Council Chamber, The Arc, Clowne, on Wednesday 3<sup>rd</sup> July 2019 at 1000 hours.

Register of Members' Interest - Members are reminded that a Member must within 28 days of becoming aware of any changes to their Disclosable Pecuniary Interests provide written notification to the Authority's Monitoring Officer.

You will find the contents of the agenda itemised on page 2.

Yours faithfully



Joint Head of Corporate Governance & Monitoring Officer  
To: Chairman and Members of the Planning Committee



We speak your language  
Polish **Mówimy Twoim językiem**  
Slovak **Rozprávame Vaším jazykom**  
Chinese **我们会说你的语言**

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**PLANNING COMMITTEE  
AGENDA**

**Wednesday 3<sup>rd</sup> July 2019 at 1000 hours  
in the Council Chamber, The Arc, Clowne**

<b>Item No.</b>		<b>Page No.(s)</b>
	<b>PART 1 – OPEN ITEMS</b>	
1.	<b><u>Apologies for Absence</u></b>	
2.	<b><u>Urgent Items of Business</u></b> 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.	<b><u>Declarations of Interest</u></b> 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 5 <sup>th</sup> June 2019	3 to 10
5.	(i) Notes of Site Visits held on 31 <sup>st</sup> May 2019	11
	(ii) Notes of Site Visits held on 28 <sup>th</sup> June 2019 <i>Will be provided in the supplementary report.</i>	To follow
6.	Applications to be determined under the Town & Country Planning Acts.	
	(i) 18/00481/REM - residential development of 219 dwellings on land off Blind Lane, Bolsover	12 to 27
	(ii) 19/00083/FUL - Residential development of 78 dwellings on Field adjacent To Pattison Street off Bolsover Road, Shuttlewood	28 to 52
	(iii) 19/00181/VAR - Variation of condition 4 (trading hours) of planning permission 17/00153/FUL to trade between 05:00 and 00:00, with deliveries and other service functions only between 06:30 and 23:00, 2 Tallys End, Barlborough, Chesterfield	53 to 66
7.	Appeals Decisions - January 2019 – June 2019	67 to 74

## 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 5<sup>th</sup> June 2019 at 1000 hours.

### PRESENT:-

Members:-

Councillor Tom Munro in the Chair

Councillors Allan Bailey, Anne Clarke, Nick Clarke, Jim Clifton, Chis Kane, Duncan McGregor, Elizabeth Smyth, Janet Tait, Graham Parkin and Jen Wilson.

Officers:-

Chris Fridlington (Planning Manager (Development Control)), Chris McKinney (Principal Planning Officer), Jenny Owen (Chartered Legal Executive) and Alison Bluff (Governance Officer).

### 0020. APOLOGIES

Apologies for absence were received on behalf of Councillors Derek Adams, Dan Salt, Natalie Hoy and Deborah Watson.

### 0021. URGENT ITEMS OF BUSINESS

There were no urgent items of business to consider.

### 0022. DECLARATIONS OF INTEREST

Member	Minute No.	Level of Interest
Councillor Graham Parkin	0025 (ii)	Significant Other Interest

### 0023. MINUTES – 10<sup>th</sup> APRIL 2019

Moved by Councillor Duncan McGregor and seconded by Councillor Steve Fritchley **RESOLVED** that the minutes of a meeting of the Planning Committee held on 10<sup>th</sup> April 2019 be approved as a true and correct record.

### 0024. SITE VISIT NOTES – 5<sup>th</sup> APRIL 2019

Moved by Councillor Tom Munro and seconded by Councillor Jen Wilson

## PLANNING COMMITTEE

**RESOLVED** that the minutes of a meeting of the Planning Committee held on 5<sup>th</sup> April 2019 be approved as a true and correct record.

Councillor Graham Parkin left the meeting for the following item of business.

### **0025. APPLICATIONS TO BE DETERMINED UNDER THE TOWN AND COUNTRY PLANNING ACTS**

- (i) **18/00393/FUL - Proposed Garage and MOT facility to rear of existing garage which is to be demolished, new road built to proposed site and change of use from car parking to light industrial - 190 Carter Lane East South Normanton Alfreton DE55 2DZ.**

There were no further details relating to the application in the Supplementary Report other than a note advising Committee that Coleman's Garage employed 12 full time staff according to their submitted application form.

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

Councillor Andrew Joesbury, South Normanton Parish Councillor, attended the meeting and spoke in support of the application.

Matthew Edwards (Applicant), attended the meeting and spoke in support of the application.

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 Duncan McGregor and seconded by Councillor Steve Fritchley **RESOLVED** that application 18/00393/FUL be **approved** subject to the conditions as detailed below;

(Planning Manager (Development Control))

1. The development shall be begun before the expiration of three years from the date of this permission.
2. Before construction commences on the erection of any buildings or walls a schedule of all external facing materials including boundary/retaining walls shall first have been submitted to and approved in writing by the Local Planning Authority.
3. The development shall take place exactly in accordance with the details submitted as follows:

SL05431.400 Rev B Existing sections  
SL05431.401 Rev B General Arrangement and Proposed Levels  
SL05431.404 Rev B Elevations and Levels  
SL05431.403 Rev A Internal Layout  
SL05431.402 Rev B Sections through the site

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SL05431.406 Rev B Site Access and Usage Plan

SL05431.405 Rev B Site Plan

SL05431.408 Rev A Construction Sequences Drawing

4. Prior to any works commencing on site, details of a scheme for the drainage and disposal of surface water from within the site shall be submitted to and approved in by the local Planning Authority. The scheme shall be implemented during the construction phase and maintained throughout the life of the development.
5. The phasing of the redevelopment of the site hereby permitted shall be carried out in accordance with the Construction Sequences Drawing (SL05431.408 rev B). Notwithstanding the submitted drawing, the "temporary road access" shall not exceed the site boundary or encroach onto the public highway.
6. Within 28 days of the new garage becoming operational the new access road shall be provided, laid out in accordance with the application drawing (SL05431.401 rev B) and paved in a solid bound material.
7. Prior to the new access being taken into use, the car parking and manoeuvring space shall be laid out in accordance with the application drawing (SL05431.401 rev B) and maintained throughout the life of the development free of any impediment to its designated use.
8. Within 28 days of the new access being taken into use, all other means of access to Carter Lane East shall be permanently closed and the frontage, including the redundant dropped crossing, reinstated as footway. The works shall be carried out in accordance with a scheme first submitted to and approved in writing by the local Planning Authority in consultation with the County Highway Authority and may include the need to provide appropriate road markings fronting the site
9. The boundary fence shall be provided generally in accordance with the application drawings and provided with measures to ensure that headlights do not dazzle or distract drivers on the adjacent highway. However, notwithstanding the submitted drawing (SL05431.402 rev B) Section 1-1 and 7-7, the boundary fence shall be set back from the site boundary to ensure that the footings of the fence do not encroach into the public highway.
10. Prior to the installation of any external lighting except street lighting a detailed scheme shall have first been submitted to and approved in writing with the Local Planning Authority. The scheme shall be implemented as approved and shall be designed to minimise light spillage outside of the site, it is designed to serve and into the sky.
11. No building shall be occupied until full details 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 and retained for the life of the

## PLANNING COMMITTEE

development. The landscaping shall include robust tree and shrub landscape treatment to the northern boundary and retention of hedgerows.

12. If within a period of five years from the date of the planting of any tree or shrub 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.
13. Prior to the new building being brought into use, a noise management plan must be submitted to and agreed in writing with the Local Planning Authority. This shall include hours of use and noise management controls that shall be then implemented for the duration of the development. This shall include proposals for an acoustic fence to be erected at the rear of the residential properties closest to the proposed building which once agreed, shall be erected and maintained for the duration of the development.
14. Prior to the vehicle wash area being brought into use, plans for an acoustic screen must be submitted and approved in writing by the Local Planning Authority. This screen must be installed and maintained for the life of the development and no vehicle washing or valeting should take place on site outside of this area.

(Planning Manager (Development Control))

Councillor Graham Parkin returned to the meeting.

- (ii) **19/00055/FUL - Change of use of the former school rooms to a single dwelling with internal and external alterations. Two off-street parking spaces provided on the site frontage. The Old School Room 88 Main Street Newton Alfreton.**

Further details relating to the application were included in 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.

Councillor Dexter Bullock, South Normanton Parish Councillor, attended the meeting and spoke in support of the application.

Steven Rye (Applicant), attended the meeting and spoke in support of the application.

Mike Gyles attended the meeting and spoke in support of the application.

William O'Leary attended the meeting and spoke in support of the application.

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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.

Committee considered the access to be safe and suitable in planning terms because of the nature of the street, the presence of the existing pedestrian crossing, on-street parking, and the presence of other similar access points and off-street parking arrangements that all served to ensure drivers alongside this part of Main Street would be driving more cautiously than might normally be expected on a road with a 30mph speed limit, and would therefore be less likely to be inconvenienced or endangered by drivers using the new access and moving their car on to the highway to achieve adequate visibility before turning on to Main Street.

In reaching these conclusions, Committee also took into account that there was no record of any road traffic accidents in the local area over the previous five years, which indicated similar accesses had been used safely over that time and that the new access would not exacerbate any existing problems.

Moved by Councillor Steve Fritchley and seconded by Councillor Duncan McGregor **RESOLVED** that application 19/00055/FUL be **approved** subject to the conditions as detailed below;

1. The development shall be begun before the expiration of three years from the date of this permission.
2. Subject to the following conditions or modifications, the development shall be carried out in complete accordance with the following approved plans:
  - revised cross-sections (reference PR/S-CR-SEC/SCHOOL ROOM) received on 23 April 2019;
  - submitted Site Layout Plan (reference SITE-PLAN/SCHOOL ROOMS);
  - submitted elevational drawings (reference EX/PR/ELV/SCHOOL ROOMS/SIDE; EX/PR/ELV/SCHOOL ROOM; EX/PR/ELV/SCHOOL ROOMS/SIDE); and
  - submitted floor plans (reference OLD/SC-RM/F-PLANS).
3. No development shall be carried out until a nocturnal bat survey completed by a suitably qualified ecologist, demonstrating that the development proposals would not prejudice the conservation status of any bats or their habitat, is submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be carried out in complete accordance with any working practices, mitigation measures and/or enhancement measures recommended by a suitably qualified ecologist in the approved nocturnal bat survey and any mitigation measures or enhancement measures for future conservation of bat species and their habitat set out in the approved nocturnal survey shall be completed prior to the first occupation of the dwelling hereby permitted.
4. Prior to the installation of any new doors or windows, precise details of the windows or doors shall be submitted to and agreed in writing by the local

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planning authority. Thereafter, any new windows or doors shall be installed as approved prior to the first occupation of the dwelling hereby permitted.

5. Prior to the first occupation of the dwelling hereby permitted, obscured glazing shall be installed in all west facing window openings.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revising, revoking and re-enacting that Order with or without modification), other than the development expressly consented by this planning permission: there shall be no alterations to or extension of the dwelling hereby permitted without the prior written approval of the local planning authority.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revising, revoking and re-enacting that Order with or without modification), no new building or enclosure shall be constructed within the application site without the prior written approval of the Local Planning Authority.
8. The off street parking provision shown on the approved plans shall be made available prior to the first occupation of the dwelling hereby permitted and thereafter shall be maintained free of any obstruction to the parking and manoeuvring of cars in forward gear on and off the public highway throughout the lifetime of the development.

(Planning Manager (Development Control))

**(iii) 19/00070/FUL - Change of Use from woodland, and the laying of hardstanding to provide additional parking for HGV lorries, trailers, and staff parking; in association with an existing use. Land Rear of Erewash Garage Kirkby Lane Pinxton.**

Further details relating to the application were included in 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.

District Councillor Mary Dooley attended the meeting and spoke against the application.

Barry Wagstaff attended the meeting and spoke against the application.

Moved by Councillor Jim Clifton and seconded by Councillor Duncan McGregor  
**RESOLVED** that application 19/00070/FUL be **approved** subject to the conditions as detailed below;

1. The development hereby permitted shall be carried out in accordance with the details and specifications shown on the submitted application form and plans.
2. The extended yard area hereby permitted shall be used solely for the purposes of the parking and manoeuvring of vehicles in association with the approved use of the site for cement handling, packing and distribution and for no other purposes.



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3. There shall be no movement of any vehicles, or any noisy activities, to be carried out within the area of land outlined in red on the submitted site location plan, outside of the hours 05:00-21:00 Mondays to Saturdays.
4. Within 3 months of the date of this permission, a landscaping scheme, including details of ecological mitigation for the loss of the trees cleared from the site, shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter, any approved scheme of planting and ecological mitigation measures shall be carried out no later than the end of the next Planting Season (October 2019 - March 2020).

(Planning Manager (Development Control))

### **0026. LOCAL PLAN – MAIN MODIFICATIONS**

The Principal Planning Officer presented the report which outlined the Inspector's judgement on the Main Modifications to the Submitted Local Plan for Bolsover District that were necessary to make the Local Plan legally compliant and sound. The report also outlined the findings of Sustainability Appraisal and Habitat Regulation Assessment on the Main Modifications to the Submitted Local Plan for Bolsover District.

Committee's approval was sought on the Main Modifications and associated documents for the purposes of the required public consultation exercise.

Following a public consultation exercise, which took place between 2<sup>nd</sup> May 2018 and 15<sup>th</sup> June 2018, the Local Plan was formally submitted to the Secretary of State on 31<sup>st</sup> August 2018 and this led to the appointment of an independent Government Planning Inspector to undertake the formal Examination of the Local Plan for Bolsover District.

The Local Plan Examination had progressed and the Local Plan Inspector held Hearing Sessions between 21<sup>st</sup> January to 6<sup>th</sup> February 2019 with an additional and final session on 12<sup>th</sup> March. Following the final session, the Inspector explained the next stages and outlined her timetable for providing her judgement on the necessary Main Modifications to make the Local Plan for Bolsover District legally compliant and sound. In accordance with this, the Inspector provided her judgement and the necessary Main Modifications on 14<sup>th</sup> May 2019 and the Principal Planning Officer highlighted several of the listed modifications.

The final stage of the Local Plan Examination was for the Council to consult on the necessary Main Modifications for a six week period and send any representations received on the Main Modifications to the Inspector. The Inspector would consider the representations and then set out her recommendations in her Report, so concluding the Local Plan Examination.

In line with the report, the Principal Planning Officer advised the meeting that the view of the Local Plan Steering Group meeting held on 29<sup>th</sup> May 2019 was to recommend unanimously to Planning Committee the Main Modifications and associated documents for approval for the purposes of the required public consultation exercise as detailed in the report.

## PLANNING COMMITTEE

Moved by Councillor Duncan McGregor and seconded by Councillor Tom Munro

**RESOLVED** that (1) the Inspector's judgement on the Main Modifications to the Submitted Local Plan for Bolsover District that are necessary to make the Local Plan legally compliant and sound be noted,

(2) the findings of Sustainability Appraisal and Habitat Regulation Assessment as set out in the report be noted; and

(3) the Main Modifications and associated documents for the purposes of the required public consultation exercise as detailed in the report be approved.

Councillor Allan Bailey abstained from voting.

The meeting concluded at 1125 hours.

## **PLANNING SITE VISITS**

Notes of Planning Site Visits held on 31<sup>st</sup> May 2019 commencing at 10:00 hours.

### **PRESENT:-**

Members: Councillors A Bailey, A Clarke, N Clarke, J Clifton, P Cooper, C Kane, E Smith, J Tait, J Wilson.

Officers: Chris Fridlington and Kay Gregory

### **APOLOGIES**

Apologies were received from Councillors D Adams, D McGregor, T Munro and D Watson.

### **SITES VISITED**

- 1) 18/00393/FUL: Coleman's Garage, 190 Carter Lane East, South Normanton
- 2) 19/00055/FUL: The Old School Rooms, 88 Main St, Newton
- 3) 19/00070/FUL: Erewash Garage, Kirkby Lane, Pinxton

The meeting concluded at 11:50 hours

**PARISH** Old Bolsover

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**APPLICATION** Reserved Matters application for appearance, landscaping, layout and scale of Outline Planning Permission 16/00463/OUT  
**LOCATION** Land adjoining North side of Blind Lane, Bolsover  
**APPLICANT** Matthew Jackson,  
**APPLICATION NO.** 18/00481/REM  
**CASE OFFICERS** Kay Gregory & Chris Fridlington  
**DATE RECEIVED** 25<sup>th</sup> September 2018

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### **SITE**

The site (approximately 12 ha in area) is located on the north-western edge of Bolsover comprising several large adjoining fields running west-east between Woodhouse Lane and paddocks separating the eastern edge of the site from dwellings on Shuttlewood Road. The fields are currently unused and becoming overgrown. There are various footpath routes crossing the site but only one definitive footpath across the north-eastern part of the site.

The site has a gradual and then steep increase in gradient from west to east as it climbs the Magnesian Limestone escarpment slope, which means the application site is quite a prominent landscape feature in views towards Bolsover from public vantage points to the south and south west of the town. In addition, the site also affords numerous views back towards Bolsover Castle, which provides an impressive and distinctive backdrop to the site.

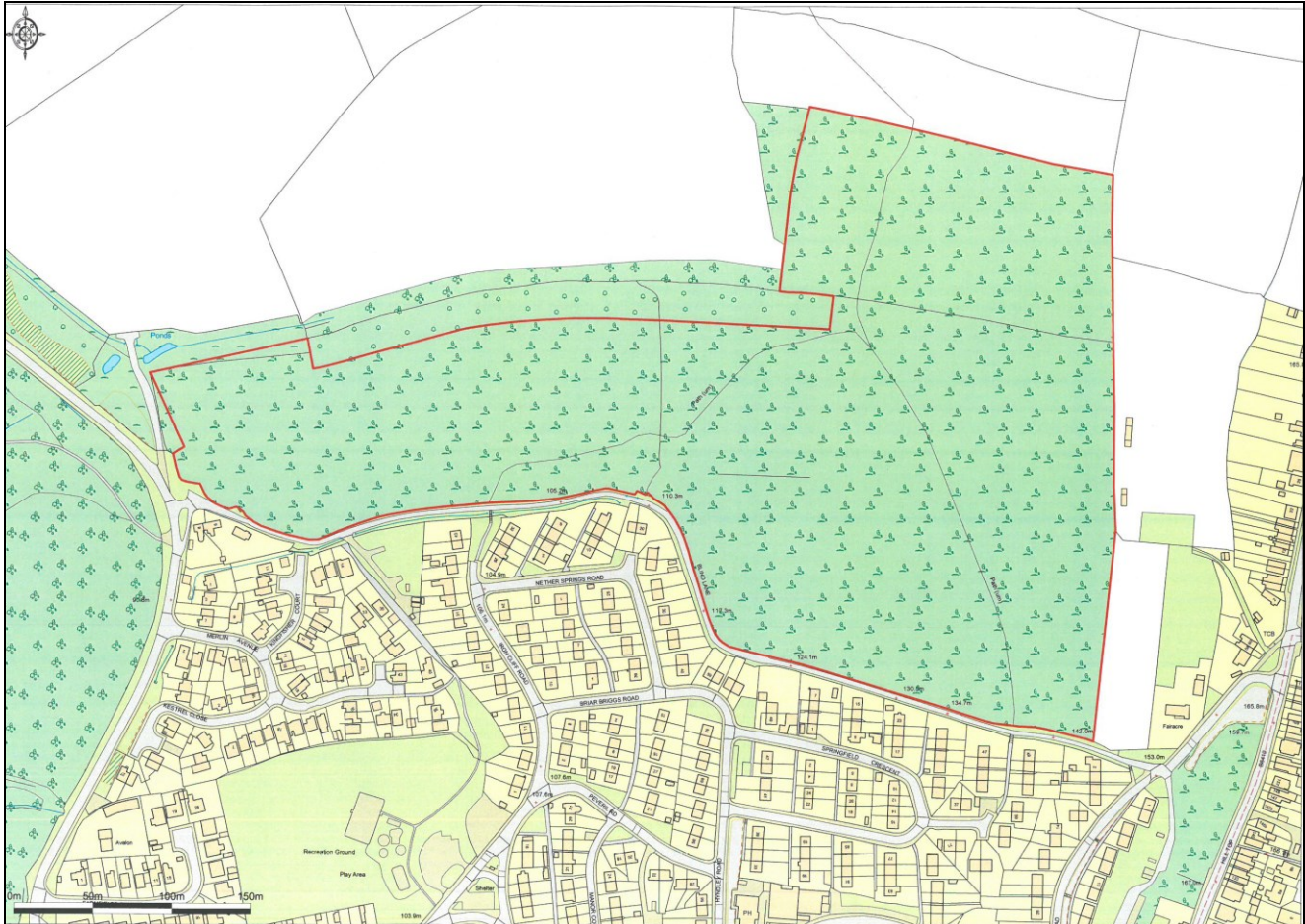
### Application Site



Blind Lane runs alongside the southern site boundary and this sunken lane has a rural character and although it is currently somewhat neglected, there is attractive stone walling and stream following much of its length. Blind Lane currently separates the site from the

existing Castle Estate to the south. The mature hedgerows and a woodland belt alongside the northern boundary of the site are also important visual and ecological components of the site and its setting.

### Site Location Plan



### **PROPOSAL**

In January 2017, outline planning permission was granted for up to 250 dwellings on the application site (16/00463/OUT). This application seeks reserved matters approval for the appearance, landscaping, layout and scale of the proposed residential development granted outline consent.

The amended plans (shown overleaf) show that 218 houses are now being proposed. The new houses would be a mixture of:

- 39 x 2 bed semi/terrace
- 28 x 2 bed semi
- 65 x 3 bed semi
- 68 x 3 bed detached
- 18 x 4 bed detached



## Site Layout



Amongst other things, the amended plans also show:

- provision of public open space throughout the site;
- landscape planting;
- new vehicular access from Woodhouse Lane;
- highway improvements at the junction of Blind Lane and Woodhouse Lane;
- provision of children's play area;
- attenuation pond and swales; and
- 5 no. cycle / pedestrian links from the site on to Blind Lane.

## **AMENDMENTS**

The application has been amended by submission of revised plans, amended drainage and land stability strategy, improved landscaping proposals, additional information on Blind Lane improvements and revised landscape and ecology management plan, amongst other things. This iterative process has allow the developer to address a number of technical issues raised by various consultees as this application has progressed to a determination.

## RELEVANT PLANNING HISTORY

09/00175/OUTMAJ	REF	Residential Development including localised road widening for site access
10/00568/OUTMAJ	GC	Residential development of approximately 250 dwellings including details of access (resubmission of planning application 09/00175/OUTMAJ)
14/00577/OTHER	GC	Variation of S106 Planning Obligation to remove the requirement to make a contribution to affordable housing.
16/00463/OUT	GC	Residential development of approximately 250 dwellings including details of access (renewal of planning permission 10/00568/OUTMAJ)
16/00556/VAR	WDN	Removal of condition 13 (Highways Improvements) of planning permission 10/00568/OUTMAJ
16/00559/DISCON	PTDIS	Discharge of conditions 3 (Hazardous Substances), 5 (Archaeological work), 6 (Land contamination), 7 (Foul water drainage), 9 (Surface water drainage), 11 (Landscape and Ecology Management Plan) and 14 (Pedestrian and cyclist access) on 10/00568/OUTMAJ for residential development
18/00201/FUL	PCO	Residential Development of 218 Dwellings & Ancillary Works

## CONSULTATIONS

Bolsover District Council (Environmental Health) – No objections subject to clarification on radon protection measures.

Bolsover District Council (Heritage Conservation) – No objections.

Bolsover District Council (Housing Strategy) – No overriding objections to the proposals on the basis that this site is adjacent to the Castle Estate and therefore, there is already a relatively high number of affordable or social-rented properties in the local area.

Bolsover District Council (Leisure) – Offers qualified support for the current proposals

Bolsover District Council (Senior Urban Designer) – remains concerned that the proposed enhancements to Blind Lane and the overall design of the scheme falls short of the Council's expectations compared to what was anticipated when outline permission was granted for residential development on this site.

Bolsover District Council (Street Scene) – No response to date.

Bolsover Town Council – No response to date

Coal Authority – No objections

County Archaeologist – No response to date

Derbyshire County Council (Flood Team) – No objections subject to the development being carried out in accordance with the agreed drainage strategy.

Derbyshire County Council (Highways) – No overriding objections but have concerns with the road gradient in parts of the site. The County Council are seeking a series of minor amendments in relation to road surfacing, service strips, pedestrian walkways, and visibility splays that would be required before the new roads could be adopted.

Derbyshire Wildlife Trust – No objections subject to adoption of the revised Landscape and Ecological Management Plan submitted with this application.

Derbyshire Police (Designing Out Crime) – No overriding objections but raise concerns about some boundary treatments

Eastwoods and Partners (Land Stability) – No objections

Environment Agency – No objections

Yorkshire Water – No objections

## **PUBLICITY**

The application was publicised by site notice and press advert and 63 neighbouring properties were notified of the proposed development: 5 representations have been received as a result of this publicity. The main issues raised include:

- loss of green space and adverse impact on wildlife;
- traffic congestion and highway safety in the local area;
- concerns about the appropriateness of proposed traffic calming measures;
- adequacy of existing public transport;
- whether there is a need for this additional housing on a greenfield site;
- potential impact of further residential development on local infrastructure and concerns raised about capacity at local schools, gps and dentists to accommodate existing residents and future occupants of the new houses;
- disruption from development in addition to the disruption from HS2, which on its current alignment would affect the local road network but would not affect the application site itself; and



- concerns about the details in the landscaping plans

These representations are available in full on the application pages on the Council's website but it should be noted that the principle of the development has already been accepted at outline stage. Therefore, only comments about the reserved matters submitted with this application are directly relevant to the determination of this application.

## **POLICY**

### Bolsover District Local Plan (adopted February 2000)

Planning law requires that applications for planning permission be determined in accordance with the adopted Local Plan, unless material considerations indicate otherwise the most relevant policies in adopted Local Plan include:

- GEN1 - Minimum Requirements for Development
- GEN2 - Impact of Development on the Environment
- GEN3 - Development Affected By Adverse Environmental Impacts from Existing or Permitted Uses
- GEN4 - Development on Contaminated Land
- GEN 5 - Land Drainage
- GEN 6 - Sewerage and Sewage Disposal
- GEN 7 - Land Stability
- GEN 11 - Development Adjoining the Settlement Framework Boundary
- HOU 2 - Location of Housing Sites
- HOU 5 - Outdoor Recreation and Play Space Provision for New Housing Developments
- HOU 6 - Affordable Housing
- TRA 1 - Location of New Development
- TRA 7 - Design For Accessibility by Bus
- TRA 10 - Traffic Management
- TRA 13 - Provision for Cyclists
- TRA 15 - Design of Roads and Paths to Serve New Development
- CON 10 - Development Affecting the Setting of Listed Buildings
- ENV 3 - Development in the Countryside
- ENV 5 - Nature Conservation Interests Throughout the District
- ENV 8 - Development Affecting Trees and Hedgerows
- ENV 9 - New Trees on Development Sites

### Publication Version of the Local Plan for Bolsover District (published May 2018)

In accordance with Paragraph 48 of the National Planning Policy Framework some weight should now also be attached to policies in the new Local Plan following its examination in public. The most relevant policies in the new Local Plan include:

- Policy SS1: Sustainable Development
- Policy SS2: Scale of Development
- Policy SS3: Spatial Strategy and Scale of Development
- Policy LC3: Type and Mix of Housing
- Policy SC2: Sustainable Design and Construction
- Policy SC3: High Quality Development
- Policy SC9: Biodiversity and Geodiversity
- Policy SC10: Trees, Woodland and Hedgerows
- Policy SC11: Environmental Quality (Amenity)
- Policy SC12: Air Quality
- Policy SC13: Water Quality
- Policy SC14: Contaminated and Unstable Land
- Policy SC15: Hazardous Installations
- Policy SC17: Development affecting Listed Buildings and their settings
- Policy ITCR5: Green Space and Play Provision Policy
- Policy ITCR7: Playing Pitches
- Policy ITCR10: Supporting Sustainable Transport Patterns
- Policy ITCR11: Parking Provision
- Policy II1: Plan Delivery and the Role of Developer Contributions

#### National Planning Policy Framework (published January 2019)

The National Planning Policy Framework ('the Framework') is a relevant consideration in the determination of this application and the most relevant parts of the Framework include:

- Section 2: Achieving sustainable development, including at Paragraph 11 the presumption in favour of sustainable development
- Section 3: Plan Making: Includes Paragraph 34: Developer Contributions and Paragraph 48: Status of Development Plan.
- Section 5: Delivering a sufficient supply of homes.
- Section 8: Promoting healthy and safe communities
- Section 9: Promoting Sustainable Transport
- Section 11: Making effective use of land
- Section 12: Achieving well designed places
- Section 14: Meeting the challenge of climate change, flooding and coastal change
- Section 15: Conserving and enhancing the natural environment
- Section 16: Conserving and enhancing the historic environment
- Annexe 1: Implementation – refers to the weight to be given to relevant policies in existing plans and relevant policies in emerging plans.

#### Other Relevant Planning Guidance

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

National Planning Policy Guidance

## ASSESSMENT

### Principle of Development

In this case, outline planning permission has already been granted for up to 250 houses on the application site. Therefore, the acceptability of housing on this site and the suitability of the access point from Woodhouse Lane has already been determined when outline permission was granted. Accordingly, this application has been submitted solely for the approval of 'reserved matters', which in this case includes:

- **scale** - the size of the development, including the height, width and length of each proposed building;
- **layout** - including buildings, routes, open spaces, and drainage within the development and the way they are laid out in relations to buildings and spaces outside the development;
- **appearance** – the aspects of a building or place which affect the way it looks, including the exterior of the development; and
- **landscaping** - the retention, improvement or protection of the amenities of the site and the area and the surrounding area; to include planting trees and hedges, and improvements to biodiversity.

Therefore, the key issues in the determination of this application are whether the submitted details demonstrate that the residential development would be of a sufficiently high quality of design to meet the requirements of the Council's adopted planning policies and guidance and the requirements of national planning policies in the Framework with regard to these reserved matters.

In this case, it is considered the proposed development would have a negligible impact on Bolsover's designated Conservation Area because of the relationship between the site and the Conservation Area. However, this application must also be assessed with due regard to the impact of the proposed development on the setting of Bolsover Castle taking into account its potential visual impact on the surrounding landscape.

### Scale

The current proposal seeks permission for 218 units, which is less than the 250 dwellings allowed for by the original outline permission. The number of houses has been reduced during the application process because it has since been determined that it is not viable to build houses on the steeper slopes that affect some parts of the site.

In terms of the houses themselves, the proposed scheme includes a mix of 2, 3 and 4 bedroom; semi-detached and detached two storey dwellings which is consistent with the scale of development on the adjacent Castle Estate and consistent with the prevailing character of most residential development in the District.

Therefore, there are no objections to the size of the houses proposed in this application or the overall scale of development as shown below on the revised plans.

### Layout



The proposed layout has been dictated mostly by the topography of the land and the need to achieve manageable gradients. The layout has also been designed to respect the setting of Bolsover Castle and take advantage of views towards Bolsover Castle from within the site.

Notably, the eastern half of the site is elevated and is visible in views from Bolsover Castle and in views of Bolsover Castle from a number of public vantage points. The lower density form of development now proposed, together with the open space and increased tree planting within the upper parts of the site will minimise the visual impact of the development within the setting of the Castle and soften the appearance of the development when seen from the Castle.

The County Council have no overriding objections to the scheme but would require some minor amendments to the current plans before they would adopt any of the new roads. The County Council have also raised some concerns about the gradients of the roads but have previously advised that a lower gradient would be preferable but not essential.

The point of access has already been approved at outline stage so officers are satisfied the site would have a safe and suitable access. However, the single point of access to the site is

at the point furthest away from Bolsover's town centre. Therefore, the layout includes links from the site on to Blind Lane.

With some improvements, Blind Lane will provide a link to the town centre for pedestrians and cyclists to help reduce car dependency and improve connectivity. Existing residents should also benefit from improvements to Blind Lane because of the links from Blind Lane on to the adjoining Castle Estate. These links should help to better integrate the new houses with the town.

In all other respects, the proposals meet the requirements of the Council's design guidance with particular regard to adequate separation distances between properties, adequate outdoor amenity space and the amount of accommodation provided by the individual houses. The proposed scheme would not otherwise be unneighbourly when taking into account the intervening distances and intervening landscaping between the application site and the nearest neighbouring properties.

Therefore, taking all these points together, there are no objections to the proposed layout of the site, which benefits from a significant provision of open space, makes the best out of its location within the setting of Bolsover Castle and looks towards improving connectivity between the application site and Bolsover's town centre.

### Appearance

At outline stage, it was anticipated that house types through the site would form distinct character areas with more traditional properties at the front of the site (relative to the vehicular access on to Woodhouse Lane) with a higher density of housing in the middle area of the site feathering out to a lower density of housing on the higher part of the site. It was also anticipated that the house types (in terms of materials and design) would reflect local distinctiveness and this would help create a sense of place.

Unfortunately, the submitted scheme falls short of these aspirations insofar as the majority of the scheme will be made up of 'typical' standard house types with perhaps more reliance on the use of materials to provide character and variation. However, a distinctive character area has been retained at the front of the site where Plots 1 - 8 will be built with re-constituted stone, and grey slate roofs, and arranged around a SuDS basin designed to emulate a village green.

In addition, the drawings of the street-scenes (shown overleaf) illustrate that some thought has been given to the use of 'urban' and 'rural' styling to differentiate the housing and create distinctive character areas. These houses would be built in a mixture of red and buff bricks with the contrasting brick colour and some render to provide additional detailing with a mix of red pantile and grey tile and in general terms would normally be 'acceptable' house types on many housing developments approved within the District.

## Urban



## Rural



Therefore, whilst this scheme might not achieve the very highest standard of design, it is considered the new houses would still be of a good standard of design. It is also reasonable to conclude that the overall attractiveness of this scheme will be significantly enhanced by its layout and extensive provision of open space, which would give this scheme a locally distinctive sense of place. Consequently, it is considered that the external appearance of the proposed development would be of a sufficiently high quality to meet the requirements of the Council's adopted planning policies and guidance and the requirements of national planning policies in the Framework and therefore, could be approved.



## Landscaping

As far as practicable, existing trees and hedgerows will be retained and the amended landscaping scheme more than compensates for the loss of fifteen trees from the site. The detailed landscape proposals (received 11 June 2019) now show a number of standard (heavy and selected) trees to be planted, predominantly within the areas of open space, creating a stronger sense of character to the appearance of this part of the site.

The full tree, shrub and hedge planting schedule shown below helps to illustrate that the landscaping proposals are quite extensive, include native species, and (as shown on the amended plans) add value to the overall quality of the proposed development.

Proposed Shrubs 1

Nr	Code	Plant Name	Ht(cm)	Root	Cntr()	Nrim <sup>2</sup>
189	BrS	Brachyglottis 'Sunshine'	30-40	C	5	3.00
68	CrS	Choisya ternata 'Sandance'	30-40	C	5	3.00
58	Ccorb	Cistus corbariensis	30-40	C	5	4.00
215	EIEG	Euonymus fortunei 'Emerald 'n' Gold'	20-30	C	5	4.00
94	EIE	Euonymus fortunei 'Emerald Gaiety'	20-30	C	5	4.00
151	HpS	Hebe pinguifolia 'Sutherlandii'	20-30	C	5	4.00
167	Lah	Lavandula angustifolia 'Hidcote'	20-30	C	5	4.00
81	LrBG	Lonicera nitida 'Baggesen's Gold'	30-40	C	5	3.00
20	Vt	Viburnum tinus	20-30	C	5	2.00

Proposed Trees

Nr	Code	Plant Name	Form	Ht(cm)	Grth(cm)	CSm(cm)	Root	Cntr()
60	Ac	Acer campestre	Standard	250-300	8-10	175-200	B	
11	Ap	Acer platanoides	Standard (Selected)	300-350	10-12	175-200	RB	
8	ApCK	Acer platanoides 'Crimson King'	Standard (Heavy)	350-425	12-14	175-200	C	45
12	Ag	Alnus glutinosa	Standard (Selected)	300-350	10-12	175-200	RB	
6	Ag	Alnus glutinosa	Standard (Heavy)	350-425	12-14	175-200	C	45
52	Bp	Betula pendula	Standard	250-300	8-10	175-200	B	
2	CIPS	Crataegus laevigata 'Paul's Scarlet'	Standard (Light)	250-300	6-8	150-175	B	
9	CIPS	Crataegus laevigata 'Paul's Scarlet'	Standard	250-300	8-10	175-200	B	
23	M/D	Malus 'John Downie'	Standard (Light)	250-300	6-8	150-175	B	
9	Pa	Prunus avium	Standard (Selected)	300-350	10-12	175-200	RB	
51	PaP	Prunus avium 'Plena'	Standard (Selected)	300-350	10-12	175-200	RB	
6	Pp	Prunus padus	Standard	250-300	8-10	175-200	B	
17	Sar	Sorbus aria	Standard (Selected)	300-350	10-12	175-200	RB	
24	Sar	Sorbus aria	Standard	250-300	8-10	175-200	B	
18	Tc	Tilia cordata	Standard (Heavy)	350-425	12-14	175-200	C	45

Proposed Native Hedge Mix (5.00/m)

Nr	Code	Plant Name	Ht(cm)	Root	Mix(%)
165	Ac	Acer campestre	45-60	B	10.00
330	Cav	Corylus avellana	45-60	B	20.00
662	Cm	Crataegus monogyna	45-60	B	40.00
330	Sn	Sambucus nigra	45-60	B	20.00
165	Vo	Viburnum opulus	45-60	B	10.00

Proposed Hedging

Nr	Code	Plant Name	Ht(cm)	Root	Cntr()	Nrim
859	Fs	Fagus sylvatica	40-60	B		4.00
863	Lo	Ligustrum ovalifolium	40-60	C	5	4.00

In addition, the landscaping scheme offers further reassurance that the proposed development would not harm the setting of Bolsover Castle and notably, the Council's Heritage Conservation Manager has no objections to the scheme. Therefore, there are no objections to the amended landscaping scheme, which will also help to achieve a net gain in biodiversity across the site once it has been developed and allow this development to sit more comfortably within its landscape setting.

## Conclusions

In conclusion, the revised plans show a scheme that meets the requirements of the Council's adopted planning policies and guidance and the requirements of national planning policies in the Framework because:

- the size and scale of the proposed development are appropriate;
- the site layout provides the development with a distinctive sense of place;
- the external appearance of the development would be of a good quality of design; and
- the landscaping would be extensive, add value to the scheme and allow the development to be better accommodated within the surrounding landscape..

For these reasons, the proposed development would also have a limited impact on the setting of Bolsover Castle and would not harm its significance. Therefore, the current application also meets the specific requirements of heritage conservation policies in the Local Plan and the Framework. Accordingly, the current application is recommended for approval subject to variations to the existing s.106 legal agreement and appropriate planning conditions.

## Planning Obligations

The existing s.106 legal agreement is attached to the outline planning permission behind this reserved matters application and contains planning obligations that require the developer (or successor in title) to make the following financial contributions towards local infrastructure:

- £1,025,000 – to be used for off-site affordable housing purposes
- £179,618 – Education contribution
- £81,562 – Health care contribution
- £80,000 – Play space contribution
- £191,250 – Recreation contribution.

In normal circumstances, it would not be possible to seek additional contributions at the reserved matters stage but the current applicant would like to offer a commuted sum of £135,866.94 to pay for a series of enhancements to Blind Lane to be undertaken by a third-party. The Council's Special Project Officer has offered qualified support for these proposals and ongoing negotiations are taking place to ensure the commuted sum would pay for what is needed and to clarify the schedule of works.

Therefore, if an agreement can be reached, the Council could accept this offer because this would allow a third-party to carry out the necessary works and effectively discharge the relevant planning conditions on the outline permission requiring improvements to Blind Lane to allow it to be better used by pedestrian and cyclists and improve connectivity between the application site and Bolsover's town centre.

If an agreement on the commuted sum cannot be reached a condition will be needed on any approval of this application requiring an agreed schedule of works to Blind Lane to be completed prior to the first occupation of more than 100 of the proposed 218 dwellings.



## Affordable Housing

The applicant is also seeking to delete the obligation to pay a commuted sum of £1,025,000 that was intended to be used for refurbishment of the Castle Estate.

As noted in previous sections of this report, this reserved matters application has been heavily influenced by the topography of the site and land stability issues, which have impacted on layout and the total number of houses proposed in this application. These issues have also affected the viability of the scheme and this has resulted in the applicant's proposals to delete an obligation to pay £1,025,000 towards the regeneration of the Castle Estate and instead provide 30% on-site provision of affordable housing to offset the loss of this financial contribution.

Notably, this commuted sum was originally accepted in lieu of on-site provision of affordable housing but no Council-led scheme or any other housing project has been progressed that would benefit from this money. The Council's housing strategy officer is still uncertain how this money could be used and part of the issue is that properties on the Castle Estate are in wide range of different ownerships making it particularly difficult to facilitate a meaningful Council-led housing improvement project. In addition, it is unclear whether the money would come forward in any event if the requirement to pay this sum makes the proposed development unviable and as such: highly unlikely to go ahead.

Therefore, the proposed variation offers a reasonable alternative given that the developer is proposing to provide 30% on-site affordable housing comprising 65 dwellings that would be distributed as follows:

- 40no. 2 bed semi-detached Dwellings (code 201 on layout) with car parking spaces with a maximum selling price of £105,500 (£162per sq ft gross); and
- 25no. 3 bed semi-detached Dwellings (code 311 on layout) with car parking spaces with a maximum selling price of £120,000 (£158 per sq ft gross).

However, as can be seen in the above descriptors, these properties will be offered for sale at a price 20% lower than market value, if consent is to be granted for this application, rather than provide affordable housing that would be offered to a registered social landlord, for example. This means that the affordable housing would meet the definition of affordable housing as set out in the Framework but not necessarily meet the identified need for affordable housing within the District.

In summary, the need in the District is predominantly for affordable / social rented housing to provide for people who cannot afford to access the market through insufficient income levels, lack of access to capital for a deposit and other fees, or mortgage restrictions. The affordable housing offered by the developer in this case would not address this need but it is intended to limit the sale of these houses to first time buyers under the age of 40.

In these respects, the on-site affordable housing would meet the requirements of national policies and would offer some wider socio-economic benefits to the District by presenting additional opportunities for younger people and young families to get on the housing ladder.

Equally, because of the proximity of the Castle Estate and the amount of affordable rented and social rented properties in the local area, additional social rented housing would exceed the level of affordable housing actually required in this part of the District.

It is also important to note that the new Local Plan will define 'affordable housing' as affordable housing for rent through a registered social landlord and this means going forward the Council could decline to accept affordable housing that does not meet this criteria. So, accepting the current proposals would not prejudice the ability of the Council to meet the identified affordable housing needs of the District when dealing with future planning applications.

Therefore, it is considered there are good planning reasons to delete the obligation for the commuted sum in the existing s.106 legal agreement, which is unlikely to come forward in any event, and accept the on-site provision of affordable housing, which will be offered for sale at a price 20% lower than market value to first time buyers under the age of 40.

### Planning Conditions

As this is an application for approval of reserved matters, there is generally no opportunity to impose additional conditions on any permission for this application beyond the scope of the conditions already imposed on the outline permission. It is also not necessary to attach conditions that are already attached to the outline permission on any permission for this application.

However, the original two year time limit for commencement of the proposed development once reserved matters have been granted should be imposed on any approval for this application for clarity and avoidance of doubt. It would also add clarity to any decision notice to specify the approved plans also taking into account there have been several revisions to the submitted plans and supporting documents.

Similarly, conditions should be imposed on any permission for this application requiring the development to be carried out in accordance with the amended drainage and land stability strategies, improved landscaping proposals, and revised landscape and ecology management plan. It would also be reasonable and necessary to seek clarity on finished floor level of the housing, most pertinently in respect of the housing on the higher level of the site to ensure that they do not have more of an impact on Bolsover Castle than expected once they are completed.

In addition, conditions relating to the creation of the new access, highway improvements and estate roads would be recommended to ensure the site access is safe and suitable to use, to ensure the development does not have an adverse impact on the local road network and to ensure the estate roads are made up to an adoptable standard.

Finally, it is recommended that samples of external facing materials should be submitted to and approved in writing by the Council prior to construction in the interests of securing a high quality development with a locally distinctive character and an attractive appearance.

## RECOMMENDATION

For the above reasons, it is recommended that the current application be **APPROVED** subject to:

- (i) a **VARIATION** to the existing s.106 legal agreement deleting the obligation requiring a commuted sum of £1,025,000 towards affordable housing and inserting an obligation on-site provision of 30% affordable housing to be offered for sale at a price 20% lower than market value to first time buyers under the age of 40; and
- (ii) the addition of a **PLANNING OBLIGATION** to the existing s.106 legal agreement requiring a commuted sum towards improvements to Blind Lane or a **PLANNING CONDITION** requiring an agreed schedule of works to Blind Lane to be completed prior to the first occupation of more than 100 dwellings; and
- (iii) subject to the following **PLANNING CONDITIONS** requiring the development to be:
  - commenced within two years,
  - carried out in accordance with the revised plans;
  - carried out in accordance with approved drainage strategy;
  - carried out in compliance with the recommendations in the revised land stability and land contamination reports;
  - carried out in accordance with revised Landscape and Ecological Management Plan and the detailed landscape proposals;
  - carried out in accordance with relevant highways conditions; and if not fixed prior to the issue of a decision:
  - finished floor levels must be submitted to and agreed in writing prior to construction; and
  - samples of external facing materials must be submitted to and agreed in writing prior to construction.

### Statement of Decision Process

Officers have worked positively and pro-actively with the applicant to resolve a number of technical issues arising in consultation responses and agree a revised application that meets the requirements of the Council's adopted planning policies and guidance and the requirements of relevant national policies in the Framework.

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**PARISH**

Old Bolsover

**APPLICATION**

Residential development of 78 dwellings

**LOCATION**

Field Adjacent To Pattison Street Off Bolsover Road Shuttlewood

**APPLICANT**

2 Midland Court Barlborough Chesterfield S43 4UL

**APPLICATION NO.**

19/00083/FUL

**FILE NO.**

**CASE OFFICER**

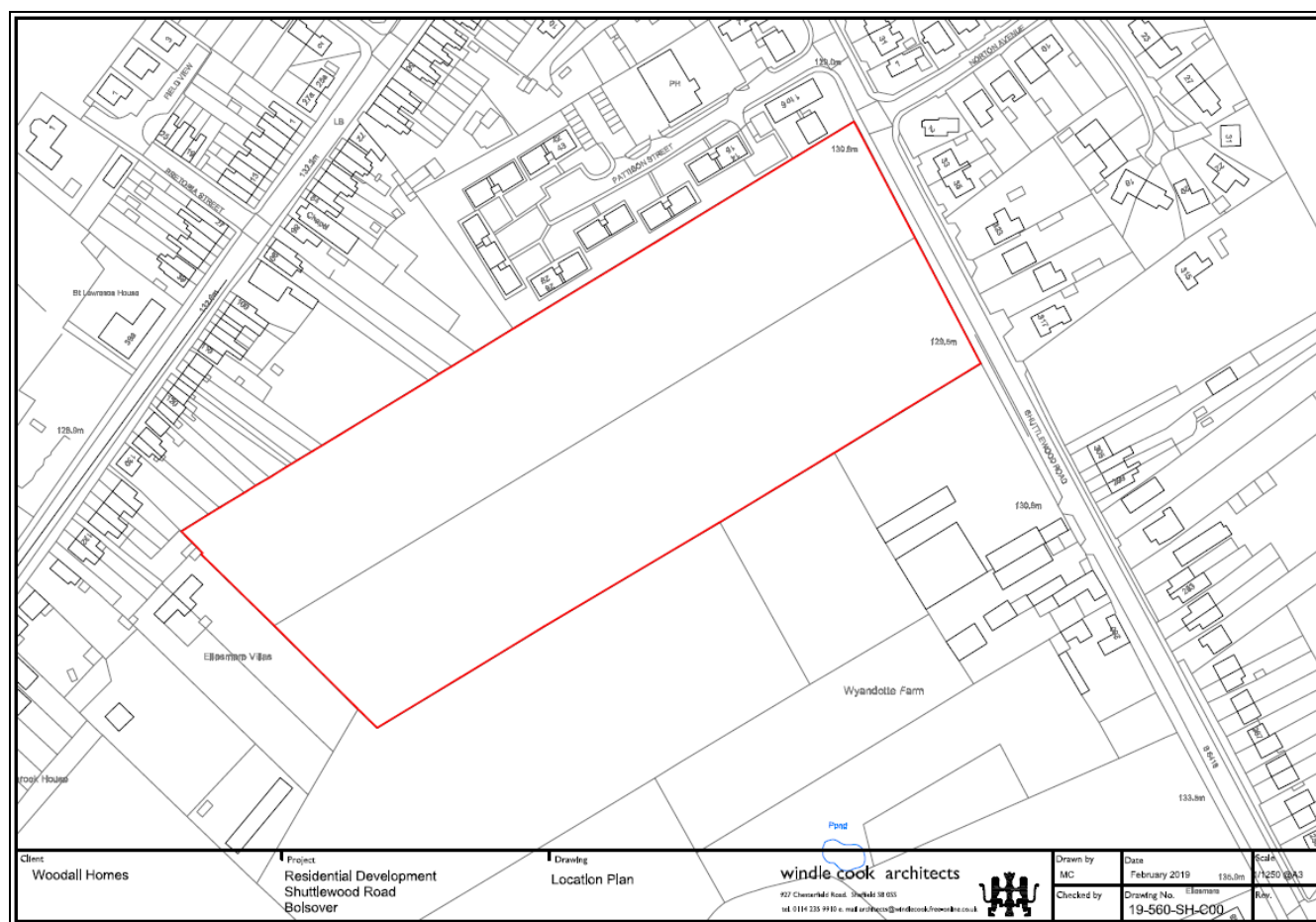
Mr Peter Sawdon

**DATE RECEIVED**

7th February 2019

**SITE**

The site the subject of this application comprises some 2.95 hectares of land fronting Shuttlewood Road that sloped down by around 9 metres from its northern corner adjacent Shuttlewood Road to its south west corner. The site is a rectangular shaped piece of land that currently comprises two narrow fields which are approximately equal in size; each field is bounded to all sides by existing hedgerows.



The site is surrounded by existing residential development to the north, west and east. To the south is Wynacotte Farm and its farm buildings. An overhead line crosses the site towards the western edge of the area and also runs along the majority of the central boundary hedge that

separates the two fields to which this application relates.

Development has commenced on the site under an extant planning permission for this site. This includes the formation of the access, part of the access road and implementation of drainage works.

Following the lawful implementation of the planning permission, some further works, including the erection of one dwelling, have also been carried but these are not in accordance with the earlier approved details and these works are included for consideration with this current planning application.

## PROPOSAL

This full planning application is for the erection of 78 dwellings.



All dwellings would be served from a single point of vehicular access to Shuttlewood Road; this is as approved at the time of the earlier planning permission's granted on this site and works to implement that approved access has been carried out. The dwellings would comprise 55 detached, 20 semi-detached (8 of which would be affordable) and 3 apartments (located over garages).

A separate pedestrian access into the site would be provided at the eastern corner of the site, which would pass along an informal footpath that is proposed to run through an area of linear semi-natural open space proposed to run alongside the southern boundary of the site.

The applicant initially approached the Council to amend just the approved house types and some layout issues, but due to the date of the original outline planning permission it was not possible for them to submit a revised reserved matters application and as such have opted to make a full planning application that if granted would in effect replace the earlier consents.

## **AMENDMENTS**

Documents submitted 19/06/19: -

- Phase 1 & 2 Environmental Assessment Vol 1 Rev. C
- Phase 1 & 2 Environmental Assessment Report and Appendix A – F Rev. A
- Revised Vehicle Tracking

Documents submitted 18/06/19: -

- C04E – Site Plan West
- C45D – Site Plan
- P47 – 2 bed affordable house for Plots 10 – 11
- Tracking overlay

Documents submitted 12/06/19: -

- C04D – Site Plan West (Now Superseded)
- C45C – Site Plan (Now Superseded)

03/06/19:

- Response to drainage Authority including copies of drainage details previously approved by earlier planning applications.

Documents submitted 24/05/19: -

- Supporting letter responding to layout comments, comments of consultees, including requests for S106 contributions.
- C02C - Street Elevation
- C03C - Site Plan East
- C04C - Site Plan West (Now superseded)
- C17B - Kingston Type B
- C39 - Hardwick 2 ½ Storey Type
- C45 B - Site Plan (Superseded)
- C46A - Kingston
- Shut Track 1
- Shut Track 2

Documents submitted 30/04/19: -

- C02 rev A - Street Elevations (now superseded)
- C03 Rev B - Site Plan East (now superseded)
- C04 Rev B - Site Plan West (now superseded)
- C05 Rev A - Petworth
- C06 Rev A - Petworth
- C07 Rev A - Petworth
- C08 Rev A - Petworth
- C09 Rev A - Lindisfarne
- C10 Rev A - Lindisfarne
- C11 Rev A - Lindisfarne
- C12 Rev A - Lindisfarne

- C13 Rev A - Lindisfarne
- C14 Rev A - Lindisfarne
- C15 Rev A - Lindisfarne
- C16 Rev A - Kingston
- C17 Rev A - Kingston
- C18 Rev A - Hardwick semi
- C19 Rev A - Hardwick semi
- C20 Rev A - Hardwick semi
- C21 Rev A - Hardwick det
- C22 Rev A - Hardwick det
- C23 Rev A - Hardwick det
- C24 Rev A - Hardwick det
- C25 Rev A - Rosedene
- C26 Rev A - Rosedene
- C27 Rev A - Rosedene
- C28 Rev A - Rosedene
- C29 Rev A - Wycombe
- C30 Rev A - Wycombe
- C31 Rev A - Westbury
- C32 Rev A - Westbury
- C33 Rev A - Westbury
- C34 Rev A - Buckingham
- C35 Rev A - Danbury
- C36 Rev A - Sudbury
- C37 Rev A - Claydon
- C38 Rev A - Claydon
- C40 Rev A - 2.5 storey Hardwick Elevations
- C41 Rev A - 2 bed Affordable House (now partially Superseded by P47 in respect of Plots 10 and 11)
- C43 Rev A - Garages- paired
- C44 Rev A - Plot materials Schedule
- C45 Rev A - Site Plan 1/500 (now superseded)

**HISTORY (if relevant)**

12/00269/OUTMAJ	Granted Conditionally	Outline residential development including means of access (80 dwellings)
16/00207/REM	Granted Conditionally	Erection of 80 dwellings
18/00406/DISCON	Conditions discharged	Discharge of Conditions 4 (Survey to establish the presence of badgers and ground nesting birds), Conditions 8 (Disposal of foul and service water) of Planning Permission 12/00269/OUTMAJ
18/00407/DISCON	Conditions discharged	Discharge of conditions 1 (levels), condition 4 (fencing to protect trees/hedgerows), condition 5 (construction access/haul road), condition 6 (site compound), condition

7 (construction management plan) and condition 11 (surface water outfall) of planning permission 16/00207/REM.

18/00537/DISCON    Conditions discharged    Discharge of Condition 1 (Application of Reserved Matters) of Planning Permission 12/00269/OUTMAJ

**CONSULTATIONS:**

Housing Strategy – Previously approved provision of 8 2-bed semi's is still acceptable as the affordable housing provision for this development 20/02/19

Natural England – No comments, but refers to its published Standing Advice 21/02/19

Bolsover District Council Engineer –

1. Subject to acceptance of the SuDS design by DCC (LLFA), we must ensure the developer submits an Operation and Maintenance Plan (in accordance with section 32 of the SuDS Manual) which provides details of the arrangements for the lifetime management and maintenance of the SuDS features together with contact details. (a copy to be kept by Engineering Services )
2. The developer must ensure any temporary drainage arrangements during construction gives due consideration to the prevention of surface water runoff onto the public highway and neighbouring properties.

NHS Hardwick CCG – existing medical practices already working at capacity, so is seeking a financial contribution of £29,671 to provide additional capacity to accommodate additional demand from the development 7/3/19

Force Designing Out Crime Officer – Seeking amendments to improve crime prevention 8/3/19.

*Further comments* - note some improvements but still requires clarification of some details 7/5/19

*Further comments* - I think that the matters raised in our previous comments have been resolved, and have nothing further to add. 05/06/19

Derbyshire Wildlife Trust – Additional information sought regarding provision of biodiversity enhancements prior to determination of the planning application. Recommends conditions and notes 8/3/19.

*Further comments* - Re-iterated their earlier comments 13/5/19 and 13/6/19

Yorkshire Water – No objections subject to conditions. 8/3/19

Economic Development - The proposed scheme meets the relevant thresholds set out in the Bolsover Draft Local Plan Policy II2: Employment and Skills, so request inclusion of a condition regarding local employment 11/3/19



Derbyshire County Council Developer Contributions – Seeking £292,700.76 for the provision of 12 secondary places at The Bolsover School, along with an advisory note regarding the provision of high speed broadband 13/3/19

DCC (Highways) – Seeking clarification regarding swept paths and alterations to provide sufficient visibility splays and parking provision. Also recommends revisions to the width of some proposed highways. Includes recommended conditions and advisory notes in the event that the Council is minded to grant planning permission. 13/03/19

*Further comment* - Seeking further minor amendment regarding visibility splay provision along with the swept path plan previously requested. 17/05/19

*Further comment* – Visibility splays and one turning head now acceptable, but further improvements required to one remaining turning head 18/06/19

*Further comment* – Revised detail still not appropriate and seek further amendment to one turning head 18/06/19

*Further comment* – The revised tracking drawing is acceptable from a highway viewpoint 19/06/19

Derbyshire County Council (Flood Risk Management) – Request for additional information 14/3/19

*Further comment* - The LLFA are aware of the previous planning application for 80 houses on the same site as concluded from the outline application initiated in 2012, discharged in September 2018. As the new application for 78 homes is considered under the changes to the National Planning Policy Framework (NPPF) published in July 2018 can the applicant provide, in accordance with NPPF (2018), clear evidence why sustainable drainage (that provides multi-functional benefits) would be inappropriate for the new full application 10/06/19

Conservation Officer - I am of the view that the proposed development would not harm the setting of Bolsover Castle and would therefore not impact on its significance as a heritage asset of national importance. 15/03/19

Leisure – Normal expectation for on-site play provision on a development of this size, but earlier application provided for off-site financial contribution that would be acceptable on the nearby Shuttlewood Recreation Ground; using 2018 index linked costs this would be £63,648 (78 x £816 per dwelling). A financial contribution is also sought to off-site built and outdoor sports facilities; using 2018 prices this would be £75,738 (78 dwellings x £971 per dwelling). 21/03/19

Public Art Officer – Seeking contribution to public art provision 21/03/19

Environmental Protection Officer – Have reviewed the submitted Phase 1 & 2 Environmental Assessment. The document is missing some appendices and relates to investigations carried out 6 years ago or to ongoing gas investigations, so will require updating and the submission of additional details. Request the inclusion of conditions to deal with these issues and an

advisory note in respect of noise and dust emissions. 28/03/19

*Further comment* – Whilst there are some shortcomings in the amount and quality of testing that has been carried out for both ground contamination and gas monitoring, even accounting for this, no significant contamination was identified and so the previous recommendation for a condition can be removed.

Since the previous consent there have been complaints about dust and a condition for a construction environmental management plan to control dust and noise is requested.  
20/06/19

Urban Design Officer – repetitive linear street scheme lacking variety of space, vistas and strong focal points, with dwellings not relating well to each other. Poor frontage to Shuttlewood Road worsened by the loss of hedgerow. High incidence of screen walls viewed from access road that would benefit from being reduced and landscaped. Areas of parking domination and poor outlook onto boundary treatment in some areas. Would benefit from softening of curve in the road. Appearance of pumping station could be softened through landscaping. More details on landscaping would be beneficial and provision; there is a need to ensure tree planting on the edge of the development to settle the development into the wider landscape. 12/04/19

*Further comment* – Notes improvements to the scheme, but still considers some additional changes necessary including: the relationship of dwellings to the highways, landscaping, repetitive nature of the street layout, incidence and dominance of screen walls and parking areas. 15/05

*Further comment* – Notes further improvements to the scheme through the inclusion of additional hedgerows on the site frontage and around the pumping station, but still recommends previously suggested changes 15/05

Environment Agency – No formal comment to make and Local Planning Authority should ensure consultation with Lead Local Flood Authority 7/5/19

## **PUBLICITY**

By site notice, press advert and 69 neighbour letters. 2 letters of representation have been received.

One letter is in support of the proposals stating “I fully support the proposal to invest in the local community with quality residential housing. Local amenities such as the primary school will benefit and hopefully local transport links such as the poor bus service will need to improve.”

The second letter accepts that the site is being developed but raises some concerns:

Loss of privacy to conservatory and garden; maintaining our house and gardens Privacy and amenity is paramount to maintaining our current lifestyle. Specific mention is made of a conservatory on the rear of the property with side windows. Happy to see bungalows but concerned at overlooking from upper floor windows in some dwellings – writer suggests

fencing to the boundary to ensure no overlooking.

Loss of security and possible light pollution through existing hedge as this is very old and has many gaps both at the base and in sections that the writer has tried to reinforce but which has failed. As the hedge is deciduous it is bare in the winter.

It is proposed to plant a new hedge where there is currently a picket fence that would take up space where cars are parked reducing amenity.

New residents may wish to remove hedge or cut to different heights which would ruin the appearance of the hedge. Would like the hedge to be protected and maintained to a uniform height; the hedge is difficult to maintain, normally requiring the farmer to use special equipment to trim the top and sides.

There is a slight height / level difference between development side and our property.

We would propose that a new 1.8m timber fence is installed on the development side to maintain privacy, reduce light pollution, improve security, improve appearance for new residents, help protect and maintain uniformity of the hedge by keeping hedge between 1.8m and 2.0m due to protection of fence, reduce maintenance for the new residents by restricting growth to their side, and the use of fence plinths to retain soil due to different levels. Writer would like a fence putting up soon to provide privacy during building works.

Existing chicken coop / livestock close to new residents that may be an issue.

I understand that the where plots 39 42 are situated (approx.) there are plans to significantly raise the height of the ground level. Although we can't see this on the proposals. Assume a suitable system will be installed to retain the new soil and that any new fence / hedge will be between 1.8 and 2.0 m measured from the new soil level to maintain privacy and amenity.

In the future would it be possible the bungalows would be extended within the roofs and Dorma windows installed, and hence losing my privacy?

Building close to a boundary will restrict access to maintain property.

Access to the writer's dwelling is restricted, including for access for emergency vehicles; is there any way to gain a different vehicle access point to our property via the proposed development site in the future.

Would like the applicant to engage with us directly on any of the issues raised above and to keep us informed of any works close to our boundary.

## **POLICY**

Bolsover District Local Plan (BDLP) Policies:

GEN1 (Minimum Requirements for Development),  
GEN2 (Impact of Development on the Environment),  
GEN4 (Development on Contaminated Land),  
GEN5 (Land Drainage),

GEN6 (Sewerage and Sewage Disposal),  
GEN11 (Development Adjoining the Settlement Framework Boundary),  
CON10 (Development Affecting the Setting of Listed Buildings)  
TRA10 (Traffic Management),  
TRA13 (Provision For Cyclists),  
TRA15 (Design of Roads and Paths To Serve New Development),  
ENV5 (Nature Conservation Interests throughout the District).

Submitted Local Plan for Bolsover District:

The plan has progressed through examination and so its policies should be given weight depending on the level of object to specific policies.

Policy SS1: Sustainable Development  
Policy SS2: Scale of Development  
Policy SS3: Spatial Strategy and Scale of Development  
Policy SS9: Development In The Countryside  
Policy LC2: Affordable Housing Through Market Housing  
Policy LC3: Type and Mix of Housing  
Policy SC2: Sustainable Design and Construction  
Policy SC3: High Quality Development  
Policy SC7: Flood Risk  
Policy SC8: Landscape Character  
Policy SC9: Biodiversity and Geodiversity  
Policy SC10: Trees, Woodland and Hedgerows  
Policy SC11: Environmental Quality (Amenity)  
Policy SC12: Air Quality  
Policy SC13: Water Quality  
Policy SC14: Contaminated and Unstable Land  
Policy SC17: Development Affecting Listed Buildings and their Settings  
Policy ITCR5: Green Space and Play Provision  
Policy ITCR7: Playing Pitches  
Policy ITCR10: Supporting Sustainable Transport Patterns  
Policy ITCR11: Parking Provision  
Policy II11: Plan Delivery and the Role of Developer Contributions  
Policy II2: Employment and Skills

National Planning Policy Framework

*Paragraph 8.* Achieving sustainable development means that the planning system has three overarching objectives: economic, social and environmental which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).

*Paragraph 47.* Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

*Paragraph 64.* Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership.

*Paragraph 94. School Places*

It is important that a sufficient choice of school places is available to meet the needs of existing and new communities.... give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications.

*Paragraphs 96-101. Open Space and Recreation*

*Paragraph 117.* Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.

*Paragraph 122.* Planning policies and decisions should support development that makes efficient use of land, taking into account:

- a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;
- b) local market conditions and viability;
- c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;
- d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and
- e) the importance of securing well-designed, attractive and healthy places.

*Paragraph 123.* Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. In these circumstances.....

- c). local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework.

*Paragraph 127.* Planning policies and decisions should ensure that developments....

- 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...

*Paragraph 170. Conservation of the Natural Environment*

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

- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures...

*Paragraph 190. Identification of heritage assets.*

Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal.

*Paragraph 193.*

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Other (specify)

Adopted Housing Layout and Design Guidance.

**ASSESSMENT**

The Principle of Development

The site lies outside the settlement framework for Bolsover as defined in the current Bolsover District Local Plan (2000) and outside of the settlement envelope as defined in the Publication Local Plan and there are no exception criteria, such as agricultural need, to satisfy other requirements in those plans. The application must be treated therefore as a departure from the Local Plan.

Notwithstanding this, the site has an extant and partially implemented planning permission and this is considered to be a material consideration that weighs against that normal policy position. The site is shown as an unallocated site with planning permission on the proposals map in the publication Local Plan.

The established principle of residential development on this site is due to the lawful start to an earlier planning permission for 80 dwellings; this means that the remainder of that development can be undertaken without any additional planning permission. Indeed, work is ongoing in respect of that approved development (implementation of the road and drainage works, albeit other works have now also been carried out that are subject to this planning application.

Given the presence of that existing planning permission it is considered that in principle the proposed development is not materially different to the development that can still be lawfully implemented. As a development of a similar quantum of housing with a broadly similar layout, the wider impacts of this development will have a neutral impact on the locality and open countryside compared to that already approved. On this basis, a different approach in respect of that established principle would be unreasonable.

Heritage Assets

Whilst 2km away from Bolsover Castle, the site is in views from that heritage asset and so the Conservation Officer has considered the impacts on the Castle and its setting. She is of the view that the development of this site would not result in the loss of a significant surviving component of the traditional Wooded Landscape setting of the Castle and would not be unduly prominent in the landscape as viewed from the Castle and would in fact provide the opportunity for softening the urban edge at this location. The proposed development would not therefore harm the setting of Bolsover Castle and would not impact on its Significance as a heritage asset of national importance. The development is considered therefore to comply with the requirements of the NPPF, Policy CON10 (Development Affecting the Setting of Listed Buildings) of the adopted Bolsover District Local Plan and Policy SC17: Development

Affecting Listed Buildings and their Settings of the emerging Local Plan.

#### Proposed Layout, design and amenity considerations

The overall layout comprises a series of cul-de-sacs served by single road together with a footpath corridor proposed to run parallel with the southern boundary and which connects back to Bolsover Road.

The applicants have submitted a number of revisions seeking to address issues raised with them, in particular those of the Urban Design Officer. That officer has acknowledged the improvements made, but considers that further changes could still be made to improve the scheme in lines with his earlier suggestions.

Notwithstanding that further request for more change, it is acknowledged that several amendments have already been made. The site is a relatively narrow site that is constrained by the close proximity of the flats off Pattison Street to the north and this limits the scope for substantive layout change. The layout proposes lower densities, including the incorporation of bungalows, towards the south west corner of the site which, together with the linear open space proposed on the southern boundary, act as a transition between the adjacent countryside and the urban areas to the north and there is variation in street layouts and dwelling types with the use of properties to act as focal points at key viewpoints within the development. Whilst there is room for improvement, as there are with most schemes, it is considered that the layout provides a reasonable layout that is in general compliance with the Council's adopted Design Guide and the principles contained in the NPPF. As such, subject to control over detailed elements including landscaping and materials, it is considered that the latest iteration of the layout is acceptable and is in compliance with the requirements of saved Policy GEN2 in this respect and the requirements of Policy SC3: High Quality Development of the emerging Local Plan.

There are a few instances where the layout doesn't fully meet the Council's adopted guidelines for garden lengths and distances between windows; for the most part these are very close to the published guidelines, with the exception of some garden lengths that fall around 1m short of that normally required. Within and between the new houses proposed in the development these are not considered to raise any harm to the privacy of occupants of the new units and a reasonable standard of privacy, amenity and garden space would be provided to the future occupants and are considered acceptable.

To control overlooking of adjoining plots, the dwellings on plots 4, 25 and 75 (all Flats over garages) either have a hall window (non-habitable) or a hall window and a high level kitchen window. In order to secure the privacy and amenity of existing neighbours, both existing and proposed, it is recommended that a condition be included requiring the hall window to be obscurely glazed. As flats have no permitted development rights for the alteration or installation of windows and this would be sufficient to protect the privacy of neighbouring properties.

In terms of the neighbouring dwelling to the west:

- This property would have 5 of the new dwellings facing onto its side boundary.

- The 2.5 storey dwellings specifically mentioned in the neighbours' representation meet Council guidelines in terms of offset positions from the rear boundary and do not directly overlook windows in the neighbouring dwelling.
- This property has a side facing ground floor window in a recently constructed extension to it; at 16.5m, less than the normally 21m would be available between that window and the proposed windows in the rear of the proposed bungalow on plot 36. However, there is a hedgerow on the field boundary and a 1.8m high timber fence is proposed on the boundary that would screen any overlooking given the single storey dwelling proposed on that plot; a condition requiring the erection and maintenance of a fence here would be needed to ensure adequate privacy for both dwellings is provided and maintained. Permitted development rights should also be removed for this plot to control the future installation of upper floor windows that may otherwise harm the privacy of residents of the existing property.
- Whilst several plots on this boundary meet the Council's normally required 10.5m rear garden distance adjacent to the neighbours rear curtilage, some fall below this, with the minimum measuring approx. 8.95m (plot 40). Additionally, proposed ground levels towards the south west corner of the planning application site would be raised relative to the current field level and the level of the garden of the adjacent dwelling (plots 39 @1m higher than at the boundary, plot 40 @1.7m and plot 41 @2.5m). Where 10.5m garden length is not provided the dwelling types are all bungalows. There is a mature hedgerow along the majority of that boundary, although there are some gaps in it and several species of hedgerow are deciduous and will not therefore provide year round screening and the increased ground levels would may also provide views over that hedgerow. Notwithstanding this, that property has a very long rear garden (@ 80m long) and there is no breach of the guideline for the first 35m of that garden length. It is considered that to ensure 10.5m rear gardens to all the new dwellings proposed along the entire length of that garden would be disproportionate in terms of securing a reasonable level of privacy and amenity for the residents of this neighbour's garden. Whilst some overlooking may occur from windows at less than the normally required 10.5m offset distance, given the generally single storey nature of the dwellings where there is a nominal breach of the guideline, the length of the neighbours garden and the existence of the hedgerow, that could be supplemented if needed by the neighbour or occupants of the new dwellings, it is not considered that the amenity of the neighbouring occupants would be materially harmed to a degree requiring a refusal of planning permission or any additional controls or amendments to the design and layout of these plots.

In respect of crime prevention, the Force Designing Out Crime Officer made suggestions for improvements to the original scheme that have been included in the layout and design drawings and is now content with the proposal with no recommendations for any further changes or conditions.

Overall it is considered that the layout provides an appropriate level of privacy and amenity subject to the conditions suggested above and the proposal is considered to accord with the general principles of the Council's adopted housing layout and design guidelines and with the requirements of saved Policy GEN2 and the requirements of Policy SC3: High Quality Development of the emerging Local Plan.



## Highways

In respect of highway safety, the amendments submitted by the developer have included alterations to address initial comments made by the Highway Authority and that Authority considers the proposal acceptable from a highway safety perspective.

Suggested conditions of the Highway Authority have been considered, but not all are considered reasonable or necessary. As the access is already implemented there is no need to approve a temporary means of access to the site. There has been a request for two conditions, one for a construction management plan (CMP) and one for a wheel washing facility; these issues are already contained in an approved CMP under the existing planning permission's and it is recommended that compliance with that document be conditioned. Construction details of the highway is controlled under highways legislation. Several conditions have been suggested that were not included on the earlier planning permission's and their inclusion here would not be reasonable in this circumstance This includes: secure cycle parking; means of preventing discharge of water from private drives; use of loose materials for driveways (although this is controlled under the recommended hard landscape details condition); the widening of Bolsover Road and 2m wide footway on the site frontage; and the provision of gates to driveways.

## Ecology/Biodiversity

Derbyshire Wildlife Trust has advised stated: -

“This application comprises a revised site layout to that previously commented on by the Trust under earlier applications. Initial ecological survey work (Phase 1 habitat survey and GCN survey) was undertaken at the site in 2012, with updates in 2018 (badger and breeding bird survey). The two badger setts previously recorded were no longer considered active. We do not consider update survey work to be necessary at this time, although a precautionary badger survey prior to commencement on site would be prudent to avoid any future offences

The proposals will result in the net loss of approx. 280 m of the central hedge and approx. 100 m roadside hedge. This significant net loss of a habitat of principal importance contradicts the aims of the local Biodiversity Action Plan and the NPPF 2019. Compensatory measures for hedgerow should be provided prior to determination.

Biodiversity enhancements could be secured through a planning condition.”

Conditions suggested include control over vegetation removal during bird nesting season and an updated badger survey. As development has already commenced and hedgerow and vegetation has already been removed (as approved by the earlier permissions), it is not considered necessary to include such conditions in respect of this proposal. An advisory note reminding the developer of their obligations under separate legislation to protect wildlife is proposed.

Although the request for compensatory measure is noted, these were not required prior to the determination of the earlier permissions and as the earlier approved development has already commenced, it is considered unreasonable to delay the determination of this planning application pending agreement of such detail. As with the earlier permission, this can be included within any condition requiring Biodiversity enhancements.

Conditions requiring the ongoing protection of the boundary hedgerows on site, in line with the earlier permission on this site should also be included.

In respect of biodiversity protection and mitigation, the submitted layout plan makes provision for large amounts of 1.8m high solid timber fencing alongside the retained boundary hedgerows. Such fencing is against the best interests of biodiversity in that it precludes light and access by wildlife to that hedgerow and therefore has a negative impact on its biodiversity interest. On this basis, except where this is needed to secure privacy to the rear of plot 36, as discussed earlier, alternative fencing should be required by condition.

Subject to the inclusion of conditions as outlined above, it is considered that the proposal accords with the requirements of saved policy ENV5 of the adopted Bolsover District Local Plan and the requirements of Policy SC9: Biodiversity and Geodiversity of the emerging Local Plan.

#### Drainage

Yorkshire Water has commented that the Flooding & Drainage Assessment prepared by CoDa Structures (Report 6920 dated 18 May 2012) is acceptable. In summary, the report states that foul water will discharge via pumping to the 300mm diameter public combined water sewer in Shuttlewood Road and surface water will discharge to the watercourse to the south west of the site; this is as approved under the earlier consent and works to implement this approved scheme have already commenced. Yorkshire Water recommends the inclusion of conditions relating to the provision of separate systems of foul and surface water drainage and provision of a satisfactory outfall for surface water.

The Lead Local Flood Authority (Derbyshire County Council) has sought additional information to demonstrate that options for Sustainable Urban Drainage Systems (SUDS) have been considered.

Notwithstanding this request, given the existing approval of the principles of the drainage scheme (recently approved in consultation with the Flood Authority), to require a different approach to that previously approved and part implemented scheme would be unreasonable. A revision to the layout of that approved scheme will be need to be included by condition to take account of the new dwelling and highway layout on parts of the site, and this is proposed to be included as a conditional requirement.

Subject to inclusion of such a condition, the proposal is considered to accord with the requirements of saved policies GEN5 (Land Drainage) and GEN6 (Sewerage and Sewage Disposal) of the adopted Bolsover District Local Plan and the requirements of Policies SC7 and SC13 of the emerging Local Plan.

#### Pollution

The Environmental Protection Officer has reviewed the submitted Phase 1 & 2 Environmental Assessment and additional information that was submitted in response to the Environmental Protection Officer's initial comments.

She has advised that whilst there are some shortcomings in the amount and quality of testing that has been carried out for both ground contamination and gas monitoring, even accounting

for this, no significant contamination was identified and so that there is no requirement for any conditions to control any additional investigation or mitigation.

In respect of the Environmental Protection Officer's request for a condition for a Constructional Environmental Management Plan (CEMP), no such requirement was previously requested, and no control made, in terms of noise and dust on the earlier and implemented consents. Nevertheless, a CEMP was completed under a condition of the earlier planning permission's as a response to a request for this from the Highway Authority; it is proposed to require compliance with that document in any event. The issues of dust and noise are discussed in that document with proposals for mitigation, but the Environmental Protection Officer would wish to see this extended. However, to alter the requirement of that document would be unreasonable given the earlier permissions and approval of that document. Nevertheless, it is also worth noting that separate controls exist under Environmental Health legislation to control statutory nuisance from noise and dust to give protection to local residents in the event of incidents in this respect.

#### Affordable Housing

The Strategic Housing Officer has advised that there is an identified need for affordable housing in the district and that the previously agreed provision of 8 x 2 bed (4 person) houses for rent is still acceptable as the affordable housing contribution; the affordable units should be owned and managed by a Housing Association with stock in the district, or in that of a neighbouring Local Authority. Nomination rights should be given to the council.

The applicant has agreed to this provision and this will need to be dealt with by the completion of a section 106 Planning Obligation to secure the delivery of those dwellings prior to the issue of any planning permission. Such provision will accord with the requirements of policy HOU6 (Affordable Housing) of the adopted Bolsover District Local Plan and the requirements of Policy LC2: 'Affordable Housing Through Market Housing' of the emerging Local Plan.

#### Other S106 Matters

In addition to the affordable housing request, there have been further requests for contributions from the Leisure Officer, Public Arts Officer, the Education Authority and the NHS Hardwick CCG.

Whilst those requests have been put to the applicant they no additional offers have been made over and above the affordable housing, which was the only requirement of the earlier planning permission's.

In a supporting letter, the agent correctly summarises the fact that that at the time of that earlier decision there had been requests for 16 primary school places and a public art contribution. It was however demonstrated at the time of the submission that the public art contribution would not meet the tests for S106, whilst the Education Authority could not release the relevant information to justify the school place requirement it had requested.

Additionally in respect of that earlier decision it is worth noting that:

- Due to the proximity of existing play facilities and sports pitches, additional leisure contributions could not be justified at that time. This was based on the Council's updated open space audit that has been unchanged since then and there has been no material change in circumstance in respect of leisure provision within Shuttlewood since that date; and
- The Derbyshire County Primary Care Trust (the predecessor to the current CCG) stated that no contributions to health provision were required as capacity existed at local practices.

The agent indicates that:

- Future planning with respect to infrastructure and school place requirements going forward should therefore already take into account the additional housing numbers and population increase anticipated from the site; and
- As the current plot substitution application represents a reduction in quantum by 2 plots but no other substantial changes, no review of the S106 requirements is deemed necessary. Therefore, it should be possible to rely on the existing S106 Heads of Terms.

It is considered that this interpretation is correct in these circumstances given the 'fall back' position relating to the prospect of implementation of the approved scheme for 80 dwellings, which is 2 more dwellings than is now proposed.

As one of the tests for S106 contributions is that the requirement should be reasonable in all other respects, it is considered that to seek to impose additional S106 requirements at this stage would be unreasonable and would fail this test of lawfulness.

On this basis it is considered that in the event that planning permission is granted, this should be made subject to a Section 106 Planning Obligation to secure solely the provision of the proposed affordable housing.

In addition to the above, the agent has also indicated that to provide additional funding to S106 matters would negatively impact on the viability of the scheme. Whilst viability is a matter that can be considered in more detail if considered necessary, given the acceptance of the status of the earlier permission and S106, no further consideration of this issue is required.

#### Other matters

The Council's Economic Development team has noted that the proposed scheme meets the relevant thresholds set out in the emerging Bolsover Local Plan Policy I12: Employment and Skills, so request inclusion of a condition regarding the provision of local employment. In line with other issues raised in this report, such a condition was not included on the earlier planning permission's for this development and development has already been commenced and is ongoing and clearly contracts let given that ongoing work. Additionally, whilst the Local Plan is relatively advanced this is still not adopted policy and on this basis, the inclusion of such a condition is not considered to be reasonable in this case.

The above report has dealt directly with a number of comments raised in the submitted letter of representation. In respect of the further comments raised: -

- It is not considered that the introduction of dwellings on the boundary of the neighbours' property will increase security risk given the current boundary is onto an open field. There will be no highway access to that boundary and any access to the boundary would have to be through the grounds of the new dwellings.
- Whilst lighting may be introduced onto properties this is not unreasonable on dwellings or in urban locations and this is not considered to be harmful in planning terms.
- Hedge and other property maintenance is a private matter. Should any hedgerow encroach onto adjoining land this is also a private matter.
- The extent of fencing and boundary works suggested by the writer is not considered reasonable or necessary in planning terms.
- It is not unusual for livestock to be kept in gardens and it is not considered that this raises any material issues that would weigh against the proposals.
- There is no planning reason to provide an improved vehicular access to the writer's property.

### Conclusion

Whilst being contrary to the adopted Local Plan, regard must be had to the lawful implementation of the earlier planning permission on this site that is considered to weigh against the normal policy principles regarding development in the countryside. There have been negotiated improvements to the proposed development in the interests of the character and appearance of the area, highway safety, the privacy and amenity of neighbours and biodiversity to bring the proposal in-line with other policy requirements, the Council's published design guidance and the NPPF (2019). A S106 Agreement to address affordable housing need has been agreed. On balance it is considered that there are no outstanding matters that would indicate that planning permission should not be granted in this case.

### **Other Matters**

Listed Building: See assessment

Conservation Area: N/A

Crime and Disorder: See assessment above

Equalities: No significant issues arise

Access for Disabled: No significant issues arise

Trees (Preservation and Planting): See assessment

SSSI Impacts: N/A

Biodiversity: See assessment above.

Human Rights: No significant issues arise

**RECOMMENDATION      The current application be approved pending completion of a S106 obligation in respect of affordable housing.**

**And subject to conditions**, including the following given in precis form below to be formulated in full by the Head of Planning/Planning Manager in liaison with chair and vice chair of the Planning Committee:-

1. The development hereby permitted must be carried out in accordance with the following approved drawings and documents:-

- C00 – Site location plan submitted 07/02/19
- C01 – Topographical survey submitted 07/02/19
- C02 Rev C - Street Elevations submitted 24/05/19
- C03 Rev C - Site Plan East submitted 24/05/19
- C04 Rev E - Site Plan West submitted 18/06/19
- C05 Rev A - Petworth submitted 30/04/19
- C06 Rev A - Petworth submitted 30/04/19
- C07 Rev A - Petworth submitted 30/04/19
- C08 Rev A - Petworth submitted 30/04/19
- C09 Rev A - Lindisfarne submitted 30/04/19
- C10 Rev A - Lindisfarne submitted 30/04/19
- C11 Rev A - Lindisfarne submitted 30/04/19
- C12 Rev A - Lindisfarne submitted 30/04/19
- C13 Rev A - Lindisfarne submitted 30/04/19
- C14 Rev A - Lindisfarne submitted 30/04/19
- C15 Rev A - Lindisfarne submitted 30/04/19
- C16 Rev A - Kingston submitted 30/04/19
- C17 Rev B - Kingston submitted 24/05/19
- C18 Rev A - Hardwick semi submitted 30/04/19
- C19 Rev A - Hardwick semi submitted 30/04/19
- C20 Rev A - Hardwick semi submitted 30/04/19
- C21 Rev A - Hardwick det submitted 30/04/19
- C22 Rev A - Hardwick det submitted 30/04/19
- C23 Rev A - Hardwick det submitted 30/04/19
- C24 Rev A - Hardwick det submitted 30/04/19
- C25 Rev A - Rosedene submitted 30/04/19
- C26 Rev A - Rosedene submitted 30/04/19
- C27 Rev A - Rosedene submitted 30/04/19
- C28 Rev A - Rosedene submitted 30/04/19
- C29 Rev A - Wycombe submitted 30/04/19
- C30 Rev A - Wycombe submitted 30/04/19
- C31 Rev A - Westbury submitted 30/04/19
- C32 Rev A - Westbury submitted 30/04/19
- C33 Rev A - Westbury submitted 30/04/19
- C34 Rev A - Buckingham submitted 30/04/19
- C35 Rev A - Danbury submitted 30/04/19
- C36 Rev A - Sudbury submitted 30/04/19

- C37 Rev A - Claydon submitted 30/04/19
- C38 Rev A - Claydon submitted 30/04/19
- C39 - 2.5 storey Hardwick Plans submitted 24/05/19
- C40 Rev A - 2.5 storey Hardwick Elevations submitted 30/04/19 (only approved in respect of plots 12 – 18)
- C41 Rev A - 2 bed Affordable House submitted 30/04/19
- C42 – Garages – single and combined submitted 07/02/19
- C43 Rev A - Garages- paired submitted 30/04/19
- C44 Rev A - Plot materials Schedule submitted 30/04/19
- C45 Rev D - Site Plan 1/500 submitted 18/06/19
- C46A – Kingston submitted 24/05/19
- P47 – 2 bed affordable house for Plots 10 – 11

*REASON:* For the avoidance of doubt having regard to the amended and additional drawings submitted during the application in order to define the planning permission.

2. The fencing erected to protect retained trees and hedgerows, as approved under application ref. 18/00407/DISCON, must be maintained as approved at all times during the development of this site. Nothing will be stored or placed within the fenced area around any retained tree or hedgerow and the ground levels within the fenced area must not be altered, and no any excavation will take place, without the written consent of the Local Planning Authority.

*REASON:* To ensure that adequate protection is given to trees and hedgerows that are to be retained on the site or which abut the site in the interests of the visual amenity of the area and biodiversity interests, and in compliance with Policies GEN1, ENV5 and ENV8 of the adopted Bolsover District Local Plan.

3. Building works must not commence above foundation level on more than 10 new dwellings unless a Biodiversity Enhancement Strategy has been submitted to and approved in writing by the Local Planning Authority to achieve a net gain in biodiversity in accordance with the NPPF 2019. Such approved measures should be implemented in full and maintained thereafter. Measures must include (but are not limited to):

- the provision of compensatory hedgerow planting for the hedgerow lost as part of the development;
- details of bird and bat boxes to be clearly shown on a plan (positions / specification / numbers).
- hedgehog connectivity measures to be clearly shown on a plan, such as small fencing gaps (130 mm x 130 mm), railings or hedgerows; and
- a summary of ecologically beneficial landscaping (full details to be provided in Landscape Plans).

*REASON:* To provide for an enhancement of the ecological/biodiversity interest of the site in accordance with the policy of the National Planning Policy Framework and policy ENV5 of the adopted Bolsover District Local Plan.

4. Notwithstanding the submitted details, prior to building works commencing above foundation level on more than 10 dwellings, details of both hard and soft landscape works, including all means of enclosure and a programme for implementation, must have been submitted to and approved in writing by the Local Planning Authority and the works must be carried out as approved. The soft landscaping details must take account of the need to provide for biodiversity enhancement under the requirements of condition 3 above.

*REASON:* To ensure that satisfactory landscaping is provided within a reasonable period in the interests of visual amenity and biodiversity and in compliance with Policies GEN1, GEN2 and ENV5 of the adopted Bolsover District Local Plan

5. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas including the open space-footpath route along the southern edge of the site, other than small, privately owned, domestic gardens, must be submitted to and approved in writing by the Local Planning Authority prior to the occupation of any dwelling . The landscape management plan must be carried out as approved.

*REASON.* To ensure that landscaped areas are effectively maintained in the interests of biodiversity and the visual amenity of the area and in compliance with policies GEN1, GEN2 and ENV5 of the adopted Bolsover District Local Plan.

6. If within a period of five years from the date of the planting of any tree or shrub that tree or shrub may die, be removed, uprooted or become seriously damaged it must 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.

*REASON.* To provide a reasonable period for the replacement of trees and shrubs in the interests of biodiversity and the visual amenity of the area and in compliance with policies GEN1, GEN2 and ENV5 of the adopted Bolsover District Local Plan.

7. The Hall windows in the rear elevation of plots 4, 25 and 75 must be fitted with obscured glass that must be maintained as such at all times thereafter for the lifetime of the development.

*REASON:* In the interests of the privacy and amenity of occupants of the adjoining dwellings and in compliance with Policy GEN2 of the adopted Bolsover District Local Plan

8. Notwithstanding the provisions of Parts 1 and 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) there will be no alterations resulting in the installation of any windows (including roof-lights) above the ground floor of the proposed dwelling on plot 36 without the prior grant of planning permission.



*REASON:* In the interests of the privacy and amenity of occupants of the adjoining dwellings and in compliance with Policy GEN2 of the adopted Bolsover District Local Plan.

9. Prior to the occupation of the approved dwelling on plot 36, a 1.8m high solid screen fence must have been erected on that plots rear boundary that must be maintained at all times thereafter for the lifetime of the development.

*REASON:* In the interests of the privacy and amenity of occupants of the adjoining dwellings and in compliance with Policy GEN2 of the adopted Bolsover District Local Plan.

10. Prior to building works commencing above foundation level on more than 10 dwellings, full details of foul and surface water drainage to include a scheme of implementation and arrangements for the lifetime management and maintenance of the drainage works, based on the principles established by the drainage details previously approved under planning consent ref. 18/00406/DISCON, must have been submitted to and approved in writing by the Local Planning Authority, which must be implemented in accordance with the approved timetable. The scheme will provide for separate foul and surface water systems on and off the site.

*REASON:* To ensure that satisfactory provision is made at the appropriate time for the disposal of foul and surface water and in compliance with policy GEN5 and GEN6 of the adopted Bolsover District Local Plan.

11. There shall be no piped discharge of surface water from the application site until works to provide the outfall for surface water, as approved under planning consent ref. 18/00407/DISCON, have been completed.

*REASON:* To ensure that the site is properly drained and surface water is not discharged to the foul sewerage system which will prevent overloading and in accordance with the requirements of policy GEN5 of the adopted Bolsover District Local Plan.

12. The construction management plan previously approved under application reference number 18/00407/DISCON shall be adhered to throughout the construction period.

*REASON:* In the interests of highway safety and residential amenity and in compliance with policies GEN1 and GEN2 of the Bolsover District Local Plan.

13. The construction access must be provided and maintained in accordance with the details previously approved under planning consent ref. 18/00407/DISCON. The access shall be retained in accordance with that approved scheme throughout the construction period, or such other period of time as may be agreed in writing by the Local Planning Authority, free from any impediment to its designated use.

*REASON:* In the interests of highway safety and in compliance with Policy GEN1 of the Bolsover District Local Plan.

14. The construction compound within the site for the storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles must be provided and maintained in accordance with the details previously approved under planning consent ref. 18/00407/DISCON free from any impediment to its designated use throughout the construction period.

*REASON:* In the interests of highway safety and in compliance with Policy GEN1 of the Bolsover District Local Plan.

15. No dwelling will be occupied unless and until it is served by an access road which has been surfaced at least to base course level and there is a level surfaced footway suitable for use by wheelchairs and pushchairs between that dwelling and the public highway.

*REASON:* In the interests of highway safety and in compliance with Policy GEN1 of the Bolsover District Local Plan.

16. No part of the development shall be occupied until a new estate street junction has been formed to Bolsover Road in accordance with the application drawing Nos 18-560-SH-C03, and provided with visibility sightlines extending from a point 2,4m from the carriageway edge, measured along the centreline of the access, for a distance of 47m in each direction measured along the nearside carriageway edge. The land in advance of the visibility sightlines being levelled, constructed as footway and not being included in any plot or other sub-division of the site.

*REASON:* In the interests of highway safety and in compliance with Policy GEN1 of the Bolsover District Local Plan.

17. No dwelling will be occupied until its new vehicular access has been formed to the new estate street in accordance with the approved application drawings. The accesses serving plot numbers 7 to 41, 46, 49 to 59 and 73 to 76 must be provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the accesses, for a distance of 25m in each direction measured along the nearside carriageway edge, with the accesses serving plot numbers 3, 42, 47, 48, 59, 60, 70, 71 and 77 to 79 being provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the accesses, for a distance of 17m in each direction measured along the nearside carriageway edge. The land in advance of the visibility sightlines must be retained throughout the life of the development free of any object greater than 1m in height relative to adjoining nearside carriageway channel level.

*REASON:* In the interests of highway safety and in compliance with Policy GEN1 of the

## Bolsover District Local Plan.

18. Individual and shared private vehicular accesses shall not be taken into use until 2m x 2m x 45° pedestrian intervisibility splays have been provided on either side of the accesses at the back of the footways/margins, the splay areas being maintained throughout the life of the development clear of any object greater than 1m in height relative to footway level.

*REASON:* In the interests of highway safety and in compliance with Policy GEN1 of the Bolsover District Local Plan.

19. No dwelling shall be occupied until space has been laid in accordance with the approved application drawings for the parking of that dwelling's resident's vehicles.

*REASON:* To enable a vehicle to be parked clear of the highway in the interests of safety and in compliance with Policy GEN1 of the Bolsover District Local Plan

20. The garages / car parking spaces to be provided shall be kept available for the parking of motor vehicles at all times. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and/or re-enacting that Order) the garage / car parking spaces hereby permitted shall be retained as such and shall not be used for any purpose other than the garaging of private motor vehicles associated with the residential occupation of the property without the grant of further specific planning permission from the Local Planning Authority.

*REASON:* To enable a vehicle to be parked clear of the highway in the interests of safety and in compliance with Policy GEN1 of the Bolsover District Local Plan.

21. The proposed access driveways to the new estate street shall be no steeper than 1 in 14 for the first 5m from the nearside highway boundary and 1 in 10 thereafter.

*REASON:* In the interests of highway safety and in compliance with Policy GEN1 of the Bolsover District Local Plan.

### **Statement of Decision Process**

1. Whilst being contrary to the adopted Local Plan, the Local Planning Authority has had regard to the lawful implementation of an earlier planning permission on this site that is considered to weight against the normal policy principles regarding development in the countryside. The Local Planning Authority has negotiated improvements to the proposed development in the interests of the character and appearance of the area, highway safety, the privacy and amenity of neighbours and biodiversity to bring the proposal in-line with other policy requirements, the Council's published design guidance and the NPPF (2019). A S106 Agreement to address affordable housing need has been agreed. On balance it is considered that there are no outstanding matters that would indicate that planning permission should not

be granted.

### **Notes**

Advisory notes to cover the following issues are proposed: -

- S106;
- Use of open boundary treatments adjacent existing hedgerows;
- Soft landscaping, especially the use of native species;
- Reminder about obligations under the Wildlife and Countryside Act;
- Noise and Dust mitigation;
- Temporary arrangements for surface water run-off;
- Local Employment;
- Derbyshire County Council highways advisory notes;
- Encouragement for provision of high speed broadband.

**PARISH** Barlborough

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**APPLICATION** Variation of condition 4 (trading hours) of planning permission 17/00153/FUL to trade between 05:00 and 00:00, with deliveries and other service functions only between 06:30 and 23:00.  
**LOCATION** 2 Tallys End Barlborough Chesterfield S43 4WP  
**APPLICANT** McDonalds Restaurants Ltd  
**APPLICATION NO.** 19/00181/VAR **FILE NO.** PP-07717860  
**CASE OFFICER** Mr T Ball  
**DATE RECEIVED** 27th March 2019

DELEGATED APPLICATION REFERRED TO COMMITTEE BY: (Former) Cllr H Gilmour  
REASON: Level of public interest

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### **SITE**

Existing McDonald's restaurant with drive through situated at the junction of Tally's End with Chesterfield Road (A619). KFC (Kentucky Fried Chicken) restaurant with drive through and Costa Coffee unit adjoin to the south-western side. All these units have the same trading hours restriction of between 06.00hrs and 23.00hrs daily.

Beyond the restaurant/take-away units, to the south west are offices. Across Tally's End to the south east a single storey office with, further east, the Ibis Hotel and Treble Bob Public House. All these commercial units are accessed off Tally's End.

Across Chesterfield Road are residential properties, the closest of which is approximately 44m away (building to building).

### **PROPOSAL**

This application is to vary condition 4 of planning permission 17/00153/FUL by adding an extra hour for trading at the beginning and at the end of the day so that the premises open at 5am and close at midnight.

Condition 4 of 17/00153/FUL states:

*The trading hours of the restaurant/hot food takeaway shall only be between 06.00hrs and 23.00hrs daily. Deliveries and other service functions (such as refuse collection) shall only take place between 06.30hrs and 23.00hrs daily.*

The reason for the condition is:

*For the avoidance of doubt and to be consistent with extant planning permissions for the site, to protect the amenity of occupants of nearby dwellings and in compliance with policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan.*

The proposal is to amend this condition to read:

*The trading hours of the restaurant/hot food takeaway shall only be between 05.00hrs and 00.00hrs daily. Deliveries and other service functions (such as refuse collection) shall only take place between 06.30hrs and 23.00hrs daily.*

The application is accompanied by a Noise Impact Assessment. This states that the closest residential properties are around 50m away; that road traffic noise is a major contributor to the noise climate; attended and unattended measurements took place in August 2018; and that the noise impact from people, vehicles, the Customer Ordering Display (COD – ordering point for drive through) and from plant, would be likely to cause no impact on nearby residential amenity without further mitigation need.

A premises Noise Management Plan is also provided to establish good practice proactively and reduce the risk of causing a low noise impact on the quality of amenity to a minimum.

## AMENDMENTS

Community Consultation Statement removed from consideration with the application by BDC following consideration of comments made by members of the public and councillors due to alleged misleading statements and it relating to 24 hour operation.

Site Management Plan received 3 May 2019:

- security maximised with CCTV including 2 external cameras monitoring the drive-thru lane;
- litter picks every 2 hrs in the immediate vicinity and around the local community on a daily basis picking up all litter, frequency and area are able to be extended if deemed necessary should the opening hours be extended;
- McDonalds 'staff safe' system has been installed which is an audio visual system linked to remote monitoring and assists in managing anti-social behaviour etc.;
- signage is in place requesting customers to be respectful of neighbours and to keep noise to a minimum;
- managers are trained in conflict management awareness.

Response to various public responses also received 3 May 2019.

Response to comments of Environmental Health received 21 May 2019.

## HISTORY

99/00309/FUL	GC	Erection of a restaurant & hot food takeaway with a drive through facility & formation of a car park & creation of a new access
99/00310/FUL	GC	Erection of a restaurant & hot food takeaway with a drive through facility & formation of a car park & creation of a new access
08/00510/VAR	WDN	To trade between 6am - 11.00pm, seven days a week (Vary condition 9 of planning permission 99/00309/FUL & 99/00310/FUL which limited hours to 0730-2300 daily)
08/00720/VAR	GC	To extend opening hours (vary condition 9 of planning permission 99/00309/FUL and 99/00310/FUL which limited hours to 0730-2300 daily). [Revised hours of

		06.30 to 23.00 approved for temporary 6 month period].
09/00628/VAR	GC	Variation of condition 9 of planning permissions 99/00309/FUL & 99/00310/FUL to allow restaurant to open between the hours of 6.30am - 11.00pm
10/00456/FUL	GC	External alterations including doors, windows and cladding and alterations to car parking and landscaping
11/00145/VAR	GC	Extend opening hours of restaurant from 0630hrs to start 0600hrs (Variation of Condition 9 of planning permission 99/00309/FUL and condition 1 of 09/00628/FUL)
13/00144/FUL	GC	Reconfiguration of the exit and car park to allow side-by-side drive through order point
17/00153/FUL	GC	Refurbishment of the restaurant with alterations to elevations to include the installation of a new "Folded Roof" concept, comprising of aluminium cladding to the roof (increasing overall height of roof by 0.3m), the construction of extensions totalling 47.23 sq m (Revised plans submitted 28th April 2017).
17/00280/MINAM	GU	Minor amendment to planning application 17/00153/FUL - Erection of 7.5ft fence (Drawing No. 6925_AEW_1027_004 Ref F)
18/00493/VAR	WDN	Application for the variation of Condition 4 of Planning Permission 17/00153/FUL (to remove trading hours of between 0600hrs and 2300hrs to allow 24 hour trading)

## CONSULTATIONS

Environmental Health: Has reviewed the noise assessment that has been submitted to support this application which is essentially the same as that submitted for the previous application albeit the trading hours are altered so that the assessment covers the hours 23:00-00:00 and 05:00-06:00. Comments regarding the noise assessment are therefore much the same as for the previous application as the proposed increase in hours will capture many of the predicted additional customers which is to be expected. However, the main impact of the proposed increase has always predominantly been with respect to the hours now under consideration. Therefore, although aware that the applicant has sought to reduce the level of hours that they wish to trade from 24 hours, comments are still much the same as previous. The impact of traffic pulling away from Tally's End has not been considered any further, nor is there any information to determine whether a more significant noise reduction could be achievable at the store.

Unfortunately, this store is located in an area where there are already existing high noise levels due to the busy road and the commercial nature of the businesses opposite the residential houses. There is no additional information or justification with the application to demonstrate why the extended hours requested are essential or desirable. When this is

coupled to the potential for additional disturbance to the residents, unable to say that this would be justified or reasonable.

Therefore, recommendation and comments from the previous consultation remain valid and in view of the potential impact on existing residents, we would recommend a refusal of the application at this time, predominantly as much of the proposed impact would be outside the direct control of McDonalds.

Following a site visit in connection with the withdrawn application, it would appear that a potentially significant source of noise is from vehicles pulling away from the junction on Tallys End to turn right towards the Treble Bob roundabout. This is difficult to assess within this type of acoustic report. Although there will always be some vehicles in this area at night, the presence of a 24hr McDonalds will increase the traffic flow. Due to the intermittency of this noise, it can potentially be more disruptive to local residents than if it was happening constantly. 15.05.19

Parish Council: Objects:

The air quality for the residents living in close proximity to both the restaurant and also the parking areas used by the heavy goods vehicles would be significantly diminished.

There would be significantly increased noise pollution from vehicles using the facility, the residents will only have four hours of respite from the additional noise.

Also other sources of additional noise pollution would arise from the extraction fans being operated from 4:00 a.m., the noise generated from the kitchen and the drivers and passengers in the vehicles using the car park.

The light pollution would be increased, coming from both the facility and the vehicles entering and leaving the premises.

The extended opening times will attract more traffic, especially HGV.

Potentially more anti – social behaviour after 11.00 p.m., as it could encourage groups of people and vehicles to congregate in the car park.

Permission given to this facility for extended trading hours could open the floodgates for similar businesses in the area to extend their opening hours.

We would also like to point out that this planning application for extended opening hours has a history of refusal on previous occasions and the application immediately prior to this application was withdrawn by McDonalds themselves. 17.04.19

Local Highway Authority (DCC): No objections 02.04.19

## **PUBLICITY**

Site notice posted. 23 neighbours notified.  
25 letters of objection, 2 of support:



Two letters of support one of which welcomes more employment opportunities and access to services for people who work nights etc. No reasons for support provided by second supporter.

25 letters of objection mainly from residents on Chesterfield Road, but also some from other residents nearby or regular visitors to relations on Chesterfield Road.

Main reasons for objection:

Noise and nuisance (e.g. moving headlight beams on bedroom windows) from additional traffic particularly from using Tallys End junction with Chesterfield Road disturbing sleep. (Mentioned specifically by 9 objectors).

Potential additional noise disturbance from increased use of lay-by opposite Tallys End junction (people parking to eat food purchased from McDonalds during extended hours - talking, shouting, music and litter at an anti-social time for a residential area) disturbing sleep. This problem already occurs during the current trading hours. (Mentioned specifically by 4 objectors).

Potential extra litter from additional trade. (Mentioned specifically by 18 objectors).

Potential for anti-social behaviour during increased hours. (Mentioned specifically by 9 objectors).

Additional traffic, pollution (fumes) light and noise. (Mentioned by 20 objectors).

Additional odours from cooking process. (Mentioned specifically by 2 objectors).

Additional noise from kitchen extraction plant which currently finishes and starts an hour after/before trading. (Mentioned specifically by 4 objectors).

Precedence for 24 hour opening. ((Mentioned specifically by 2 objectors).

Precedence for Costa and KFC to extend their hours of trading. (Mentioned specifically by 2 objectors).

Sufficient 24 hour restaurants in locality. (Mentioned specifically by 6 objectors).

Existing parking problems/damage to footways and verges, particularly by HGV's which cannot access car park. (Mentioned by 3 objectors).

Circumstances which justified existing restrictions on trading have not changed and still apply, being to protect the amenity of occupants of nearby dwellings and their quality of life. (Mentioned specifically by 3 objectors).

Contrary to health and wellbeing agenda/policies, widening availability of 'junk' food. (Mentioned specifically by 5 objectors)

This is not a predominantly commercial area but a mixed residential/commercial area with more residential properties than commercial ones.

The benefit of jobs does not outweigh the impacts on local residents.

The current operation of the premises impacts on the quality of life in a substantial manner, any increase will make this worse. (Mentioned specifically by 2 objectors).

Proposed new housing in the locality will increase trade during the current hours with consequent noise, pollution. Litter impacts; no need for extended hours.

Existing signage asking customers to keep noise levels down does not work.

Weekday noise is different to weekend noise (different type of customer more prone to anti-social behaviour at weekends). Noise assessment does not account for this difference.

Transient customers (passing trade) have no respect for the quality of life of nearby residents.

Affects human right to enjoy your home peacefully.

Further comments of objection received by the local Neighbourhood Watch Coordinator on behalf of residents following consideration of agents response to previous objections. These are discussed below.

## **POLICY**

### National Planning Policy Framework ('The 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 optimise the potential of the site and, 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 users; and where crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion and resilience. (para 127f).

### Bolsover District Local Plan

Shows as within settlement framework, general urban area policies apply, of particular relevance will be policies GEN1 (Minimum Requirements for Development), GEN2 (Impact of Development on the Environment).

It is considered that the general aims of these policies have a degree of consistency with the principles and policies of the National Planning Policy Framework.

### Emerging Local Plan:

Publication Version of the Local Plan for Bolsover District (May 2018) currently undergoing examination although with public sessions now closed and minor modifications published for consultation. The plan is therefore at an advanced stage.

This shows the site as within the development envelope for Barlborough within which urban forms of development will generally be acceptable (Policy SS3) and allows development which is appropriate in scale, design and location; is compatible with and does not prejudice existing or intended use of adjacent sites; accords with other policies of the Plan, and would not have an unacceptable environmental impact (Policy SC1). The proposed minor modifications to the emerging Local Plan do not impact on the interpretation of these policies in the context of this proposal.

### **ASSESSMENT**

This is an established McDonald's restaurant with 'drive through' on the north western edge of Barlborough Links. The building backs onto Chesterfield Road with the drive through lane and collection booths on this north-western elevation. It is at a lower ground level than the main road, with a 2.3m (7ft 6in) high close boarded fence at road level, which effectively screens the restaurant, drive through lane and restaurant windows which face this side. There are no illuminated advertisements on this elevation although there are lights illuminating the drive through lane. There is a residential area across Chesterfield Road with a mixture of house and bungalows. The front elevation of the nearest dwellings are 44m to 47m from the McDonalds building.

The application is to allow an additional 2 hours trading of the restaurant and drive through. Currently it is closed between 11pm and 6am. The proposal is to change these times so that the premises are closed between 12midnight and 5am. The main issues are therefore the impact on residential amenity and on the amenities of the area as a result of the extended opening hours.

The Noise Impact Assessment (NIA) predicts customer numbers in the restaurant being on average 21 during the 11pm – 12am period and 3 during the 5am – 6am period and customers using the drive-thru being on average 29 during the 11pm – 12am period and 7 during the 5am – 6am period. These equate, from information within the NIA, to an average of 36 cars during the 11pm – 12am period and 7 cars during the 5am – 6 am period visiting the premises. The kitchen extract system works for an additional hour beyond the closing time and before the opening time. The NIA includes a Premises Noise Management Plan which in summary requires staff and management to be vigilant and intervene if necessary in respect of vehicle and antisocial behaviour (e.g. loud music) and noise from people outside the building, and to set the intercom (COD) at the drive-thru to reduced noise levels after 23.00hrs and before 07.00hrs. The Site Management Plan submitted during the consideration of the application (summarised above) adds specific additional detail (e.g. existing number of CCTV cameras, existing number of litter bins and frequency of litter picks, existing signage, existing staff training and the existing external monitoring system) which supports the Premises Noise Management Plan. No new or additional measures are proposed.

It is generally accepted, including by some of the objectors, that the building and drive through lane are well screened from impacts on the residential properties across Chesterfield Road. The main concerns to this current application relate to:

- the increased activity from people visiting the premises causing noise and nuisance during the additional hours,
- from the additional traffic visiting the premises causing noise from engines and from headlights, particularly when exiting from the junction of Tallys End with Chesterfield Road to turn towards the Treble Bob roundabout,
- as a result of the increase in trade, the consequential increase in litter, and
- potential use of the lay-by/access way across Chesterfield Road serving nos 16 - 28 for parking and consuming McDonald's products (possibly with vehicle windows open, music playing and engines running).

It was noted on a site visit by the Case Officer (in connection with the withdrawn application) during the hours of darkness that the dipped headlights of vehicles leaving Tally's End and turning right towards the Treble Bob roundabout can be seen tracking the movement of the vehicle on the walls of the houses opposite the junction at about first floor cill level. It is therefore accepted that there could potentially be disturbance from the extra vehicles leaving McDonald's and turning onto Chesterfield Road during the night impacting on people sleeping in the first floor front facing rooms. Due to the camber of the road and boundary treatments along the frontage of the dwellings the impact on ground floor windows is much less.

Environmental Health have considered the submitted Noise Impact Assessment. They comment that it is essentially the same as that submitted for the previous (withdrawn) application albeit with the trading hours altered to cover the hours now applied for. Their comments are therefore much the same as the proposed increase in hours captures many of the predicted additional customers which 24 hour operation anticipated. The main impact of the proposed increase in hours has always predominantly been with respect to the hours now under consideration. Although the applicant has sought to reduce the level of hours that they wish to trade from 24 hours, Environmental Health comments are still much the same as previous. The impact of traffic pulling away from Tally's End has not been considered any further, nor is there any information to determine whether a more significant noise reduction could be achievable at the store.

This store is located in an area where there are already existing high noise levels due to the busy road and the commercial nature of the businesses opposite the residential houses. There is no additional information or justification with the application to demonstrate why the extended hours requested are essential or desirable. When this is coupled to the potential for additional disturbance to the residents, it is not possible to say that this would be justified or reasonable.

The previous comments of Environmental Health therefore remain the same. These relate to concerns about the impact of the proposal. Most of the noise sources from the increased use of the premises would not be discernible but they would contribute to the accumulation of noise which then leads to an increase in the ambient background levels.

Background noise levels are already high in the area and it is therefore considered that any addition to background noise is not acceptable as this would worsen an already poor situation.

Environmental Health consider following a night time site visit that a potentially significant source of noise is from vehicles pulling out of Tallys End and turning right towards the Treble Bob roundabout. The extended opening hours at McDonalds will increase the traffic flow. Due to the intermittent nature of the noise it can potentially be more disruptive to local residents than if the flow and movement of traffic were constant.

The saved policies of the Bolsover District Local Plan show the site as within the settlement framework where the general urban development policies apply, in particular policy GEN2 (Impact of Development on the Environment) which resists development that creates materially harmful impacts on the local environment with a list of criteria to consider in this assessment. These include the extent of the generation of noise, vibration, smells etc., the hours of operation of any activities proposed and the amount of road and pedestrian traffic generated.

It is clear that extended hours of operation (including 24hour operation) of restaurants such as McDonald's can take place in business park or road side service station locations, i.e. in locations where they do not abut residential areas (e.g. Markham Vale or Woodall Services). This is not the case at Barlborough where residential dwellings are located across the man road from the restaurant. The many objections received outline amenity problems already experienced by local residents which could potentially be extended into the quieter night time period when impacts can be more closely felt. These impacts relate to the additional road traffic that could be attracted to the area causing noise disturbance and related activity potentially of an anti-social nature. Combined with the noise generated by plant and equipment which would need to operate during the proposed extended hours, and their impact on background noise levels (as explained in the response of the Council's Environmental Protection Officer) it is considered that the development would create an harmful material impact on nearby residents contrary to policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan.

The emerging Local Plan for Bolsover District similarly has policies to ensure development does not have an unacceptable environmental impact (policy SC1) and that development ensures a good standard of amenity is maintained for the occupants of existing neighbouring properties. The proposal would therefore also be contrary to the submitted policies of the Local Plan for Bolsover District although due to the stage of preparation of the emerging Local Plan full weight cannot be given to its policies.

It has been recorded above that the proposal will add to already high night time background noise levels, this could impact on health and the quality of life with the higher background levels and the addition of sporadic additional vehicle movements during the extended hours.

The applicant has stated in his application that the proposal will generate new jobs and that custom will largely be drawn from passing traffic (supporting letter). In addition the applicant states that a high proportion of customers would be taxi drivers, shift workers, delivery vehicle drivers, and emergency service crews, none of whom are prone to causing anti-social

behaviour or significant noise. While this may be so it would not be possible to limit trade to such people nor is the statement necessarily true.

The applicant has submitted a Premises Noise Management Plan with the NIA and subsequently a 'Site Management Plan'. These set out that the trained members of the management team should challenge anti-social behaviour noise, log incidents for reporting to the authorities when appropriate and identifies provision already in place to assist in monitoring and controlling the site. It is not clear if any of the internal CCTV cameras effectively monitor the car park and outdoor sitting area, the Site Management Plan states there are 2 external camera monitoring the drive-thru and 13 internal cameras.

Implementation of these plans can be required by condition. However these measures are already in place and in operation but do not appear to impact on the examples of anti-social behaviour (including litter) and noise identified and currently experienced by objectors (most of whom live on Chesterfield Road). Such problems primarily relate to vehicles entering or leaving Tallys End making excessive noise or using the lay by opposite, which are outside the direct control of McDonalds but appear to relate to their customers.

It would be appropriate, if the application were to be approved to review the litter management plan to include an increase in frequency of litter patrols to reflect the increased custom.

In respect of issues of parking raised by objectors, this relates to the current use of the premises, given the anticipated level of trade during the extended hours similar parking problems (on pavements and verges on Tallys End) are unlikely. The highway authority has not raised any objections to the development.

The applicant has responded to various issues raised, pointing out that a perceived lack of commercial need or demand is not a valid reason for refusal of an application. In response to the objections concerning noise the applicant points out that the NIA (Noise Impact Assessment) provides a robust, technical basis from which to assess the impact of the proposed extended operating hours. The NIA provides clear technical advice, undertaken by a suitably qualified acoustic engineer, which concludes the proposals will not have an unacceptable impact on the amenity of residents. The NIA unequivocally states that the proposed extended hours will not generate any material increase in noise or disturbance as a result of vehicular movement. This is primarily due to a high proportion of the customers who will be using the premises during the proposed hours already being on the road network, and therefore the noise generated by vehicles is predominately existing rather than new.

In response to the comments about the generation of traffic the applicant states that the majority of the additional trade during the extended hours will be drawn from passing vehicles which are already travelling on the road network, rather than generating new dedicated vehicle trips. Similarly there will be no increase in pollution as the vehicles are already on the road. However this does not take into account that as the premises becomes established with its extended hours that additional traffic and custom may be attracted to the restaurant, i.e. over time specific journeys rather than just passing trade may be attracted to the restaurant.

As regards anti-social behaviour the applicant states that there is absolutely no evidence to show that the proposed extended operation of the restaurant would result in any increase in anti-social behaviour at the site due to the proposed hours. The applicant understands that the restaurant does not currently have a problem with the occurrence of anti-social behaviour. A large amount of custom at the McDonald's Restaurant during the extended hours will be 'pass by' trips carried out by vehicles already on the road network. They state that a high proportion of these customers using premises during late-night hours do so linked to their employment such as taxi drivers, shift workers and delivery drivers. As a result of this, the potential risk of anti-social behaviour is, the applicant states, limited due to the nature of the custom.

Further objection has been received in response to these issues on behalf of residents:

Comments made by residents are not about commercial need or demand, there are no benefits to the neighbourhood as a result of longer opening hours as there are already two 24 hour McDonalds within 4 miles of Barlborough, extending hours provides no benefits, it only generates nuisance.

The Noise Impact Assessment is deeply flawed as it deals primarily with noise emanating from the restaurant itself rather than the 'full cycle' impact of customers using the restaurant including their route entering and exiting Tallys End. Problems of noise predominantly arise from customers manoeuvring within and leaving the car park and exiting Tallys End. The true impact of noise at affected properties should include assessment of all types of traffic using Tallys End including hgv's which have to turn with reversing alarms.

As regards highway impact, it is inconceivable that the level of demand predicted (50 vehicles during the late night hour) will be generated only from passing trade, it is inevitable that new traffic will be attracted to the area at times of the day when there are typically few vehicles on the road. The applicant also states that a high proportion of these new customers will be taxi drivers, shift workers and delivery drivers, at 11pm taxis are usually busy, shift workers are at work, and delivery drivers are long haul (and therefore more able to stop at premises more suitable for their vehicles). Tallys End junction is dangerous, evidence of 3 accidents is provided. A further 100 vehicle movements in and out of this junction late at night increases the likelihood of further accidents.

Comments relating to air pollution are wrong, a vehicle travelling at a steady speed along a straight road will not have the same emissions as a vehicle manoeuvring around the McDonald's site and pulling away from the Tallys End junction which will be much greater.

As regards light pollution photographs are submitted to illustrate the problem from vehicles exiting Tallys End.

With respect to anti-social behaviour, this takes many forms not just rowdy behaviour; it includes litter which will be increased with the extended hours. There have been incidents, last September, of theft from property and vehicles apparently perpetrated

by people seen leaving McDonalds car park. Late night opening after the pubs have closed will result in increased anti-social behaviour from people attracted to the premises for food. The Site Management Plan is a worthwhile document and any efforts to reduce the impact of the McDonalds operation with respect to their current opening hours is welcomed but does not justify extending the opening hours which will extend the nuisance caused by the restaurant to further encroach upon times when neighbours are trying to sleep. The Plan merely demonstrates that McDonald's recognises that it introduces all manner nuisance to its neighbours and that it makes a cursory attempt to implement some rudimentary control measures.

In addition the applicant has provided further commentary on the Environmental Health response. These include in summary:

There is no requirement for the applicant to demonstrate why the extended hours are essential or desirable [Comment – in this respect Environmental Health were trying to see if there were any overriding reasons for the proposal which would outweigh its impacts.]

Emphasises that the NIA demonstrates that the proposed development will not have a significant impact upon the residential amenity of the surrounding area by way of noise. [Comment: The NIA relates to noise emanating from the premises it does not take into account the impacts of vehicles using the Tallys End junction.]

The test in the Framework is that there should be 'significant adverse impact'

If the existing noise climate in the vicinity of the application site is characterised by high noise levels associated with the road network and commercial businesses (as detailed in the NIA and Cover Letter), then any noise impacts of the proposed extension of operating hours will be even further reduced. [Comment: the noise and traffic on the road network related to commercial businesses in the area do not impact on Tallys End.]

The additional comments of the applicant are noted and taken into account, however it is not felt that the additional information justifies or outweighs the adverse impacts of the proposal upon the residential amenity of nearby residents as further illustrated by their later comments.

#### **Other Matters**

Listed Building:	N/A
Conservation Area:	N/A
Crime and Disorder:	Discussed in report
Equalities:	No issues raised
Access for Disabled:	No issues raised
Trees (Preservation and Planting):	N/A
SSSI Impacts:	N/A
Biodiversity:	N/A
Human Rights:	A potential breach of Human Rights has also been raised.



However it is accepted that 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 to assess the effects that a proposal will have on individuals and weigh these against the wider public interest in determining whether development should be allowed to proceed.

## **Conclusion**

In summary, the proposal is within an established business area, although where it adjoins a residential area, and within the settlement framework where development is generally acceptable subject to no adverse impacts. While there may be economic benefits from the proposal, through increased employment (although no job creation figures have been given) and provision of a food service at a time of day when there is no similar provision in the immediate area, it is considered that the amenity impacts outweigh any economic and employment benefits. The proposal will add to background noise levels at sensitive times of the day and there is potential for additional disturbance and anti-social behaviour from the additional pedestrian and vehicular traffic visiting the premises to the detriment of the amenities of nearby residents.

The proposal is therefore contrary to saved policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan and to policies of the Framework which seeks to ensure that development is appropriate for its location. In view of the impacts of the development the proposal is not considered to be sustainable development within the terms of the Framework.

## **RECOMMENDATION**

### **REFUSE**

#### **For the following reason:**

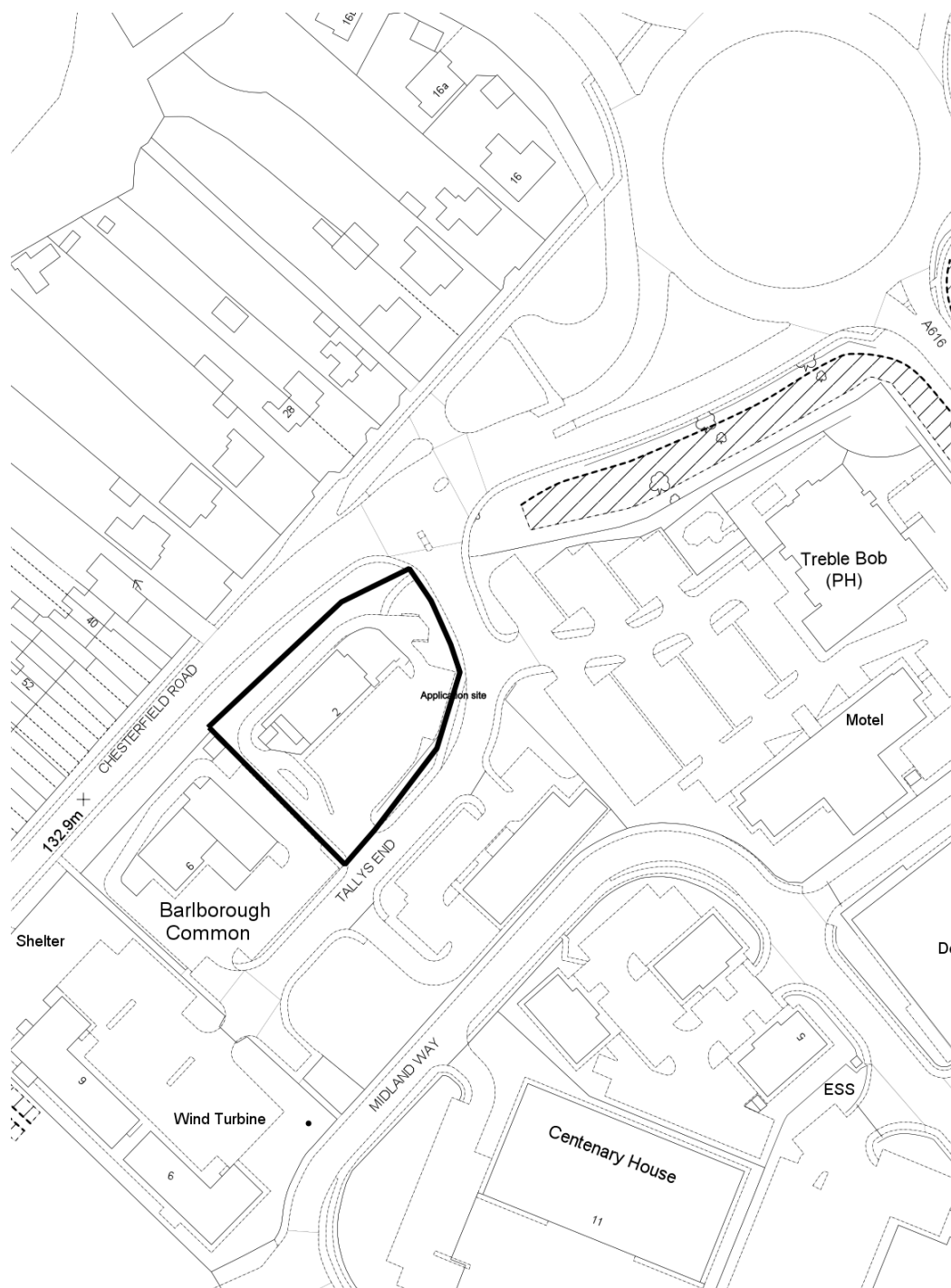
While there may be economic benefits from the proposal, through increased employment and provision of a food service at times of day when there is no similar provision in the immediate area, it is considered that the amenity impacts outweigh any economic and employment benefits. The proposal will add to background noise levels at sensitive times of day and there is potential for additional disturbance and anti-social behaviour from the additional pedestrian and vehicular traffic visiting the premises to the detriment of the amenities of nearby residents. The many objections received outline amenity problems already experienced by local residents which could potentially be extended into the quieter night time period when impacts can be more closely felt.

The proposal is therefore contrary to saved policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan and to policies of the Framework which seeks to ensure that development is appropriate for its location. In view of the impacts of the development the proposal is not considered to be sustainable development within the terms of the Framework.

### Statement of Decision Process

Discussions have taken place with the applicant to clarify aspects of the proposal. The proposal has been considered against the policies and guidelines adopted by the Council and the decision has been taken in accordance with the guidelines of the Framework. In view of the impacts of the proposal and the location of the site the proposal is not considered to be sustainable development; it is not considered that these issues can be overcome.

### Site Location Plan



**Bolsover District Council**

**Planning Committee**

**3<sup>rd</sup> July 2019**

**Appeal Decisions: January 2019 – June 2019**

**Report of the Planning Manager (Development Control)**

**Purpose of the Report**

- To report the Planning Service's performance against the Government's quality of decision making targets.
- To report any issues or lessons learnt from the appeal decisions.

**1 Report Details**

- 1.1 This report relates to the quality of the Council's decision making compared to the Government's performance targets.
- 1.2 The Government measures the quality of the Council's decision making by the percentage of the total number of decisions made by the authority on applications that are then subsequently overturned at appeal. If during a 2 year monitoring period, **10 per cent** of an authority's total number of decisions on applications (for either major or non-major development) are overturned at appeal, then the Council may be designated for its poor performance and applicants can then make their applications directly to the Planning Inspectorate rather than to the Council.
- 1.3 However, during the first appeal monitoring period (from April 2015 to December 2017) the Council won 100% of appeals on Major planning applications and 99.6% of appeals on non-major applications. This performance indicates the Council's decision making during this period was sound and the Council was well below the threshold for designation.
- 1.4 During the second monitoring period (from April 2016 to December 2019) the Council won 96.5% of appeals on major planning applications and 98.8% of appeals on non-major applications. The Council's performance therefore remained above the designation thresholds but 3% of decisions on major applications were over turned at appeal during this monitoring period.
- 1.5 Therefore, given the relatively low number of major applications received each year, it was considered necessary to provide the Planning Committee with additional insight into the reasons appeals were overturned or dismissed so Members would have a better understanding of the issues over the next monitoring period, which covers April 2017 to December 2020.

- 1.6 Subsequently, the Council's performance on appeals over the first two monitoring periods, as noted above, was reported to Planning Committee in January 2019. At that time, it was agreed that an update on appeal decisions should be reported to members every 6 months to give members appropriate oversight of the quality of the Council's decision making under delegated powers as well as inform decision making at Committee level.
- 1.7 This approach also helps to mitigate any potential risk of exceeding the thresholds for designation through poor performance.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 In the 6 months since the last monitoring period ended (i.e. from January 2019 to the end of June 2019) the council has won 100% of appeals on major planning applications, 100% of appeals on non-major applications and 100% of appeals against enforcement notices.
- 2.2 The Council is therefore exceeding its appeal decision targets and this indicates the Council's decision making on planning applications (and enforcement issues) continues to be sound. Summaries of the appeals determined over the last six months are also included as appendices to this report and provide additional insight into how these decisions were made.
- 2.3 Officers consider that continuing to update Members on performance at appeal and the outcome of appeal decisions represents best practice and allows appropriate oversight of the Council's decision making on planning applications. Therefore, officers are recommending this report is noted and that the Council's performance at appeal continues to be reported to the Planning Committee every six months.

## **3 Consultation and Equality Impact**

- 3.1 Consultations are carried out with each application and appeal. Consultations on this report of appeal decisions is not necessary.
- 3.2 Appeal decisions do not need an equality impact assessment in their own right but by monitoring appeal decisions it allows us to check that equalities are considered correctly in every application. There have been no appeal decisions reporting equalities have been incorrectly addressed.

## **4 Alternative Options and Reasons for Rejection**

- 4.1 An alternative option would be to not publish appeal decisions to members. It is however considered useful to report decisions due to the threat of intervention if the council does not meet the nationally set targets. Members of Planning Committee should understand the soundness of decision making and soundness of Planning Policies.

## 5 Implications

### 5.1 Finance and Risk Implications

5.1.1 Costs can be awarded against the council if an appeal is lost and the council has acted unreasonably.

5.1.2 The Council can be put into special measures if it does not meet its targets.

### 5.2 Legal Implications including Data Protection

5.2.1 Appeal documents are publicly available to view online. Responsibility for data is PINS during the appeal process.

5.2.2 Decisions are open to challenge but only on procedural matters.

### 5.3 Human Resources Implications

5.3.1 Factored into normal officer workload and if original application report is thorough it reduces the additional work created by a written representations appeal. Additional workload created if the appeal is a hearing or public enquiry.

## 6 Recommendations

6.1 That the report be noted.

6.2 That appeal decisions continue to be reported to Committee members every 6 months.

## 7 Decision Information

<b>Is the decision a Key Decision?</b> 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: <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"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	No
<b>Has the relevant Portfolio Holder been informed?</b>	N/A
<b>District Wards Affected</b>	No
<b>Links to Corporate Plan priorities or Policy Framework</b>	All

**8 Document Information**

Appendix No	Title
Appendix 1	Planning Appeal Decisions Period 1st January 2019- 31st May 2019
Appendix 2	Planning Enforcement Appeal Decisions January 1st 2019 - 31st May 2019
<p><b>Background Papers</b> (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>	
Report Author	Contact Number
Chris Fridlington	01246 242265

## **Appendix 1: Planning Appeal Decisions Period 1<sup>st</sup> January 2019- 31<sup>st</sup> May 2019**

### **APP/R1010/W/18/3211091: Field to South Of New Street Whitwell: Outline Application for Residential Development with Associated Access, Parking and Landscaping**

#### **Main Issues**

The main issues were:

- The character and appearance of the area with particular regard to the settlement boundary
- Biodiversity
- Highway safety

#### **Conclusion**

The Inspector concluded that the appeal site and the fields opposite formed an important delineation between settlement and countryside and that the scheme would introduce a significant built form into the countryside creating a harmful, uneven and irregular visual relationship between the built form and the wider countryside. The proposal was therefore considered contrary to policies GEN 2, GEN 8, GEN 11 and ENV 3 of the Bolsover District Local Plan.

The Inspector concluded that the habitat surveys submitted with the application were taken outside the dates and optimal conditions for a site survey and as such the results could not be conclusive on the presence of reptiles making the proposal contrary to policies GEN 2, GEN 8 and ENV 3 of the Bolsover District Local Plan.

The Inspector concluded that the appellant had not shown that a safe access could be provided to the site and visibility splays could only be provided by the detrimental removal or alteration of the existing boundary wall and the effect this would have on the character and appearance of the area. The proposal was therefore considered contrary to Policy GEN 1 of the Bolsover District Local Plan.

The appeal was dismissed

#### **Recommendations**

None.

The existing countryside and general requirements for development policies are in line with the Guidance in the NPPF.

### **APP/R1010/W/18/3216384: Land at 82 New Station Road, Bolsover: Outline Application for a Two Storey Dwelling including Access.**

#### **Main Issues**

The main issue was:

- The effect of the development upon the stability of land both on the site and in its immediate vicinity

## Conclusion

The Inspector concluded that none of the evidence submitted was sufficient to demonstrate that the necessary site works would not exacerbate the instability of the site and there was no substantive evidence that demonstrated that the site was stable or could be made so. The Inspector concluded that the proposal as submitted would be likely to result in material harm to the stability of the land contrary to Policy Gen 7 of the Bolsover District Local Plan and the National Planning Policy Framework

The appeal was dismissed

## Recommendations

None.

The existing stability policy is in line with the Guidance in the NPPF.

## **APP/R1010/W/19/3220085: Holly House Farm, 80 Littlemoor Lane, Newton**

### Main Issues

- Whether the appeal site would be a suitable location for the proposed development having regard to the development plan and national policy: and
- Whether the proposal would provide for suitable living conditions for future occupants

### Conclusion

The site is not in an isolated position and is in a relatively sustainable location. The site is adjacent to but outside the settlement Framework boundary of the Bolsover District Local Plan.

The Inspector considered that saved Policies GEN 8 and ENV 3 were in accordance with the framework in that they recognise the intrinsic beauty of the countryside and the meaning behind the framework is not that any site which is not isolated is suitable for development. The Inspector concluded that the council could demonstrate a five year supply of deliverable housing and as such full weight could be given to the saved policies which are in line with the framework and as such the “tilted balance” under paragraph 11 of the framework was not engaged.

The Inspector concluded that the proposed dwelling did not meet the requirements of Policy HOU 9 in that it was not necessary in this location or essential to the operation of agriculture.

The Inspector also considered that the siting of the proposed dwelling within the curtilage of a working farm and adjacent to the farm access road would result in noise and disturbance for the occupiers of the proposed dwelling contrary to saved Local Plan Policies GEN 1 and GEN 2 which seeks to ensure development does not increase health risks and that when considering the impact of development, consideration will be given to the character and sensitivity of the land and uses around a proposed development with regard given to factors including noise. The proposal would also be contrary to paragraphs 127 and 182 of the Framework which require development to provide a high standard of amenity for existing



and future users and for new development to be integrated effectively with existing businesses.

The Inspector concluded that in accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004) the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.

The Inspector attached limited weight to the small contribution to housing supply an associated economic benefits through the provision of one dwelling an attached significant weight to the fact that for sustainability reasons a new dwelling within a rural environment in the countryside would be inappropriate and future occupants would suffer noise and disturbance from farming activities. This tipped the balance firmly against the proposal.

The appeal was dismissed.

### Recommendations

None.

The existing countryside and general requirements for development policies are in line with the Guidance in the NPPF.

## **Appendix 2: Planning Enforcement Appeal Decisions January 1<sup>st</sup> 2019 -31<sup>st</sup> May 2019**

The performance of Local Authorities in relation to the outcome of enforcement appeals are not being measured in the same way as planning appeals. However it is considered useful to report the enforcement appeals within the same time period to address any issues or lessons learnt from these appeal decisions.

### **APP/R1010/C/17/3191666: 27 High Street, Whitwell: Retention of the Installation of Exterior Cladding.**

#### Main Issues

The breach of planning control alleged was the addition of external insulation overlain with render to the existing rendered exterior to all elevations without planning permission. An enforcement notice was issued requiring:

- The removal of the external insulation and associated render from all elevations of the building and;
- Remove all associated waste from the site

The main issue was the effect of the proposal on the character and appearance of the appeal property and on the Whitwell Conservation Area.

#### Conclusion

The ground of appeal was that the steps required to be taken by the notice exceed what is necessary to achieve the purposes of the notice.

The Inspector concluded that the objective of the notice was to remove all external insulation and associated render from all elevations as the purpose of the notice is to clearly remedy the breach of planning control. Leaving any part of the material in place would not achieve that purpose. Accordingly the requirements of the notice did not exceed what was necessary and the appeal on that ground must fail.

The appeal was dismissed and the enforcement notice upheld.

#### Recommendations

None.

## **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 28 June 2019 commencing at 10:00hours.

#### **PRESENT:-**

Members: Councillors D Adams, A Bailey, A Clarke, N Clarke, J Clifton, P Cooper, T Munro, G Parkin, L Smyth, J Tait, D Watson, and J Wilson.

Officers: Chris Fridlington and Kay Gregory

#### **APOLOGIES**

Apologies were received from Councillors S Fritchley, N Hoy, C Kane, and D McGregor.

#### **SITES VISITED**

- 1) 18/00481/REM: Blind Lane, Bolsover**
- 2) 19/00083/FUL: Bolsover Road, Shuttlewood**

The meeting concluded at 11:00 hours

#### **Updates:**

##### **Agenda Item 6.1: Blind Lane, Bolsover (18/00481/REM)**

Since the publication of the officer report, the applicant has again confirmed they are unable to consider converting the affordable housing offer (30% of houses at 20% less than local market value) to 10% or even 5% affordable houses for social rent. The applicant says that it generally costs less per month to buy one of their houses than to rent from an RSL and also draws attention to the surplus of rented accommodation in the area.

The applicant would consider a 'local occupancy clause' so the affordable housing 'as proposed' would be prioritised for first-time buyers from within the District but not on particularly good terms i.e. the applicant suggests allowing the Council the opportunity to nominate local people (possibly from the council house waiting list), 2/3 weeks ahead of being released to the general public.

Officers would consider a clause similar to the Derbyshire Occupancy Clause would be more meaningful i.e. occupancy restricted to a person (and their dependents) who has lived or worked in the District for a minimum of three years prior to purchase. However, the applicant

cannot agree to this clause either saying that it would be extremely difficult to capture such a request legally with regard to future sales of private homes.

The applicant goes on to say that most lenders would not entertain lending with such a restriction in place and this would lead to much higher mortgage costs due to the limited funding availability from a small number of lenders.

In these respects, members are reminded that they can determine the reserved matters application separately from the proposals to amend the s.106 legal agreement although they are interlinked in viability terms. In other words, the reserved matters could be approved but the proposed amendment could be declined but this approach may mean the scheme is no longer deliverable.

In addition, the Council is able to consider amendments to an existing s.106 legal agreement but can decline to accept an application to modify or discharge an application until a period of a five years after it was first entered into. The existing legal agreement was first entered into in January 2017.

However, for the reasons set out in the original report, officers consider that the proposed amendment to the s.106 legal agreement warrants approval not least to promote delivery of housing on this site. Equally, officers are satisfied that the reserved matters application can be approved. Therefore, officers are not proposing any changes to the recommendation of conditional approval as set out on p.27 of the original officer report.

**Agenda Item 6.2: Bolsover Road, Shuttlewood (19/00083/FUL)**

There are no further updates since publication of the original officer report but officers have been asked to revisit the issue of local infrastructure contributions to allow members to make a fully informed decision on this application.

The table below shows the obligations proposed by the applicant compared to the requests from the relevant consultees. It can be seen that the applicant is only proposing affordable housing.

Consultee	Request	Need	Agreed
Affordable Housing	8 houses = 10% of total	2 bed (4 person) social rented	✓
CCG	£29,671	Existing medical practice at capacity	✗
Education	£292,700	12 secondary places at Bolsover School	✗
Leisure	£63,648	Towards improving nearby playground – no space on site for on-site provision	✗

Leisure	£75,738	Towards off-site outdoor / built sports facilities	<b>x</b>
Public Art	1% of development costs	Policy requirement	<b>x</b>

As set out in the original officer report and shown in the following table, this offer is identical to that agreed at outline stage in 2013.

Consultee	Original Request	Agreed (2012)	Current Request	Agreed (2019)
Affordable Housing	8 houses = 10% of total	8 houses = 10% of total	8 houses = 10% of total	8 houses = 10% of total
CCG	£0 – sufficient capacity	No contribution	£29,671	<b>£0</b>
Education	£182,384	No contribution	£292,700	<b>£0</b>
Leisure	£56,320	No contribution	£63,648	<b>£0</b>
Leisure	£66,880	No contribution	£75,738	<b>£0</b>
Public Art	1% of development costs	No contribution	1% of development costs	<b>£0</b>

The above table shows that the current application is only policy compliant in respect of affordable housing. This is important because the current application is a ‘fresh application’ for full planning permission and needs to be determined on its individual merits. However, it remains true to say that the contributions agreed when the outline consent was granted (for housing on this site) has some bearing on the Council’s ability to seek additional obligations in this particular case.

The officer report addresses these issues by concluding the reserved matter approval that has been implemented means there is a fall-back position, which would allow the developer to go ahead without making any contributions to local infrastructure other than providing the 10% affordable housing previously agreed.

However, it also remains true to say that if the applicant is unwilling to make the requested contributions to local infrastructure then they have a permission to fall-back on and this may be preferable to accepting the current application that does very little to mitigate for the development’s impact on local infrastructure as it goes forward in the here and now.

For example, at the time of the original outline application in 2012/2013, the CCG were not reporting issues with capacity but are now reporting there is a lack of capacity at the local

medical practices. Therefore, the absence of the requested contribution towards health would normally weigh against approval of this application.

In 2012/2013 the County Council were not willing to release their figures (based on demographic trends) to show how their request was justified and their original request was turned because it could not be demonstrated that the contribution was reasonably necessary.

At the current time, pressure on local school places still exists and there is no doubt this request would meet the three legal tests in the CIL regulations and the policy tests in the National Planning Policy Framework i.e. the request for £292,700 is:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

The commuted sums requested for leisure relate to (i) the provision of some play equipment on Shuttlewood Recreation Ground, particularly for younger children who are not currently adequately provided for, and (ii) upgrading sports facilities on Shuttlewood Recreation Ground and other outdoor sport facilities within the parish of Bolsover.

Previously, these requests were deemed to be unreasonable because the audit of recreational facilities suggested there was no under provision in Shuttlewood. There is still no under provision of recreation facilities in Shuttlewood (based on the evidence base for the new Local Plan) and Policy HOU5 says these commuted sums would be reasonably required unless there is adequate provision already.

Therefore, the agent considers that the scheme is compliant with HOU5 on the basis adequate provision already exists but this analysis relies on the existing facilities being fit for purpose.

A contribution to Public Art is required by saved Local Plan policy GEN17 but officers have previously been reluctant to pursue contributions under this policy. Hence, the reason public art was not secured in 2013 when outline planning permission was granted but more recently, Inspectors have been willing to accept that this policy requirement meets the three legal tests in the CIL regulations and the policy tests in the National Planning Policy Framework

Of these issues, officers consider the education contribution is the biggest 'problem' because the shortfall in provision was identified in 2012/2013 and still exists. It might be said that the CCG could or should have factored in the contribution now requested from this development (as it was an existing commitment) over the intervening years and requested similar funding from other developments that have come forward over that time.

The leisure and public art requests are matters of planning judgement noting that identical requests were made when the original outline application was originally determined and more than five years have since passed.

However, in a very finely balanced planning judgement, officers are recommending acceptance of the current offer paying due regard to the viability and deliverability of the scheme and affording what is considered by officers to be 'due weight' to the fall-back position.

Therefore, the officer recommendation remains unchanged but if members wished to pursue this matter then it may be appropriate to ask the applicant to submit a formal viability appraisal to make a further assessment of the deliverability of this scheme before a final decision is made.

### **Agenda Item 6.3: McDonalds, Bolsover (19/00181/VAR)**

Since the publication of the officer report, the applicant has made the following representations:

#### ***Environmental Health***

*The comments of the Environmental Protection Officer blatantly ignore the findings of the Applicant's Noise Impact Assessment ('NIA'), undertaken by Sustainable Acoustics. The NIA explicitly demonstrates that the proposed development will not have a significant adverse impact upon the residential amenity of the surrounding area by way of noise caused from a variety of sources. In fact, the conclusions of the NIA demonstrate that the proposal will result in no impact upon residential amenity. The evidence, provided by a qualified acoustic engineer, having undertaken quantitative measurements in line with accepted industry best practice, clearly show that the proposal is acceptable. The Council's Officer has made no effort to address this, and has produced no evidence to show that the proposal would cause any adverse effect, contrary to the conclusions of the NIA.*

*At Page 61 of the Officer's Report, it is stated that due to vehicle traffic and plant noise "it is considered that the development would create a harmful material impact on nearby residents contrary to Policy GEN 2 (Impact of Development on the Environment) of the Bolsover District Local Plan". Despite this statement, Environmental Health does not conclude that the proposal would result in such a level of impact. In fact, the officer's response to the previous application stated that it would result in "limited discernible impact". It follows that the level of impact assessed by the officer falls below that threshold outlined in Policy GEN 2.*

#### ***Highways/ Vehicle Noise***

*The remarks from Environmental Health in relation to traffic pulling away from Tally's End are not relevant to this application. Vehicles can already use this road junction at any hour of the day or night. Furthermore, the Treble Bob public house, which is accessed via the same route, already has planning permission to operate the hours proposed by this application. It follows that, should the Treble Bob public house wish to open until 12 midnight (or even later) then vehicles would likely use this route. It follows that the level of impact which the Council is alleging to be unacceptable in this instance, has already been considered in a previous application for the public house, and been accepted. Therefore, to say that this application*

*would result in any greater impact upon residential amenity is prejudicial and casts doubt upon the Local Planning Authority's consistency of decision-making.*

*The Officer's Report concedes that "background noise levels are already high in the area...". If that is the case, then the "limited discernible impact" identified by Environmental Health would be even further reduced, not amplified. The Council's Highways Officer has not objected to the application.*

### **The Development Plan**

*Policy GEN 2 states, similar to the above, that "planning permission will not be granted for development which creates materially harmful impacts on the local environment...". The level of impact outlined in the NPPF which would warrant refusal on noise impact grounds is 'significant adverse impact'.*

*The only justification provided by the Council for alleging conflict with Policy GEN 2 is that the proposal will "add to background noise levels" and "there is potential for additional disturbance and anti-social behaviour". Nowhere in the Officer's Report does it conclude that the proposal will result in either a 'materially harmful' or a 'significant adverse' level of impact upon residential amenity. The evidence, presented in the NIA, in fact indicates the opposite. The restaurant is located some distance from residential premises across a busy road, the drive-thru lane is well screened, there are no existing anti-social behaviour issues and the existing background noise levels are high. Under any rational assessment, the impact of the restaurant opening for an additional hour in the evening and morning trade periods, will be modest.*

### **The Recommended Reason for Refusal**

*The recommended reason for refusal is deeply flawed and is based upon an assessment of impact upon residential amenity which is not robust and lies in stark contrast to that provided by the Applicant in the NIA.*

*Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that decisions on planning applications must be made in accordance with the development plan, unless material considerations indicate otherwise. As we have demonstrated, the proposal does not conflict with the wording of Policy GEN 2, properly understood. As the proposed development accords with all other policies in the adopted development plan, it should be approved in accordance with the legal basis of Section 38(6).*

*Although most of these points are already covered in the original officer report, the applicant does raise the issue of the nearby 'Treble Bob' and it may be true to say that there are no planning conditions restricting the opening hours of the public house. However, this decision was taken in very different circumstances over ten years ago.*

*At that time, the potential impact of development at Tally's End wasn't as clearly understood as it is now and the Council cannot be bound by a 'historic decision' without reference to the current situation in the way the applicant is suggesting in the above representations.*



Furthermore, the Council could take action against any of the businesses within the local area, through licensing for example, if they were giving rise to the same range and magnitude of complaints from the local area as McDonalds.

In these respects, members will already be aware from the original officer report that the officer recommendation does not hinge solely on the adequacy (or otherwise) of the noise impact assessment and officers are equally concerned about the range of impacts the existing operations have on the living conditions of local residents, which would be unacceptably diminished further if this application were to be approved.

On these points, officers would like to reiterate the provisions of paragraph 127 of the National Planning Policy Framework, which says, amongst other things:

*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; 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 users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

It should also be noted that national Planning Practice Guidance says:

*The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation.*

*These factors include:*

- the source and absolute level of the noise together with the time of day it occurs. Some types and level of noise will cause a greater adverse effect at night than if they occurred during the day – this is because people tend to be more sensitive to noise at night as they are trying to sleep. The adverse effect can also be greater simply because there is less background noise at night;*
- for non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise;*
- the spectral content of the noise (ie whether or not the noise contains particular high or low frequency content) and the general character of the noise (ie whether or not the noise contains particular tonal characteristics or other particular features). The local topology and topography should also be taken into account along with the existing and, where appropriate, the planned character of the area.*

*More specific factors to consider when relevant:*

- *where applicable, the cumulative impacts of more than one source should be taken into account along with the extent to which the source of noise is intermittent and of limited duration;*
- *In cases where existing noise sensitive locations already experience high noise levels, a development that is expected to cause even a small increase in the overall noise level may result in a significant adverse effect occurring even though little to no change in behaviour would be likely to occur.*
- *Some commercial developments including fast food restaurants, night clubs and public houses can have particular impacts, not least because activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the noise that may be made by customers in the vicinity.*

Therefore, with due regard to national planning policy and guidance, officers are satisfied that the advice offered by the Council's Environmental Health Officer and the officer recommendation of refusal are sound. As such, there is no change to the officer recommendation but officers would recommend a minor amendment to the reasons for refusal as follows.

**The application be REFUSED for the following reasons:**

**While there may be economic benefits from the proposal, through increased employment and provision of a food service at times of day when there is no similar provision in the immediate area, it is considered that the amenity impacts outweigh any economic and employment benefits. The proposal will add to background noise levels at sensitive times of day and there is potential for additional disturbance and anti-social behaviour from the additional pedestrian and vehicular traffic visiting the premises to the detriment of the amenities of nearby residents. The many objections received outline amenity problems already experienced by local residents which could potentially be extended into the quieter night time period when impacts can be more closely felt.**

**The proposal is therefore contrary to saved policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan and to policies of the Framework which seeks to ensure that development is appropriate for its location. In view of the impacts of the development the proposal is not considered to be sustainable development within the terms of the Framework and it has not been demonstrated that the social and economic benefits of granting planning for the current application would demonstrably or significantly offset or outweigh the adverse impacts of doing so.**