

To: Chair and Members of Planning
Committee

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15th October 2019

Dear Councillor

PLANNING COMMITTEE

You are hereby summoned to attend a meeting of the Planning Committee of the Bolsover District Council to be held in the Council Chamber, The Arc, Clowne on Wednesday, 23rd October 2019 at 10.00 am.

Register of Members' Interests - 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 from page 2 onwards.

Yours faithfully



Joint Head of Corporate Governance & Monitoring Officer



Bolsover
District Council

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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If you require an adjustment to enable you to participate in or access the meeting please contact the Governance Team at least 72 hours before the meeting starts.

**PLANNING COMMITTEE
AGENDA**

Wednesday, 23rd October 2019 at 10.00 am in the Council Chamber, The Arc, Clowne

Item No.	PART 1 – OPEN ITEMS	Page No.(s)
1.	Apologies For Absence	
2.	Urgent Items of Business 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.	Declarations of Interest 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.	Minutes To consider the minutes of the last meeting held on 25 th September 2019.	4 - 24
5.	Notes of Site Visits To consider the Notes of the Site Visits held on 21 st October 2019 <i>These will follow in the supplementary report.</i>	
6.	Applications to be determined under the Town & Country Planning Acts	
i)	19/00256/VAR - Variation of Condition 8 (Flood Attenuation Pond), 9 (Surface water drainage details), 20 (new access junction replacing roundabout) of Planning Permission 17/00298/VAR - Rear of 16 to 124 and South West of 124 and Between Brickyard Farm and Barlborough Links Chesterfield Road, Barlborough	25 - 56
ii)	18/00470/FUL - Frontage part of a mixed use retail, leisure and employment development comprising the demolition of existing dwellings and farm buildings and the erection of Class A1 Retail Class A3/A4 food and drink units, and Class C1 hotel with associated car parking, landscaping and service areas (on land also known as Wincobank Farm, North of Cartwright Lane) -	57 - 110

**Land To The North And West Of Berristow Farm, Mansfield Road,
South Normanton**

- iii) 19/00549/OTHER - Variation of the wording of S106 Planning Obligations agreed for Outline planning permission 14/00518/OUT relating to the community facilities contribution and play area contribution - Land to the North West of Broad Lane, Hodthorpe 111 - 118**
 - iv) 19/00113/REM - Residential development of 101 dwellings and associated work (approval of reserved matters following outline planning permission 14/00518/OUT) - Land to the North West of Broad Lane, Hodthorpe 119 - 136**
- 7. Proposals to include the former Bolsover Hospital site on Part 2 of the Brownfield Register 137 - 144**

Agenda Item 4

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 25th September 2019 at 1000 hours.

PRESENT:-

Members:-

Councillor Chris Kane, Vice-Chair in the Chair

Councillors Derek Adams, Allan Bailey, Anne Clarke, Nick Clarke, Steve Fritchley, Natalie Hoy, Chis Kane, Duncan McGregor, Graham Parkin, Liz Smyth, Janet Tait, Deborah Watson, James Watson and Jen Wilson.

Officers:-

Chris Fridlington (Planning Manager (Development Control)), Peter Sawdon (Principal Planner), Kay Gregory (Planner), Jenny Owen (Legal Executive) and Donna Cairns (Senior Governance Officer).

0326. APOLOGIES

Apologies for absence were received on behalf of Councillors Jim Clifton, Tom Munro and Dan Salt.

0327. URGENT ITEMS OF BUSINESS

There were no urgent items of business to consider.

0328. DECLARATIONS OF INTEREST

Members were requested to declare the existence and nature of any disclosable pecuniary interests and/or other interests, not already on their register of interests, in any item on the agenda and withdraw from the meeting at the appropriate time.

No declarations of interest were made at the meeting.

0329. MINUTES –31st JULY 2019

Moved by Councillor Steve Fritchley and seconded by Councillor Duncan McGregor
RESOLVED that, subject to the above amendments, the minutes of a meeting of the Planning Committee held on 31st July 2019 be approved as a true and correct record.

PLANNING COMMITTEE

0330. SITE VISIT NOTES – 20th SEPTEMBER 2019

It was noted that Blind Lane, Bolsover had not been visited and in fact the following sites had been visited:

- Rear of 16 to 124 and South West of 124 and between Brickyard Farm and Barlborough Links Chesterfield Road, Barlborough - Application 19/00256/VAR
- Land Adjacent Brick Yard Farm Slayley Lane Barlborough - Application 19/00257/VAR.

Moved by Councillor Duncan McGregor and seconded by Councillor Jen Wilson
RESOLVED that, subject to the amendment as noted above, the notes of the site visit held on 20th September 2019 be approved as a true and correct record.

0331. APPLICATIONS TO BE DETERMINED UNDER THE TOWN AND COUNTRY PLANNING ACTS

- (i) 18/00452/OUT - Outline planning application (all matters reserved except access) for the mixed-use redevelopment of the former Whitwell Colliery site, comprising circa 450 dwellings, circa 6 hectares of employment, public open space, convenience retail store and offices, means of access and parking including drop off area for Whitwell railway station, drainage and structural landscaping - Whitwell Tip and Surrounding Land Southfield Lane, Whitwell

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

The applicant and the agent on behalf of the 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. Members considered the criteria in the emerging Local Plan's site-specific policy SS6; the impact on the setting of any heritage assets and the physical and visual coalesce of the neighbouring settlements of Hodthorpe and Whitwell; the suitability of access points for all users and the impact on the local road network; the provision of affordable housing on the site; and the socio-economic benefits of the 'over-provision' of public open space and the 'under-provision' of formal sports facilities.

It was considered that the development proposed in this application was acceptable or could be made acceptable in planning terms, subject to appropriate conditions and subject to planning obligations via a s.106 legal agreement as set out in the report.

In accordance with Council Procedure Rule 14.4, Councillor James Watson requested that a recorded vote be taken. Councillors Allan Bailey and Graham Parkin supported this request.

The officer's recommendation was moved by Councillor Duncan McGregor and seconded by Councillor Deborah Watson.

PLANNING COMMITTEE

For – 11 (Councillors Derek Adams, Anne Clarke, Nick Clarke, Steve Fritchley, Natalie Hoy, Chris Kane, Duncan McGregor, Liz Smyth, Janet Tait, Deborah Watson and Jen Wilson)

Against – 3 (Councillors Allan Bailey, Graham Parkin and James Watson)

Abstentions – 0

Moved by Councillor Duncan McGregor and seconded by Councillor Deborah Watson
RESOLVED that Application 18/00452/OUT be approved subject to prior entry into a s.106 legal requirement containing the following planning obligations:

Affordable Housing

- A. On site provision of 5.5% affordable housing (equivalent to a maximum of 25 new houses) tenure to be split: 85% socially rented and 15% affordable home ownership;
- B. Review mechanism to allow for 10% affordable housing in the event market conditions change over the operational phase of the proposed development;

Education

- C. Financial contribution of £1,133,134.80 (index linked) towards provision of additional teaching block for the provision of 70 primary places at Whitwell Primary School;
- D. Financial contribution of £219,525.57 (index linked) towards additional teaching accommodation for the provision of 9 secondary places at Heritage High School;

Public Health

- E. Financial contribution of £171,180 (index linked) towards local health provision unless and until contracts have been signed securing the build out of the new build medical centre being proposed in Creswell and the provision of the additional treatment room in this development. Once the construction of the new-build medical centre has been secured, the financial contribution towards local health provision shall be reduced to an amount equivalent to the cost of the works required to convert the office at the Whitwell medical practice to a medical treatment room and convert the existing store room into a replacement office;

Public Open Space

- F. Neighbourhood equipped area of play (NEAP), of an area of 600m², to be provided on the location identified in the masterplan 13.012/32L, to an agreed investment of £120,000 (to be index linked), and providing play equipment particularly for the ages of 8-13 to address local shortfalls identified locally within the Parish;
- G. Maintenance provision of the NEAP, over a period of 10 years, at a cost of £30,816, based on a rate of £51.36 per m² (to be index linked), providing that the applicant is not transferring the NEAP to a management company;

PLANNING COMMITTEE

- H. 25 years aftercare of the agreed landscaping scheme once it has been carried out; and

Travel Plan Monitoring

- I. Travel Plan monitoring fee of £1,015.00pa for 5 years, total of £5,075 index linked

AND subject to the following conditions:

Reserved Matters

1. Approval of the details of the landscaping of the site and the siting, scale and external appearance of the buildings on the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced. The approved layout shall broadly accord with the disposition of uses identified on Drawing No.
2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of five years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of three years from the date of approval of the last of the reserved matters.

Reasons: In the interests of the proper planning of the local area

Archaeology

4. No development shall take place until a Written Scheme of Investigation for archaeological work shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
 - i. the programme and methodology of site investigation and recording;
 - ii. the programme for post investigation assessment;
 - iii. the provision to be made for analysis of the site investigation and recording;
 - iv. the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v. the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi. the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

PLANNING COMMITTEE

5. No development shall take place other than in accordance with the approved Written Scheme of Investigation.
6. Prior to the first occupation of the development hereby approved, the site investigation and post investigation assessments shall have been completed in accordance with the Written Scheme of Investigation approved under Condition 4, and provision shall have been made for the publication, dissemination, and archive deposition of the results.

Reasons: To ensure that the archaeological interest on site is properly managed in accordance with its degree of significance.

Broadband

7. All dwelling houses erected as part of the residential development and any buildings erected on the commercial land hereby approved must be provided with full fibre broadband connections to an operational telecommunications network (or equivalent) prior to first occupation.

Reasons: To ensure appropriate connectivity in accordance with national planning policies in the Framework.

Coal Mining Legacy

8. No development shall take place within the safeguarding areas of the two mine shafts on site without the prior written approval of the local planning authority (as shown on Drawing No. 13.012/32I).

Reason: Building over or within the influencing distance of a mine entry (shaft or adit) can be dangerous and has the potential for significant risks to both the development and the occupiers if not undertaken appropriately.

Construction Environmental Management Plan

9. Prior to the start of any development hereby approved, a construction environmental management plan shall be submitted and approved in writing by the local planning authority.

This plan must include methods for controlling noise levels to those specified in mineral planning guidance and should not exceed background sound levels (LA90, 1hr) by more than 10 dB(A) and in any event should not exceed 55dB (A) (LAeq 1 hour) free field (during normal working hours). Exceedances of these limits will only be permitted for short, defined periods when additional mitigation measures have been agreed.

The construction environmental management plan must also include hours of work, methods of controlling nuisance dust and soiling, vibration which shall include but not limited to the provision of wheel washes, speed limits, damping down, locations of soil storage mounds and site compounds.

PLANNING COMMITTEE

In addition, the construction environmental management plan must provide details of the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic signing or restrictions and measures required to protect the integrity and safe operation of the railway line adjacent to the application site.

Once agreed in writing by the local planning authority, the development shall be carried out in complete accordance with the approved construction environmental management plan.

Reasons: In the interests of highway safety and safeguarding the amenities of the local area.

Design

10. The design of the proposed residential development shall be in accordance with the principles set out in the submitted design and access statement and the supplementary planning document *Successful Places* (and/or any successor supplementary planning document adopted by the local planning authority).

Reasons: To ensure that the proposed development is completed to an appropriate standard of design in the interests of place-shaping, the amenities of the local area and living conditions of future occupants.

Drainage

Foul Water

11. The development hereby permitted shall not commence until drainage plans for the disposal of foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

Reason: To ensure that the development is provided with a satisfactory means of foul drainage as well as reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.

Surface Water Drainage

12. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
 - a) Whitwell Colliery Redevelopment Flood Risk Assessment and Drainage Strategy A090970, Version 3, Welbeck Estates (February 2018), including any subsequent addendums, amendments or updates to those documents as approved by the LLFA,

PLANNING COMMITTEE

- b) And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015), No objections in principle Conditions Recommended X Objection Recommended

have been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design, prior to the use of the building commencing

Reason: To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Local Planning Authority, in advance of full planning consent being granted.

- 13.No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 of the planning practice guidance."

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- i. into the ground (infiltration);
- ii. to a surface water body;
- iii. to a surface water sewer, highway drain, or another drainage system;
- iv. to a combined sewer.

- 14.Prior to commencement of the development, the applicant shall submit for approval to the LPA, details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the LPA, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development.

Ecology

- 15.Prior to the commencement of the development hereby approved, a Landscape and Ecology Management Plan (LEMP) for each phase must be submitted to and approved in writing by the local planning authority. The LEMP must include details of the landscape restoration plans for each phase including planting,

PLANNING COMMITTEE

seeding, details of habitat creation and establishment of that habitat including details of management proposals and the applicable aftercare period. The LEMP for each phase is to be prepared and implemented in accordance with the LEMP approved by Derbyshire County Council under application ref: CM5/0818/42 and agreed as part of the S106 Agreement for the reclamation scheme submitted to the County Council.

Reason: To ensure the successful and appropriate re-establishment of landscape and habitats within the site, in the interests of nature and landscape conservation, and to achieve a net gain in biodiversity.

Electric Charging Points

16. All dwelling houses erected as part of the residential development hereby approved shall be provided with a charging point for electric vehicles, and a minimum of one charging point for electric vehicles shall be provided for each building erected on the employment land hereby approved.

External Lighting

17. Prior to the installation of any external lighting (during either the construction phase or operational phase of the proposed development), precise details of any external lighting, including details of siting, lighting installations, luminosity, illuminated areas, light spread and/or light patterns, and duration of installation, must be submitted to and approved in writing by the local planning authority.

Thereafter, any external lighting shall be installed or implemented as approved.

Reason: To avoid compromising the operation of the adjacent railway line and to avoid any unnecessary light pollution in the interests of safeguarding biodiversity and the amenities of the local area and in the interests of protecting the living conditions of future occupants.

Ground Conditions

18. Prior to each phase of development approved by this planning permission, no development shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
- i. A preliminary risk assessment which has identified: all previous uses, potential contaminants associated with those uses a conceptual model of the site indicating sources, pathways and receptors potentially unacceptable risks arising from contamination at the site.
 - ii. A site investigation scheme, based on (i), above, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - iii. The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy

PLANNING COMMITTEE

giving full details of the remediation measures required and how they are to be undertaken.

- iv. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Thereafter, the scheme shall be implemented as approved.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from/adversely affected by, unacceptable levels of water pollution in line with paragraph 170 of the National Planning Policy Framework.

- 19.If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reason: National Planning Policy Framework (NPPF) paragraph 170 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Government policy also states that planning policies and decisions should ensure that adequate site investigation information, prepared by a competent person, is presented (NPPF, paragraph 178).

Ground Water

- 20.Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: Piling or any other foundation designs using penetrative methods can result in risks to potable supplies from, for example, pollution, risk of mobilising contamination, drilling through different aquifers and creating preferential pathways. Thus it should be demonstrated that any proposed piling will not result in contamination of groundwater.

Highways and Site Access

- 21.No development shall commence on any phase/area until temporary access for construction purposes has been provided, laid out and constructed to base level in accordance with a detailed scheme first submitted to and approved in writing by the Local Planning Authority and County Highway Authority.

- 22.No works shall commence on site until a detailed scheme for the traffic signal control and new footways on the Station Road and Southfield Lane railway

PLANNING COMMITTEE

bridges has been submitted to and approved in writing by the local Planning Authority in consultation with the County Highway Authority. The works shall be implemented in accordance with the approved scheme prior to the first occupation of any dwelling or premises hereby permitted.

23. No works shall commence on site until a detailed scheme for improvements to the Green Lane/Station Road junction (generally in accordance with Drawing 13050-5003-006 rev 2) has been submitted to and approved in writing by the Local Planning Authority in consultation with the County Highway Authority. The works shall be implemented prior to the first occupation of any dwelling or premises hereby permitted in accordance with the approved scheme and the area forward of the new sightline constructed as highway verge prior to the first occupation of any dwelling or premises hereby permitted.
24. Prior to the first occupation of any dwelling hereby permitted on Areas 1-4 (Phases 1A & 2B), the new access onto Station Road serving that dwelling shall be laid out in accordance with application drawing 13050-5003-04 rev E, having a minimum carriageway width of 5.5m, 2 x 2m footways and 6m radii, constructed to base level, drained and lit in accordance with the County Council's specifications. Each access shall be provided with visibility sightlines of 2.4m x 160m in each direction, the area forward of the sightlines shall be constructed as footway and taken into the highway.
25. Prior to the first occupation of any dwelling hereby permitted on Areas 5 & 6 (Phases 2A & 1B), the new access onto Station Road shall be laid out in accordance with application drawing 13050-5003-04 rev E, having a minimum carriageway width of 5.5m, 2 x 2m footways and 6m radii, constructed to base level, drained and lit in accordance with the County Council's specifications. The access shall be provided with visibility sightlines of 2.4m x 160m in the easterly direction and 2.4m x 90m to the west, the area forward of the sightlines shall be constructed as footway and taken into the highway.
26. Prior to the first occupation of any dwelling hereby permitted on Areas 7 & 8 (Phase 3), the new access onto Southfield Lane shall be laid out in accordance with application drawing 13050-5003-05 rev G, having a minimum carriageway width of 5.5m, 2 x 2m footways and 6m radii, constructed to base level, drained and lit in accordance with the County Council's specifications. The access shall be provided with visibility sightlines of 2.4m x 100m in both directions, the area forward of the sightlines shall be constructed as footway and taken into the highway.
27. Prior to any premises first being taken into use on Areas 9 & 10 (the Employment phases), the access serving that property from Southfield Lane shall be laid out in accordance with application drawing 13050-5003-05 rev G, having a minimum carriageway width of 7.3m, 2 x 2m footways and 10m radii, constructed to base level, drained and lit in accordance with the County Council's specifications. The access shall be provided with visibility sightlines of 2.4m x 100m in both directions, the area forward of the sightlines shall be constructed as footway and taken into the highway.

PLANNING COMMITTEE

28. The gradient of any access into the site shall not exceed 1:30 for the first 10m from the existing highway boundary and not exceed 1:20 thereafter.
29. No works shall commence on site until a detailed scheme for the provision of footways and drainage on Station Road and Southfield Lane has been submitted to and approved in writing by the local Planning Authority in consultation with the County Highway Authority. The scheme shall be implemented prior to the first occupation of any dwelling or premises hereby permitted, between the railway bridge on the existing road and the access of the area/phase serving the property.
30. Notwithstanding the submitted drawing, forward visibility of 100m shall be provided round the bend at the approach from the east to the traffic signals on Southfield Lane in order to maximise visibility available to a driver approaching the signals and also for a driver approaching behind vehicles queuing at the signals. The area forward of the sightline shall be laid out and constructed as highway in accordance with detailed designs first submitted to and approved in writing by the local Planning Authority in consultation with the County Highway Authority.
31. Notwithstanding the submitted drawing, forward visibility sightline of 160m shall be provided at the approach from the east to the junction of areas 3 & 4 in order to maximise visibility available to a driver approaching behind a vehicle waiting to turn right into the junction. The area forward of the sightline shall be laid out and constructed as highway in accordance with detailed designs first submitted to and approved in writing by the local Planning Authority in consultation with the County Highway Authority.
32. Notwithstanding the submitted information, a subsequent reserved matters or full application shall include design of the internal layout of the site in accordance with the guidance contained in the 6Cs' Design Guide and the "Manual for Streets" document issued by the Departments for Transport and Environment and Local Government.
33. The new dwellings shall not be occupied until the proposed new estate street, between each respective plot and the existing public highway, has been laid out in accordance with the approved application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.
34. Any full or reserved matters application should be accompanied by a swept path analysis to demonstrate that service and emergency vehicles can successfully enter and manoeuvre within the site.

Reasons: In the interests of highway safety and safeguarding the amenities of the local area, and in the interests of the amenity and living conditions of future occupants of the proposed development.

PLANNING COMMITTEE

Local Employment Opportunities

35. Before the development hereby approved commences, an Employment Scheme to enhance and maximise employment and training opportunities during the construction phase of the project shall be submitted to and approved in writing by the Local Planning Authority (please refer to the template attached). The approved Scheme shall then be implemented in full unless in accordance with any such subsequent variations as shall have been formally submitted to and approved in writing by the Local Planning Authority.
36. Within 6 weeks prior to the approved development being first brought into operation, an Employment Scheme to enhance and maximise employment and training opportunities during first occupation, including a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved Scheme shall then be implemented in full in accordance with the approved timetable unless in accordance with any such subsequent variations as shall have been formally submitted to and approved in writing by the Local Planning Authority.

Reasons: To maximise potential local skills, training and employment opportunities.

Noise Attenuation

Residential

37. Prior to the commencement of each development phase, a scheme of sound insulation shall be submitted to and approved in writing the Local Planning Authority. The scheme shall be designed following the completion of a sound survey undertaken by a competent person. The survey and the resulting scheme for each phase shall take account of the established noise conditions at the time of survey, and will consider the need to provide adequate ventilation where deemed to be necessary, which will be by mechanical means in addition to opening windows, where such an open window would not achieve the following criteria. Where ventilation has been considered to be necessary, the scheme shall be designed to achieve the following criteria with the ventilation operating:

- Bedrooms 30 dB LA_{eq} (15 Minutes) (2300 hrs – 0700 hrs)
- Living/Bedrooms 35 dB LA_{eq} (15 Minutes) (0700 hrs – 2300 hrs)
- All Other Habitable Rooms 40 dB LA_{eq} (15 Minutes) (0700 hrs – 2300 hrs)
- All Habitable Rooms 45 dB LA_{max} to occur no more than 6 times per hour (2300 hrs – 0700 hrs)
- Any outdoor amenity areas 55 dB LA_{eq} (1 hour) (0700 hrs – 2300 hrs)

The scheme as approved shall be validated by a competent person and a validation report submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full and retained thereafter.

PLANNING COMMITTEE

Commercial and Retail Uses

38. Prior to the erection of any buildings for employment/retail uses on the application site (i.e. buildings in an A1, B1, B2 or B8 use or in a mixed use):

- an assessment of sound must be undertaken and a scheme specifying the provisions to be made for the control of sound emanating from these buildings must be submitted to and approved in writing by the Local Planning Authority.

The assessment must identify and quantify all sound sources from each building and must assess the significance of the sound impact, taking into account the uncertainty of the assessment at the boundary of any neighbouring dwellings or other sensitive receptor in accordance with the methodology described in the British Standard BS4142:2014 Methods for rating and assessing industrial and commercial sound.

The approved scheme must then be implemented in full when each building (i.e. building in an A1, B1, B2 or B8 use or in a mixed use) is erected and upon completion of all works within the approved scheme a validation report must be completed by a competent person and must be submitted to and approved in writing by the Local Planning Authority.

Thereafter, the approved noise attenuation scheme must be maintained as validated throughout the lifetime of the buildings.

Reason: In the interests of safeguarding the amenities of the local area and the living conditions of future occupants.

Public Art

39. Prior to the occupation of any development on Phase 2A of the site, a viewpoint at the tip of the former colliery site, a trim trail and a series of interpretative boards advertising the proposed walking routes across the former colliery site and connections beyond (towards the Archaeological Way and Creswell Crags for example) must be provided in accordance with a scheme to be first submitted to and agreed in writing by the local planning authority.

Reasons: In lieu of the financial contribution required by saved Local Plan policy GEN17 and in the interests of place making and promoting and encouraging access to public open space.

Safety Barriers

40. Network Rail's existing fencing / wall must not be removed or damaged and prior to the occupation of any part of the development hereby approved, an Armco or similar barrier must be located in positions where vehicles may be in a position to drive into or roll onto the railway or damage the lineside fencing in accordance with a scheme first submitted to and approved in writing by the local planning authority.

PLANNING COMMITTEE

Thereafter, the safety barriers must be maintained as approved for as long as the railway remains operational.

Reasons: To ensure the proposed development does not compromise the operation of the adjacent railway line.

Sequence of Development

41. The development hereby approved shall be carried out in sequence as shown on Drawing No. 13.012/24o starting with the build out of housing on Phase 1A.
42. Phase 1A (residential development) must not commence until phase 3 of the restoration of the site (as illustrated by Drawing no. 13.012/39f) has been substantially completed in accordance with the requirements of the associated Landscape and Environmental Management Plan (subject of Condition 15, above).
43. No residential development in Phase 1B shall be carried out (other than ground preparation works) until a minimum of 10 houses have been substantially completed in Phase 1A.
44. No more than 50% of the houses subsequently granted reserved matters approval on Phase 1A and no more than 25% of the houses subsequently granted reserved matters approval on Phase 1B shall be occupied until phase 4 of the restoration of the site (as illustrated by Drawing no. 13.012/41b) has been substantially completed in accordance with the requirements of the associated Landscape and Environmental Management Plan (subject of Condition 15, above).
45. Phase 2A and 2B (residential development) must not commence until phase 4 of the restoration of the site (as illustrated by Drawing no. 13.012/41b) has been substantially completed in accordance with the requirements of the associated Landscape and Environmental Management Plan (subject of Condition 15, above).
46. No residential development in Phase 2B shall be carried out (other than ground preparation works) until a minimum of 10 houses have been substantially completed in Phase 2A and the 'drop off' area for Whitwell Station and footpath links to this drop off point and the station itself have been provided.
47. Phase 3 (residential development) must not commence until (a) reserved matters approvals or full planning permission has been obtained for commercial buildings (i.e. buildings suitable for a B1, B2 or B8 use) with a minimum cumulative floor area of 30,000m² to be provided on the employment land proposed in this application or (b) until 50% of the employment land proposed in this application (3ha) has been taken into use for employment purposes falling within a B1, B2 or B8 Use.

Reasons: To ensure the proposed development delivers on the socio-economic and environmental benefits that justified granting outline permission for re-development of the site of the former Whitwell Colliery and for new development on undeveloped land adjacent to the site of the former Whitwell Colliery.

PLANNING COMMITTEE

Travel Plan

- 48.No building or use hereby permitted shall be occupied or the use commenced until a Travel Plan comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car use has been prepared, submitted to and been approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed travel Plan Targets.

Reasons: To promote and encourage the take up of sustainable modes of transport in accordance with national planning policies in the Framework.

- (ii) 19/00005/REM - Approval of Reserved Matters application for details of appearance, landscaping, layout and scale in relation to the development of 238 homes, open space and associated infrastructure, along with discharge of conditions 6 (Phasing Programme), 8 (Framework Travel Plan), 11 (Highway Surface Water Disposal), 15 (Maintenance/ Management of public areas), 16 (hedgerow retention/creation) and 19 (Noise Assessment) in respect of the areas of the site included in this application - Land between Welbeck Road and Oxcroft Lane, Bolsover

Further details relating to the application were included in the Supplementary Report, including a number of comments and responses that had been received at a late stage. A number of minor issues remained outstanding which were proposed to be delegated to officers to resolve.

The Principal Planner presented the report which gave details of the application and highlighted the location and features of the site and key issues.

Mr Boden attended the meeting and spoke against the application.

The agent on behalf of the 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. Members considered the reserved matters insofar as they related to means of access (other than the main site access), layout and design, scale, appearance, landscaping, ecology and highway safety. Heritage impacts, flood risk and drainage, noise were also evaluated.

In accordance with Council Procedure Rule 14.4, Councillor James Watson requested that a recorded vote be taken. Councillors Allan Bailey and Graham Parkin supported this request.

Members expressed concern about the possible loss of the hedgerow at the rear of plots 81-83 on the south west boundary of the site and requested that the retention of this hedgerow be made a condition of any approval.

PLANNING COMMITTEE

It was further discussed that Members wished the developer to include the provision of electric vehicle charging points on every property as a design feature.

It was moved by Councillor Steve Fritchley and seconded by Duncan McGregor that the application be approved subject to the retention of the hedgerow and the provision of the electric vehicle charging points as outlined above, being agreed as conditions, and that the resolution of other outstanding issues and the determination of conditions be delegated to the Head of Planning following consultation with the Chair and Vice-Chair of the Planning Committee. Should satisfactory resolution of these issues not be achieved, the matter would be brought back to Planning Committee.

For – 9 (Councillors Derek Adams, Anne Clarke, Steve Fritchley, Natalie Hoy, Chris Kane, Duncan McGregor, Liz Smyth, Janet Tait, Deborah Watson and Jen Wilson)

Against – 4 (Councillors Allan Bailey, Nick Clarke, Graham Parkin and James Watson)

Abstentions – 1 (Councillor Anne Clarke)

Moved by Councillor Steve Fritchley and seconded by Duncan McGregor

RESOLVED that

1. Application 19/00005/REM be approved subject to:
 - (i) agreement to retain the hedgerow at the rear of plots 81-83 on the south west boundary of the site, and the provision of the electric vehicle charging points on every dwelling, which would be subject of appropriate conditions; and
 - (ii) satisfactory resolution of the outstanding issues including landscaping, design alterations and alterations to the travel plan document; and
2. that the resolution of these issues (at (i) and (ii) above), and the determination of any other conditions be delegated to the Head of Planning, following consultation with the Chair and Vice Chair of Planning Committee.

Councillors Steve Fritchley and Duncan McGregor left the meeting at this point.

- (iii) 19/00256/VAR - Variation of Condition 8 (Flood Attenuation Pond), 9 (Surface water drainage details), 20 (new access junction replacing roundabout) of Planning Permission 17/00298/VAR - Rear of 16 to 124 and South West of 124 and Between Brickyard Farm and Barlborough Links Chesterfield Road Barlborough

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

Councillor David Dixon, Ward Member, attended the meeting and spoke against the application.

The agent on behalf of the applicant attended the meeting and spoke in support of the application.

PLANNING COMMITTEE

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.

The only matters for consideration in this application were whether the revised drainage system with underground tank was acceptable and technically feasible, taking into account sustainable drainage principles, and whether the revised access was safe and suitable for the proposed development.

Members expressed concerns regarding the suitability of the revised access on highway safety grounds. It was commented that a roundabout would be more suitable than the revised access proposed in this application. The Committee were advised that they had no evidence before them that contradicted the view given by the Local Highway Authority, as the statutory consultee, which was that the proposed junctions were safe and suitable in highway safety terms.

It was therefore proposed that determination of the application be deferred in order to allow for further advice from the Council's Highways Consultant to be obtained in relation to Members' concerns.

Moved by Councillor Natalie Hoy and seconded by Councillor Nick Clarke

RESOLVED that application 19/00256/VAR be deferred in order to obtain further advice from the Council's Highways Consultant.

- (iv) 19/00257/VAR - Variation of Condition 2 (Approved Plans), Condition 15 (Access Junction replacing roundabout), Condition 16 (Provision of footway to revised junction) of Planning Permission 17/00539/FUL - Land Adjacent Brick Yard Farm Slayley Lane Barlborough

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

Councillor David Dixon, Ward Member, attended the meeting and spoke against the application.

The agent on behalf of the 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.

The only matters for consideration in this application were whether the revised access arrangements would be safe and suitable for the proposed development.

The decision notice was to repeat the relevant conditions from the original planning permission, unless they had already been discharged, to provide additional clarity.

The approval was to be subject to a deed of variation to the existing s.106 legal agreement to make land available for the provision of a roundabout and a financial contribution of £111,450.34 towards highway improvements to ensure that the omission of a site access

PLANNING COMMITTEE

roundabout from this scheme would not prejudice or compromise the safe and efficient operation of the Treble Bob roundabout in the future.

Moved by Councillor Deborah Watson and seconded by Councillor Jen Wilson

RESOLVED that Application 19/00257/VAR be approved subject to:

- A. a condition requiring prior entry into a legal agreement to secure land for the provision of a roundabout and a financial contribution of £111,450.34 towards highway improvements within the local area prior to the commencement of development;
- B. the following varied conditions:
 - i. The development shall be carried out in complete accordance with the following approved plans, Drawing Nos.:
 - P17-0895 09A Location Plan
 - P17-0895 13B Ground Floor
 - P17-0895 14B First Floor
 - P17-0895 15C Elevations
 - P17-0895 16B Sections
 - P17-0895 17B GF Perspective
 - P17-0895 18B FF Perspective
 - P17-0895 19 Floor Areas
 - P17-0895 23G Proposed Layout.
 - ii. Before the site is taken into use, (a) a new access junction shall be formed to Chesterfield Road broadly in accordance with application drawing number: LTP/3383/S1/01.01 Rev 0 produced by Local Transport Projects, and (b) the new access junction shall be laid out and constructed, lined, signed, drained and lit to adoptable criteria.
 - iii. The premises, the subject of the application, shall not be taken into use until a footway has been provided between the new site access junction and the bus stop shelter on Chesterfield Road to the north east of the site, laid out and constructed in accordance with Derbyshire County Council's specification for adopted roads.

AND

- C. the following conditions repeated from the original permission (application no. 17/00539/FUL)

Expiry Date

1. The development shall be begun on or before 1st August 2021.

Prior Approval of Materials and Landscaping

2. Before construction commences on the erection of any building beyond the construction of the foundations for that building, a schedule of wall and roof

PLANNING COMMITTEE

materials shall first have been submitted to and approved in writing by the Local Planning Authority.

3. Prior to the erection of the proposed retaining walls / introduction of gabions on site, precise details of site levels as existing and as proposed and sectional details of the gabions and retaining walls shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be carried out as approved.
4. Prior to the erection of any fences, railings or other similar items, the details of these shall be submitted to and approved in writing by the local planning authority. Thereafter, these items shall be constructed as approved prior to the development hereby permitted being taken into use.
5. Prior to the development hereby permitted being brought into use, full details of soft landscape works. including a programme for implementation, measures to encourage biodiversity, tree and hedgerow planting, and suitable mitigation for birds and reptiles, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the works shall be carried out as approved.
6. 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.

Safeguarding Amenity

7. No goods, material or waste shall be stored outside the building(s) except in accordance with a scheme which shall have first been submitted to and approved in writing by the Local Planning Authority and implemented as agreed. The submitted scheme shall include details of the height of storage and measures to contain and screen the material.
8. Sound from the entire commercial development shall, not exceed the residual noise level of 49dB LAR (1hr) daytime (7:00-23:00) and 43dB LAR (15min) night-time (23:00-7:00) corrected for acoustic features, measured at or calculated to, a position representing any residential boundary which may suffer a loss of aural amenity from sound associated with the development. The measurements and assessment shall be made in accordance with BS4142: 2014 Methods for rating and assessing industrial and commercial sound.
9. The jet wash shall only be used during daytime hours 08:00-19:00 Monday to Saturday and not at all on Sundays or Bank Holidays.
10. Any external plant equipment must comply with the design criteria in Table 12 of the Noise Impact Assessment (Ref 12359.01.v2 April 2018).
11. The workshop building shall be constructed with sound insulation in accordance with the recommendations within sections 4.15 and 4.17 of the Noise Impact Assessment (Ref 12359.01.v2 April 2018).

PLANNING COMMITTEE

12. Prior to the start of development, a dust management plan for the construction phase and prior to the buildings being brought into use, a dust management plan for the operational phases of the development must be submitted and approved in writing by the Local Planning Authority and then implemented in full during construction and whilst the site is operational.

Drainage

13. Drainage systems on the site including

- The proposed separate systems of drainage on site and off site
- The proposed amount of domestic foul water to be discharged to the public foul sewer
- The proposed amount of curtilage surface water to be discharged to the public surface water sewer at a restricted rate of 14.6 (fourteen point six) litres/second
- the proposed use of the petrol/oil separator

shall be carried out broadly in accordance with the details submitted on drawing BARL - AWP - ZZ - XX - DR - C - 0200 (revision P3) dated 14/02/2018 that has been prepared by Alan Wood & Partners.

Highways

14. The premises, the subject of the application, shall not be taken into use until space has been provided within the application site in accordance with the approved drawings for the parking and turning of domestic and commercial vehicles, laid out and surfaced in a solid, bound material and maintained throughout the life of the development free from any impediment to its designated use.
15. No part of the development permitted by this consent shall be occupied until a revised Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out proposals (including a timetable) to promote travel by sustainable modes which are acceptable to the Local Planning Authority. The Travel Plan shall be implemented in accordance with the timetable set out in that plan unless otherwise agreed in writing by the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually on each anniversary of the date of the planning consent to the Local Planning Authority for approval for a period of five years from first occupation of the development permitted by this consent.
16. No development within the application area shall be occupied or otherwise brought into use until the works to the A616/A619 roundabout as broadly indicated on drawing number LTP/2439/T1/05.02 Rev A, subject to detailed design, have been completed to the satisfaction of the Local Highway Authority through consultation with Highways England and open to traffic unless an alternative mechanism for facilitating improvements to this junction has been agreed with the Local Planning Authority through consultation with the Local Highway Authority and Highways England.

PLANNING COMMITTEE

Site Remediation

17. A detailed remediation scheme to address ground contamination issues including landfill gas and its potential for migration beyond the site, including all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures shall be submitted to the Local Planning Authority prior to commencement of the development hereby permitted.
18. The remediation scheme approved in accordance with condition 17 above, must be carried out in accordance with its terms, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.
19. Following completion of measures identified in the remediation scheme approved in accordance with condition 17 above, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority. The verification report will also provide for any long term monitoring of pollutant linkages, maintenance and arrangements for contingency action as approved in writing by the Local Planning Authority.
20. Piling or any other foundation designs using penetrative methods shall not be permitted unless it has been demonstrated to the Local Planning Authority and agreed in writing, that there is no resultant unacceptable risk to groundwater.
21. In the event that it is proposed to import soil onto site in connection with the development, the proposed soil shall be sampled at source and analysed in a laboratory that is accredited under the MCERTS Chemical testing of Soil Scheme for all parameters requested (where this is available), the results of which shall be submitted to the Local Planning Authority for approval. Only the soil approved in writing by the LPA shall be used on site.

(Planning Manager (Development Control))

The meeting concluded at 1135 hours.

Bolsover District Council

Planning Committee

23rd October 2019

PARISH	Barlborough Parish		
APPLICATION	Variation of Condition 8 (Flood Attenuation Pond), 9 (Surface water drainage details), 20 (new access junction replacing roundabout) of Planning Permission 17/00298/VAR		
LOCATION	Rear of 16 to 124 and South West of 124 and Between Brickyard Farm and Barlborough Links Chesterfield Road Barlborough		
APPLICANT	ARBA Ground Trading Company		
APPLICATION NO.	19/00256/VAR	FILE NO.	PP-07842866
CASE OFFICER	Mr T Ball / Mr C Fridlington		
DATE RECEIVED	13th May 2019		

Report of the Planning Manager

This report is public

Purpose of the Report

- To enable the Planning Committee to make a determination on application no. 19/00256/VAR following deferral of a decision at the meeting of the Planning Committee on 25 September 2019.

1 Report Details

Introduction

- 1.1 The original officer report on this application is attached to this report as Appendix 1 and in this report: the proposed replacement of a site access roundabout with staggered T-Junctions was recommended for approval by officers.
- 1.2 This officer recommendation of approval followed the local highway authority's advice that the staggered junctions would provide safe and suitable access points to both the residential development of 157 houses on one side of Chesterfield Road and to the commercial development on the opposite side of this road (the A619).
- 1.3 However, a decision on application no. 19/00256/VAR was deferred at the last meeting of the Planning Committee to allow for an independent highway consultant to be commissioned to verify whether the staggered junctions proposed in this application are safe and to compare the relative highway safety merits of the proposed staggered junctions compared to the previously approved roundabout.

- 1.4 In part, this deferral related to strongly expressed local concerns about the speed of traffic on the A619 at the location of the proposed staggered junction and the reported prevalence of road traffic accidents at the nearby junction of Tallys End and the A619, which is also said to be related to the proximity of this junction to the Treble Bob Roundabout.
- 1.5 The distance between the staggered junctions and the Tallys End junction would be around 350m and the Tallys Road junction is within 100m of the Treble Bob roundabout.

Background

- 1.6 The proposed change from a site access roundabout to staggered junctions has come about because the local highways authority have advised that they cannot adopt the approved roundabout mainly because it would bridge over the former railway embankment, which has subsequently been infilled with unknown material.
- 1.7 In the most straightforward of terms, if the roundabout cannot be adopted by the local highway authority; it cannot be built in the highway. Therefore, there is currently no prospect of the previously approved roundabout being built even if this application were to be refused.
- 1.8 In the alternative, the approved and ongoing housing development on the north side of Chesterfield Road would be completely stymied if the staggered junctions were to be refused planning permission and an alternative solution could not be found.
- 1.9 Notably, the proposed T-Junction for the commercial development proposed on the south side of Chesterfield road was granted planning permission at the last meeting of the Planning Committee (application no. 19/00257/VAR).
- 1.10 This approval does not necessarily mean that this application should be approved; it simply means that the T-Junction was considered by the Planning Committee to be a safe and suitable access for the commercial development on the south side of Chesterfield Road.
- 1.11 By virtue of the resolution to defer this application, the Planning Committee, as a whole, was not convinced that a staggered T-junction would be a safe and suitable access for the housing development.
- 1.12 By way of the deferral, the Planning Committee has also retained the opportunity to re-consider the safety merits of the previously approved roundabout compared to the staggered T-Junctions.
- 1.13 The independent highway consultant's report should inform the Planning Committee's final decision on both these issues.

Key Issues

- 1.14 In summary, the approval for application no 19/00257/VAR means that the staggered junctions proposed in this application have already been partly approved and this decision may only be challenged in the event that the independent highway consultant (commissioned by the Council) were to find the staggered junctions proposed in this application are actually unsafe.

- 1.15 Equally, if the consultant were to find the staggered junctions proposed in this application are unsafe then this finding would be a substantive reason to refuse the current application.
- 1.16 If the independent highway consultant were to otherwise find that the staggered junction were safe and suitable then the previous approval of the new site access for the commercial development would be demonstrably sound.
- 1.17 Equally, if the consultant were to find the staggered junctions proposed in this application are safe; the grounds on which to consider refusing this application would be limited to whether the previously approved roundabout could or would demonstrably improve highway safety on the local road network.

Independent Highway Consultant

- 1.18 Curtins are a suitably qualified and wholly independent highway consultant that has been commissioned by the Council and have been instructed by the Council to provide (a) an assessment of the stagger priority junction arrangement proposed in the current application and its appropriateness for this development; and (b) assess the comparative benefits of the approved roundabout or the proposed stagger priority arrangement in slowing traffic down on the A619 at the location of the access points.
- 1.19 To carry out this assessment, Curtins arranged for two further Road Safety Audits ('RSA's) to be carried out on the staggered junction proposals and the previously approved roundabout and then review the two separate RSAs and provide independent advice and commentary on a) safety and b) whether the stagger priority arrangement would be better/neutral/worse than the roundabout in terms of slowing traffic down on the highway.
- 1.20 This work has now been completed and has been published in full on the Council's website.

Key Findings

- 1.21 In the review of the Risk Safety Audits, Curtins found that the reports identified several potential safety issues for each of the options, some of which were common to both:
- 1.22 Firstly, Curtins note that for both options poor visibility for vehicles travelling along Chesterfield Road in a north -easterly direction. This issue is a result of the curvature of the existing highway and likely vehicle speeds. Neither of the junction options exacerbate this issue and the RSA recommendations are that forward visibility is improved.
- 1.23 Curtins also note that this issue (which applies to both junction options) will be addressed during the detailed design phase to eliminate or mitigate the identified safety concerns. These considerations at the detailed design stage would typically include:
- A check that the proposed visibility splays conform to the Design Manual for Roads and Bridges guidance (section TD 9/93) published by the Highways Agency.

- Consideration to be given to reduce the speed limit together with other speed reduction measures
- Ensure no obstructions (e.g. hedgerows, signage, etc.) encroach within the highway boundary on the inside of the curve.
- Consideration of providing a higher standard of street lighting than at present on the approach to the proposed junction.

1.24 Secondly, Curtins note that for both options, the gradient of the approach road from the development to the Roundabout or Tee Junction is relatively steep. The RSA recommends that the a flat “dwell” area is provided in advance of the give way line. Note that this issue will be addressed during the detailed design stage to ensure there is a flat area for vehicles to wait.

1.25 In addition to the above common issues, Curtins identified a further three issues for the T Junction option (as proposed in this application) and four for the Roundabout option (as previously approved).

Issues with the T-Junctions

1.26 The RSA report notes that pedestrians may be at risk whilst crossing the road and recommends a pedestrian crossing with central refuge at a location that will serve the existing bus stops.

1.27 Further, the report identifies that road drainage gullies should be located away from the dropped kerbs at the pedestrian crossing to minimise trip injuries.

1.28 The final issue identified for the T-Junction option refers to the widening of the road to accommodate the right-turn harbourage on Chesterfield Road which may affect existing obstructions within the verge and recommends these are relocated a safe distance away from the proposed carriageway edge.

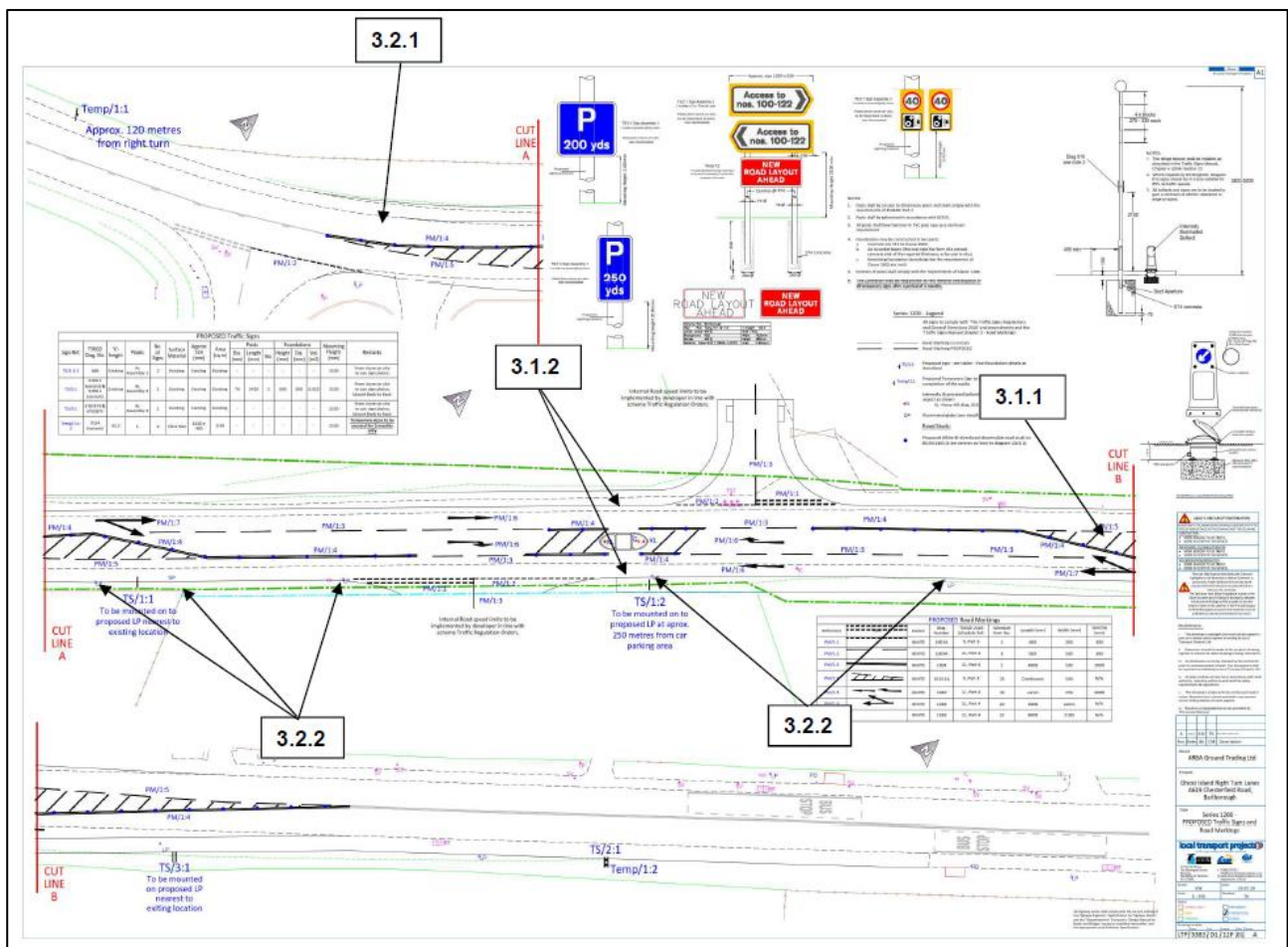
Issues with the Roundabout

1.29 The RSA report notes that the proposed “splitter” islands on the approaches on the A619 to the Roundabout appear to be too narrow to accommodate wheelchairs, pushchairs, etc. and recommends that these are made wider.

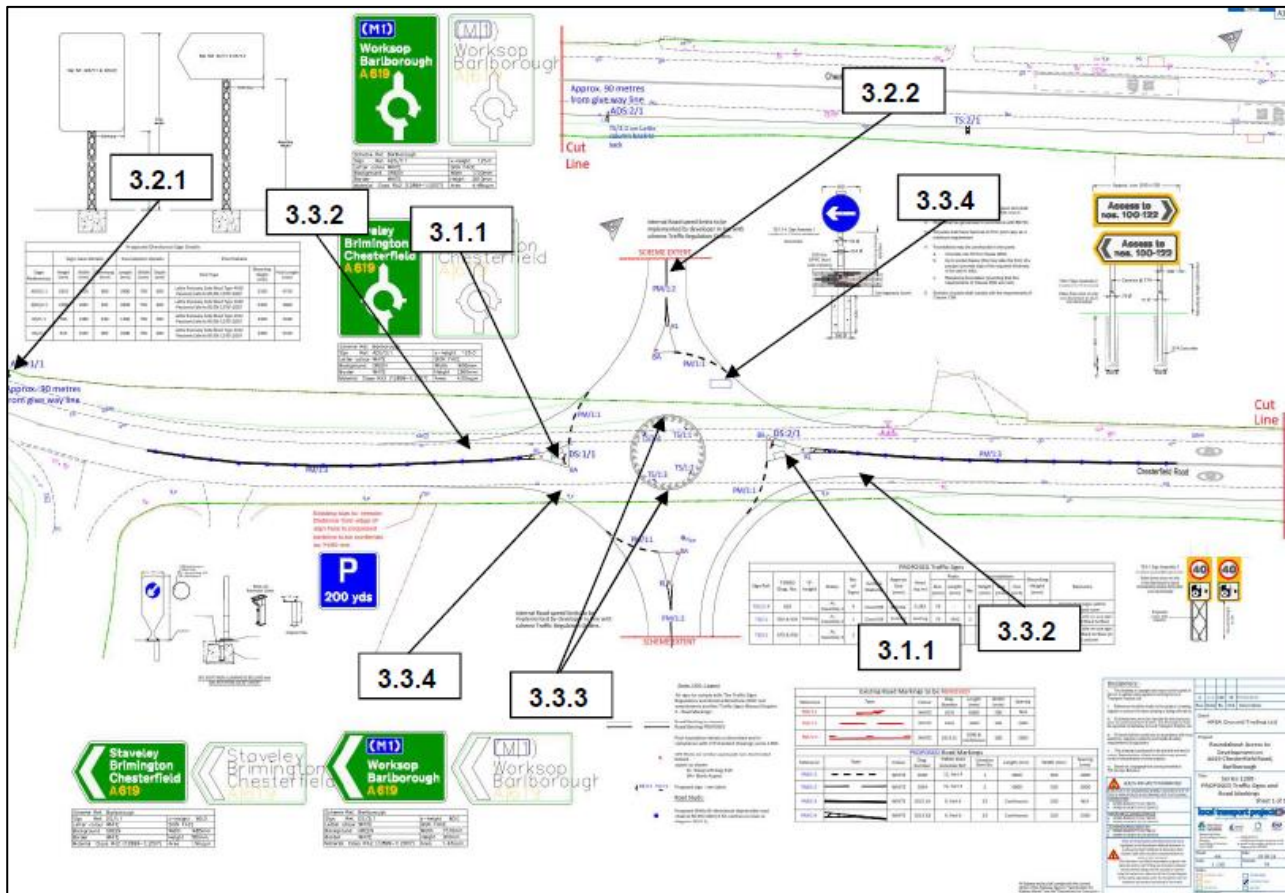
1.30 The report further identifies that the proposed design of the Roundabout would result in the central over-run area (which is flush with the surrounding road surface) not being noticed by vehicles travelling at speed along Chesterfield Road resulting in possible failure to give way or late braking collisions and recommends that the central area is made more visible.

1.31 Two additional issues noted in the report are the location of road drainage gullies and service covers in the vicinity of the Roundabout which would pose a skidding risk especially for bicycle riders and motorbikes and recommends that these are relocated away from the junction.

Extract from the Road Safety Audit (RSA) of the staggered T-Junctions



Extract from the Road Safety Audit (RSA) of the approved Roundabout



2 Conclusions and Reasons for Recommendation

2.1 The comparison of the road safety issues for the two options, as carried out by Curtins, indicates that the Roundabout option appears to present greater safety risks when compared to the T-Junction option for the following reasons:

- Due to the compact nature of the Roundabout with a flush central over-run area, there could be an increase the risk of collisions due to vehicle drivers not noticing the Roundabout when approaching at speed, either by not giving way to turning traffic or from late breaking.
- Two wheeled users of the Roundabout are at increased skidding risk due to gullies/ service covers if these cannot be relocated.
- The “splitter” islands on the approaches to the Roundabout are considered too narrow in their present design to safely accommodate pedestrians crossing Chesterfield Road.

2.2 Therefore, Curtins consider that the proposed T-Junction layout will provide the least risk to road safety when compared to the Roundabout option.

- 2.3 Curtins also noted that some of the planning consultees consider that the provision of a Roundabout will allow a “left turn out” restriction be placed on traffic leaving Tallys End to the north-east of the proposed development.
- 2.4 However, due to the compact nature of the proposed Roundabout, Curtins consider that long or articulated lorries wishing to travel to the existing A616 roundabout would not be able to safely perform a “U” turn at the proposed Roundabout and would need to travel to the Netherthorpe roundabout which is approximately 8 km further west.
- 2.5 In addition, Curtins looked at the benefits of a Roundabout to reduce speeds along Chesterfield Road. However, Curtins say this can be more easily attained by the introduction of a new 30 mph speed limit on the approach to the outskirts of Barlborough, especially if this measure is used in combination with a “gateway” type road layout (e.g. short narrowing of the main road, use of coloured tarmac surfacing, etc.) prior to the new junction.

Further Considerations

- 2.6 Curtins also say neither the roundabout nor the staggered junctions should be designed to reduce speeds, but the different junction types are designed largely on the basis of providing for the most efficiently and safe way to move traffic through the junction.
- 2.7 However, it should be noted that the risk of collision could be increased by the provision of a Roundabout as noted in 2.1 above due to inattentive drivers not noticing the junction on their approach leading to late braking which may result in “rear-end” type collisions with following vehicles.
- 2.8 In comparison, the T-Junction option (together with other means of reduction of speed noted above) would allow for the flow of traffic on Chesterfield Road to pass through the junction without the need to change direction to negotiate the Roundabout.

Conclusions

- 2.9 Therefore, on the basis of Curtin’s independent advice, it can be seen that the T-Junctions proposed in this application would provide a safe and suitable access to both the housing site and the commercial site subject to the detailed design considerations that would be addressed at the s.278 stage of the development.
- 2.10 However, it is considered determinative that the proposed T-junctions is considered by Curtins to be safer than the approved roundabout and on this basis, it is recommended that the current application is approved.
- 2.11 Finally, it also weighs heavily in favour of this application that the applicant is offering to safeguard land for the provision of a suitable roundabout to provide for a left-turn solution out of Tallys End.
- 2.12 This offer of safeguarded land is supplemented by the offer of a commuted sum of £111,450.34 which may be used towards a suitable roundabout at this location to facilitate left turning only out of the Tallys End junction or this money may be used towards other highway improvements within the local area.

- 2.13 For example, this money could be used to promote and achieve the optimal road safety solution identified by Curtins, which would be the introduction of a new 30 mph speed limit on the approach to the outskirts of Barlborough, especially if this measure is used in combination with a “gateway” type road layout.
- 2.14 Alternatively, this money could be used to create a new exit off the Tallys End ‘business park’ on to High Hazels Road, or towards the signalisation of the Tallys End junction.
- 2.15 In addition, the County Council are satisfied that the commuted sum offered by the applicant would make a useful contribution to the overall package of measures that are being proposed at the Treble Bob roundabout if the approved roundabout were to be replaced by the proposed T-Junctions.
- 2.16 In these respects, officers consider the offer of safeguarded land combined with the offer of commuted sum is directly related to the proposed development and is reasonably necessary to improve the overall amenities of the local area and safeguard the safe and efficient operation of the local road network over the longer term.

3 Consultation and Equality Impact

- 3.1 The original officer report (attached as Appendix 1) sets out the consultation and publicity undertaken in respect of this application and addresses the responses from all third parties including statutory consultees.
- 3.2 The findings of the independent highway consultant that the staggered junction is safer than the roundabout option reduces any likelihood that the development would directly or indirectly affect a person with a protected characteristic or group of people with a shared protected characteristic.
- 3.3 The requirement to provide a pedestrian crossing and footpath from the site access points to the nearest bus stop would improve the connectivity and accessibility of the housing site and the commercial development on the opposite side of Chesterfield Road.

4 Alternative Options and Reasons for Rejection

- 4.1 The alternative option to a recommendation of approval would be a recommendation of refusal but this would be undesirable because the findings of the independent highway consultant demonstrate it would not be possible for officers or members to substantiate a recommendation of refusal based on highway safety grounds without further input from an external consultant.
- 4.2 If the Council wished to try and rebut Curtins findings, which coincide with the local highway authority and the applicant’s own consultant’s findings, the cost of commissioning this work would be in the region of £5,000 albeit it seems unlikely a third consultant would deviate from the ‘standard’ methodology used by Curtins and therefore, would be unlikely to reach a different conclusion.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 There are no particular financial risks to the Council arising from the recommendation of approval made in this report but any approval of this application would secure a financial contribution of £111,450.34 towards highway improvements within the local area.
- 5.1.2 However, there is a high risks of a costs award against the Council if the application is refused and the reasons for refusal cannot be substantiated particularly if the Council is found to have 'ignored' independent expert advice commissioned by the Council itself.
- 5.1.3 In addition, the Council is at a high risk of a costs award against it if it is found at appeal to have behaved unreasonably by not granting permission for development that accords with local and national planning policies in the absence of any material considerations that fairly and reasonably indicate that it should have done otherwise.
- 5.14 If the Council were unable to substantiate reasons for refusal of an application and/or was found to be acting unreasonably there is also risk of reputational damage and loss of public confidence in the Council's decision making that would result from any appeal and substantial costs award being allowed by the Planning Inspectorate.

5.2 Legal Implications including Data Protection

- 5.2.1 Planning law requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. A decision that is taken without proper regard to this statutory duty is open to legal challenge.
- 5.2.2 There are no obvious Data Protection issues arising from a determination on this application.

5.3 Human Resources Implications

- 5.3.1 There are no human resource implications arising from any decision on this application because dealing with planning applications and S106 legal agreements is respectively part of the Council's Planning and Legal Service's normal workloads.
- 5.3.2 In the event of a refusal of planning permission, as noted above, both departments may require additional resource to deal with any forthcoming legal challenge or planning appeal if those challenges were to be made in respect of technical highways grounds.

6 Recommendations

6.1 The current application be approved subject to

A. prior entry into a legal agreement to secure land for the provision of a roundabout and a financial contribution of £111,450.34 towards highway improvements within the local area;

B. the following varied conditions:

- i. The underground tank for the proposed sustainable drainage system for the housing development shall be located in accordance with the details shown on drawing No. E17/7044/004V (Revision V) produced by Haigh Huddleston and Associates.
- ii. Prior to the occupation of any dwelling hereby permitted, a fully operational surface water drainage system shall have been completed on site in accordance with detailed plans and specifications first submitted to and agreed in writing by the local planning authority.
- iii. Before any dwelling or other commercial building is first occupied, the new access junctions shall be formed onto the A619, Chesterfield Road generally in accordance with application drawing number LTP/3383/S1/01.01 Rev 0 produced by Local Transport Projects.

AND

C. the following conditions repeated from the original permission (application no. 17/00298/VAR)

Safeguarded Trees and Hedgerows

1. The existing hedgerows and trees identified as to be safeguarded on the Design Concept and Illustrative masterplan drawings as contained within the Design and Access Statement and its addendum by FPCR LLP submitted with the application documents, shall be retained, and protected during construction works.

Ground Conditions

2. The proposed development shall be carried out in complete accordance with the implementation and mitigation measures contained within the gas risk assessment approved under discharge of conditions application no. 15/00406/DISCON.
3. A detailed remediation scheme to bring the whole site to a condition suitable for the intended uses by removing unacceptable risks to human health, buildings and other property, and the natural environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

4. The remediation scheme approved in accordance with condition 3 above, must be carried out in accordance with its terms, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.
5. Following completion of measures identified in the remediation scheme approved in accordance with condition 3 above, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority. The verification report will also provide for any long term monitoring of pollutant linkages, maintenance and arrangements for contingency action as approved in writing by the Local Planning Authority.
6. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.
7. In the event that it is proposed to import soil onto site in connection with the development, the proposed soil shall be sampled at source and analysed in a laboratory that is accredited under the MCERTS Chemical testing of Soil Scheme for all parameters requested (where this is available), the results of which shall be submitted to the Local Planning Authority for approval. Only the soil approved in writing by the LPA shall be used on site.
8. Piling or any other foundation designs using penetrative methods shall not be permitted unless it has been demonstrated to the Local Planning Authority and agreed in writing, that there is no resultant unacceptable risk to groundwater.

Highways

9. No development within the application area shall be occupied or otherwise brought into use until the works to the A616/A619 roundabout as broadly indicated on drawing number LTP/2439/T1/05.02 Rev A, subject to detailed design, have been completed to the satisfaction of the Local Highway Authority through consultation with Highways England and open to traffic unless an alternative mechanism for facilitating improvements to this junction has been agreed with the Local Planning Authority through consultation with the Local Highway Authority and Highways England
10. The development hereby approved shall take place in accordance with the agreed Framework Travel Plan for the site dated December 2008 and with reference D118649.
11. No development within either phase of the development shall be occupied or otherwise brought into use unless and until footways have been provided between the bus stop shelters on Chesterfield Road (north east of the vehicular access into

the development) and the residential and commercial areas of the development.

Conditions relevant to the Housing Development

12. Prior to the occupation of a dwelling (or in accordance with a scheme of implementation submitted to and approved in writing by the local planning authority) a controlled pedestrian crossing of the A616 dual carriageway to the northern side of the residential site shall be provided to link the footpath from the north east of the residential site with the footway to the northern side of the A616/A619 roundabout in accordance with details previously submitted to and approved in writing by the local planning authority.
13. Prior to the occupation of a dwelling (or in accordance with a scheme of implementation submitted to and approved in writing by the local planning authority) the footpath from the north east of the residential site shall connect with the footway to the western side of the A616/A619 roundabout in accordance with details previously submitted to and approved in writing by the local planning authority.
14. Prior to the occupation of a dwelling the new streets within the development shall have been laid out and constructed to at least base course, lit and drained to provide a link from the dwelling to the existing public highway.
15. Construction work shall not begin on the residential element of the proposal until a scheme for protecting the proposed residential development from road traffic background noise (principally from the M1 motorway) has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the approved scheme shall be completed before any part of the residential development is occupied.
16. No dwellings shall be erected within 20 metres of the application site boundary with the M1 motorway.
17. There shall be no occupation of dwellings adjacent to 124 Chesterfield Road whilst ever those premises are used for a scaffold business.

Conditions relevant to the Commercial Development

18. Prior to discharges to the public sewer from the commercial phase of the development all surface water drainage from parking areas and hardstandings shall be passed through a petrol/oil interceptor with an overall capacity compatible with the site being drained.
19. Before any related premises are occupied on the commercial phase of the development the whole of the vehicle parking and manoeuvring area and all service areas (including secure/covered cycle parking) shall be formed, laid out, constructed and surfaced in concrete, tarmacadam or block pavers. All parking spaces shall be clearly and permanently delineated and shall be retained for their intended use at all times.
20. The access road serving the commercial phase of the development shall include a turning area suitable for large HGV's.

Legal Agreement

21. Prior to the first occupation of any dwelling or commercial unit hereby permitted, a completed deed of variation that links this permission to the varied obligations attached to 09/00370/OUTMAJ, or a completed s.106 legal agreement containing the same obligations, shall be submitted to the Local Planning Authority.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <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
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title
1	Original Officer Report on application no. 19/00256/VAR
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
nil	
Report Author	Contact Number
Chris Fridlington	EXT 2265

APPENDIX 1: ORIGINAL OFFICER REPORT

PARISH Barlborough Parish

APPLICATION Variation of Condition 8 (Flood Attenuation Pond), 9 (Surface water drainage details), 20 (new access junction replacing roundabout) of Planning Permission 17/00298/VAR

LOCATION Rear of 16 to 124 and South West of 124 and Between Brickyard Farm and Barlborough Links Chesterfield Road Barlborough

APPLICANT ARBA Ground Trading Company

APPLICATION NO. 19/00256/VAR **FILE NO.** PP-07842866

CASE OFFICER Mr T Ball / Mr C Fridlington

DATE RECEIVED 13th May 2019

DELEGATED APPLICATION REFERRED TO COMMITTEE BY: Cllr David Dixon
REASON: Highway safety concerns

SITE

As illustrated on the plan shown overleaf, the application site is located to the south west of Barlborough within two land parcels located either side of Chesterfield Road.

The land to the north west of Chesterfield Road is now a housing development site and this part of the application site adjoins the M1 motorway along its north western boundary with open views of the countryside beyond. The A616 dual carriageway link road between the Chesterfield Road roundabout and the M1 junction 30 adjoins to the north east boundary of the housing site with the main part of the village of Barlborough beyond.

This part of the application site also lies behind the existing Chesterfield Road residential properties and was previously overgrown and underused agricultural land with parts having been used as a site base for the recent 'smart motorway' widening project along the adjacent M1.

In addition, land beyond the western limits of the proposed housing development was formerly part of railway cutting, filled with waste and subsequently made available for agricultural uses; this area is within the green belt and more recently has been included in a safeguarding zone for future use by HS2.

As also illustrated on the plan shown overleaf, a mixed use commercial development has been proposed on the land to the south east of Chesterfield Road.

This part of the application site was previously a railway cutting and brick yard subsequently filled with waste and grassed over and then more recently used for car boot sales. This area adjoins Barlborough Links Business Park with office/warehouse/workshop units to the north eastern side and larger industrial/warehouse units to the south eastern side. There are two houses and agricultural land to the south western side of the site.

Previously Approved Masterplan (from application no.16/00187/REM)



PROPOSAL

The current application seeks variations to Conditions 8, 9 and 20 attached to planning permission 17/00298/VAR, which grants outline planning permission for the residential

development of land to the northern side of Chesterfield Road (between the M1 motorway and existing houses fronting Chesterfield Road) and for the commercial development of land on the southern side of Chesterfield Road adjoining Brickyard Farm and Barlborough Links (the former Slayley Tip).

The proposed variations would:

- Replace the flood attenuation pond required by Condition 8 of 17/00298/VAR with an underground tank;
- Revise Condition 9 to require the submission of surface water drainage details within two months of this permission instead of being in accordance with the previously approved details (13/00001/DISCON); and
- Revises condition 20 to allow a revised access into the development sites. This comprises two right turn harbourages replacing the previously approved roundabout and related changes to the position of the access road into the residential development site, the position of the access into the commercial element remains in a similar position as the previously approved roundabout access.

AMENDMENTS

The applicant has submitted additional information to address concerns raised by Derbyshire County Council in their capacity as the lead local flood authority. The applicant has also made an offer of a financial contribution of £111,450.34 towards highway improvements in the local area and a planning obligation securing the availability of land for the construction of a roundabout in this location in the future.

However, this is the same offer made in respect of the parallel application (19/00257/VAR) and a single legal agreement containing these planning obligations is intended to cover the planning issues raised by both this application and the parallel application.

PLANNING HISTORY

In summary, this is an application to vary conditions on planning permission 17/00298/VAR which itself was an application to vary highway requirement conditions on 13/00002/VAR which in turn varied the position of the flood alleviation pond referred to on outline planning permission 09/00370/OUTMAJ.

Therefore, if this this application were to be granted permission, it would be the third variation of the outline planning permission granted under 09/00370/OUTMAJ for the residential development of land to the northern side of Chesterfield Road (between the M1 motorway and existing houses fronting Chesterfield Road) and for the commercial development of land on the southern side of Chesterfield Road adjoining Brickyard Farm and Barlborough Links (the former Slayley Tip).

However, reserved matters approval has been granted for development on both sides of Chesterfield Road and as noted above, development has commenced on the part of the site allocated for housing.

There is also a separate planning permission for commercial development on the land to the south of Chesterfield Road and there is a parallel application seeking a variation to the conditions attached to this permission currently pending consideration.

The details of the relevant planning applications are shown below with the full planning history of the application site:

09/00370/OUTMAJ	GC	Residential and commercial development (business, industrial and warehousing, Class B1, B2 and B8) including new roundabout and associated roads
13/00001/DISCON	DISCH	Discharge of conditions 9 (surface water disposal system), 11 (gas risk assessment), 20 (access) and 22 (archaeology) of planning permission 09/00370/OUTMAJ
13/00002/VARMAJ	GC	Variation of condition 8 of 09/00370/OUTMAJ to allow for repositioning of flood alleviation pond
14/00622/OTHER	GU	Variation of Section 106 agreement relating to 09/00370/OUTMAJ to reduce affordable housing to 10%
15/00406/DISCON	DISCH	Discharge of condition 11 of 12/00002/VARMAJ - Gas risk assessment
16/00187/REM	GC	Approval of reserved matters for erection of 157 dwellings and 5 B1 office units and 4 B2/B8 industrial units with provision of open space and access to the site via A619
17/00298/VAR	GC	Removal of condition 17 and variation of conditions 18 & 20 (all highways issues) of 13/00002/VAR (which varied outline permission 09/00370/OUTMAJ)
17/00539/FUL	GC	Commercial development comprising an office building, workshop and manufacturing facility and a HGV trailer park and associated works
17/00642/MINAM	GU	Minor amendment to previously approved 16/00187/REM - revised layout for the housing development
18/00445/DISCON	NOTDIS	Discharge of Condition 12 (Detailed Remediation Scheme), Condition 22 & 23 (Pedestrian Crossing/Footpath), Condition 25 (Noise) of Planning Permission 17/00298/VAR, and Discharge of Condition 3 & 5 (Landscaping), Condition 7 (Materials) of Planning Permission 16/00187/REM
19/00257/VAR	PCO	This application relates to a separate (standalone) planning permission for the development of the commercial area and is for the Variation of Condition 2 (Approved Plans), Condition 15 (Access Junction replacing roundabout), Condition 16 (Provision of footway to revised junction) of Planning Permission 17/00539/FUL
19/00258/VAR	PCO	Variation of Condition 3 (Treatment of Hard Surfaces), Condition 4 (Hard and Soft Landscaping) of Planning Permission 16/00187/REM

CONSULTATIONS

HS2

No objections to the proposals. 22.08.19

Local Highway Authority (DCC):

“From a highway safety point of view, it is considered that the provision of the right turn facilities will function satisfactorily and, as such, the Highway Authority is not in a position to raise objections to the proposals. However, from a strategic planning point of view, you may wish to consider it inappropriate to approve these proposals due to the potentially prejudicial effect it will have in the wider Clowne area and the intervention proposed to mitigate the impact on the Treble Bob roundabout.” 24.06.19

Local Lead Flood Authority (DCC):

The LLFA have no objections to condition 8 and 9 being varied as requested. 13.08.19

Barlborough Parish Council:

Strong objection on the grounds of safety – the roundabout would actively slow the traffic down especially before the Treble Bob roundabout and the access of Tallys End. There will also be a major impact on the volume of traffic from the access roads, potentially 300 additional vehicles leaving at peak times to access the Treble Bob roundabout and turning right onto the A619 Chesterfield Road.

There are already major problems with safety at the right turn at Tallys End, which is approximately 200 yards away from the proposed access roads. These problems are impact accidents and near misses. The new conditions will have a much greater impact on road safety than the present problems currently witnessed at Tallys End.

The footpath to access the new road is also a matter of great public safety, especially for school children who walk to school and to prevent further volume of traffic outside the schools, where there are currently major parking issues.

The Parish Council strongly objects to any changes from the original plans. 02.09.19

At the time of writing, no response has been received from this Council's Environmental Health Protection Officer.

PUBLICITY

Advertised in press. 2 Site notices posted. 94 neighbours notified.

Four letters of objection were received raising the following issues:

A roundabout and speed control will be needed on Chesterfield Road to safely provide access to these proposed residential and commercial developments. This proposal will result in someone getting killed. Lots of accidents at Tallys End Junction which has a filter lane. Van Dyk village has a roundabout but for less traffic.

Replacing the roundabout with a give way for the new junction would cause more incidents, as people will struggle to get out of the junction and will make rash decisions due to visibility and speed of other vehicles. If allowed 30mph speed limit should be requested. Pedestrian refuge for bus stops should also be provided.

The proposed removal of the roundabout will introduce a serious road safety risk. Vehicles turning right into and out of the new developments will be at risk of collision from oncoming traffic - the right turn out of Tallys End is already an accident blackspot and this will create a greater hazard due to the increased speeds on this section of road. The only alternative to a roundabout would be to reduce the speed limit to 30 mph with speed enforcement cameras

Installation of tank instead of the approved drainage pond is of concern. How has the capacity been calculated and is it adequate? Houses backing onto Chesterfield Road have water logging problems since the motorway depot was dismantled. The water table is very high as there is heavy clay level with little top soil. Photographic evidence of problems submitted. Once the current porous surface of the development site is made into hard surface for roads and properties this would worryingly increase the surface water. Has the proposed drainage been properly assessed?

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 add to the overall quality of the area; be visually attractive; sympathetic to local character and history; establish or maintain a strong sense of place; optimise the potential of the site; and, create places that are safe, inclusive, and accessible, with a high standard of amenity for existing and future users.

Bolsover District Local Plan (BDLP)

The application site lies outside the settlement framework and partly within the Green Belt as defined on the Proposals Map where general open countryside control policies apply. However, as outline permission has already been granted for the development, GEN1 (Minimum Requirements for Development), GEN2 (Impact of Development on the Environment), are the main applicable policies for this variation of conditions application.

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 submitted following consultation the plan is therefore at an advanced stage. The Plan allocates the sites for residential and employment development respectively and shows them as within

the development envelope for Barlborough.

In terms of drainage and access the main applicable policies are: SC7: Flood Risk, and SC3: High Quality Development.

Planning Practice Guidance

Section 73 of the Town and Country Planning Act 1990, as amended, applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. On an application made under s.73 to vary conditions, such as the current application, the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

- a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
- b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The original planning permission will continue to exist whatever the outcome of this application under section 73. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.

In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.

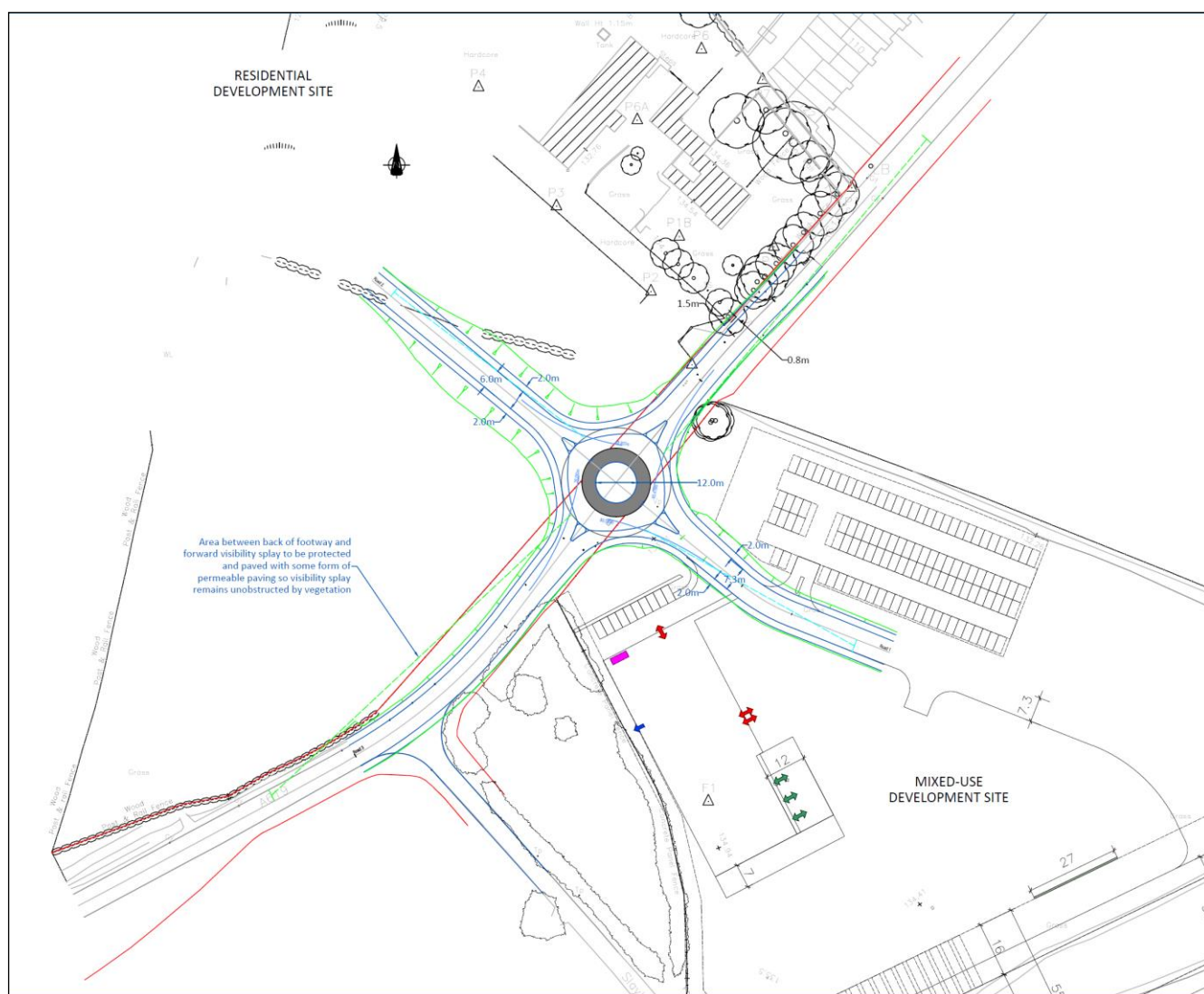
ASSESSMENT

The principle for the development is established with the outline planning permission (09/00370/OUTMAJ) as varied by 13/00002/VARMAJ and 17/00298/VAR and remaining in place with the approved reserved matters 16/00187/REM. These are supported by the allocation in the emerging Local Plan of this development site for residential and employment development.

The only matters for consideration in this application are whether the revised drainage system with underground tank is acceptable and technically feasible taking account of sustainable drainage principles, and whether the revised access is safe and suitable for the proposed development.

Site Access

The following plan shows the approved site access roundabout.

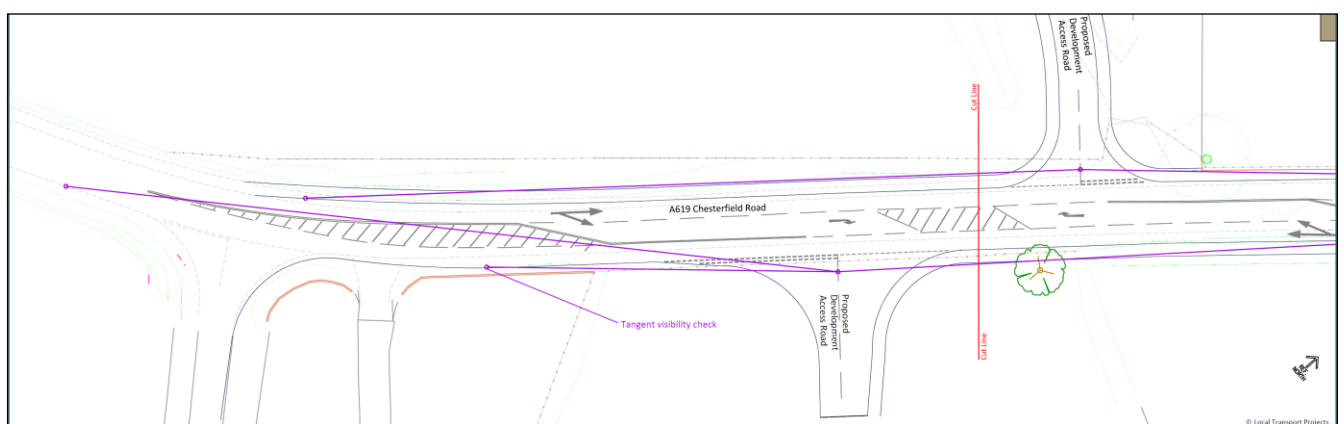
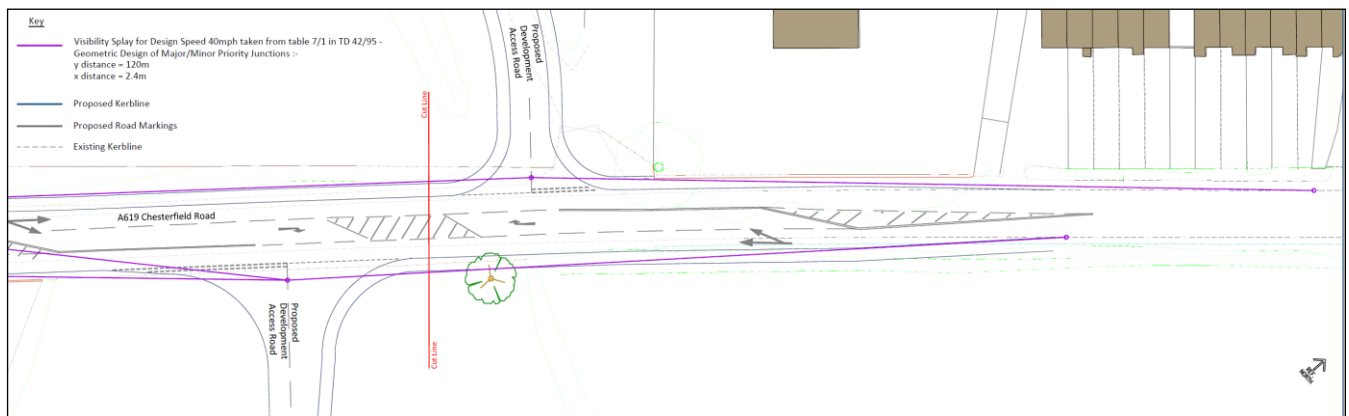


The roundabout would provide a safe and suitable access to both sites but at this stage, it cannot be built because of difficulties with obtaining technical approval (and subsequent adoption by the local highway authority) for a structure that 'bridges' over the previous railway embankment.

The issues in this case are not about the cost of the roundabout, the variations have been proposed in response to difficult ground conditions and made in attempt to find a practicable solution to providing access to both sites that would allow both developments (on either side of Chesterfield Road) to progress within a reasonable timescale.

The junctions proposed in this application are shown below and the County Council (in their capacity as the local highways authority) confirm that the proposed arrangements would provide a safe and suitable access to both sites and do not object to the proposals on highway safety grounds. Therefore, the proposed variations do accord with national planning policy and saved Local Plan policies GEN1 and GEN2.

Proposed Site Junctions (with right turn harbourages)



However, concerns have been raised by the County Council because the site access roundabout (albeit with some variations) would have provided an opportunity to restrict right turns out of the nearby Tally's End junction on to Chesterfield Road.

On the plan below, the Tallys End junction can be identified by the McDonald's icon and the site access roundabout (as approved) would lie just beyond the City Scaffolding icon. Potentially, traffic wanting to turn right out of Tallys End could be diverted left and around the site access roundabout to then come back to the Treble Bob roundabout along Chesterfield Road.



From the County Council's perspective, this type of restriction (on turning right out of Tallys End) may be necessary to allow for the safe and efficient operation of the Treble Bob roundabout particularly following highway improvements needed to facilitate the proposed development of Clowne Garden Village. Equally, this type of approach may address some of the local concerns based on the increasing amount of road traffic accidents observed at the Tallys End junction with Chesterfield Road.

To address these issues on the wider road network, the applicant has proposed a 'deed of variation' – i.e. a legal agreement that would make the land required for a new roundabout available to the County Council to carry out highway improvements at this location in the future.

This offer of securing the necessary land for a roundabout is accompanied by the offer of a financial contribution of £111,450.34, which is the difference between the projected cost of the site access roundabout and the two junctions with right turn harbourages proposed in this application. This money could be used to part-fund a new roundabout but could also be used for other highway improvements at the Tallys End junction or through the provision of an alternative vehicular access to Tallys End.

The County Council have agreed this offer would be acceptable 'in principle' as they accept that it offers some opportunities to provide an appropriate roundabout at the access points to both sites in the future, or for alternative solutions to be considered that could be funded by the proposed financial contribution towards highway improvements.

It is acknowledged that the offer of providing land and a financial contribution towards a new roundabout, or other highway improvements in the local area might not necessarily allay the concerns about highway safety raised by local residents in their representations on this application.

However, as noted above, the County Council's advice as the statutory consultee on these matters are that the proposed junctions are safe and suitable in highway safety terms and no technical evidence has been provided to properly dispute this conclusion.

There is also no technical evidence to demonstrate (contrary to the County Council's advice) that the roundabout would be an appropriate traffic calming measure and there is no technical evidence demonstrating that speed cameras or a reduction in speed limit would be required to make these junctions safe to use.

Finally, there is no evidence to suggest that the new junctions would exacerbate the issues reported at the Tallys End junction or increase the potential for road traffic accidents at this location also taking into account the distance between the application site and the Treble Bob roundabout.

Consequently, the proposed road junctions are considered to be acceptable on their individual planning merits because they would provide a safe and suitable access to both development sites.

The offer to make land available for a roundabout with a financial contribution of £111,450.34 towards highway improvements is sufficient to offset and outweigh the County Council's remaining strategic concerns about the impacts of these proposals on the safe and efficient operation of the Treble Bob roundabout in the future.

There are no other issues with the proposals from a planning perspective because they would not have any significant impact on the character, appearance or amenities of the local area and there are no other constraints at the access points to the site that require further consideration

Therefore, officers would recommend conditional approval of the proposed variation to Condition 20 attached to planning permission to allow the approved site access roundabout to be replaced with the new junctions and associated right turn harbourages.

Sustainable Drainage System (SuDs)

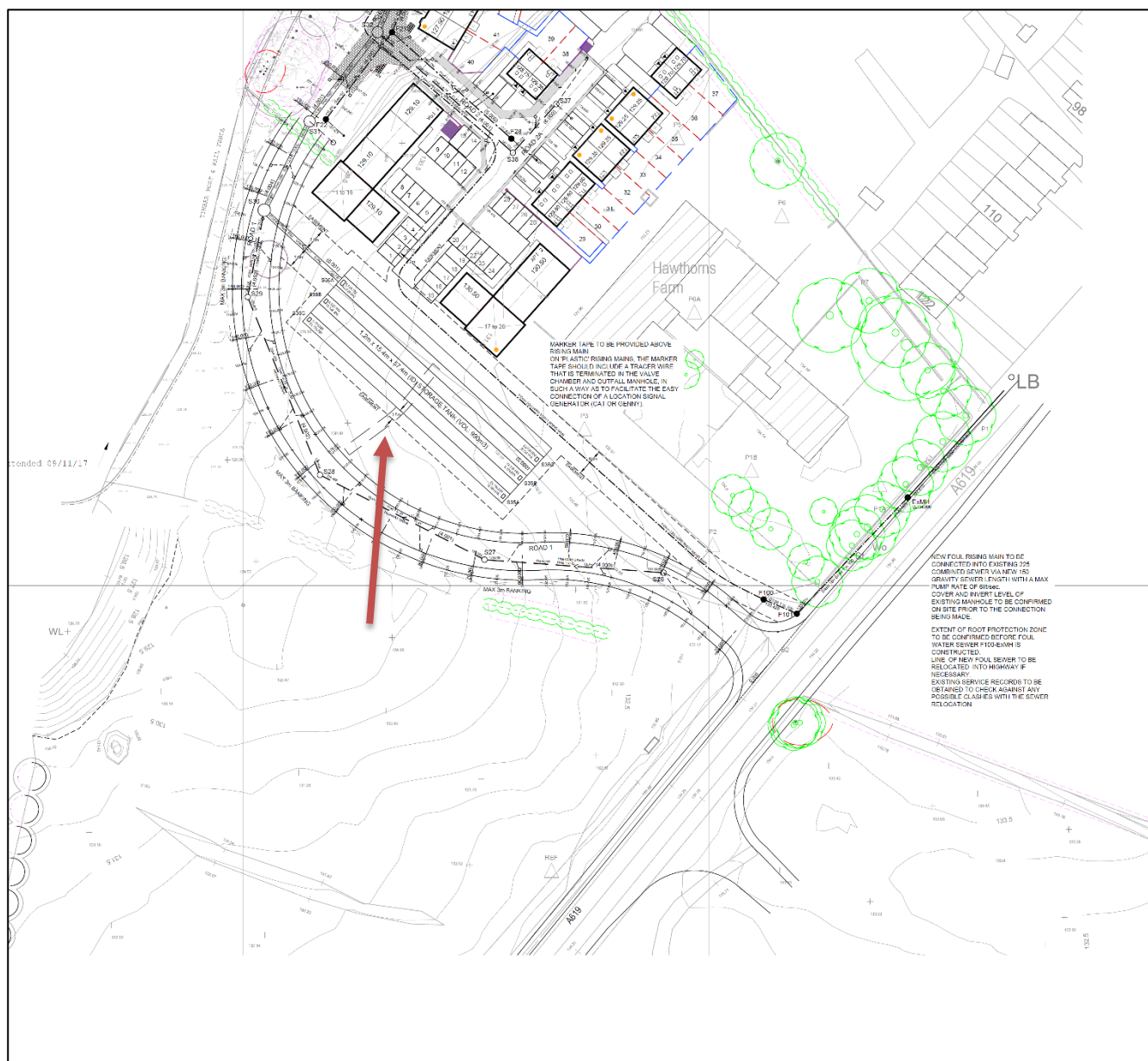
As the proposed housing development is a major development, national planning policies and emerging policy in the new Local Plan require the development to be provided with a sustainable drainage system. Amongst other things, SuDs are required to prevent surface water run-off causing issues off-site and to prevent surface water run-off compromising the capacity of the mains sewer.

Originally, an attenuation pond was proposed as part of a SuDs system for the site and would have been located to the west of the proposed housing development as identified by the arrow on the plan below:



In consultation with Yorkshire Water, the proposed attenuation pond was found to have insufficient capacity to deal with surface water drainage with reference to the most up to date methodology for calculating run off rates. In addition, the ground conditions on-site are such that attenuation ponds could not be provided in this location.

Consequently, the applicant has prepared a revised scheme that relies on an underground storage tank rather than an attenuation pond. The underground tank would be located to the east of the main road into the site and is identified by the arrow on the plan below.



The County Council have since been consulted in their capacity as the lead local flood authority. Following the submission of additional information from the applicant; the County Council now have no objections to condition 8 and 9 being varied to allow the attenuation pond to be substituted with the underground tank and vary the precise details of the SuDS system from that previously approved (for a system relying on attenuation pond).

Consequently, subject to the prior approval of the precise details of the revised SuDS system, Yorkshire Water and Derbyshire County Council as statutory consultees on drainage matters are satisfied that the storage tank and the associated revised strategy for surface water drainage is appropriate and as such; the proposed SuDs system complies with the relevant local and national planning policies.

There are no other issues with the proposals from a planning perspective because they would not have any significant impact on the character, appearance or amenities of the local area and there are no other constraints within this part of the site that require further consideration

Therefore, officers would recommend approval of the proposed variations to Conditions 8, 9 and 20 attached to planning permission 17/00298/VAR to allow:

- the replacement of the flood attenuation pond required by Condition 8 of 17/00298/VAR with an underground tank; and
- variation of Condition 9 to require the submission of surface water drainage details within two months of this permission instead of being in accordance with the previously approved scheme.

CONCLUSIONS

As this application has been made under s.73 of the 1990 Act, as amended, it is not possible to reconsider matters other than the conditions subject of this application. Therefore, it is not necessary to revisit the principle of the development or any other planning matters beyond those raised by the proposals to vary Conditions 8, 9 and 20 attached to planning permission 17/00298/VAR.

It is considered the proposed variations should be allowed because the revised site junctions would be safe and suitable for the proposed development and the revised SuDs system would be appropriate for the reasons set out in the above report.

However, to assist with clarity, the decision notice for any planning permission for this application made under section 73 of the 1990 Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.

Therefore, this application is recommended for approval subject to conditions relating to the provision of the new road junctions and the revised SuDs system and underground tank and the relevant conditions from the original permission that need to be repeated on a permission for this application.

Finally, any permission should also be subject to a deed of variation to the existing s.106 legal agreement to make land available for the provision of a roundabout and a financial contribution of £111,450.34 towards highway improvements to ensure that the omission of a site access roundabout from this scheme does not prejudice or compromise the safe and efficient operation of the Treble Bob roundabout in the future.

RECOMMENDATION

The current application be approved subject to

- A. prior entry into a legal agreement to secure land for the provision of a roundabout and a financial contribution of £111,450.34 towards highway improvements within the local area;**

B. the following varied conditions:

- a) The underground tank for the proposed sustainable drainage system for the housing development shall be located in accordance with the details shown on drawing No. E17/7044/004V (Revision V) produced by Haigh Huddleston and Associates.
- b) Prior to the occupation of any dwelling hereby permitted, a fully operational surface water drainage system shall have been completed on site in accordance with detailed plans and specifications first submitted to and agreed in writing by the local planning authority.
- c) Before any dwelling or other commercial building is first occupied, the new access junctions shall be formed onto the A619, Chesterfield Road generally in accordance with application drawing number LTP/3383/S1/01.01 Rev 0 produced by Local Transport Projects.

AND

C. the following conditions repeated from the original permission (application no. 17/00298/VAR)

Safeguarded Trees and Hedgerows

- 1. The existing hedgerows and trees identified as to be safeguarded on the Design Concept and Illustrative masterplan drawings as contained within the Design and Access Statement and its addendum by FPCR LLP submitted with the application documents, shall be retained, and protected during construction works.

Ground Conditions

- 2. The proposed development shall be carried out in complete accordance with the implementation and mitigation measures contained within the gas risk assessment approved under discharge of conditions application no. 15/00406/DISCON.
- 3. A detailed remediation scheme to bring the whole site to a condition suitable for the intended uses by removing unacceptable risks to human health, buildings and other property, and the natural environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 4. The remediation scheme approved in accordance with condition 3 above, must be carried out in accordance with its terms, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.
- 5. Following completion of measures identified in the remediation scheme approved in accordance with condition 3 above, a verification report (referred to in PPS23 as a

validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority. The verification report will also provide for any long term monitoring of pollutant linkages, maintenance and arrangements for contingency action as approved in writing by the Local Planning Authority.

6. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.
7. In the event that it is proposed to import soil onto site in connection with the development, the proposed soil shall be sampled at source and analysed in a laboratory that is accredited under the MCERTS Chemical testing of Soil Scheme for all parameters requested (where this is available), the results of which shall be submitted to the Local Planning Authority for approval. Only the soil approved in writing by the LPA shall be used on site.
8. Piling or any other foundation designs using penetrative methods shall not be permitted unless it has been demonstrated to the Local Planning Authority and agreed in writing, that there is no resultant unacceptable risk to groundwater.

Highways

9. No development within the application area shall be occupied or otherwise brought into use until the works to the A616/A619 roundabout as broadly indicated on drawing number LTP/2439/T1/05.02 Rev A, subject to detailed design, have been completed to the satisfaction of the Local Highway Authority through consultation with Highways England and open to traffic unless an alternative mechanism for facilitating improvements to this junction has been agreed with the Local Planning Authority through consultation with the Local Highway Authority and Highways England
10. The development hereby approved shall take place in accordance with the agreed Framework Travel Plan for the site dated December 2008 and with reference D118649.
11. No development within either phase of the development shall be occupied or otherwise brought into use unless and until footways have been provided between the bus stop shelters on Chesterfield Road (north east of the vehicular access into the development) and the residential and commercial areas of the development.

Conditions relevant to the Housing Development

12. Prior to the occupation of a dwelling (or in accordance with a scheme of implementation submitted to and approved in writing by the local planning authority) a controlled pedestrian crossing of the A616 dual carriageway to the northern side of the residential site shall be provided to link the footpath from the north east of the

residential site with the footway to the northern side of the A616/A619 roundabout in accordance with details previously submitted to and approved in writing by the local planning authority.

13. Prior to the occupation of a dwelling (or in accordance with a scheme of implementation submitted to and approved in writing by the local planning authority) the footpath from the north east of the residential site shall connect with the footway to the western side of the A616/A619 roundabout in accordance with details previously submitted to and approved in writing by the local planning authority.
14. Prior to the occupation of a dwelling the new streets within the development shall have been laid out and constructed to at least base course, lit and drained to provide a link from the dwelling to the existing public highway.
15. Construction work shall not begin on the residential element of the proposal until a scheme for protecting the proposed residential development from road traffic background noise (principally from the M1 motorway) has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the approved scheme shall be completed before any part of the residential development is occupied.
16. No dwellings shall be erected within 20 metres of the application site boundary with the M1 motorway.
17. There shall be no occupation of dwellings adjacent to 124 Chesterfield Road whilst ever those premises are used for a scaffold business.

Conditions relevant to the Commercial Development

18. Prior to discharges to the public sewer from the commercial phase of the development all surface water drainage from parking areas and hardstandings shall be passed through a petrol/oil interceptor with an overall capacity compatible with the site being drained.
19. Before any related premises are occupied on the commercial phase of the development the whole of the vehicle parking and manoeuvring area and all service areas (including secure/covered cycle parking) shall be formed, laid out, constructed and surfaced in concrete, tarmacadam or block pavers. All parking spaces shall be clearly and permanently delineated and shall be retained for their intended use at all times.
20. The access road serving the commercial phase of the development shall include a turning area suitable for large HGV's.

Legal Agreement

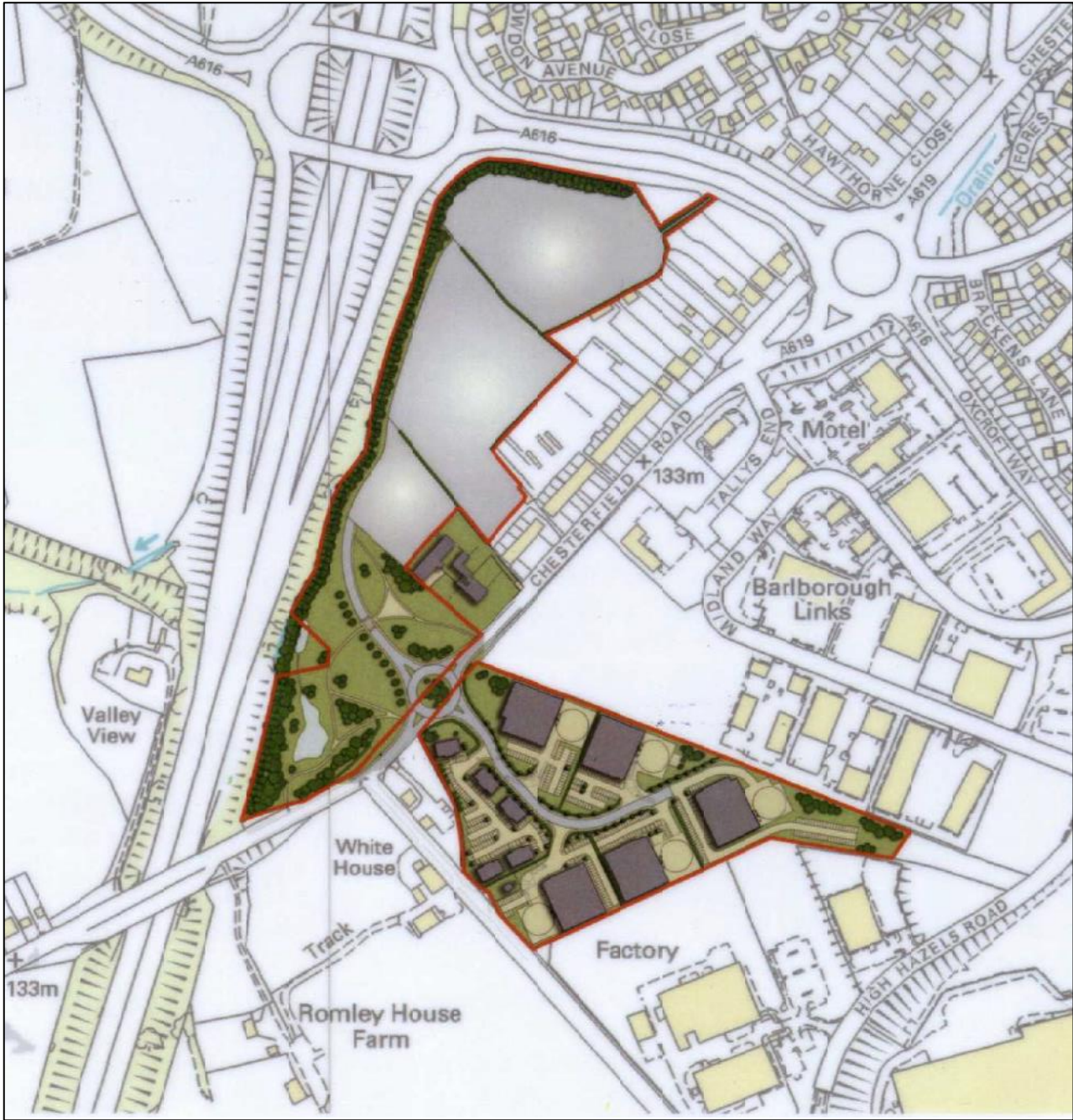
21. Prior to the first occupation of any dwelling or commercial unit hereby permitted, a completed deed of variation that links this permission to the varied obligations attached to 09/00370/OUTMAJ, or a completed s.106 legal agreement containing the same obligations, shall be submitted to the Local Planning Authority

Statement of Decision Process

Officers have worked positively and pro-actively with the applicant to address concerns raised in representations on this application and sought additional information and additional planning obligations to ensure the proposed variations would comply with local and national planning policies.

By virtue of the nature of the development and its relationship with the nearest neighbouring residential properties, it is also considered that the proposed development would not have an impact on any individual's or group of individuals' human rights or adversely affect a person with a protected characteristic or group of people with a shared protected characteristic.

Site Location Plan



PARISH

South Normanton

APPLICATION

Frontage part of a mixed use retail, leisure and employment development comprising the demolition of existing dwellings and farm buildings and the erection of Class A1 Retail Class A3/A4 food and drink units, and Class C1 hotel with associated car parking, landscaping and service areas (on land also known as Wincobank Farm, North of Cartwright Lane)

LOCATION

Land To The North And West Of Berristow Farm Mansfield Road South Normanton

APPLICANT

Mr Marcus Jolly, Limes Developments Ltd.

APPLICATION NO.

18/00470/FUL

FILE NO. PP-07262649

CASE OFFICER

Mr T Ball

DATE RECEIVED

13th September 2018

SUMMARY

This application has been brought to the planning committee for determination because it is contrary to the development plan and because of the significant public interest in these proposals, which are often referred to as 'Park 38'.

Park 38



The Park 38 proposals comprise

- An L-shaped 'terrace' of retail stores (Class A1), expected to be divided into ten individual units and with some stores providing space over two levels plus a small coffee shop unit. This provides a total retail floorspace of 19,705 sq m (including mezzanine at 40% of ground floor area) plus 167 sq m coffee shop.
- A 'pod' of food and drink uses (Classes A3/A4) including the option of restaurant

and/or wine bar uses to serve evening as well as daytime customers (1,227 sq m); and

- A hotel (Class C1) together with ancillary restaurant/café/bar type use (Class A3) on the ground floor; six storey building with 95 bedrooms and 370 sq m A3 use to ground floor

Hotel



However, the proposals are not compliant with either the adopted Local Plan or emerging policies in the new Local Plan because the application site is on land to the east of South Normanton that is outside the existing settlement framework and allocated for employment uses in the emerging Local Plan.

In this case, there are no other relevant planning considerations that outweigh or offset the identified conflict with adopted Local Plan or the finding that the proposals do not comply with emerging policies in the new Local Plan.

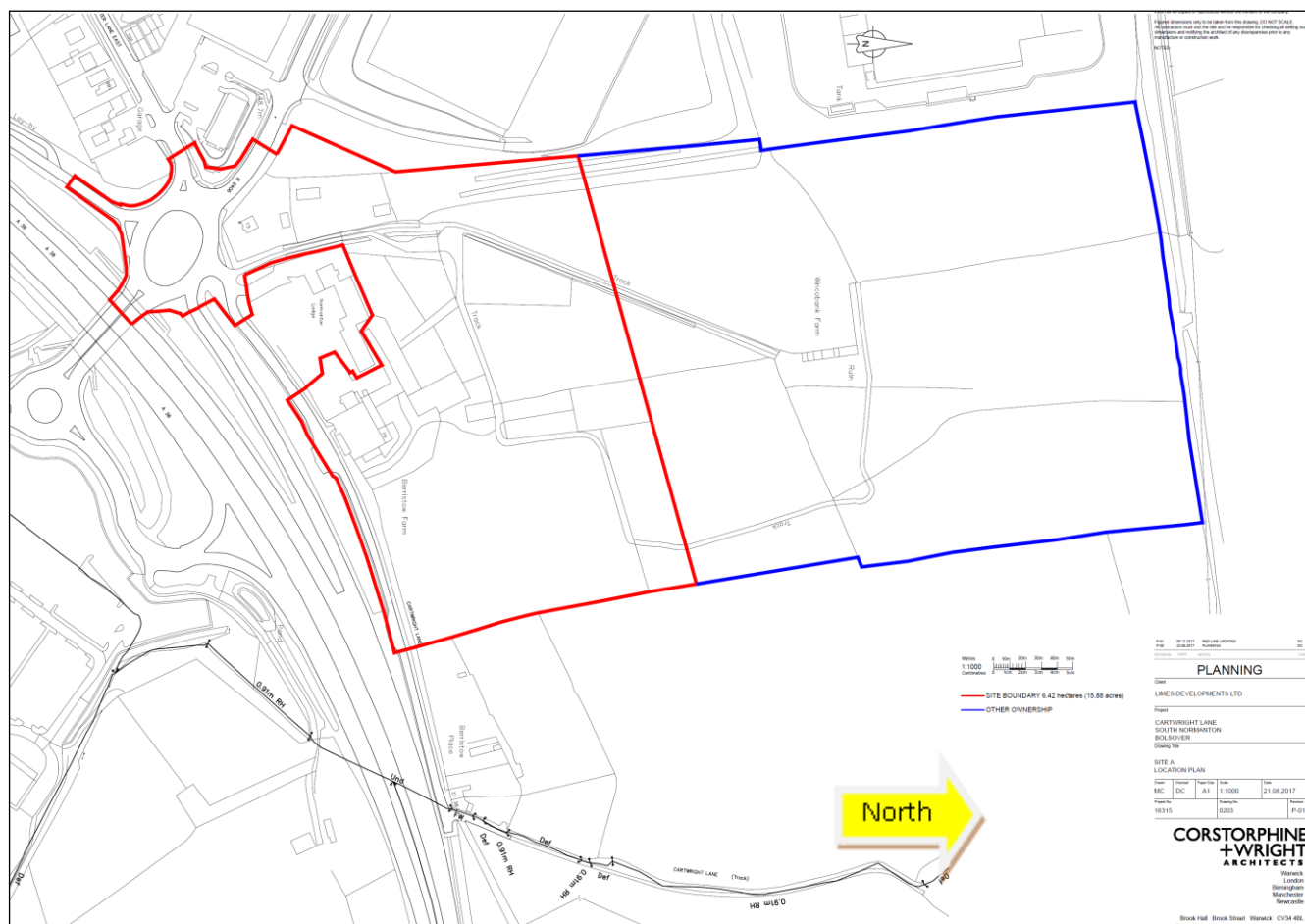
In particular, the employment uses (as envisaged by emerging policy WC1) on this land would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B2 and B8 uses on this land could be achieved without resulting in adverse impacts on the viability or vitality other local town centres.

Therefore, although the proposals are considered to be able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework; any benefits of granting planning permission would be significantly and demonstrably offset and outweighed by the adverse impacts of doing so.

Accordingly, officers are recommending that the current application be refused for the following reasons:

- The application site is outside the settlement framework and within the countryside as defined by the adopted Bolsover District Local Plan where development is subject to saved policy ENV3: Development in the Countryside. The proposal fails to comply with any of the criteria within that policy which would allow development in the countryside. Therefore the proposal is contrary to the saved policies of the adopted Local Plan.
- The emerging Local Plan for Bolsover District is at a very advanced stage. The application site is part of an allocation for employment land (B2 and B8 Uses) under policy WC1: Employment Land Allocations. The policy has been tested at the Local examination and is not the subject of any Main modifications. It therefore carries significant weight. The proposal for A1 shops including a C1 hotel use and A3/A4 restaurant and drinking establishments is on land allocated solely for B2/B8 uses under policy WC1 of the emerging Local Plan.
- On balance it is considered that the proposal passes the sequential and retail impact tests set out in the National Planning Policy Framework. However it is not considered that any benefits of the proposed development offset and outweigh its adverse impacts. In particular, the employment uses (as envisaged by emerging policy WC1) on this land would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B2 and B8 uses on this land could be achieved without resulting in adverse impacts on the viability or vitality of local town centres.
- Therefore, the proposals are contrary to saved policies in the adopted Local Plan, contrary to emerging policies in the new Local Plan and are not a form of sustainable development in accordance with the terms of the Framework.

Application Site



The red-edged application site for the retail application (18/00740/FUL) comprises farm land, areas of which are also used for horse grazing, to the east of warehouse/industrial units along Berristow Lane. The application site includes Berristow Farm which fronts Cartwright Lane which is parallel to the A38 and opposite the East Midlands Designer Outlet Centre. The application site wraps round the western, northern and eastern sides of Normanton Lodge Care Home (now known as Normanton Lodge Care Village).

Berristow Farm comprises a detached rendered and slate hipped roof farmhouse, a range of rendered barns with cottage at its eastern end having a mix of slate and concrete tile roof coverings, a low red brick range of buildings with slate roof adjoining Cartwright Lane and behind and to the side of these most prominent buildings, various agricultural buildings of various styles plus stabling.

Also included in the site is the site of a house with related outbuildings and outside storage at the junction of Berristow Lane and Cartwright Lane (73 Mansfield Road), to the west of Normanton Ledge Care Village.

Field boundaries within the site generally comprise well maintained hawthorn based hedgerows with occasional mature hedgerow trees. A track with hedging and trees to its sides extends from Cartwright Lane (between Normanton Lodge and 73 Mansfield Road) and crosses part of the site diagonally (continuing into the outline planning application site). There are trees and overgrown hedgerow to the western side alongside existing industrial units off Berristow Lane.

The site rises gently away from Cartwright Lane before dropping away more steeply northwards through the outline planning application site. The full application site is therefore at the top of a hill which makes any built development prominent, particularly from the north and north-west.

To the east of the site is agricultural land which is identified as an Important Open Area in the adopted Local Plan and more recently is now identified as the route of HS2. Beyond is the Fulwood Industrial Estate in Nottinghamshire. To the north the outline planning application site is agricultural land which adjoins an access track from Berristow Lane serving an area of regenerating tipped land used for informal recreation.

PROPOSALS

Park 38



This full application seeks permission to construct a new retail development on the southern part of the site (6.42ha) aimed at providing:

- An L-shaped 'terrace' of retail stores (Class A1), expected to be divided into ten individual units and with some stores providing space over two levels plus a small coffee shop unit. This provides a total retail floorspace of 19,705 sq m (including mezzanine at 40% of ground floor area) plus 167 sq m coffee shop.
- A 'pod' of food and drink uses (Classes A3/A4) including the option of restaurant and/or wine bar uses to serve evening as well as daytime customers (1,227 sq m); and
- A hotel (Class C1) together with ancillary restaurant/café/bar type use (Class A3) on the ground floor; six storey building with 95 bedrooms and 370 sq m A3 use to ground floor.

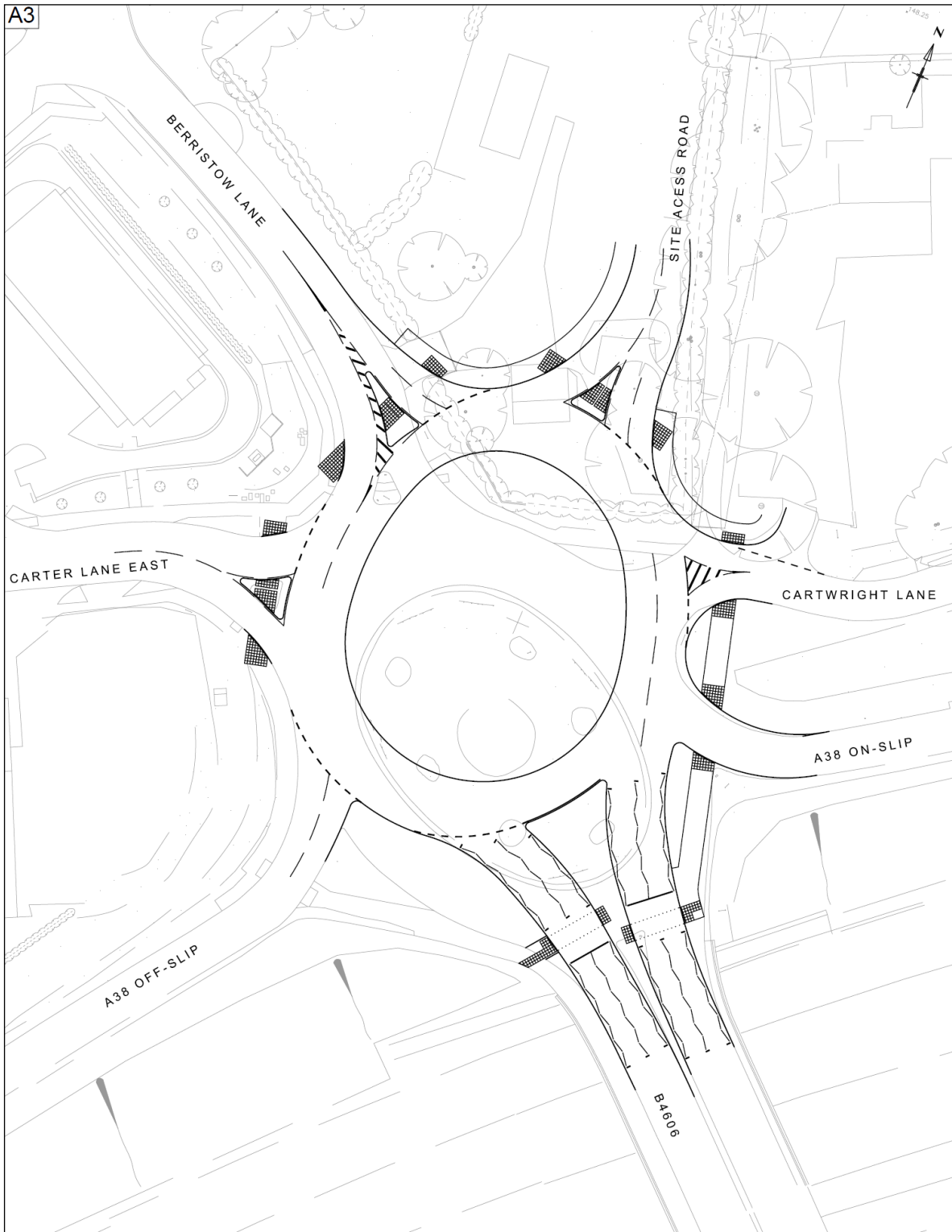
The proposed hotel and retail units will share the same access as the development proposed in the parallel application for the development on the northern part of the site (18/00471/OUT), which comprises:

- Employment development comprising units for warehousing and distribution activities (Class B8) with ancillary office floorspace; and
- A small group of trade counter type outlets, or alternatively, a gym or similar use.

Access

To facilitate access to the site, the existing Carter Lane East/Berristow Lane/A38 junction roundabout will be enlarged to provide an additional arm to serve the proposed development using the site of 73 Mansfield Road. The access is adjacent to Normanton Lodge Care Village with the proposed hotel sited between the access and Berristow Lane.

Layout of Proposed Roundabout



Berristow Farm (including the two houses and all the related farm buildings and stables), which is situated on the Cartwright Lane frontage to the east of Normanton Lodge, would be demolished to make way for the proposed retail development. The food and drink 'pod' would, in effect, be built on its site.

Normanton Lodge retains its current access from the Berristow Lane roundabout which is off Cartwright Lane a road which runs parallel to the A38. Normanton Lodge Care Village is situated to the south-western corner of the proposed retail park, with proposed retail car parking to its northern side and the food and drink 'pod' to its east (on the site of Berristow Farm complex).

An acoustic fence is shown on the landscape plans to the northern side of the original Nursing home.

Car Parking

Car parking with 719 spaces is proposed to the front of the units with the main block of retail units along the northern boundary of the application site (at the highest point of the site) facing south and a smaller range along the eastern side facing west. The food and drink 'pod' back onto Cartwright Lane and face north into the car park. Servicing of the retail units is from their rear.

External Appearance



The design of the buildings involves extensive glazing to the frontages, with additional glazing on the Cartwright Lane side of the food and drink 'pod'. These are to be clad in a mix of blue brick, stone rainscreen cladding (buff) and grey ceramic tile. The rear elevations (north and east facing) are microrib composite cladding panels laid vertically and randomly of different shades of green and buff to break up these extensive elevations.

The Pod



The Hotel



The hotel at 6 storeys has 95 bedrooms with at ground floor entrance and reception and a separate food and drink unit occupying approximately two thirds of the ground floor area. The building is to be clad in a mix of blue brick, stone rainscreen cladding (light grey), ceramic rainscreen cladding ((light grey) with flat roof. There are 70 parking spaces arranged around the hotel, the main retail car park is across the access road.

Suggested Conditions

In the submitted Planning and Retail Statement the applicant suggests conditions to control the scope of the retail floorspace:

1. The total retail floorspace (Class A1) shall not exceed 13,800 sq.m. net sales area;
2. Floorspace at mezzanine level will not exceed 5,630 sq.m.;
3. No unit will be smaller than 929 sq.m. gross, and there shall be no sub-division of units;
4. The retail floorspace shall not be used for the sale of convenience goods, except for an ancillary element within individual units if required and in any event not to exceed five per cent of the net sales area in total;
5. No more than 40% (i.e. 5,520 sq.m.) of the net sales area to be devoted to clothing, footwear and accessories; and
6. The remainder of the sales floorspace to be restricted to the sale of the following only:

- a. Car parts and accessories
- b. Cycles and cycling equipment
- c. DIY, building and decoration products
- d. Electrical goods
- e. Floor coverings and carpets
- f. Furniture and furnishings
- g. Garden improvement products and accessories
- h. Homewares
- i. Pets Products
- j. Sports Goods and equipment (with any clothing included within such stores to be deducted from the 'fashion' total)

The applicant indicates that these suggested conditions are reflected in the results in the sequential and impact assessments undertaken prior to the submission of this application.

Supporting Documents

The application as submitted is accompanied by the following documents:

- Planning and Retail Statement
- Design and Access Statement
- Distant View Analysis
- Transport Assessment
- Framework Travel Plan
- Flood Risk Assessment and Surface Water Drainage Strategy
- Ecological Appraisal
- Phase I Environmental Desktop Study
- Statement of Community Involvement
- Archaeological Desk-Based Assessment and Geophysical Survey
- Noise Impact Assessment
- Air Quality Assessment
- Tree Survey
- Coal Mining Risk Assessment
- Masterplan
- Ecological mitigation plan
- Landscape plan
- Plans and drawings showing the proposed buildings.

AMENDMENTS

During the consideration of the application various amendments, revisions and additional information has been submitted which are described below.

Following concerns expressed by Derbyshire Wildlife Trust further work has been undertaken to address their concerns. A revised Masterplan has been produced showing greater areas retained for biodiversity mitigation, retaining some of the important hedgerows to the western side in a buffer zone, covering a total area of 3.73ha. Areas affected by the line of HS2 are also identified as additional biodiversity mitigation areas (1.28ha). The revised master plan also shows the retention of an existing tree within the car park area.

The Ecological Mitigation Compensation and Enhancement Plan included within the revised Ecological Appraisal sets out the principles of mitigation and retention. A biodiversity metric has been undertaken to give a base line value of 26.74 with the value of loss being 17.7. Overall the Biodiversity Impact Assessment Calculator predicts a Habitat Biodiversity Impact Score of +6.29 taking into account the proposed mitigation measures; there is a net loss to hedgerows.

The revised scheme is expected to generate Full Time Equivalent jobs as follows:

- Retail: 291
- Leisure (A3 and hotel uses): 82
- Total for this application of 373

The related outline application is expected to generate FTE jobs of 315 plus 24 for the trade/gym total 339.

Thus the complete development as proposed could generate 712 FTE jobs.

The applicant provides a comparison if the whole site were to be developed for Storage or distribution uses (class B8 uses) but including the hotel of 623 FTE jobs. A difference of 89 FTE jobs.

Summary of Submissions

Response to Planning Policy comments. 19.09.19

Additional ecological information (extra climbed tree survey 16.08.19

Revised Proposed Masterplan (Rev P-08). 08.08.19

Response to Council's independent report on retail impact (Nexus Planning) and third party report by Williams Gallagher. 08.08.19

Revised Masterplan showing biodiversity areas. 05.08.19

Revised Ecological Appraisal taking account of comments made by DWT. 05.08.19

Employment Benefits, Scheme as amended from original submission and comparison with Class B use only. 02.08.19

Addendum to Planning and Retail Statement (Response to queries raised by Nexus Planning on behalf of the Council). 08.03.19

Air Quality Assessment Update (Response to request for additional analysis to address the Ministerial Direction). 13.12.18

Response to Mineral Planning Authority comments. 05.12.18

HISTORY

17/00232/SCREEN	Environmental Assessment not required	Mixed use retail, leisure and employment development
17/00498/FUL	Withdrawn	Frontage part of a mixed use retail, leisure and employment development comprising the demolition of existing dwellings and farm buildings and the erection of Class A1 Retail Class A3/A4 food and drink units, and Class C1 hotel with associated car parking, landscaping and service areas (on land also known as Wincobank Farm, North of Cartwright Lane)
17/00499/OUT	Withdrawn	Rear part of a mixed use retail, leisure and employment development comprising the erection of Class B8 employment units with provision for trade counter and/or Class D2 gymnasium uses with all matters except for means of access reserved for subsequent approval (on land also known as Wincobank Farm, North of Cartwright Lane)
18/00471/OUT	Pending Consideration	Rear part of a mixed use retail, leisure and employment development comprising the erection of Class B8 employment units with provision for trade counter and/or Class D2 gymnasium uses with all matters except for means of access reserved for subsequent approval (on land also known as Wincobank Farm, North of Cartwright Lane)

CONSULTATIONS

Environmental Protection Officer (Environmental Health):

- *Contaminated Land:* Agree with recommendations of phase1 desk based study that the site has had a range of previous industrial uses and that a further intrusive investigation is required to ensure suitability of the site for the intended use including a gas risk assessment. Therefore recommends condition requiring such an assessment and submission/implementation of any necessary remediation scheme.
- *Noise:* Appreciate that the noise levels within the area are already fairly elevated due to the road network and existing industrial park and retail activities. However, do not wish to increase overall noise levels with this development. Concerns on a number of aspects in particular impacts on the adjacent nursing home; noise limits may need to be imposed on the industrial units. Peak time for the retail development noise is different to that of the traffic assessment. Proposed acoustic fence provides limited protection from HGV's approaching the site. No night time assessment for the restaurant/wine bar/food outlets, assume they close at 11pm. No assessment of cumulative impact of noise emissions from plant and equipment. Would be seeking to achieve noise levels lower than current background levels to minimise overall noise levels being increased. Agree that a construction environmental management plan be submitted. No assessment of extraction systems for the A3/A4 uses next to the Nursing Home (odour may also be a factor).

Conclusion that more can be done to improve the acoustic impact of the development. It is likely that suitable solutions can be found although this may place additional restrictions on the flexibility of the development. Therefore recommend conditions requiring further acoustic assessment with updated provisions to control sound, submission of site specific construction environmental management plan (CEMP), scheme for extraction of odours to all food premises before occupation, no food/retail unit open between 23:00 to 07:00 unless a night-time assessment demonstrated there will be no impact on night time amenity.

- *Air Quality:* Significant concerns regarding the air quality assessment in view of the Ministerial Direction that was served on Bolsover District Council under the Environment Act 1995 as part of the Ambient Air Directive with respect to the A38 directly leading up to and away from the proposed development. The submitted updated air quality assessment identified that there would be negligible impact as a result of the development although the modelling results differed in conclusion from our own modelled data carried out as part of the work required by Defra. Independent peer review concluded that the differences in model output related to technical differences in terms of the heights of the roads and the heights of the receptors. This was unlikely to significantly affect the conclusions of the assessment although the peer review identified that the report is robust and in line with current guidance, but it may not represent a clear worst case scenario; we remain cautious of the impact within this area as this is a significant development. It is calculated that by the time that this development is completed, the area should be in compliance with air quality standards for NOx as a result of several factors, including improvements to the designs of vehicles. However, the potential impact of HS2 is not included within either of these reviews. In view of the concerns regarding air quality within this area, we would like the applicant to consider proactive measures to provide further reassurance that the development will not jeopardise the work that is currently being undertaken to improve

levels within this area. This could include measures such as alternative low emission energy sources for the site, requirements for low emission vehicle fleets for the commercial units, charging points for electric vehicles throughout the site, improved public transport arrangements for the retail units etc. Therefore recommend conditions to cover these aspects. 04/08/19

Derbyshire Wildlife Trust (DWT):

Comments on Revised Ecological Appraisal with Biodiversity Metric and Revised Masterplan showing biodiversity areas, which have been prepared to address the concerns previously raised by DWT:

Satisfied that the ecological appraisal provides a thorough assessment that has addressed the issues identified in our previous responses.

Welcome the details of the change in biodiversity value as set out in the ecological report. Mitigation proposals for Mitigation Area are broadly acceptable, but we have concerns that transforming the species poor grassland to species rich grassland solely through sympathetic management is unlikely to be successful. Recommend that suitable enhancement measures are explicitly set out within the body of the EMMP.

Proposals in relation to protected species are considered to be acceptable.

It remains unclear how the long term management of the mitigation areas will be funded and secured and how long a period of management there will be. In order to ensure that the biodiversity gains outlined in the ecological report are realised we advise that the LPA should be satisfied that it can secure a period of management of ideally 25 years and/or in perpetuity for the land management.

Recommend conditions:

- Detailed bat mitigation strategy;
- The mitigation and habitat enhancement measures for great crested newt outlined in the ecological report should be implemented in full;
- No removal of hedgerows, trees, shrubs or brambles shall take place between 1st March and 31st August inclusive;
- No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority.
- The Ecological Mitigation and Management Plan (EMMP) described in the Ecological Report shall be submitted to, and approved in writing by, the LPA prior to the commencement of the development. 28.08.19

DCC County Archaeologist:

The applicant has provided the results of a revised archaeological desk-based assessment and geophysical survey which address the requirement for heritage information at NPPF paras 189/190.

The desk-based assessment, walkover and geophysical survey have identified several strands of archaeological interest within the site:

- Remains of two colliery tramways survive;
- The site of a former colliery, this was a small operation originating in the mid 19th century and closed in 1889;
- an area of activity associated with the former colliery, plus medieval ridge and furrow across the site; underlying this is an early field system on a different alignment, possibly of prehistoric or Romano-British date.;
- The site of Berristow Farm may be of early date, with buildings shown in this approximate location on a map of 1699.

The archaeological interest outlined above is of local/regional significance and is most appropriately addressed through a conditioned scheme of work in line with NPPF para 199 to comprise:

- 1) pre-demolition recording of the historic Berristow Farm complex;
- 2) archaeological trial trenching to assess below-ground remains across the site as identified above;
- 3) mitigation excavation/recording of significant archaeological remains within the footprint of the development.

Parts 1) and 2) should take place at an early stage to enable delivery of part 3) before commencement of development work on site.

Recommends detail condition to cover these aspects. 22.10.18

Mineral Planning Authority (DCC):

Site is underlain by coal reserves. Coal Mining Risk Assessment submitted with the application states that they are of good quality and potentially of economic value, concluding that further investigation is necessary before development takes place.

Saved Policy MP17 of the Derby and Derbyshire Minerals Local Plan should, therefore, be taken into account in the assessment of this proposal. This states that the mineral planning authority will resist proposals for development which would sterilise economically workable mineral deposits, except where it is shown that there is an overriding need for the development and where prior extraction of the mineral cannot reasonably be undertaken or is unlikely to be practicable or environmentally acceptable.

More recent policy in the NPPF at paragraph 204 continues to encourage the prior extraction of minerals where practical and environmentally feasible, if it is considered necessary for non-mineral development to take place on the site. Policies in the emerging Derbyshire and Derby Minerals Local Plan Review will seek to safeguard the full extent of the surface coal resource in Derbyshire and this will ensure that the presence of workable minerals are taken into account in the consideration of proposals for non-mineral development.

The developer to provide a report which determines the practicality and viability of extracting the coal resource as part of the development. 08.11.18

Coal Authority:

The site is likely to have been subject to historic unrecorded underground coal mining at shallow depth and that a thick coal seam outcropped across the site.

The Coal Authority concurs with the recommendations of the Report on a Coal Mining Risk Assessment (December 2017, prepared by Rogers Geotechnical Services Ltd); that coal mining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site. Accordingly, no objection to the development subject to a pre-commencement condition requiring such works. 09.11.18

HS2:

No objections. Given interfaces between respective works programmes in that location it will come as no surprise that discussions are ongoing between HS2 and the applicant regarding the construction, logistics and proposed environmental mitigation. In that regard HS2 Ltd stresses the importance of such dialogue and collaboration continuing to ensure that the proposed scheme and HS2 can operate without conflict and work to mitigate any potential conflicts that may arise. 02.01.19

Highways England:

In April 2018 Highways England reviewed the original applications (17/00498/FUL and 17/00499/OUT), recommending that these not be approved until further information to determine the impacts of the proposed development on M1 J28 had been provided. We provided the applicant with our VISSIM model of the junction (validated to a 2017 base year) to support their impact assessment work, for which the modelling results were subsequently submitted for review.

In the AM peak period we expect an increase of approximately 40 vehicle trips at M1 J28. We have no concerns regarding junction operation in this peak as a result of the development, and a review of the VISSIM model confirms no change to queue lengths.

We expect a net increase of approximately 200 vehicle trips through the junction in the PM peak as a result of the development, which we note could result in the queue length on the M1 northbound off-slip increasing by 120m. This takes the maximum queue length on this approach to approximately 300m, although this can be accommodated within the stacking capacity of the existing off-slip link.

Although the operation of the M1 southbound off-slip is currently a significant safety concern due to queues reaching back to the M1 mainline, the addition of development traffic does not affect queues on this approach.

Considering these impacts, we do not consider there to be mitigation that can be provided which is fair and proportionate to the scale of impact on the operation of the junction. We therefore issued a no objections response in May 2018. Daily fluctuations for example, in traffic levels could mirror the impact of the additional development traffic.

As applications 17/00498/FUL and 17/00499/OUT were withdrawn, proposals were resubmitted in October 2018 under respective application references 18/00470/FUL and 18/00471/OUT. With the only change being that the overall quantum of development had been reduced by 5,574sqm we would expect a reduction in trips compared to previous proposals and therefore our previous no objections response remains unchanged. 11.01.19

Local Highway Authority (DCC):

Detail comments on the submitted Travel Plan. 15.11.19

Access proposals acceptable in principle. Some concerns about the level of parking provision. However a parking accumulation analysis indicates that overall within the site capacity will be available. As any shortfall in parking would be likely to cause congestion and on-street parking within the site rather than on the public highway an objection cannot be sustained.

No objections subject to conditions:

- Construction management plan;
- Detailed scheme for offsite highway works;
- Detailed phasing programme for the off-site highway works;
- Access gradient;
- Design of temporary access off Cartwright Lane;
- Access, parking, servicing etc areas before first occupation;
- Travel Plan to be revised. 14.11.18

Severn Trent Water:

Requests condition requiring drainage plans for the disposal of surface water and foul sewage prior to commencement. 14.12.18

Local Lead Flood Authority (DCC):

Majority of site drains to the north-west, to Normanton Brook. Part of the site drains to the south east.

To avoid any catchment transfer into the north west catchment, the applicant is proposing to drain the whole of the proposed sites impermeable area to the greenfield run-off rates for the north west catchment of the site alone, which the Lead Local Flood Authority (LLFA) strongly welcomes.

The applicant as per the submitted Flood Risk Assessment has considered and shall incorporate a range of SuDS features within the proposed development, this is in line with the National Planning Policy Framework.

The LLFA will require the production and submission of details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development.

Therefore recommends conditions requiring detailed design and management plan for the surface water drainage of the site; assessment to demonstrate that the proposed destination accords with the drainage hierarchy; and details of surface water management during construction. Also provides detailed advisory notes. 09.11.18

Senior Engineer (BDC):

Subject to acceptance of SuDS by the LLFA must ensure that an Operation and Maintenance Plan is in place. Any temporary drainage during construction must give due consideration to the prevention of surface water run-off onto the highway and neighbouring properties.

12.11.18

Economic Development (BDC):

If Planning is minded to approve the planning applications that the local jobs planning condition should be applied and also for support to be given for the Regeneration Framework's plans for South Normanton town centre.

The number of jobs proposed under the two alternatives are noted. The jobs figures are employment density derived figures using information from the publically available 'HCA Employment Density Guide 3rd Edition'. The applicant has reflected construction jobs in the response. It is noted the GVA data is based on the UK National Accounts Blue Book. No information is provided about the skills levels of jobs provided under either scheme.

The Council has strategies and plans to promote economic growth and skills across Bolsover District. The strategies support business growth and recognise the role of the market towns. From an Economic Development perspective, Retail and Business/Professional/Financial Services and Manufacturing/Advanced Manufacturing and Transport/Storage/Logistics are identified as priority sectors in the District (amongst other sectors). It is noted the two alternative schemes make different contributions to meeting these priorities. It is recognised that different development types will result in different jobs and skills levels depending on the end occupier for a scheme. No skills information has been made available about the schemes. We have no evidence currently available to prioritise one sector over another. Economic Development would request the inclusion of a planning condition to secure local opportunities for skills, training and employment in the District. 16.09.19

Planning Policy (BDC):

Detailed assessment against policies of the adopted development plan, the emerging Local plan and the Framework.

Concludes in relation to retail use that the proposed new retail units (under application ref. 18/00470/FUL) is considered to be contrary to the Development Plan. On this basis, application ref. 18/00470/FUL should be refused unless material considerations indicate otherwise.

In relation to the emerging Local Plan for Bolsover District as a potential material consideration that could indicate otherwise, it is noted that the emerging Local Plan allocates the two application sites as one allocation for 14 hectares of B2 / B8 uses only. As such, the detailed proposals for the retail units do not accord with the emerging Local Plan's allocation and thus the emerging Local Plan cannot be treated as a material consideration to depart from the Development Plan in this case.

Finally, in relation to the NPPF as a potential material consideration that could indicate otherwise, the above assessment concludes that the application does not fail to satisfy the sequential test nor is likely to have significant adverse impact on existing town centres.

However, whilst a negative assessment would provide a further reason to refuse the application, this positive or neutral outcome is considered to not represent a material consideration that would indicate the application should be approved contrary to the Development Plan and emerging Local Plan.

Considers the hotel element of the proposal separately and concludes that it does not comply with the relevant policies of the adopted Local Plan.

Consider the stated employment benefits from the proposal and concludes that at face value the proposal could deliver 89FTE more jobs than just B Class employment.

From an assessment of this proposal, it is considered that the:

- retail element of the proposal is contrary to policy ENV 3 - Development in the Countryside of the adopted Bolsover District Local Plan as it is within the countryside and is none of the types of development permitted by the policy;
- hotel element of the proposal is contrary to policy ENV 3 - Development in the Countryside of the adopted Bolsover District Local Plan as it is within the countryside and is not in the locations permitted by policy CLT 14 - Hotel Development of the adopted Bolsover District Local Plan
- employment element of the proposal is contrary to policy ENV 3 - Development in the Countryside of the adopted Bolsover District Local Plan as it is within the countryside and is none of the types of development permitted by the policy;

In terms of material considerations that could indicate that the proposal should be approved, the emerging Local Plan allocates the two application sites as one allocation for 14 hectares of B2 / B8 uses only under policy WC1: Employment Land Allocations. This employment allocation has been tested at the Local Plan Examination and the Inspector has judged that it does not need to be modified to make the Local Plan sound or legally compliant. As such, the outline proposals for employment use on the northernmost part of the allocation are largely in conformity with the emerging Local Plan and this is considered to represent a material consideration that could indicate that this part of the proposals could be approved.

It is noted that the retail elements of the proposal are found to largely pass the sequential test. Furthermore, despite the identified impact of the retail elements on the turnover and trade draw of the surrounding town centres, particularly those of Mansfield and Sutton-in-Ashfield, based on the expert advice provided by Nexus Planning have to conclude that the impact of the proposal is unlikely to represent a significant adverse impact as interpreted in the NPPF. However, this positive or neutral outcome is considered to not represent a material consideration that would indicate the application should be approved contrary to the Development Plan and emerging Local Plan.

Finally, the stated employment benefits of the applicant's development proposal in comparison to the Council's allocation of the whole site for Class B use employment only, namely 89 more FTE jobs (or 222 more gross jobs), are not considered from a policy perspective to represent a material consideration that would indicate the application should be approved contrary to the Development Plan and emerging Local Plan.

Therefore, a decision to refuse the application is recommended from a policy perspective.

29.08.19

South Normanton Parish Council:

The Council is very concerned with the following issues should the development go ahead: -

1. The increased level of traffic and extra congestion around the M1 Junction 28, and the roundabouts off the A38 to McArthur Glen.
2. The increased levels of air pollution due to extra traffic and extra congestion around the M1 Junction 28, and the roundabouts off the A38 to McArthur Glen.
3. The increased noise levels due to the increased level of traffic and extra congestion around the M1 Junction 28, and the roundabouts off the A38 to McArthur Glen.
4. The increased level of commercial vehicles that will travel through the centre of South Normanton to access the proposed development.
5. The increased danger to pedestrians on the roads around the proposed development from additional traffic and additional air pollution. 27.09.19

Mansfield District Council:

Strongly Object. Detailed 28 page letter submitted explaining the objection. In summary the objection issues are:

- Contrary to Bolsover District Council adopted Local plan and emerging Local Plan policies which are consistent with the Framework (NPPF).
- Strongly disagree that there are no alternative sites that meet the requirements of the sequential test having assessed all possible sites in Mansfield. There are two superior sequential sites in Mansfield capable of accommodating the proposal that need much more detailed consideration as to whether they are available, suitable and viable for the broad type of development proposed. The sequential assessment to site selection has not been satisfied.
- The impact on the overall vitality and viability of Mansfield town centre will be adverse but it is uncertain whether this will be significant adverse. Clearly there will be an adverse impact upon trade and turnover in other centres in the local retail hierarchy as well as an impact upon investment there and local consumer choice. Mansfield District Council's overall conclusion is that the impact on the overall vitality and viability of town centres in the catchment area will be adverse and potentially significant adverse particularly if it is developed as a fashion park which must form the worst case scenario.
- The loss of a greenfield employment land doesn't represent an efficient use of land; like the EMDO the development it is almost entirely reliant on car-borne customers therefore it will not discourage the need to travel or contribute to sustainable travel patterns.
- The predominantly low wage and part time jobs in the retail and leisure element will not contribute towards reducing social disadvantage particularly in comparison to the higher wage full time industrial and distribution jobs that the site is designated to provide.
- Even if the sequential assessment can be satisfied and impacts are deemed to be adverse rather than significantly adverse, in the planning balance these adverse impacts significantly and demonstrably outweigh the benefits of the proposal. This is not a sustainable development in a sustainable location. Like nearby EMDO, it is not accessible by a choice of means of transport and is almost entirely reliant upon car-borne transport and custom.
- There would be far greater economic benefits to the local economy in developing the site for B Class employment uses which would achieve most of the claimed benefits for

the development and would be compliant with the emerging development plan. This must be one of the most attractive greenfield employment sites close to the M1 that doesn't require enabling development.

The proposal is contrary to NPPF and NPPG policy guidance as it fails the sequential approach to site selection and it has not been demonstrated that the impact is unlikely '*to be significant adverse*.' The proposal could impact on future investment in nearby shopping centres in the local retail hierarchy. There is an adverse impact on town centre trade and turnover, choice and competition in several town centres and on the overall vitality and viability of these centres. In at least one centre the impact on overall vitality and viability is likely to be significant adverse and even if these impacts were only deemed to be adverse, in the overall planning balance they significantly outweigh the benefits of the proposal which fails to satisfy the NPPF policy tests that out-of-centre retail proposals such as this must address. The proposal is contrary to the existing and emerging development plan and national planning guidance and should be refused. 18.02.19

Amber Valley Borough Council:

Given the nature of the proposals, Amber Valley Borough Council has no comments to make in connection with the above application. Officers are of the opinion that the proposed development is not of a sufficient scale to be likely to have any significant adverse impact on Amber Valley, despite the proposed A1 retail element of the proposals in application 17/00498 being in an out of centre location. Bolsover District Council will need to satisfy themselves that the application proposals, by virtue of the inclusion of A1 retail uses in an out of centre location, are acceptable having regard to the relevant national and local planning policies. 02.01.19

Ashfield District Council:

Objects, 18 page letter setting out reasons:

- Proposal is not supported by the Bolsover District Local Plan policies EMP10 Sites for Large Firms and GEN10 (Important Open Areas). No evidence that the site is unviable as an employment site. Policies support the town centre first principle which is consistent with the National Planning Policy Framework. Application fails to meet criteria of policies SAC10 (Retail Development at Industrial or Warehousing Sites), SAC13 (Retail Development Outside Defined Town and Local Centres), CLT13 (Location of Major New Leisure and Entertainment Developments) and CLT14 (Hotel Development). The site is required for other uses (employment) and is taken forward in the emerging Local Plan for employment uses, it is not easily accessible by a choice of means of transport and will add to the number of car trips generating additional traffic to which concerns have been expressed by Nottinghamshire County Council. It is not a sustainable option particularly when combined with the potential impact on town centres.

- Sequential test is not satisfied, suitable sites at Stockwell Gate North in Mansfield and at Northern Bridge/Outram Street Sutton in Ashfield (1.2ha) where retail development would be welcome.
- Significant concerns regarding the submitted Impact Assessment. 70% figure for retail sales floorspace area is too low, 80% is often used. No evidence that an allowance in floorspace calculations for 40% mezzanine is reasonable, likely to be exceeded. Only one scenario examined in the applicants submission, at the broad comparison goods level, with the speculative nature of the development it should consider bulky goods, non-bulky goods and, given the proximity and claimed synergy with EMDO a third scenario of predominantly fashion and clothing retailers. A fashion led development will have a much more extensive draw than a bulky goods retail park with different trade diversions. Detailed issues with the catchment area, population and expenditure sources, market share expenditure, turnover, trade draw and trade diversion.
- The forecast retail impact does not reflect the impact on Sutton. Proposed retail element is in excess of the comparison floorspace in Sutton Town Centre. Ashfield's Local Plan strategic objective is to promote and develop the town centre as a vibrant and successful sub-regional centre with the ability to compete with other such centres. Substantial sums invested to improve the attractiveness of the town centre, in excess of £2million on refurbishment of the Market Hall, environmental improvements, acquisition of derelict buildings to facilitate development and grant support for shop fronts. Applicant has not undertaken new health checks of town centres but use data from 2016, whilst recent, retailing is a dynamic sector and the effects of reduced spending, increased on line competition mean the studies need updating particularly on vacancy rates. Particular concerns about attracting current tenants away from the town centre. The loss of retailers would diminish the already limited national multiple fashion offer. Sutton has increasing vacancy levels and limited retailer demand demonstrated by the failure to reoccupy key long term vacancies in the primary frontages. The town centre currently performs poorly on two key indicators, vacancy rate and limited diversity. Overall impact on Sutton is likely to be significant adverse.
- Forecast retail impact does not reflect the potential impact on Kirkby in Ashfield. Kirkby has several shops selling homewares, whilst unlikely to relocate they may suffer trade diversion to bring their continued presence into question.
- Substantial concerns regarding the impact on highways. The Framework seeks to reduce the need to travel by car. Proposal contrary to this objective. A transport study carried out for the Council identifies that the junctions along the A38 are all predicted to be significantly over capacity, the proposal would create a further cumulative impact. Proposal does not take account of proposed allocations in the Local Plan. Proposal is poorly served by buses with bus stops some distance away (more than 400m) across busy roads. Centres from which trade will be diverted are genuinely accessible by a choice of transport hence the claim of mileage/emission savings have to be treated with caution. Trip type proportions are disputed as these show no primary trips, with no justification. The highway authority currently object until such a time as the Transport Assessment had been amended to reflect reasonable trip proportions and the impact on the A38/Common Road junction has been assessed. The additional traffic on the A38 will add to air quality issues in this area.

- The economic benefits will not be realised. Greater benefits would be achieved by the development of the site for employment use. The number of retail jobs are exaggerated; the Next store company average (1/33sq m) rather than the HCA level of 1/90sq m is used. Part time low paid nature of retail jobs has to be contrasted with the predominantly higher paid full time jobs from employment use. Also loss of jobs from existing centres. No evidence submitted to show that the site needs enabling development for employment uses. It is one of the best located sites for employment purposes given its strategic location close to the M1.
- If Bolsover DC had intended for this retail proposal it should have come forward through the Local Plan process with consultation and reflecting the duty to cooperate. It has not been proposed in the Local Plan, Ashfield DC objects to the proposal.
- As a departure to the Local Plan it is assumed that it will be referred, if minded to grant permission, to the Secretary of State. 14.12.18

PUBLICITY

Advertised in press as a departure to the Local Plan. 3 site notices posted. 15 Neighbours notified.

Support:

Letter of support in the absence of car park construction in Amber Valley Borough Council centres.

Representation:

From Normanton Lodge Care Village situated adjacent to the application site. Concern about noise from the supply of goods to the development, from vehicles entering the roundabout, from the development adjacent to where 80 residents will live. Hours for deliveries and shopping should be restricted to help contain this problem. Lights to the retail car park need to point away from the care village. Wishes to shape the proposal so that it works for all that have to live as neighbours.

Objections:

Pro-forma letters of objection received giving the following reasons for objection:

- Proposal to restrict the types of goods sold does little to allay concerns that the development will have a significant adverse impact on Sutton-in-Ashfield, Mansfield and Alfreton town centres; 40% of the retail floorspace can be used for fashion retailing, there would be relatively few items that could not be sold from the remaining 60% and would therefore compete directly with existing retailers in the neighbouring town centres.
- The applicant has overstated the number of jobs to be created and overlooks the job losses that would ensure as a result of the trade draw impacts;
- There will be a significant adverse impact on the vitality and viability of nearby town centres including Sutton, Mansfield and Alfreton, and is a serious threat to investment already made in these town centres;

- There are site available in the surrounding town centres that are more suitable to accommodate the retail and leisure elements of the proposal;
- The proposal will have a major impact on road infrastructure and lead to traffic problems surrounding the A38;
- Unsustainable out of centre location;
- Conflicts with policies of the BDC adopted plan and emerging Local Plan, the site is not identified for mixed retail use development.

78 copies of the letter representing 78 businesses in Sutton-in Ashfield have been received.

103 copies of the letter representing approximately 89 businesses in Mansfield have been received.

In addition a further 13 copies of the letter have been received from other interested parties (no business details or remote to the area)

An objection has been received from the Chief Executive Officer of Mansfield Business Improvement District giving the following reasons:

- Threat to local economy which could see a retail impact of at least 8% on Mansfield and 15% on Sutton-in-Ashfield centres; likely to have a significant adverse impact on businesses' ability to continue trading.
- This will impact on existing and planned investments for the nearby towns.
- Retail occupiers likely to be secured for Park 38 are already represented in Mansfield and Sutton.
- Vacancy rates will increase due to anticipated loss of trade and loss of retailers to the proposed Park 38 impacting on town centre vitality and viability.
- No material considerations or benefits which outweigh the non-compliance with adopted and emerging development plans and the NPPF.
- Jobs created will be offset by jobs lost and displaced from town centres as stores close and relocate.
- Town centres nearby are improving but remain vulnerable and need time to recover and benefit from the positive steps being made by various stakeholders towards improving vitality and viability.
- More out of town retail leisure offer dilutes the town centre offer in nearby towns.
- Will increase demand on the main highways, increased traffic on already congested routes A38 and M1 junction 28. As a result there will be increased air pollution impacting on the natural environment.
- Could cause harm to the ongoing and continued development of Mansfield town centre and the town Centre Strategic Plan currently in draft format. This includes Heritage Lottery funded development of Leeming Street and the proposed development of the Rosemary Street bus interchange currently at pre planning stage, as well as earmarked development at Church Street.

3 other letters of objection received, referring to highway infrastructure being barely able to cope with current traffic levels; that business will be taken away for existing nearby town centres including South Normanton; any jobs will be at the expense of jobs in existing centres which have good public transport links.

More recently a further 8 letters of objection have been received from residents of South Normanton raising the following points:

- Cumulative negative impact of additional traffic from this development combined with proposed HGV traffic and recent approved 500 space extension to East Midlands Designer Outlet car park will add to congestion at roundabouts, increase rat run traffic through the village and create further delays for residents entering and leaving the village.
- Adding this development with others already approved will delay compliance with the Ministerial Direction to reduce nitrogen dioxide pollution and particulate matter levels on the A38.
- The entrance to Park 38 will expose residents of Normanton Lodge Care Home, recently extended, to traffic related pollution.
- Refusal on traffic and pollution grounds should be given serious consideration in addition to refusal on policy grounds.
- Share reasons for objections from surrounding businesses; however there will be further environmental impacts from the development including loss of green space.
- South Normanton is an old village, as such the roads are not laid out or suitable for the increased heavy use.
- Nationally we are trying to re-generate the High Street shopping in our towns, this type of development does the opposite.

Also a recent letter from the Chair of SoNAR (South Normanton Active Residents):

Whilst SoNAR has not held a Public Meeting on this specific application I am confident, from comments received, together with our links with other local organisations and councillors (at Parish District and County level) that residents, and their representatives in the village, are extremely concerned and wish to object in the strongest possible terms, with specific reference to traffic issues:

1. As BDC Planners and Environmental Health Officers are aware the stretch of the A38, adjacent to this application is subject to a Ministerial Direction to (for BDC and ADC) to "seek measures to reduce Nitrogen Dioxide pollution" as the current levels are deemed above legal limits.
Can I ask that, in considering this application, the Planning Committee ask the applicant and themselves, "In what ways can accepting this application meet the requirements of the Ministerial Directive?"
2. As BDC and DCC Highways are fully aware there are regular and significant tailbacks on the A38, adjacent to the application site, as well as safety concerns related to the "Rat-Run" through South Normanton village, via Carter Lane east and Ball Hill. These are due to increased traffic build up at peak times and during busy periods at McArthur Glen. So, distinct from, but linked to pollution issues, there is a real threat of significantly increased traffic from this application.
Can I ask that, in considering this application, the Planning Committee ask the applicant, themselves and DCC Highways, "In what ways can accepting this application ameliorate current pressure on the, already congested, road structure on the A38, M1 and local roads?"

I therefore request that, purely on these traffic issues, this application is refused.

Objections have also been received from Agents acting for owners of retail estates as follows:

Williams Gallagher on behalf of Eisinger Limited, owners of the Idlewells Shopping Centre, Sutton-in-Ashfield.

Submission of a 155 page detailed assessment of the proposal and its impacts.

The challenges facing the high street are well documented, but as seasoned investors, we understand that all markets are cyclical and despite the perceived threat of the internet, town centres such as Sutton-in-Ashfield can thrive based on a mixture of vibrant uses anchored by a rejuvenated retail offer.

One of the biggest threats to our ability to invest in centres such as Sutton however is the threat of uncontrolled, speculative out-of-centre development such as that proposed. These proposals serve to divert trade away from these sustainable locations, undermine attempts to attract new tenants and lead to the relocation of existing stores and facilities.

The proposed conditions offer very little reassurance as to the intentions of the applicant and in practice simply support our client's concerns that the Park 38 is intended to provide an out-of-centre retail development that will compete directly with existing town centres, including our client's own asset in Sutton-in-Ashfield town centre.

Up to 40% of the floorspace (5,520 sq.m. net) is proposed for the sale of clothing and footwear. This is a considerable amount of floorspace and, whilst it may not be the majority, it remains the case that it is likely to be the main offer within the development. Similarly, the sale of goods that would be permitted from the remaining floorspace is not restricted to 'bulky goods' as the Applicant seeks to suggest and in practice there would be very few items normally sold in town centre outlets that could not be sold at Park 38.

Idlewells Shopping Centre comprises 44 retail units, 250 car parking spaces, library and the town's indoor market. It is an integral part of the town centres retail offer and includes Specsavers, New Look, B&M Bargains, Boots, Argos, Superdrug, Bon Marche, and Holland & Barrett. The Centre owner works proactively to transform towns to ensure it has a successful and vibrant role for the local community. This can only be achieved where there is a combined effort on the part of local planning authorities within the sub region to protect and enhance the vitality and viability of its centres and defend against harmful speculative development.

The findings of their detailed assessment are summarised as follows:

- The applicant has failed to undertake a robust assessment of adopted development plan policies and their compliance/consistency with policies of the NPPF.
- The relevant policies of the adopted Local Plan are sufficiently consistent with the aims of the NPPF so as not to be rendered automatically out of date (with the exception of the needs test identified in Policy SAC12 which can be ignored)..
- There are significant adverse impacts associated with the proposal (either individually or cumulatively) which justify refusal:
 - The applicant has failed to undertake a robust sequential test in accordance with adopted and national planning policy requirements. Indeed the applicant's assessment is both incomplete and inaccurate in its assessment of potential sites - sufficient flexibility has not been demonstrated, and potential sites that are clearly sequentially preferable have been dismissed without sufficient investigation. There

are sites available in both Mansfield and Sutton that would be suitable for the retail and town centre uses elements of the scheme currently being proposed. Smaller sites are also available in the other centres and these would be suitable for elements of the scheme such as the hotel and food and beverage offer and the gymnasium, all of which can be developed separately from the retail park.

- Our interrogation of the applicant's retail impact assessment reveals that it fails to present a 'worst case' quantitative impact and that the actual impacts on nearby allocated town centres could be significantly higher than set out in the applicant's planning submission. To illustrate this point, Williams Gallagher has undertaken and submitted its own retail impact assessment. This demonstrates that the level of impact experienced by nearby allocated centres will be significantly adverse. Paragraph 90 of The Framework makes clear that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact, it should be refused.
- The applicant's assessment of the economic benefits of the proposed development are overstated. Moreover, the loss of this key employment site to retail would significantly reduce the employment-generating potential of the site. It will not create employment opportunities in key growth sectors that have higher levels of GVA as is envisaged through the emerging allocation of the site for B Class uses and for which there is demand (a point which is conceded by the applicant in its PRS). It will simply bring about the displacement of existing retail jobs which are currently located in far more accessible and sustainable town centre locations. In brief, there will be a significant opportunity cost associated with assigning B-class land to a retail and leisure development. This cost amounts to non-compliance with the National Planning Policy Framework objective of securing economic growth in order to secure jobs and prosperity (para 80).
- The proposal will have the effect of increasing car trips to an unsustainable location - the labour force required to serve the retail and town centre uses of the development will be mainly drawn from adjacent districts, it will pull employees out of town centre locations requiring them to travel to a location which is far less accessible by sustainable transport modes. There have also been significant concerns raised about highway capacity and safety by statutory consultees - clearly, a major retail development with 1,000 car parking spaces will have a much greater level of highway movements in comparison to a B2 or B8 use. These issues amount to a conflict with Paragraph 108 of the NPPF which requires developments to take account of whether opportunities for sustainable transport modes have been taken up given the type of development and its location, that safe and suitable access to the site can be achieved for all people, and any significant impacts on the transport network or highway safety can be effectively mitigated to an acceptable degree.

The following negative impacts also weigh against the proposal:

- the fact that the application site is outside of the current settlement boundary and is within the open countryside;
- the agricultural classification of the site;
- the loss of protected hedgerows and impact on biodiversity;
- the degree of heritage loss;
- significant traffic generation which will negatively impact on an Air Quality Management Area.

These factors amount to the applicant failing to demonstrate that the proposed development will address the NPPF objective to conserve and enhance the natural and historic

environment.

Based on the above analysis, the proposed development fails to meet the overarching objective of the NPPF which is to achieve sustainable development (para 7). There are no overwhelming economic, social and environmental benefits associated with the proposed development which would outweigh the adverse impacts identified within this report.

No justification is given to explain why the site has not been developed for employment purposes. Suggest that if put on the market for B Class uses there would be very strong demand.

On the evidence the local authority has at present, there is a clear weighting of all material policy considerations for a refusal of this application. Should Bolsover Council be minded to approve the application, it will of course be referred to the Secretary of State given its scale and issues of beyond local importance.

This objection in addition to providing a detailed analysis and assessment upon which the above conclusions are drawn, is also accompanied by a separate economic impact assessment which includes analysis of the economic benefits of the proposal, considers labour and economic output displacement and the impact on local centres.

Further representations following consideration of the Addendum to the applicants Planning & Retail Statement and the Retail Audit prepared for the Council by Nexus Planning. This contains 21 pages of detailed comment and analysis.

It is clear that the retail impacts on Sutton and other surrounding centres will be substantial and harmful to the centres. At present it is a scheme that does not meet the economic potential of the site as being planned for in the soon to be adopted Local Plan.

The Nexus report only considers the impact of A1 uses, dismisses A3/A4, C1 (hotel) and D2 (Gym) uses all of which are town centre uses. The cumulative effect of these uses in addition to the retail element will have the effect of increasing the overall attractiveness and draw which will increase the impact of the scheme.

The retail policy considered by Nexus contains no assessment of policy SAC13 the only relevant policy in the adopted local plan; there is only passing reference to the emerging local plan which should have greater weight and consideration given its advanced stage (policy WC5).

Identify a number of 'technical' points that significantly affect the conclusions drawn by Nexus in their commentary on the submitted Quantitative Impact Assessment. Any market share and current turnover estimates that are 'derived' from the household survey need to be treated with caution, as the survey error risks are greater than would normally be expected. This in turn means that any forecast impacts will also be subject to greater variation. Given the relatively small increases in town centre turnovers that are forecast there could easily be a significant adverse impact with different market share and trade draw estimates.

Information relating to the health of Sutton and other centres is becoming dated. An overly optimistic outlook is misplaced; the problems being faced by the High Street are not restricted to the recession as was perhaps thought but represents a more fundamental challenge threatens both town centres and retailers in them. The overall picture is of a centre that, however healthy in 2016, has since experienced a decline in its overall retail offer and a rise in

vacancies for which there is limited occupier demand in the foreseeable future. National multiples have closed outlets and identified qualitative needs for better provision of quality clothing and shoe shops and a better food and beverage offer has not been realised. This will increase the importance of retaining the remaining national multiples in the Centre. Any further closures as a result of relocation or increased competition will have a proportionally greater impact than on a centre that has low vacancies and good retailer demand. Further losses particularly to the comparison offer risks prejudicing the Centre's status as the main town centre for Ashfield District and the Centre is therefore clearly vulnerable to increased out-of-centre competition.

Nexus seem to accept that the proposal will lead to a number of store closures. If so, it is not how extensive they are that will be the determining factor in assessing the severity of the impact, but which retailers will be affected. If, as we consider possible, some of the key anchors of the centres are at greatest risk of closure, either as a result of relocation or impact, then even one or two closures would have a significantly adverse effect in the short-term. Longer term, the indirect impacts would also be significantly adverse as other businesses that rely on the footfall generated by the main attractors will also lose trade.

Makes suggestions about the suggested conditions as proposed by the applicant, would be simpler and easier to enforce a restriction on convenience floorspace to 5% of any individual unit rather than an overall total, or more specifically restrict convenience floorspace to a number of specific units with maximum convenience floorspaces specified for each. A condition requiring further impact assessment for any alterations to the scheme or conditions must be included otherwise there is no mechanism for reviewing incremental impacts as a result of 'creep' in the operation of the scheme through ongoing changes.

Additional comments in relation to the recently published Planning Policy response and additional material submitted by the applicant (comparison of employment benefits between the application proposals and the use of the site for B Class employment uses only, and the additional note of retail planning policy matters by the applicant.

Continue to object and consider that:

The reliance on the Nexus advice in concluding that the impact of the proposals will be adverse but not significantly adverse is misplaced - the information that informed the Nexus advice has been superseded by more up-to-date information on the health of Sutton-in-Ashfield Town Centre and recent appeal decisions; and the conclusion that the retail application would result in a slightly greater number of jobs than if the site were developed for employment uses only, is overly optimistic with regards to the potential benefits of the application proposals. In practice, the proposed retail development is likely to create less jobs than Q+A suggests, and 'B' Class employment uses would create more, reducing even further any positive benefits of the retail application.

Detailed justification provided to justify these comments including reference to their own updated health check of Sutton-in-Ashfield town centre, and reference and analysis of a recent appeal decision including that a reliance on town centre turnover increasing over time to indicate that an impact will not be significant adverse cannot be relied upon to indicate that an impact will not be significantly adverse; the correct approach is to consider each change in the context of the health of the centres concerned. If this approach is applied to Sutton-in-Ashfield, it is clear that the small monetary increase in turnover expected over the 5 year period (based on Q+A's figures), would be insufficient to offset the very harmful impact that would be experienced.

The recent health check shows that the Sutton centre is not as healthy as Nexus assume and that recent changes have made it more vulnerable to impact. This has recently been recognised by Central Government who have included both Sutton-in-Ashfield and Mansfield within the 100 centres invited to develop proposals for town centre regeneration, as part of the Town Deals initiative. This recognises that neither town centre can be considered to be healthy and both clearly require investment.

As a result, the levels of impact accepted by Nexus will in practice be more damaging than previously assessed. As both Q+A and Nexus acknowledge, the application proposals will have a substantial impact on the vitality and viability of both centres and, in the context of this clear evidence of the vulnerability of Sutton Town Centre, it must now be considered to be significantly adverse. The proposal will also directly impact on evolving investment plans for both town centres that Central Government recognise are in need of intervention and regeneration.

Detailed analysis of a series of appeal decisions which supports a different approach to assessing the impact of a proposal on town centre investment. Impact can be significantly adverse even if there are no specific investment proposals in an area at the time of assessment.

Consider that there is clear evidence that the application would have a significant adverse impact on both the vitality and viability of Sutton-in-Ashfield Town Centre and that, in addition to the recommended reasons for refusing the applications, a refusal on the basis of conflict with retail planning policy would be appropriate and can be justified.

The Q+A analysis only considers B1 and B8 uses on the site, despite the allocation in the emerging plan which would also support B2 uses on the site. Such a use would be likely to generate a higher level of employment than Q+A suggests.

As a result, the difference in gross job creation between the two schemes will be extremely limited and, in practice, the use of the site for employment purposes, in accordance with policy, may create more jobs than the proposed retail development. However, when job displacement is also factored in, the benefits of the allocated use are clear. We therefore agree with the Planning Policy conclusion that the employment benefits claimed for the development are not justified and cannot be considered a material consideration in favour of the proposed development.

NTR Planning on behalf of the owner of the East Midlands Designer Outlet (EMDO) Aviva Life and Pensions UK Limited and McArthur Glen who are the property managers.

Consider that the Transport Assessment is deficient and additional information is required in respect of:

- car parking demand analysis (in particular its management at peak times and relationship to the outlet centre);
- service arrangement demand assessment (whether the number of service vehicles at any one time can be catered for without impinging on each other or the operation of the car park);
- additional trip analysis to cater for the differing retail elements of the proposal;
- further information regarding the linked trip assessment;
- additional junction capacity analysis in the retail peak;

- additional junction analysis for the M1 slip road/A38/Mansfield Road junction and the Common Road/A38 signal junction and additional information to confirm the proposed access design is feasible.
- Also consider that the proposal does not comply with the existing or emerging local plan policy. Policies show an allocation for employment development.

Aldergate Property Group (owner of site included in sequential test):

We are aware of the further applications submitted on this site. They both include town centres uses as defined by the National Policy Framework and we must object to both proposals. We objected to the previous retail application and for ease of reference this email is a forwarding of that objection with its attachments.

Our position remains that the current applications should be refused.

May we also add that we wholeheartedly agree with the many retailers & businesses who have already voiced their concerns.

This proposal, if permitted, would be damaging to nearby centres and will adversely affect investments already made, investments already committed and future investment proposals in those towns. Own one of the sites included in the sequential test, with consent to develop, the proposal would affect this investment and our future investment. This site at Belvedere Street known as Stockwell Gate South, Mansfield is available and readily developable for a Park 38 development if appropriate flexibility is shown. It has an extant permission for A1 & other uses. The proposal will therefore affect investment in Mansfield Town Centre and the applicant has not adequately addressed this issue. Considers that there is misleading information in relation to the impacts of the proposal on existing centres, Mansfield District Council and the objector have invested in the town centre, to bring forward in particular the Stockwell Gate North and South sites, contrary to the applicants claim.

The retail impact appears to be understated but is nevertheless still substantial & is likely to send shock waves through the much needed regeneration proposals for such as Mansfield town centre.

The “sequential” assessments are flawed and in our view there is nothing offered by this scheme which can amount to a material consideration to outweigh its harm and failure to comply with National or local policy. Do not consider that sufficient flexibility as to the scale and format of the development has been demonstrated. Notes that many sites are deemed unsuitable on the grounds of undefined remediation/contamination and lack of viability without evidence to support such assertions.

Finally, it should be noted that the full text of all the above consultee responses and representations is also available to view on the Council's web pages.

POLICY

Bolsover District Local Plan ("the adopted Local Plan")

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

In this case, the proposals map for the BDLP shows the majority of the site as a site for large firms along with the area to the west, now occupied by various large warehouse units along Berristow Lane and subject of policy EMP9. However, EMP9 is not a saved policy of the adopted Local Plan because the site was originally allocated as a reserve site in case the Castlewood Business Park across the A38 was delayed or not developed. Large firms developed plots along Berristow Lane pending the Castlewood development. Subsequently the Castlewood development has now progressed and the allocation on the remaining land, now the subject of the current applications, was not saved (saving direction September 2007). Therefore, the allocation has been deleted and the policy is no longer relevant.

As a consequence, the site is now considered to lie outside the settlement framework for the purposes of the adopted Local Plan and in the countryside where the main applicable saved policy is ENV3: Development in the Countryside.

Other relevant and applicable saved policies include:

GEN 1: Minimum Requirements for Development

GEN 2: Impact of Development on the Environment

CLT14: Hotel Development

ENV 5: Nature Conservation Interests throughout the District

ENV 8: Development affecting Trees and Hedgerows

Part of the site frontage (an area along Cartwright Lane to the east of the farm buildings), extends into the protected open break between the Fullwood Industrial area in Nottinghamshire and this area of South Normanton Parish.

Policy GEN10: Important Open Areas is therefore also applicable.

National Planning Policy Framework ('The Framework')

The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and contains a presumption in favour of sustainable development and says decisions on planning applications should secure development which will improve the economic, social and environmental conditions of the area.

Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework are of particular relevant to this application.

Paragraph 86 says local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

Paragraph 87 goes on to say when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

Paragraph 89 says when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m² of gross floorspace). This should include assessment of:

- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

Paragraph 90 goes on to say where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused.

National Planning Practice Guidance offers further advice on the assessment of retail applications.

Publication Version of the Local Plan for Bolsover District (May 2018) ("the emerging Local Plan"):

Paragraph 48 of the National Planning Policy Framework says local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)

The Publication Version of the Local Plan for Bolsover District (May 2018) is currently undergoing examination. Following the hearings the Inspector has provided her judgement on the necessary Main Modifications required to make the new Local Plan legally compliant and sound. Consultation has taken place on these modifications and the result sent to the Inspector. The final Inspectors report is expected soon. As such the plan is therefore at a very advanced stage.

Within the Submitted Local Plan for Bolsover District, the application site is allocated under policy WC1: Employment Land Allocations on which the Council will support the development of the site for 14 hectares of B2 / B8 uses only. This restriction to B2 / B8 uses only formed a matter of discussion at the Examination and the applicant, who was objecting to the restriction

to B2 / B8 uses only, and other objectors, who were objecting to any inclusion of retail uses on the Wincobank Farm site, were in attendance at the relevant Hearing session. The Inspector considered the arguments put forward by the Council and the objectors and the Inspector has essentially ruled within her judgement on the necessary Main Modifications that the restriction to B2 / B8 uses only does not need to be modified to make the Local Plan sound or legally compliant.

WC5 also contains a requirement for a sequential and retail impact assessment for large retail outlets proposed in 'out of town' locations.

Accordingly, significant weight should be afforded to the most relevant applicable policies, which are:

WC1: Employment Land Allocations;

WC5: Retail, Town Centre and Local Centre Development.

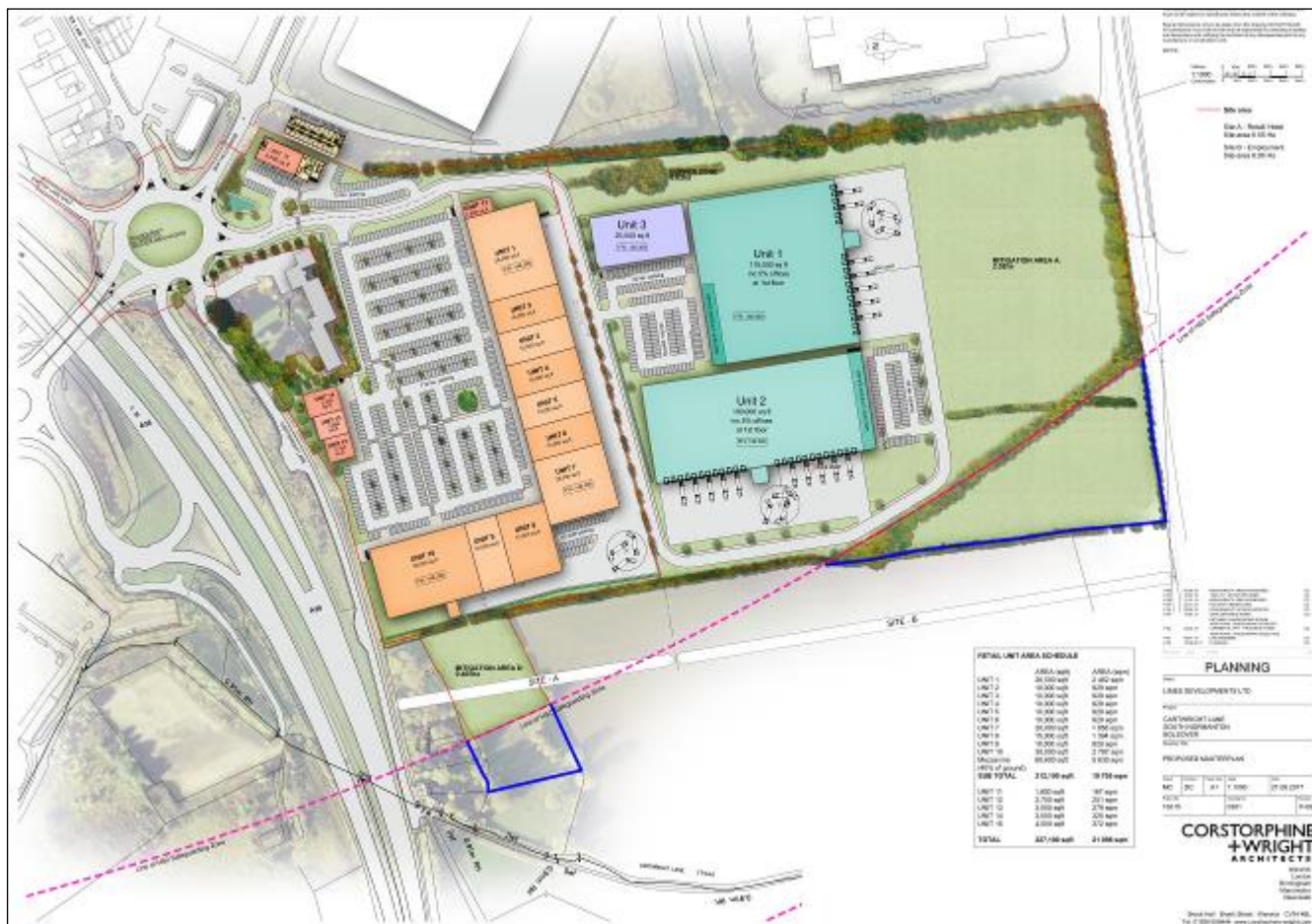
Other

Adjoining the application site to the east is the safeguarded corridor for HS2.

ASSESSMENT

This application is one of two submitted together for a total of 15.37ha of land on the eastern side of South Normanton. This report relates to the application for the southern part of the site which seeks full planning permission for retail and hotel uses.

Masterplan



A related application for outline planning permission for employment uses (application no. 18/00471/OUT) on the northern part of the site but utilising the same access off the enlarged Berristow Lane/Carter Lane East/A38 roundabout, will be considered separately.

Principle of Development

Compliance with saved policies of the adopted Local Plan

The principal policy in the adopted Local Plan relevant to the general location of the proposed new retail units is policy ENV 3 - Development in the Countryside.

Policy ENV3 states that outside settlement frameworks planning permission will only be granted for development which:

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

It is considered that the proposed retail development fails to meet any of these four criteria and is therefore contrary to the adopted Local Plan. The proposal relates to main town centre uses (as defined in The Framework) which are not normally 'necessary' in a countryside location; the proposal does not involve the exploitation of sources of renewable energy; would not improve the rural environment as it would introduce buildings of an urban character; and, does not involve the reclamation or re-use of land – the land is currently in productive agricultural use (and related discipline of the keeping of horses).

The proposal also involves the loss of small part of the protected open area covered by saved policy GEN10 – Important Open areas. This policy protects such areas from development which would impact on their open character. Taking into account that the proposal only involves a frontage part of this designation rather than part of its substantive area adjoining the application site along its entire eastern boundary, that the route of HS2 passes through this Protected Open Area, and the emerging Local Plan as a result disposes of this designation, the application of this policy is not considered to be significant nor material to the assessment of the proposal.

In addition, the saved policies of the adopted local plan also include SAC13: Retail Development outside Defined Town and Local Centres which lists 9 criteria with which the development proposal should comply. However it is considered that this policy is not consistent with the policies of the Framework and little weight can be given to its consideration.

Therefore, in terms of compliance with the adopted Local Plan, it is considered that the main issue is that the proposals are contrary to saved policy ENV3: Development in the Countryside. However, the site is allocated for employment land in emerging Local Plan policies, which diminishes the extent to which the Council can object to the application based solely on the identified conflict with saved policy ENV3.

Compliance with emerging Policies in the new Local Plan

The current proposals for A1 shops includes a C1 hotel use and A3/A4 restaurant and drinking establishments uses on land allocated solely for B2/B8 only uses under policy WC1 of the new Local Plan.

This employment allocation has been tested at the Local Plan Examination and the Inspector has judged that it does not need to be modified to make the emerging Local Plan sound or legally compliant.

As such, the detailed proposals for the retail units do not accord with the allocation in the new Local Plan and this conflict with policy WC1 is considered to carry significant weight in the determination of this application.

The Bolsover District Local Plan had allocated this site (and the land within the accompanying outline planning application) as a site for large firms along with the land to the west which is now developed with various large warehouse units. The site was originally allocated as a reserve site in case the Castlewood Business Park across the A38 was delayed or not developed. As that site has progressed the allocation on the remaining land, now the subject of the current applications, was not saved. As a result there has been no pressure for the site to come forward for development being beyond the settlement framework and in the countryside.

The site is now shown in the emerging Local Plan for B2 and B8 employment uses, but has not been marketed as far as we know, i.e. the proposed allocated use has not been tested on the market (which would in some respects be premature as the emerging plan has not yet reached adoption). Development take up in the area of M1 Junction28 would imply a demand for B8 units on this land, there is no evidence to suggest there would not be market demand for the allocated uses.

The applicant has suggested that policy WC2 of the emerging Local Plan would apply which could allow alternative employment generating uses on allocated employment land. However this policy relates to the sites listed within it which does not include this site, and if it did, WC2 requires evidence to support an argument that the site is not suitable for the protected allocated use. As the site is greenfield and has not yet been developed it cannot be argued that the land is no longer suitable for employment uses. Policy WC2 is therefore not relevant and the land should be safeguarded for B2 and B8 uses as required by policy WC1.

Therefore, as the proposals in this application do not include B2 and B8 uses; the current application is contrary to policy WC1 in the new Local Plan.

Key Issues

In summary, the proposals are not compliant with either the adopted Local Plan or emerging policies in the new Local Plan.

Therefore, the proposals are not considered to be 'acceptable in principle' and these proposals should be refused planning permission unless

- (i) the proposals are able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework; **and**
- (ii) the benefits of granting planning permission significantly and demonstrably offset and outweigh the adverse impacts of doing so.

The Sequential Test

In the new Local Plan, Policy WC5: Retail, Town Centres and Local Centre Development encourages retail and other town centre development (which would include hotels) in the established town and local centres of the District. For out-of-centre proposals a sequential and retail impact assessment are required while stating that preference will be given to accessible sites that are well connected to the town centre. It is not considered that the proposal is well connected to any town centre due to its remoteness from the town centre of South Normanton and other larger town centres nearby and as such, the proposals conflict with the basic criteria of WC5.

WC5 is consistent with Section 7 of The Framework, which establishes policies to ensure the vitality of town centres. Planning decisions should support the role that town centres play at the heart of local communities by taking a positive approach to their growth, management and adaptation. (Paragraph 85).

Section 7 of The Framework also says that a sequential test should be applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan such as the current proposals. Main town centre uses as proposed in this application should be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered (para 86).

When considering out of centre proposals, like the current proposals, preference should be given to accessible sites which are well connected to the town centre. Flexibility on issues such as format and scale should be demonstrated so that opportunities to utilise suitable town or edge of centre site are fully explored. (Para 87).

National Planning Guidance provides the following information:

The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of centre locations (with preference for accessible sites which are well connected to the town centre). It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking.

Analysis of the Sequential Test:

The applicant has submitted a sequential test to support the proposal. This is similar to that submitted with the withdrawn application and considered on behalf of the Council by external consultants (Urban Shape) at that time. It is considered that their conclusion on this aspect remains valid:

“We consider that the sequential assessment has robustly demonstrated a flexible approach to format and scale, and that there are no suitable and available sites over 2ha within the principal centres in the catchment area. On this basis, we are satisfied that the application passes the sequential test.”

Derbyshire County Council consider that there are no sequentially preferable sites within South Normanton, Alfreton or Ripley town centres which would be available, suitable or viable to accommodate the retail proposals. They do not comment on sites outside the county.

However various objectors representing various interests disagree. There is concern that the test does not show sufficient flexibility on scale and format.

The applicant in citing case law states that it is important to recognise the commercial rationale and the intended catchment of the scheme as these are important characteristics of the broad type of development proposed. The development must therefore, the applicant states, be located on a site which can provide a significant and appropriately sized mixed-use commercial scheme, attractive to national operators in a prominent location, together with easy access to a sufficient volume of customers with appropriate scope for both extensive surface level parking and dedicated servicing facilities. Disaggregating the scheme including the A3 restaurant and hotel use into constituent parts is not appropriate. As a result in undertaking the sequential assessment the applicant has not considered sites below 2ha. This represents less than 50% of the area of the scheme but the applicant states it is evident that sites of such a smaller size would not be able to accommodate the application scheme or a reasonable alternative.

Mansfield District Council strongly disagree with the applicants conclusions on identified alternative sites. They indicate that there are two superior sequential sites in Mansfield capable of accommodating the proposal that need much more detailed consideration as to whether they are available, suitable and viable for the broad type of development proposed. The applicant does not provide such a detailed assessment of these sites. In addition Mansfield District Council considers that there are likely to be sites elsewhere in the catchment area that are more accessible than the application site and better connect to shopping centres in the local retail hierarchy. Only two other out-of-centre sites in Mansfield have been considered, none elsewhere in the area of search.

Ashfield District Council make similar points to those of Mansfield DC and also state that given more realistic floor area and flexibility there is a site available in Sutton-in-Ashfield Town Centre where retail development would be welcome.

Williams Gallagher on behalf of the owners of the Idlewells Shopping Centre in Sutton-in-Ashfield similarly consider that the sequential test has not been satisfied as sufficient flexibility has not been demonstrated and potential sites have been dismissed without sufficient investigation. There are sites available in both Mansfield and Sutton that would be suitable for the retail and town centre uses of the scheme.

Aldergate Properties who own a site in Mansfield included within the sequential test has permission for retail uses. Sufficient flexibility on scale and format has not been demonstrated. The site is available and readily developable for a Park 38 development if sufficient flexibility is shown. Notes that many sites considered by the applicant are deemed unsuitable on the grounds of undefined remediation/contamination and lack of viability without evidence to support such assertions. An inflexible attitude is shown by insisting on extensive surface level car parking, failure to adjust to the scale of floorspace proposed and refusing to disaggregate different elements of the shops use class (Class A) such as restaurant/café etc. uses.

A problem with the objectors comments, which while being valid in terms of a lack of investigation into the availability/suitability/viability of the sites in Mansfield and Sutton is that there is a reliance on a level of disaggregation (accommodating elements of the proposal on smaller sites) which is not acceptable to the applicant nor is required within the policies of and guidance to the Framework.

There are vacant retail units in the adjacent towns in particular Mansfield and Ashfield of various sizes. In addition there are identified sites (shown in the Local Plan and Masterplan) within these centres which potentially could accommodate modern format shops. However this logic runs counter to policy and advice given in the Framework and Planning Policy Guidance and supported by legal cases as it relates to substantial disaggregation of the proposal.

Therefore, officers (as advised by one of the councils retail consultants) consider that the current application does pass the sequential test required by WC5 and set out in paragraphs 87 and 88 of the Framework because the applicant is able to demonstrate there are no other suitable sites for the proposals in a town centre or edge of centre location.

The Retail Impact Assessment

Paragraph 90 of the Framework says where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused. For the above reasons, officers consider that the application passes the sequential test despite a significant number of contrary objections.

The potential retail impact of the development is equally contended and Paragraph 89 of the Framework says when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, like the current proposals, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m² of gross floorspace).

This should include assessment of:

- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

National Planning Practice Guidance offers further advice on the assessment of retail applications.

The purpose of the impact test is to consider the impact over time of certain out of centre and edge of centre proposals on town centre vitality/viability and investment. The test relates to retail and leisure developments (not all main town centre uses) which are not in accordance with up to date plan policies and which would be located outside existing town centres.

A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example, in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact.

Where evidence shows that there would be no likely significant impact on a town centre from an edge of centre or out of centre proposal, the local planning authority must then consider all other material considerations in determining the application, as it would for any other development.

Analysis of retail impact:

The applicant has submitted a retail impact assessment to support the application. This has been the subject of updates and Sensitivity Tests to clarify queries raised by the Council's external consultants (Nexus Planning) who have carried out a retail audit of the submission as revised.

Their conclusion is that on balance taking account of the findings that the forecast trade impacts would be offset by the projected growth in turnover and the applicant's suggested restriction on items sold, the development proposed will result in an adverse, but not significantly adverse, impact on the relevant identified centres (South Normanton, Sutton-on-Ashfield, Kirby-in-Ashfield, Alferton, Ripley and Mansfield).

In considering the potential impact on investment in the nearby town centres Nexus, having reviewed the applicant's submission, considers that the application accords with the requirements of the investment part of the impact test and that they were unaware of any in-centre investment that would be materially impacted by implementation of the application proposal.

Again objectors disagree and consider that impacts are more likely to be significantly adverse at various town centres.

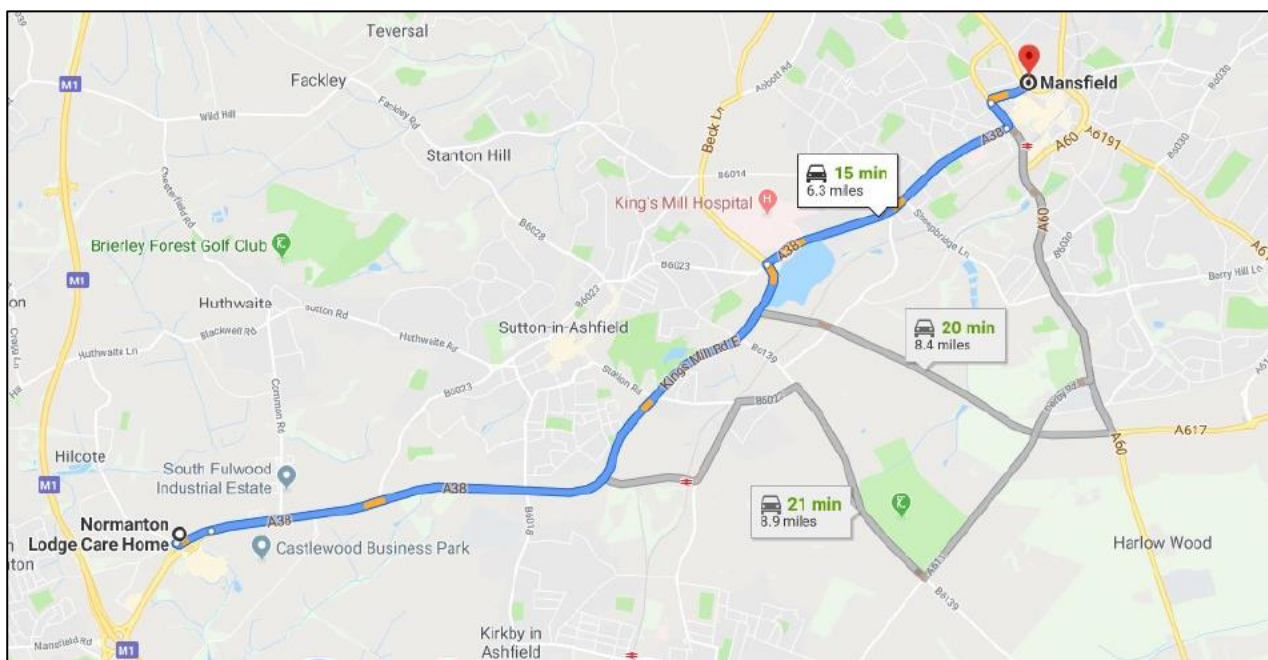
Mansfield District Council in their detailed consideration of the submitted retail impact assessment consider that the impact on investment in Mansfield Town Centre and in key development sites in and around the centre could be significant adverse. The impact on consumer choice in the centre itself could also be significant adverse. The town centre performs badly on two key indicators namely vacancy rate and limited diversity. If Park 38 is developed it is likely to have an adverse impact, particularly cumulative impact on the trade and turnover of comparison stores in Mansfield Town Centre but whether the impact on the overall vitality and viability of the town centre is likely to be significant adverse is uncertain.

The impact assessment cannot be relied upon to demonstrate the impact of the proposal on shopping centres within the catchment won't be significantly adverse, particularly Mansfield

Town Centre (which includes St Peter's Retail Park, excluded from the assessment of the town centre and considered as a separate entity in the submitted assessment).

The applicant's composite comparison goods assessment is based on erroneous weightings and their trade draw and trade diversions are largely based on their own estimates which appear to be self-serving in terms of the subsequent impacts upon shopping centres in the local retail hierarchy.

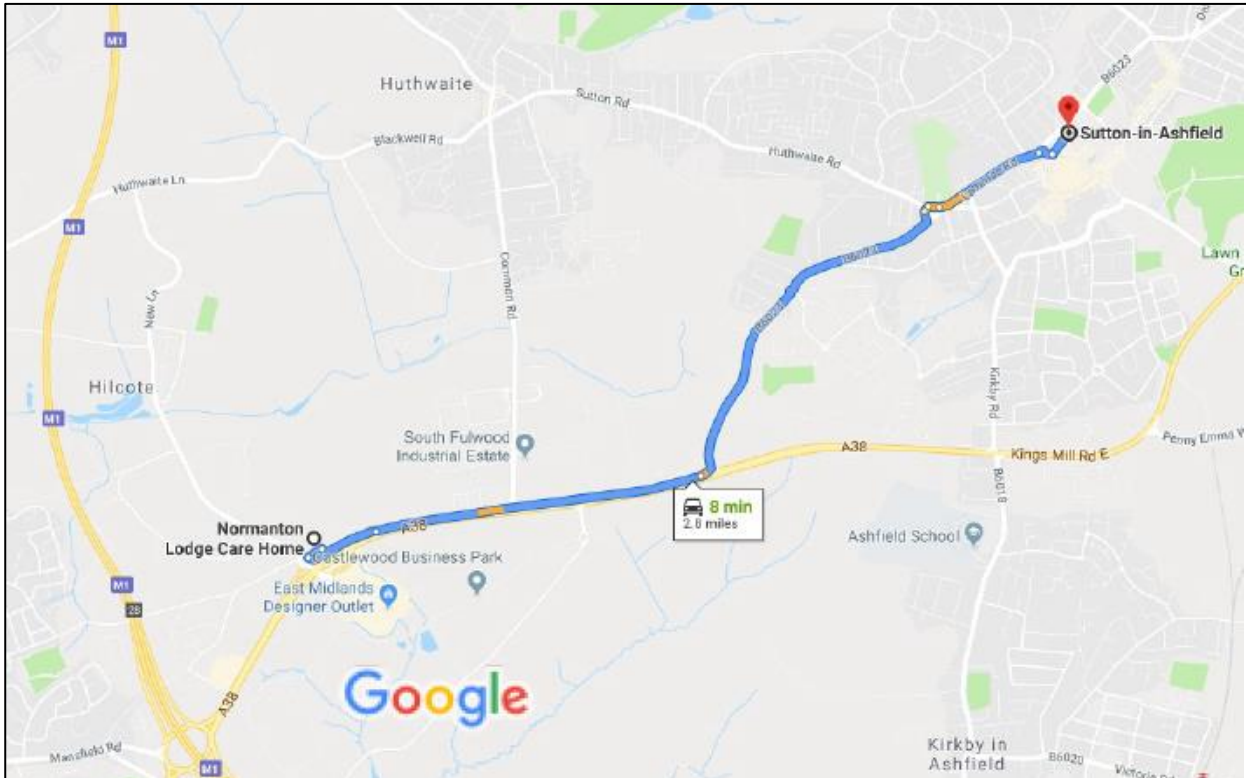
Mansfield



Ashfield District Council considers that the impacts on Sutton are likely to be significant adverse. There are particular concerns about Park 38 attracting current tenants away from the centre, the loss of any of the key anchors would particularly diminish the limited national multiple fashion offer in the town. The impact on comparison goods turnover of over 13% and the cumulative impact of other commitments in the catchment area further increases the adverse impacts. Sutton centre has increasing vacancy levels and limited retailer demand as illustrated by the failure to re-occupy key long term vacancies in primary frontages. If Park 38 is developed as a fashion park it will have an adverse impact on the trade and turnover of comparison stores in Sutton. If Park 38 is developed as a mixed retail park it will still have an impact on the town centre's fashion offer as well as homeware shops. Given the uncertainty of the future occupiers of Park 38 the overall impact on the vitality of Sutton is likely to be significant adverse.

Ashfield DC also have concerns regarding Kirby-in-Ashfield centre; a mixed retail warehouse development is likely to impact Kirby which has several shops selling homewares. These may suffer sufficient trade diversion to bring their continued presence in the town centre into question.

Sutton-in-Ashfield



Williams Gallagher on behalf of the owners of the Idlewells Shopping Centre in Sutton-in-Ashfield consider that the Nexus report is flawed as it only considers the A1 retail uses and not all the town centre uses proposed, i.e. A3/A4 (food and drink) uses together with the hotel. Also they question the applicant's household survey and the application of its results. They conclude that market share and current turnover estimates need to be treated with caution as the survey error risks are greater than would normally be expected. This means that forecast impacts will be subject to greater variation and this needs to be considered when seeking to determine the significance of impact.

The growth in centre turnover to offset impacts may be a consideration but is certainly not a definitive indicator that an impact will not be significant adverse. In any case the very small increase in turnover suggested by the applicant's analysis would be insufficient to maintain successful businesses.

The updated health check by the applicants for Sutton centre is limited to vacancy rates, however, a low vacancy rate does not necessarily mean a town centre is performing well as the quality and performance of occupied units may be relatively poor.

Williams Gallagher have undertaken a review of the health of Sutton town centre: there is a higher vacancy rate than the UK average; vacancies have arisen as a result of the loss of national multiples; as a result units suitable for modern retailer requirements remain empty being detrimental to the overall vitality and viability of the town centre; key retailers have closed and not been replaced by ones with equivalent draw; the overall offer is becoming convenience orientated. This increases the importance of retaining the remaining multiples. Any further closure as a result of relocation or competition will have greater impact than a centre with low vacancies and good retailer demand. Sutton is clearly vulnerable to increased out of town competition.

Further analysis on retail impact

Concerns about the health of Sutton-in-Ashfield town centre are recognised nationally by its recent inclusion (during the consideration of this application) in the Governments High Street Fund shortlist to develop plans to reinvent the High Street; Mansfield town centre is already included within that scheme. The inclusion of Ashfield and Mansfield in this process illustrates that these town centres are facing significant challenges now. Development of Park 38 will have further impacts on these centres (as shown in the various retail Impact documents) and could impact on investment opportunities shown for instance in the Sutton Town Centre Management Plan (March 2019). The Fund should not be relied on to address the adverse impacts of Park 38. Indeed by taking away trade Park 38 may prejudice implementation of the Masterplan and its funding as a result of its impact on an already struggling town centre.

The proposal is likely to discourage investment in shopping centres within the catchment area. Combined with East Midlands Designer Outlet it will become a much more attractive retail destination to investors and existing retailers in town centres within the catchment area. Some of these retailers are likely to relocate to Park 38 with all the trading advantages of its out-of-town location. In addition, prospective retailers who might otherwise have located within the local retail hierarchy will also be attracted to Park 38 instead and this will also decrease future consumer choice in the existing town centres.

Whilst there appear to be no definite investment commitments in the nearby town centres, there are local plans and masterplans which identify potential development sites and other ways for improvement of the town centres (particularly Sutton and Mansfield). The High Streets fund, if the local authorities are successful in their bids, may well secure the necessary investment in such proposals and will at least provide more detailed proposals for town centre development.

The applicant argues that the overall trade impact on Mansfield and Ashfield effectively equates to the expected growth in trade over the same period, and therefore there is no significant adverse impact. However this would mean that as a result of the development of Park 38 over the period of time examined, the centres would effectively experience no growth in trade. More recent appeal cases than used by the applicant to provide support for the development, take into account the impact of the development on existing town centres alongside the forecast trade diversion in relation to overall forecast trade growth and the overall health of the centre in weighing the balance between adverse and significant adverse impact.

A loss of trade to existing centres will mean less footfall. Many of the traders who have objected to the development are small private businesses who are likely to suffer disproportionately when compared to national or regional retailers to such a loss of footfall from trade diversion particular in current trading conditions.

Use of planning conditions

The sequential and retail impact assessments are based on the restricting conditions suggested by the applicant (see proposal description above). Clearly any conditions imposed could in the future be the subject of variation applications. The conditions need to be enforceable and easily monitored for compliance. It would be more practical for instance for convenience floorspace to be restricted to 5% of any individual unit rather than 5% overall. A condition requiring further impact assessments with any future changes to a permission (if it were to be granted) may also be appropriate to allow full assessment of any cumulative

incremental changes to floorspace usage beyond that in the current application (e.g. if the floorspace restriction on clothing, footwear and accessories were to be exceeded or the proportion of convenience goods floorspace were to be increased).

The applicant has submitted a sequential test and retail impact assessment which conclude that there will be no significant adverse impact on nearby town centres, in particular Sutton-in-Ashfield, Mansfield, Kirkby-in-Ashfield, Alfreton, Ripley and South Normanton subject to the use of restrictive conditions as proposed in this application. An objector has submitted their own assessment and concluded differently, i.e. there will be a significant adverse impact on Sutton-in-Ashfield centre.

Conclusions

Taking into account the detailed information submitted and the comments received, it is clearly debatable as to whether the proposal will have a significant adverse impact or “just” an adverse impact on nearby town centres. If the application is approved and developed it is clear that there will be adverse impacts, in particular to Sutton-in-Ashfield and Mansfield town centres and possibly Alfreton but national policies only allow this application to be refused on retail impact grounds where there are demonstrable significant adverse impacts.

In the applicant’s submissions, it is considered that growth in trade overall will mitigate the impacts of the proposed development, but this would in effect mean little or no growth in the town centres, which is at a time when the future pattern of trading in town centres is increasingly uncertain and changing rapidly.

This rapid change implies that the information used to compile the various reports is quickly out of date. It seems ill-advised at the present time to approve development which will impact on town centres which are already struggling, as expressed by local businesses, owners of retail property and the relevant local planning authorities, at a time when national and local policy is to regenerate town centres. The inclusion of Mansfield and Ashfield town centres in the Governments High Street Fund shortlist to develop plans to reinvent the High Street is a recognition that these centres are experiencing problems.

However, the Council’s independent consultant has reviewed the information submitted in relation to retail impact and should be considered to be impartial. Therefore, on a fine balance, officers accept their independent consultant’s conclusions that the application proposals are acceptable under the impact considerations of paragraphs 89 & 90 of the Framework.

The reason officers consider that the issues are finely balanced is because Nexus’ conclusion is based on an acceptance that the forecast impacts would be offset by the projected growth in turnover of the local town centres based on forecasting by Experian. As explained above, this issue should be carefully noted when assessing the impacts of the proposed development not least because a relatively small change in projected growth could tip the balance towards a significant adverse impact to Sutton-in-Ashfield and Mansfield town centres.

The Planning Balance

As set out in earlier sections of this report, the proposals are not compliant with either the adopted Local Plan or emerging policies in the new Local Plan. Therefore, the proposals are not considered to be 'acceptable in principle' and these proposals should be refused planning permission unless

- i. the proposals are able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework; and
- ii. the benefits of granting planning permission significantly and demonstrably offset and outweigh the adverse impacts of doing so.

For the above reasons, officer consider that the proposals are able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework. As a consequence, officers consider that the planning balance now rests on whether the benefits of granting planning permission significantly and demonstrably offset and outweigh the adverse impacts of doing so.

The following sections of this report set out how the applicant has addressed various other technical matters and how the current proposals could be made acceptable in planning terms in all other respects. Therefore, the main issue to now weigh in the planning balance is considered to be the potential socio-economic benefits of granting town centre uses on a site allocated for B1 and B8 uses. This issue is looked at in the next section of this report.

Economic benefits

For the above reasons, the determinative issue in any decision on this application is considered to be whether other social, economic or environmental benefits that could be achieved by granting permission for this application would offset or outweigh the adverse impacts of doing so on other town centres and offset or outweigh the identified conflict with the adopted Local Plan and emerging policies in the new Local Plan.

In summary, if the current proposals were to offer better local employment opportunities through a development that is likely to come forward quicker than the B1 and B8 uses anticipated by the allocation of this land for employment uses in the new Local Plan then there may be good planning reasons to approve this application.

Objectors and the applicant have considered the employment generating potential of the site for the proposed uses and the allocated B2/B8 uses.

The applicant as part of their submission seeks to draw attention to the employment benefits of their development proposal so that this can be added to the considered balance of the proposal's benefits and adverse impacts. Their updated Planning and Retail Statement sets out the following employment benefits for the amended mixed retail, hotel and B-class use employment proposal and an alternative Class B use employment only concept:

Mixed retail, hotel and Class B use employment proposal:	712 FTE jobs (921 gross jobs)
Alternative Class B use employment only:	623 FTE jobs (699 gross jobs)

The applicant states that the proposed development will, by significant margins:

- ☐ Create more jobs;
- ☐ Generate higher GVA (Gross Value Added) for the local economy; and
- ☐ Generate higher business rates.

In addition, the applicant states, the application schemes will still provide the range of other benefits previously identified, including local employment and training opportunities through both the construction and operation of the proposed development.

It should be noted that generating higher business rates is not a material consideration in the determination of planning applications, but clearly a positive impact on the local economy (higher GVA) can be a benefit that can be added to the planning balance.

Taking this job creation information at face value, it is noted that the proposed development would be expected to deliver 89 more FTE jobs (or 222 more gross jobs) than the allocated employment use. Whilst the slightly greater number of jobs would appear to be a positive outcome, it should be noted that the Council is already planning for a high level of employment growth within its emerging Local Plan.

Indeed, to boost job creation the Council has justified through its plan making the pursuit of an employment land target at the higher end of the evidence range between 65 and 100 hectares, namely 92 hectares. Development of the application proposal would result in a reduced employment growth potential encompassed by the emerging local plan policies. In addition employment land jobs (class B uses) potentially are likely to involve the creation of a greater number and range of skilled jobs than found in the retail sector.

As pointed out by objectors these job creation figures also do not take into account job losses as a result of the adverse economic impacts on nearby town centres through the loss of businesses by closure or the displacement of jobs.

The creation of retail jobs as a result of the proposal will to a certain extent replace any lost as a result of the adverse impacts on nearby centres although accessibility to the new jobs is not clear. Developing the site for B2 & B8 uses as allocated, which may be over a longer period of time, would however avoid the socio-economic impacts that the retail development will cause to nearby town centres through fewer retail and related jobs, reduced footfall and available expenditure.

Taking all these issues into account; officers consider the employment uses (as envisaged by emerging policy WC1 on this land) would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B1 and B8 uses on this land could be achieved without any resulting adverse impacts on the viability or vitality of other local town centres.

Consequently, the socio-economic benefits of bringing forward Park 38 do not outweigh or offset the main conclusions that the proposals are contrary to the adopted Local Plan, contrary to the new Local Plan and would have a harmful impact on the future viability and vitality of other local town centres.

Therefore, officers consider the application should be refused planning permission taking into account there are no other issues that weigh heavily in the determination of this application for the following reasons:

Other Relevant Considerations

Traffic Impacts

Many objectors and several consultees raise traffic issues, particularly the extra traffic which will be drawn to the area and the consequent additional congestion, noise and air pollution. A development of this nature will inevitably increase traffic in the area, including on the M1 and the operation of junction 28. There are local concerns about extra 'rat running' traffic through the village and issues of 'grid-lock' on the current Berristow Lane/A38 roundabouts at peak EMDO shopping times causing problems and delays for residents which will be made worse as a result of the traffic impacts from the development.

Highways England (the Highways Agency) do not consider there to be mitigation that can be provided which is fair and proportionate to the scale of impact on the operation of the motorway junction. Daily fluctuations, for example, in traffic levels could mirror the impact of the additional development traffic. They therefore offered no objections.

Derbyshire County Council (Local Highway Authority) consider that the access proposals into the site are acceptable in principle. They have some concerns about the level of parking provision, however as any shortfall in parking would be likely to cause congestion and on-street parking within the site rather than on the public highway do not consider that an objection could be sustained. They raise no concerns in relation to the operation of the local highway network. Various conditions are recommended (see consultation response above).

Air Quality

Many objectors and several consultees similarly, as a result of the additional traffic, raise issues of pollution and impact on air quality, particularly given the Ministerial direction in relation to air quality along the A38. The Council's Environmental Protection Officer has given detailed consideration to this issue (see Consultation response above) and does not object to the development while retaining concerns. In view of their concerns they recommend a condition requiring a scheme of Air Quality Improvement Measures. Proactive measures from the applicant would provide reassurance that the development would not jeopardise the work that is currently being undertaken to improve air quality within this area.

Landscape Impact

The development involves the creation of a plateau for the development. It is not clear from the information submitted whether this involves construction of the retail development with a floor level set at roughly the same level as the top of the hill (as shown on the site sections at 150m) or at a lower level (as indicated by finished floor levels on the masterplan of 146.3m). The former could involve infill of up to 8m at the rear of the site whilst the latter would involve removal of the hill top and levels more compatible with Cartwright Lane to the front although still involving some 4m of fill in places. The hotel is shown at a 2m lower ground level on the site sections with a top height of just under 170m.

Visualisation



It is also not clear which ground level has been used for the 'Distant View Analysis' of the hotel. This analysis shows that the hotel would be a feature of the landscape on the top of the ridge line, when seen from the distance, e.g. from the M1 when approaching in either direction.

Therefore, if this application were to be approved further information about levels needs to be submitted and agreed and such levels need to be set as low as reasonably possible, which could be done by condition. The hotel would remain a feature on the ridge, but clearly the lower the level the less its impact.

The rear elevation of the main retail block will also be prominent (whichever ground level is used) when viewed for the north, particularly from Hilcote. The elevation has been designed to reduce its visual impact as a large building by vertically breaking up the cladding and applying a range of related colours, although exact details will need to be agreed which can be done by condition.

Ecology

Derbyshire Wildlife trust have indicated that a thorough assessment has taken place and that the mitigation proposal are broadly acceptable. The assessment and comments are based on the development of both phases of the site and a requirement for conditions relating to matters of detail and future maintenance (see DWT consultation response above).

The current application involves the loss of areas of important hedgerows including trees. The main mitigation proposals take place on land within the outline planning application site apart from an area (0.4ha) of enhanced grassland with new hedgerow to the east of the application site in an area between the application site and the HS2 corridor.

As the areas outside the current full application site are controlled by the applicant it should be possible to require appropriate mitigation by condition.

Mineral Safeguarding

The Mineral Planning Authority (DCC) raised objection to the proposal as the site is underlain by coal reserves. A report which determines the practicality and viability of extracting the coal resource as part of the development is requested.

In response the applicant states:

- a) It is considered that the proposed development, which includes retail food and drink units, hotel, car parking, landscaping and service areas, will create significant employment, thus benefiting the local area. It is argued that this creates an overriding need for the development.
- b) It is considered that prior extraction of the mineral cannot reasonably be undertaken for the following reasons:
 - The site was formerly a part of a colliery, with two shafts being present within the development area. Therefore, it is likely the coal seams have been worked beneath the site. Re-opening old workings would not be feasible due to the health and safety risk to operatives. Moreover, as the area has been previously worked, there would be limited reserves and there would be a risk of collapse if further extraction by mining was permitted.
 - Open cast mining of the shallower seam could not be reasonably undertaken due to the potential dangers of excavating down to potentially worked seams. In addition, there would be adverse environmental impacts on the surrounding commercial properties.
 - The extraction of coal would result in a significant increase in traffic movements, hence pollution, on the A38 and at its junction with the M1.
- c) Insistence on extracting the limited reserves of coal beneath the site would prejudice the timing, hence viability of the proposed development.

The Minerals Planning Authority has provide no further comment. It is likely that the intrusive site investigation required by the Coal Authority will establish the situation regarding the coal mining legacy and presence of workable minerals. Such an investigation can be required by condition.

Other considerations:

Issues relating to the potential for contaminated land, protection/recording of archaeological interest, drainage of the site, noise (particularly in relation to impacts on Normanton Lodge Care Home) can all be controlled by appropriate conditions so that their impacts are addressed.

Conclusions

In conclusion, there are no other relevant planning considerations that outweigh or offset the identified conflict with adopted Local Plan or the finding that the proposals do not comply with emerging policies in the new Local Plan.

In addition, the employment uses (as envisaged by emerging policy WC1 on this land) would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B1 and B8 uses on this land could be achieved without resulting in adverse impacts on the viability or vitality other local town centres.

Therefore, although the proposals are considered to be able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework; any benefits of granting planning permission would be significantly and demonstrably offset and outweighed by the adverse impacts of doing so.

Accordingly, the current application is recommended for refusal.

RECOMMENDATION

The current application be REFUSED for the following reasons:

- **The application site is outside the settlement framework and within the countryside as defined by the adopted Bolsover District Local Plan where development is subject to saved policy ENV3: Development in the Countryside. The proposal fails to comply with any of the criteria within that policy which would allow development in the countryside. Therefore the proposal is contrary to the saved policies of the adopted Local Plan.**
- **The emerging Local Plan for Bolsover District is at a very advanced stage. The application site is part of an allocation for employment land (B2 and B8 Uses) under policy WC1: Employment Land Allocations. The policy has been tested at the Local examination and is not the subject of any Main modifications. It therefore carries significant weight. The proposal for A1 shops including a C1 hotel use and A3/A4 restaurant and drinking establishments is on land allocated solely for B2/B8 uses under policy WC1 of the emerging Local Plan.**
- **On balance it is considered that the proposal passes the sequential and retail impact tests set out in the National Planning Policy Framework. However it is not considered that any benefits of the proposed development offset and outweigh its adverse impacts. In particular, the employment uses (as envisaged by emerging policy WC1) on this land would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B2 and B8 uses on this land could be achieved without resulting in adverse impacts on the viability or vitality of local town centres.**
- **Accordingly the proposal is not sustainable development in accordance with the terms of the Framework.**

Statement of Decision Process

Officers have worked positively and pro-actively with the applicant to address issues raised during the consideration of the application. 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.

Equalities Statement

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e. "the Public Sector Equality Duty").

In this case, there is no evidence to suggest that the development proposals would have any direct or indirect negative impacts on any person with a protected characteristic or any group of people with a shared protected characteristic

Human Rights Statement

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

It is considered that assessing the effects that a proposal will have on individuals and weighing these against the wider public interest in determining whether development should be allowed to proceed is an inherent part of the decision-making process. In carrying out this 'balancing exercise' in the above report, officers are satisfied that the potential for these proposals to affect any individual's (or any group of individuals') human rights has been addressed proportionately and in accordance with the requirements of the ECHR.

PARISH Hodthorpe and Belph Parish

APPLICATION Variation of the wording of S106 Planning Obligations agreed for Outline planning permission 14/00518/OUT relating to the community facilities contribution and play area contribution

LOCATION Land to the North West of Broad Lane Hodthorpe

APPLICANT Keepmoat Homes

APPLICATION NO. 19/00549/OTHER

FILE NO.

CASE OFFICER Mr Steve Phillipson

DATE RECEIVED 19th September 2019

SUMMARY

This report relates to an application to vary planning obligations in a completed s.106 legal agreement that is attached to an outline planning permission for residential development in Hodthorpe that was granted by the Planning Committee in 2016 (application no. 14/00518/OUT).

Approved Layout



The outline permission granted under application no. 14/00518/OUT allowed for residential development of up to 101 dwellings and granted outline consent for the erection of a community building on the application site. The existing s.106 legal agreement places a legal obligation on the applicant to provide the approved community building, which should have a floor area of 350sqm and a maximum value of £427,700.

Primarily for viability reasons, the applicant has applied to delete this obligation and is proposing to provide a sum of £50,000 for Hodthorpe and Belparish Parish Council. This money would fund a programme of improvements of facilities to Hodthorpe Community Social Club, 147 Queens Road and also for the ongoing maintenance and proper administrative costs involved with the running of Hodthorpe Community Social Club

The applicant also seeks to change the wording in relation to the play space contribution but this is only to clarify that the contribution will be used for a play area on the development site rather than being used on an alternative off-site play space.

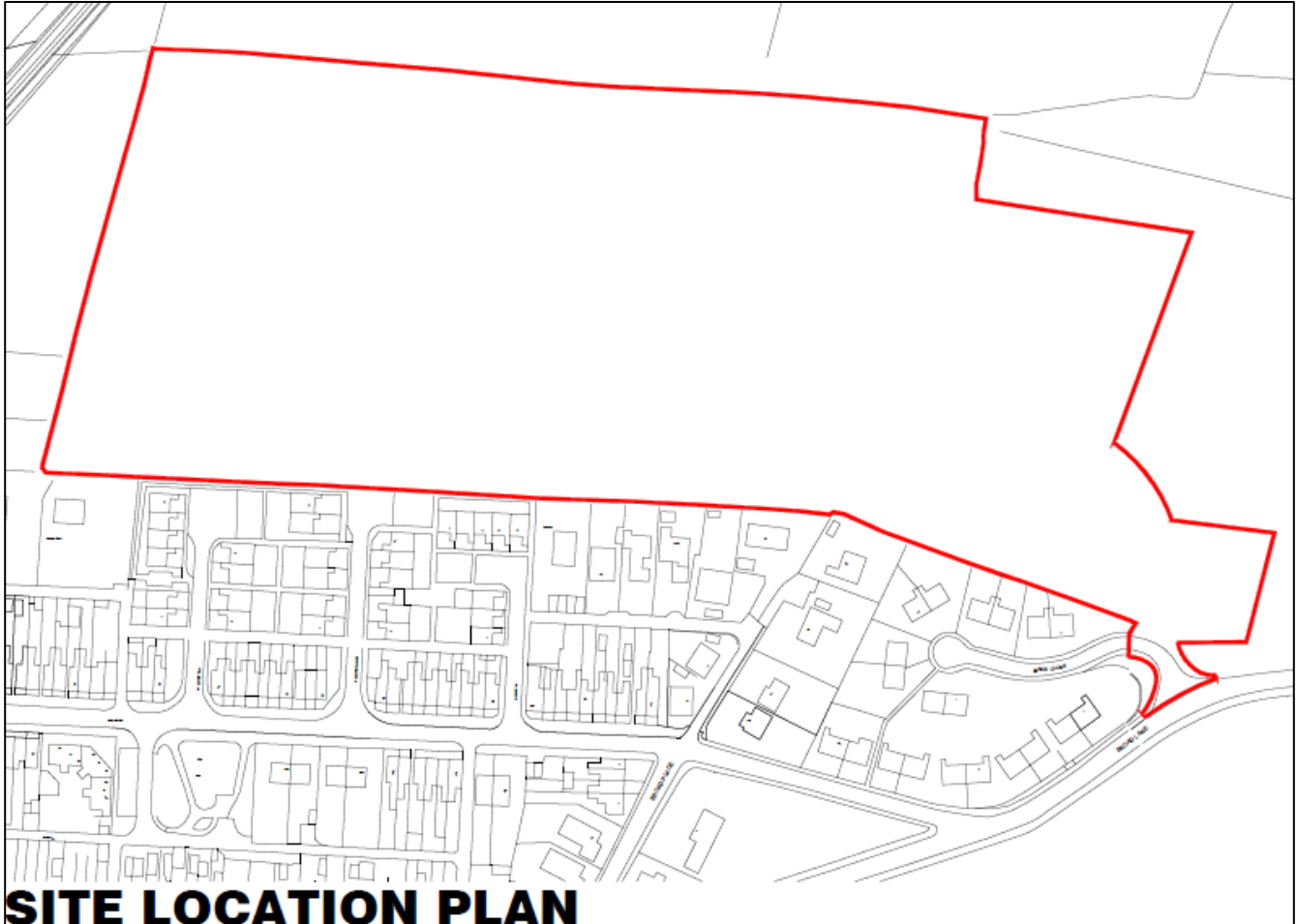
For the reasons set out in the following report, officers are recommending approval of this application. Therefore, the application has been brought to the Planning Committee for a final decision because deleting the requirement for the developer to provide a community building is a significant change from the original approval.

The consequential changes of these proposals to the layout of the approved housing development is considered in more depth in the parallel application for approval of reserved matters, which is also being brought to the Planning Committee for a final decision.

OFFICER REPORT ON APPLICATION NO. 19/00549/OTHER

APPLICATION SITE

Approximately 5.5ha site on fields adjacent to the north side of the village of Hodthorpe.



BACKGROUND

Outline planning permission (Ref 14/00518/OUT) for residential development of up to 101 dwellings and a community building up to 350 sq. m. and details of the access into the site was approved by the Council on 29/02/16.

At that time the Council did not have a five year housing supply and so although approval of development outside the settlement framework was contrary to development plan policy, the “tilted balance” and the presumption in favour of sustainable development in the National Planning Policy Framework (the Framework) applied. The Applicant was able to demonstrate that the development would be sufficiently sustainable and this led to the application being approved.

A factor to be taken into account when considering the sustainability of a site is whether or not

there is sufficient local and social infrastructure to support the extra demands from the new development. If not whether the infrastructure issues can be resolved by S106 agreement such that the development will pay for the necessary expansion of services and infrastructure.

In this case the Applicant proposed to fully meet policy requirements in the following respects (sums index linked):-

- Children's play at £75,447
- Adult recreation at £89,688
- Public art £99,384
- 10% affordable housing on site (even though an interim exemption could have been applied at that time waving the affordable requirement in return for market housing delivery by set deadlines).

In addition, the Applicant voluntarily included an obligation to provide a community building 350sqm area, to be provided by the developer to value not exceeding build cost £1,222/sqm (max value £427,700).

The S106 includes a requirement to use reasonable endeavours to enter into an agreement with the Parish Council for the transfer of a new community building to them, if they want it, and to ensure that it could only ever be used for community uses. Provided that the transfer agreement is in place, the Owner would then submit an application for approval of reserved matters for the community building. The community building was to have been provided before 70 of the market dwellings were occupied.

At the time the outline application was determined the Planning Officer's report to Planning Committee contained the following advice:-

"The Applicant is also offering to build a new community building of 350 sqm in area. Whilst on the face of it this may seem to be a benefit in favour of the proposal. The Council does not have a policy to require this, neither has it been established that there is a need for such a building nor is it necessary to make the application acceptable in planning terms and there is no indication that it would be a viable facility for the short to medium term. As such it fails the tests for planning obligations and no weight can be given to this element of an agreement.

Furthermore, whilst the Applicant may have every intention of delivering this building at this moment in time, in the event that a future developer were to seek to remove this obligation from a S106 undertaking the Council would have to agree to it. As such we cannot be certain whether this facility would ever be provided."

The Applicant now seeks to amend the S106 obligation for a community building.

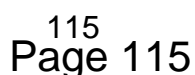
PROPOSAL

A housing developer is now interested in developing the site. They have submitted application for approval of reserved matters (19/00113/REM) which is also on this agenda.

The Applicant seeks to alter the wording of the original S106 to omit the requirement to

The Applicant also seeks to change the wording in relation to the play space contribution but this is only to clarify that the contribution will be used for a play area on the development site rather than being used on an alternative off-site play space. This was always an option as the original S106 was written.

For information, the layout from 19/00113/REM is shown below and housing is now proposed on the site originally 'ear marked' for the community building:



CONSULTATIONS

Parish Council – No response to date
Leisure Officer - No response to date

PUBLICITY

Site Notice posted. 70 residents notified.

One objection received on grounds that Hodthorpe has limited access to key services.

POLICY

Bolsover District Local Plan (“the adopted Local Plan”)
None relevant

Publication Version of Bolsover District Local Plan (“the emerging Local Plan”)

Policy ii1: Plan Delivery and the Role of Developer Contributions

Allows S106 contributions to be sought, including for community facilities, where an up-to-date Infrastructure Delivery Plan has identified infrastructure types to be necessary and relevant. There is not an identified need for a new community building in Hodthorpe.

National Planning Policy Framework

The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and policies in the Framework most relevant to this application include:

Para 56. (Which reflects the requirements of the CIL Regulations)

Planning obligations must only be sought where they meet all of the following tests:

- 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.

Other

Community Infrastructure Levy Regulations 2010 (CIL Reg’s 2010)

The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019

Government Guidance on the Community Infrastructure Levy

Government Guidance on the Use of planning obligations and process for changing obligations.

ASSESSMENT

With regard to procedure, there is no formal requirement for the Council to accept an application to change the wording of a section 106 obligation which is less than 5 years old.

However under S106A of the Town and Country Planning Act 1990, a planning obligation may be modified by agreement with the Council.

So whilst the Council does not have to agree to the modification proposed, being a responsible public authority, it should at least consider the application because it is important to ensure that the Council's decisions are reasonable.

Although the alternative offer of £50,000 for the Parish Council to use on improvements and the running of the existing Hodthorpe Community Social Club is potentially less than the value of the original obligation (a building to a cost not exceeding £427,700), the planning officer recommendation is to agree to the change in wording and to the alternative offer. The reasons for this are set out below.

It was made clear to Planning Committee at the time the outline permission was determined, that no weight could be given to the offer of a community building in the planning balance when the decision was made to grant planning permission (see extract of officer report above in italics). This obligation failed the tests set out in the Framework and the CIL Regulations because it was not necessary to make the development acceptable in planning terms.

Since the Committee gave no weight to the provision of the community building in their decision making process it is considered that it would be unreasonable to now insist that it is provided. Furthermore there is no evidence to show that the Parish Council actually want the building or have the finances in place to run and maintain the building in the future. This is important because the transfer agreement needed with the Parish Council would have prevented it from being used for any other purpose and this would effectively mean that it could not be sold off by the Parish Council.

If the Parish Council were to confirm that they do not want a new community building on site that would effectively release the Applicant from the obligation as it is currently written.

Furthermore, even if the change to the S106 wording is not agreed and the reserved matters proposals did include a community building, and the Parish Council had confirmed that they wanted it and would accept the transfer of it to them for community use; if the developer then failed to comply with the obligation (i.e. did not provide the building) they would have an arguable defence from prosecution in that that the obligation was never lawful because it didn't pass the tests in the Framework or the CIL Regulations 2010.

The changes proposed to the wording of the play space obligation are not considered to be controversial because this is only to clarify that the contribution will be used for a play area on the development site rather than being used on an alternative off-site play space. This was always an option as the original S106 was written.

Having regard to the above it is recommended that the Council agrees to the change in wording proposed.

RECOMMENDATION

The proposed changes to the wording of the S106 obligation for outline planning permission 14/00518/OUT are approved by the Planning Committee and the draft deed of variation be signed and completed by the Council with the effect of:

- A. deleting the original obligation to provide a community building;**
- B. adding an additional obligation to provide a commuted sum for use on the existing Hodthorpe Community Social Club; and**
- C. to vary the obligation to provide an on-site play area.**

Statement of Decision Process

Officers have worked positively and pro-actively with the applicant to address issues raised during the consideration of the application to promote and encourage delivery of housing on the application site.

Equalities Statement

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e. “the Public Sector Equality Duty”).

In this case, there is no evidence to suggest that the development proposals would have any direct or indirect negative impacts on any person with a protected characteristic or any group of people with a shared protected characteristic. However, the proposed contribution towards the existing community centre would offset the potential loss of a new building that is unlikely to be built due to viability reasons.

Human Rights Statement

It is not considered that a decision on this application would engage the specific Articles of the European Commission on Human Rights (‘the ECHR’) relevant to planning including Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

PARISH Hodthorpe and Belph Parish

APPLICATION Residential development of 101 dwellings and associated work (approval of reserved matters following outline planning permission 14/00518/OUT)
LOCATION Land to the North West of Broad Lane Hodthorpe
APPLICANT Keepmoat Homes, Unit D1 Orchard Place Nottingham NG8 6PX
APPLICATION NO. 19/00113/REM **FILE NO.**
CASE OFFICER Mr Steve Phillipson
DATE RECEIVED 22nd February 2019

SUMMARY

In 2016, outline planning permission was granted for up to 101 dwellings on land immediately adjacent to the northern edge of Hodthorpe. This report concerns the subsequent application for reserved matters approval, which seeks approval of the details of these houses including:

- **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.

As outline planning permission has already been granted, the principle of this development has also already been accepted. Therefore, it would not be appropriate or even possible to revisit the acceptability of housing in this location and in such circumstances, this type of application would not normally be brought to Planning Committee.

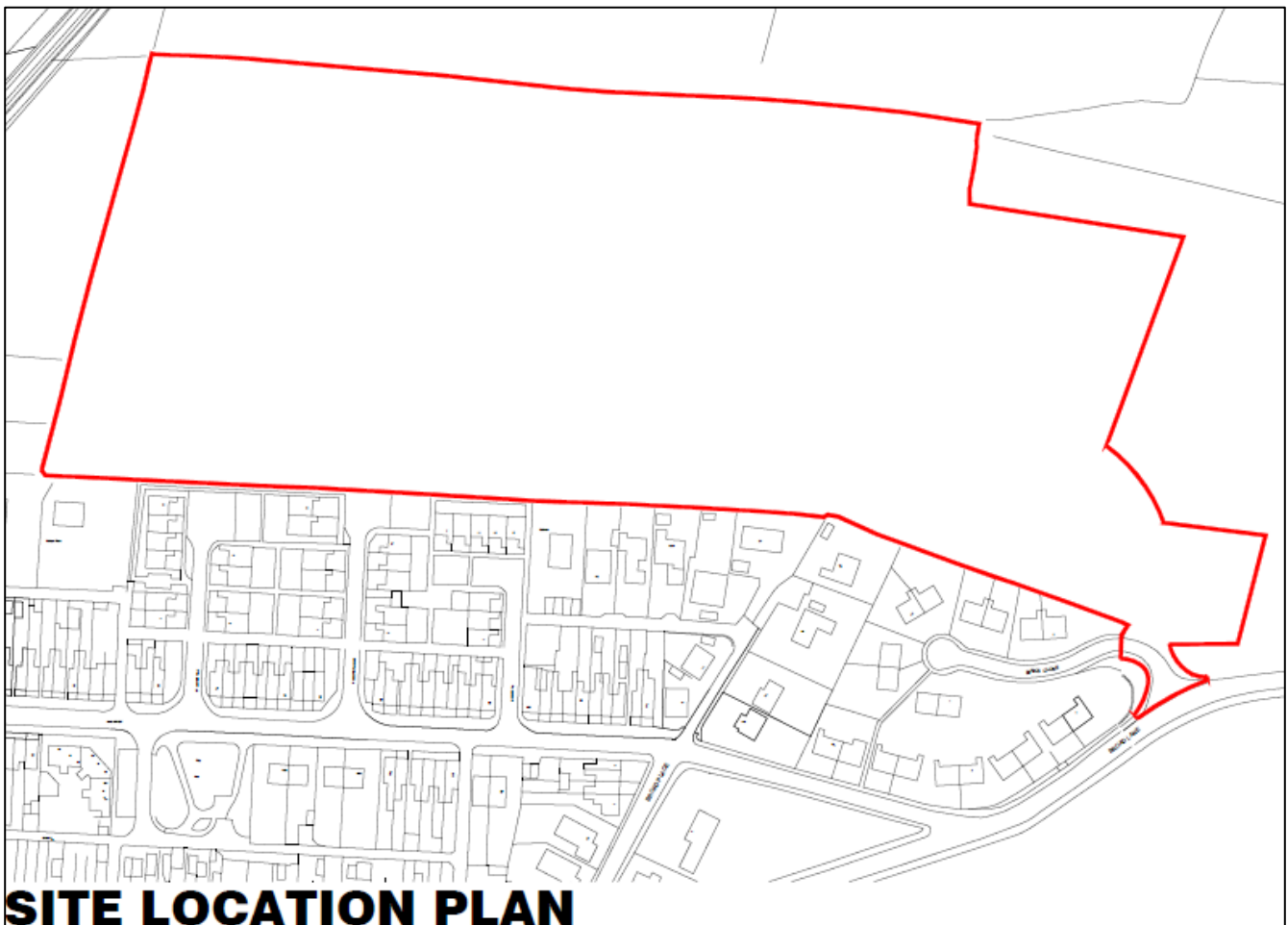
However, approval of this application as recommended by officers in the following report would pre-suppose the acceptability of the deletion of an existing planning obligation requiring the applicant to provide a community building on this site. This is because the plans submitted with this application show housing where the community building could / would have been located.

Therefore, this application has been brought to the Planning Committee so it can be decided in tandem with the parallel application (19/00549/OTHER) for the deletion and variation of planning obligations in the existing s.106 legal agreement attached to the original outline planning permission for this housing development.

OFFICER REPORT ON APPLICATION NO. 19/00113/REM

SITE & SURROUNDINGS

Approximately 5.5ha site adjacent to the north side of the village of Hodthorpe currently in use as pasture mainly for sheep grazing. There is open countryside to the north, west and east. Adjacent to the south side and south west corner is a mix of single and two storey dwellings. The site is relatively flat (falling gently from west down to east) and is bordered by hedgerows except for the eastern boundary which is relatively open. There is only one tree of note centrally located within the site.



Public Footpath 27 from Whitwell runs east/west along the northern boundary of the site and footpath 29 runs north/south adjacent to the eastern boundary of the site from Broad Lane running northwards and into the countryside beyond.

The Robin Hood Railway Line passes within about 25m of the north-western corner of the site.

Birks Farm lies about 150m from the north-east corner of the site. It is an 18th century farmhouse and is a Grade 2 Listed building. Historically the site formed part of a larger

agricultural holding that was split into smaller lots, such that some buildings generally to the south and south west of the dwelling were maintained with the main dwelling, whilst a second dwelling and further outbuildings to the east are in separate ownership. Historic former barns/stables to the south of the main dwelling have been converted to residential use. There is a more modern building to the west of the farmhouse used for a combination of agricultural activity and stabling.

BACKGROUND

Outline planning permission for residential development of up to 101 dwellings and a community building up to 350 sq. m. and details of the access into the site was approved by the Council on 29/02/16. The Applicant entered into a S106 agreement with the Council and opted to include, amongst the obligations, a requirement to provide a community building.

The S106 includes a requirement to use reasonable endeavours to enter into an agreement with the Parish Council for the transfer of a new community building to them if they want it and, provided that the transfer agreement is in place, to submit an application for approval of reserved matters for the community building.

This application for approval of reserved matters does not include a community building on the proposed plans. Instead the Applicant has applied (by means of a separate application 19/00549/OTHER) to change the wording of the S106 agreement. Instead of providing a new community building on site the Applicant now proposes to provide a sum of £50,000 for Hodthorpe and Belph Parish Council primarily for a programme of improvements of facilities to Hodthorpe Community Social Club, 147 Queens Road and also for the ongoing maintenance and proper administrative costs involved with the running of Hodthorpe Community Social Club.

Planning Committee needs to determine whether or not to accept this change to the S106 first (and so determine application 19/00549/OTHER first) before this application for approval of reserved matters is determined. Otherwise the reserved matters approval would pre-determine the application for the change in wording of the S106. This is because the time period for submitting further reserved matters applications under the outline permission has now expired and so it would not be possible for the Applicant to comply with the community building obligation.

The only way that the Applicant can continue to comply with the current S106 obligation is to include the detailed proposals for the community building with this application for approval of reserved matters.

If the change in S106 wording proposed has been agreed then the determination of this application for approval of reserved matters can proceed as normal.

PROPOSAL

Application for approval of reserved matters for the erection of 101 dwellings with associated infrastructure including roads, footpath/cycle path connection to St Martin's Walk, large public open space, play space, and sustainable drainage with 2 retention basins.



The housing mix proposed includes the following mix of dwellings:-

40 four bed; 51 three bed; 10 two bed;

10 are to be affordable (the two bed units);

The majority are two storey, 7 are 2.5 storey (at key view locations).

Materials mix includes brick and artificial stone. Plus a feature dry stone wall in natural magnesian limestone is to be provided along the stretch of the entrance road into the site up to the ninth plot.

Point of access detail has been approved previously with the outline planning permission. It is to be via a new spur taken from the Birks Close/Broad Lane junction.

AMENDMENTS

The application has been through several revisions to secure design improvements and compliance with the Council's Design Guidance (Successful Places) and compliance with the conditions of the outline planning permission.

The site initially included for a future community building has been omitted from the revised proposals.

HISTORY (if relevant)

14/00518/OUT	GC	Residential development of up to 101 dwellings and community building up to 350 sq. m. (Use Class D1 and/or D2) including details of access
19/00549/OTHER	PCO	Variation of the wording of S106 Planning Obligations agreed for Outline planning permission 14/00518/OUT relating to the community facilities contribution and play are contribution

CONSULTATIONS

BDC Conservation Officer

No objections. Notes that the development accords with the requirements of the outline planning permission re separation from the listed Birks Farm.

BDC Urban Design Officer

The amendments secured through the series of revisions to the proposals have adequately addressed the concerns initially raised.

BDC Drainage Engineer

13/03/19 Seeks Management plan for SuDS and contact details. Control of surface water runoff during construction.

BDC Leisure Services Officer

Supports the proposals for onsite play provision. Recommends a few further improvements to the play equipment proposed.

BDC Housing Strategy Officer

The applicant has agreed to provide the policy requirement of 10% affordable housing on this site, equating to 10 units. The properties will be let as Affordable Rent. The proposal is for 10 x 2 bedroom houses but we would prefer to see at least two of these to be 3 bed houses.

No further comments on the amended scheme still showing the same type of housing as the 10 affordable units.

BDC Arts Officer

Notes the provision for art already secured with the outline planning permission S106.

Designing Out Crime Officer

No objections. Notes that amendments to the layout have been positive and the one element of concern, the footpath link to existing housing has now been designed satisfactorily to reduce the risk of antisocial behaviour and nuisance.

DCC Highways (note: *Planning Officer comments in italics*)

No objections subject to conditions and advisory notes:-

Agreement of site compound details

Provision of wheel wash facilities

Construction Management Plan (*no need for the two conditions above if CMP is required*)

Construction details of the estate roads (*not necessary as dealt with by adoption process*)

Construction of estate roads to base level prior to occupation

Provision of private vehicular accesses and visibility splays

Provision of parking spaces (*dealt with on the outline permission*)

Garages to be kept available and used for car parking, removal of p.d. rights (*not considered necessary as dealt with on the outline permission*).

Provision of secure cycle parking (*not considered necessary as planning condition*)

Any gates adjacent to the highway to open inwards

Approval of surface water drainage details including management and maintenance info (*not necessary dealt with on the outline permission*).

Prevention of surface water discharge from drives to the highway (*Considered more appropriate as an informative note*).

The first 5m of the proposed access driveways shall not be surfaced with a loose material (i.e. unbound chippings or gravel etc).

DCC Flood Risk

No objections. The additional information supplied to the LLFA satisfies the concerns that the LLFA raised regarding the approval of the reserved matters application following outline planning permission 14/00518/OUT.

Severn Trent Water

No objections. States that Severn Trent will need to consider whether improvements are needed to the system to increase capacity before any additional flows are connected. The disposal of surface water by means of soakaways should be considered as the primary method. Informative note that there is a sewer and a water main within the site.

Parish Council

Objects: Layout and density of the development. Access and highways safety. Noise and disturbance from the scheme.

Derbyshire Wildlife Trust

Provides design advice for the SuDS area to benefit biodiversity. Suggests that the Ecological Mitigation and Enhancement Scheme should address this.

Suggest that tree planting is not undertaken within the wildflower area so that it has more of a meadow character.

Recommends post and rail instead of close boarded fencing adjacent to existing retained hedgerows.

The EMEP should include the provision of bat and bird boxes and hedgehog gaps.

Peak and Northern Footpath Soc'

Initial comments that more links to the east-west footpath could be made from the POS. Also the existing path could be surfaced. No comments received on revised proposals which appear to address the issues raised.

Ramblers

No objections to the proposal providing the rights of way along Hodthorpe and Belp footpaths 2 and 3 are preserved, during and after the proposed development.

PUBLICITY

Advertised in the press and on site and neighbours notified by letter.

In response to the first consultation exercise objections from 6 residents received on the following grounds:-

- Proximity to and amenity impacts on adjacent dwellings
- Loss of privacy and overlooking
- Designed to protect Birks Farm's view rather than existing residents
- Loss of light and root damage from new tree planting
- Loss of light and overlooking from 2.5 storey dwellings
- Highway safety impact
- Choice of housing not in keeping with the type of dwellings in Hodthorpe
- Suggests that a footbridge should be provided over the railway for safety.

The following issues were also raised but are not material planning considerations or they relate to the principle of development on this site which is not relevant to an application for approval of reserved matters. Officer comments are shown in italics:-

- Loss of view (*Not a material consideration*).
- Suggests that the green open space area proposed should be sited next to existing dwellings on the southern side rather than on the countryside edge. (*the position of the open space is a conditional requirement of the outline permission which the Applicant must comply with to protect the setting of the listed building, Birks Farm, and the countryside edge*).
- Access position (*this has already been approved with the outline planning permission*).
- Increased use of the public footpath over the railway (*this has already been approved with the outline planning permission*).
- Majority of people affected are retired, elderly, disabled and have long term illnesses (*the principle of development has been accepted with the outline permission*).
- Traffic impact on local roads (*Outline issue*).
- Narrow road bridge over the railway (*Outline issue*).
- Lack of services in Hodthorpe and additional pressure on services (*Outline issue*).
- Increased sewage capacity may be required (*Outline issue*).
- Not a viable site (*Outline issue*).
- Queries future maintenance responsibilities for the boundary hedgerow. *This is a legal rather than a planning matter. It is presumed the existing landowners on the south and west of the site will continue to have responsibility on their side of the hedge and the new owners will maintain it on the application side.*
- Loss of the flower bed at the site access (*access junction detail has already been approved with the outline planning permission. The flower bed would be affected but*

not the bench which is outside the application site).

One objector requests that the outline planning permission be revoked because:-

The site is greenfield

Contrary to the local plan

The effects on residents

Better sites elsewhere in Hodthorpe and Whitwell

Should remain a small village.

(Officer Comment on Revocation

Section 97 of the Town and Country Planning Act 1990 gives a local planning authority the power to revoke a planning application if it is “expedient” to do so having regard to the development plan and to any other material considerations. All of the reasons why the permission should be revoked put forward by the objector were issues considered by Planning Committee at the time outline planning permission was granted. The Committee was aware of all of these issues including the conflict with the development plan, but also had regard to other material considerations including the lack of a five year housing supply (at that time) and the “titled balance” as set out in the National Planning Policy Framework (at that time). The decision was properly made having regard to all relevant considerations and no new information has come to light that could justify a decision to revoke. Therefore it is considered that it would be unreasonable to revoke permission at this stage.

It should also be noted that revocation can involve significant claims for compensation).

In response to the second consultation exercise on the amended plans objections from 4 residents received on the following grounds:-

- Amenity impacts from 2.5 storey dwellings
- One resident says that their previous objections still apply
- One resident who did not object to the original layout objects to the amended plan because plot 48 has moved closer to the bottom of the garden boundary with impacts on visual amenity and privacy.

POLICY

Bolsover District Local Plan (“the adopted Local Plan”)

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

GEN 1 – Minimum Requirements for Development

GEN 2 – Impact of Development on the Environment

GEN 5 – Land Drainage

GEN 6 – Sewerage and Sewage Disposal

TRA 13 – Provision for Cyclists

ENV 5 - Nature Conservation Interests

ENV 8 – Development Affecting Trees and Hedgerows

Publication Version of Bolsover District Local Plan ('the emerging Local Plan')

Paragraph 48 of the National Planning policy Framework says local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)

The emerging Local Plan is now at a very advanced stage of preparation having almost completed examination in public. Therefore, it is appropriate to afford significant weight to its policies.

The most relevant policies in the emerging Local Plan include:

Policy SS1: Sustainable Development
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 SC17: Development affecting Listed Buildings and their settings
Policy ITCR3: Protection of Footpaths and Bridleways
Policy ITCR5: Green Space and Play Provision Policy
Policy ITCR10: Supporting Sustainable Transport Patterns
Policy ITCR11: Parking Provision

National Planning Policy Framework ("The Framework")

The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and policies in the Framework most relevant to this application include:

Paragraphs 7-10: Achieving sustainable development
Paragraphs 47-48: Determining applications
Paragraphs 54-57: Planning conditions and obligations
Paragraphs 91, 92 and 94: Promoting healthy and safe communities
Paragraphs 96 and 98: Open space and recreation
Paragraphs 108-111: Promoting sustainable transport

Paragraph 118: Making effective use of land

Paragraph 122-123: Achieving Appropriate Densities

Paragraphs 124-128: Achieving well-designed places

Paragraph 153: Meeting the challenge of climate change

Paragraph 165: Sustainable Drainage Systems

Paragraphs 170 and 175: Conserving and enhancing the natural environment

Paragraphs 184 and 189-197: Conserving and enhancing the historic environment

Other (specify)

- Supplementary Planning Document - Successful Places: A Guide to Sustainable Housing Layout and Design (2013) <http://www.bolsover.gov.uk/planning/development-plan>
- A Building for Life 12 (BfL12) - The sign of a good place to live <http://www.designcouncil.org.uk/our-work/CABE/Our-big-projects/Building-for-Life/>

ASSESSMENT

Principle of development

In this case, an outline planning application has been approved for up to 101 dwellings; this application has been submitted solely for the approval of the outstanding details of the outline permission (i.e. the 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 with regard to scale, layout, appearance and landscaping, because the acceptability of housing on this site has already been determined when outline permission was granted.

The assessment of this reserved matters application also has to have due regard to the impact of the proposed development on the setting of the grade 2 listed Birks Farm.

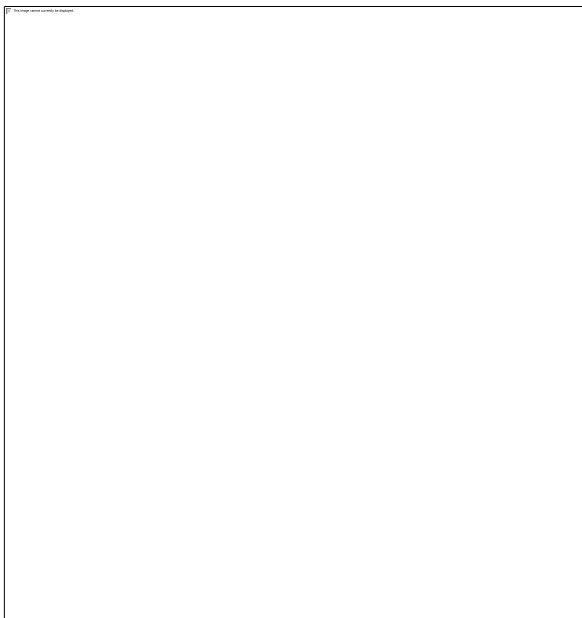
Scale

The current proposal seeks permission for 101 units. This is within the maximum parameters described under the outline permission for this site.

The development comprises of a mix of 2, 3 and 4 bedroom; semi-detached and detached.

The majority of these are two storey although 7 of the proposed 101 units are slightly larger in scale at 2.5 storey.

Representations have been received raising concerns about overlooking and overbearing from the 2.5 storey units. However the inclusion of a limited amount of 2.5 storey units at key view termination locations has been actively requested by the Council's Urban Design Officer to improve the character of the development. Where they have been used sufficient separation space has been left from existing dwellings to ensure compliance with the Council's design guidelines such that any remaining impacts on privacy or light would not be at an unacceptable level. It should also be noted that where second storey rear facing windows are proposed which look towards existing dwellings, they are small skylights to an en-suite bathroom. Given the compliance with guidelines and the nature of the windows proposed this should not provide any material privacy issues.



Having regard to the above the details of scale proposed are considered to be acceptable.

Layout

The point of vehicular access detail from the Broad Lane/Birks Close junction at the eastern end of the site has already been approved with the outline permission. The outline permission also required a pedestrian and cycle access link at the western end of the site to either St Martin's Walk or Greenfield Avenue. The reserved matters now submitted confirms that a 3m wide pedestrian/cycle link will be provided to St Martin's Walk. This is considered to be the better of the two alternative locations. Amendments have been secured during the application to ensure appropriate natural surveillance, boundary detail and footpath width.

A proposed estate road with cul-de-sac spurs would provide access to the residential area which is to be concentrated to the south and west sides of the site with green/open space to the north and east sides. The open space location is in accordance with the conditions of the outline permission to reduce the impact on the countryside and the rural setting of the listed farmhouse to the north east of the site.

The Highway Authority has not raised any safety concerns regarding the proposed layout. Adequate off-street car parking space is proposed and it is considered that there are no significant highway safety issues with this proposal subject to appropriate conditions as set out below.

The open space area is to contain sustainable drainage features with maximum slope gradient not to exceed 1 in 4, a play area and semi-natural greenspace area with links to the existing definitive footpaths to the north west and north east of the site. Comments in representations regarding the adequacy of the existing pedestrian crossing over the railway are noted. However a condition of the outline planning permission already deals with this issue and requires an assessment of the adequacy of the railway pedestrian crossing and any enhancement measures necessary prior to the occupation of any of the dwellings.

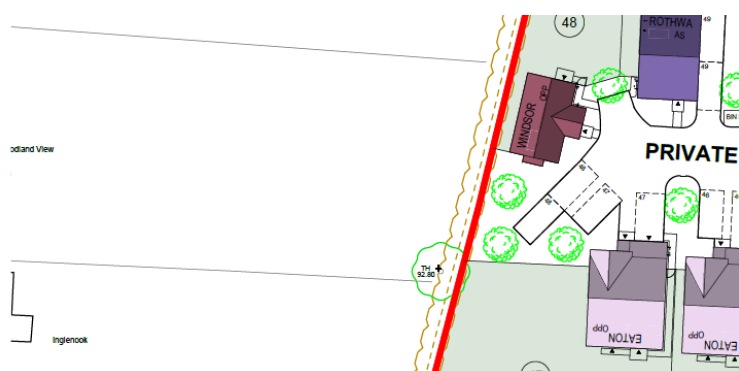
At this time the report on the adequacy of the railway crossing has not been undertaken. However the crossing appears to be well sign posted and in a reasonable condition. See images below.



A resident has objected to the close proximity of plot 48 to their rear boundary. Whilst that plot would be only 2m from the boundary, there is only a small stair landing window in the side elevation facing the resident's property which does not raise any privacy issues relative to the Council's design guidelines (because the window is not to a habitable room).



In addition the existing property affected has a 50m long back garden. This distance is significantly in excess of the separation distance required in the Council's guidelines to guard against unacceptable impacts on daylight and overbearing (4x the distance required). The boundary hedgerow is to be retained and loss of view is not a material planning consideration.



The layout has been revised to secure compliance with the Council's design guidelines in terms of impacts on amenity, space, light and privacy for both existing dwellings and for the relationship between new dwellings within the proposed development. As amended the layout proposed is improved. Some concerns remain about the amount of frontage car parking proposed which, although improved, is still on the high side and the impact this has on the street scene. However it is considered that overall the layout has now reached an acceptable standard of design.

Appearance

Various urban design improvements have been secured during the course of the application including securing outward facing development avoiding rear fence boundaries backing on to the public open space; reducing frontage parking; improving key views; materials and architectural detailing to improve local distinctiveness; natural surveillance; boundary details including provision of natural limestone wall along the frontages of dwellings at the entrance into the site and providing a softer countryside edge.

The amended proposals are considered to be acceptable and compliant with the relevant policies of the development plan including policies GEN2 of the local plan and SC3 of the emerging local plan.



Landscaping

The proposal includes a significant landscaped area to the northern/north-eastern third (approx') of the site. The open space location is in accordance with condition 4 of the outline planning permission intended to reduce the impact on the countryside and the rural setting of the listed farmhouse to the north-east of the site.

The landscape proposals have been amended during the course of the application and now include a large area of semi-natural green space as a transition to the countryside including new native tree, woodland mix, native shrub and hedgerow planting, with a new surfaced footpath running through the open space linking to the existing definitive footpaths already referred to above.

A play area (equipped to approx' £75,000 plus inflation as per S106) is to be provided towards the north eastern end of the site.

Two sustainable drainage basins for surface water are also proposed. SuDS basins are normally dry and the embankment sides relatively shallow, no steeper than 1 in 4, such that they are not considered to be a safety concern and do need fencing off. These areas are to be seeded with species rich wetland grass seed to further enhance habitat creation.

As amended the existing boundary hedgerows are to be retained with re-enforcement planting where necessary. Where proposed dwellings back on to existing hedgerow the rear garden fencing is to be 1.8m high hit and miss timber fencing such that it allows some light to continue to reach the hedgerow through the vertical slats.

Comments in representations about new tree planting shading out existing residents are noted. The amended planting proposals have largely omitted planting in rear gardens of proposed dwellings, concentrating instead on planting within public areas. Hence this is concern is unlikely to be realised. However planting is not "development" in planning terms and there is nothing to stop new residents stocking their gardens with additional planting in future.

It is considered that the amended landscaping and planning proposals show a large and appropriately planted public open space area that will enhance the amenity and character of the development as well as enhancing the biodiversity of the site.

Given that the public open space is to be privately managed there is a risk that property owners adjacent to the open space might erect fencing on it under permitted development

rights which might eat away at the open space. Therefore it is considered necessary to remove permitted development rights by planning condition for the erection of fences and walls on the open space area as shown on the approved plan.

Other Planning Considerations

Heritage Impacts

The development accords with the requirements of the outline planning permission regarding the separation from the listed Birks Farm and the landscaped area between the two. The reserved matters proposed show a development of appropriate layout, scale and landscaping which would not result in any greater setting impacts on the listed building than was envisaged when outline planning permission was granted.

Ecology and Biodiversity

Condition 10 of the outline planning permission requires the submission of an ecological mitigation and enhancement scheme with the RM application, the scheme to include retention of boundary hedgerows and the large Ash tree within the site. A scheme has been submitted but was not considered fully compliant with the condition. However it has effectively been superseded by the amended layout and landscaping plans which now include the retention of the southern and west boundary hedgerows such that the objectives of condition 10 are now met. A condition will be necessary to ensure that the approved landscaping details are implemented.

Details of the management company responsible for maintaining the landscaping are currently outstanding but this is already a requirement of condition 11 of the outline permission.

The Wildlife Trusts request for the provision of some bat and bird boxes and hedgehog gaps to fencing is not unreasonable and this could be require by condition.

Subject to conditions it is considered that the proposal should result in a net gain to biodiversity resulting in a greater range of habitats and additional tree and hedgerow planting.

Footpath Adoption

At this stage it is unclear whether or not the Highway Authority will adopt the footpath/cycle link to be provided between the St Martin's Walk and the site. This is because they do not own all the land on St Martins Walk (the end section is not adopted by the Highway Authority but is owned by the District Council). Therefore it is considered necessary to impose a condition requiring that the path is surfaced to an adoptable standard and that details of its future maintenance are provided.

Railway Noise

In accordance with condition 9 of the outline planning permission a noise report has been submitted with the application. Subject to some enhanced ventilation and glazing for properties closest to the railway line the living environment at the proposed dwellings is able to meet guideline levels.

Foul and Surface Water Drainage

Although the Water Company raised concerns over the capacity of the foul sewage system, sewage capacity is not an issue that can be taken into account for a reserved matters application. It was considered at outline stage and at that time the water company confirmed that there was adequate capacity. The Water Company are obliged to increase capacity if this is now required.

There are no objections as such from the water company, or from DCC Flood Risk Team or the BDC drainage Engineer. Hence the drainage details submitted with this application are considered acceptable and can be approved under condition 7 of the outline permission. Details are outstanding for the maintenance responsibilities and contact details for maintenance for the Sustainable Drainage System. An informative note to the applicant is appropriate regarding the outstanding details.

Affordable Housing

The proposals include 10% affordable housing which is compliant with the requirements of the S106. The Housing Strategy Officer would have preferred 2 of the 10 units to be 3 bed rather than all 2 bed. However as the main need is for 2 bed she does not object to the proposals.

Conclusions

Outline planning permission has already been granted for up to 101 dwellings and this application has been submitted solely for the approval of the outstanding details of the outline permission i.e. the reserved matters of scale, layout, appearance and landscaping.

The amended proposal shows a development which is of a scale which falls within the parameters of the outline permission and is considered appropriate for the site.

The proposed layout delivers the connections required in the outline permission, does not result in any highway safety issues, provides for adequate parking space, complies with the Council's design guidelines in terms of building orientation and space about buildings and safeguarding amenity. It also provides for a large public open space able to include a play space and sustainable drainage solutions.

The appearance and street scenes proposed are acceptable and the hard and soft landscape details provided show retention of existing hedgerows and tree and a substantial public open space area well planted to enhance the amenity and the biodiversity of the site.

The setting impact on the Listed Birks Farm is no greater than envisaged when outline permission was granted and the location of the large open space area between the listed building and the new development accords with the outline permission.

Provided that the change to the wording of the S106 obligation has been approved (application 19/00549/OTHER) allowing the omission of the community building from this development site it is concluded, having regard to the key issues, that the details of reserved matters are acceptable.

There are no other planning or technical issues that would indicate that the reserved matters should not to be approved.

RECOMMENDATION

The application be APPROVED subject to

- A. the prior approval and completion of the Deed of Variation subject of the parallel application 19/00549/OTHER; and**
- B. the following conditions (set out in precis form and to be formulated in full by the Planning Manager and/or Head of Planning in liaison with the chair and/or vice chair of the Planning Committee):-**
- Compliance with the approved plans and documents.
 - The footpath/cycle link to be surfaced to an adoptable standard prior to commencement and details of its future maintenance be provided.
 - Erection of tree and hedgerow protective fencing prior to commencement.
 - Construction Management Plan.
 - Hedgerow reinforcement planting to be undertaken before the erection of new fencing to the south and west boundaries.
 - Material samples.
 - Sample panel of stone wall.
 - Landscape plans implementation.
 - Boundary detail plans to be implemented as approved.
 - POS area to be retained for its designated use only and remove permitted development rights for fencing and walls on the POS.
 - Provision of some bat and bird boxes and hedgehog gaps to fencing.
 - Construction of estate roads to base level prior to occupation.
 - Provision of private vehicular accesses and visibility splays.
 - Any gates adjacent to the highway to open inwards.
 - The first 5m of the proposed access driveways shall not be surfaced with a loose

material (i.e. unbound chippings or gravel etc).

- Further play space details (only needed if details not agreed by the time the decision is issued).

Statement of Decision Process

In compliance with the National Planning Policy Framework, the Council has negotiated amendments in respect of layout, landscaping, design, appearance and highway details to enhance the quality of the development. The development as now proposed complies with the outline planning permission, the Council's Saved and Emerging Local Plan policies, Supplementary Planning Documents, and the objectives of the National Planning Policy Framework.

Equalities Statement

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e. "the Public Sector Equality Duty").

Although an issue has been raised in the public representations made stating that the majority of people affected by the proposal are retired, elderly and disabled and have long term illnesses; the principle of development on this site has already been accepted with the grant of outline permission.

So far as this application for reserved matters is concerned, there is no evidence to suggest that the development proposals would have any direct or indirect negative impacts on any person with a protected characteristic or any group of people with a shared protected characteristic within the scope of the Equality Act 2010.

Human Rights Statement

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

It is considered that assessing the effects that a proposal will have on individuals and weighing these against the wider public interest in determining whether development should be allowed to proceed is an inherent part of the decision-making process.

In carrying out this 'balancing exercise' in the above report, officers are satisfied that the potential for these proposals to affect any individual's (or any group of individuals') human rights has been addressed proportionately and in accordance with the requirements of the ECHR.

Bolsover District Council

Planning Committee

23rd October 2019

Proposals to grant 'permission in principle' for residential development on the former Bolsover Hospital site, Welbeck Road, Bolsover by entering this site on to Parts 1 and 2 of the Brownfield Land Register.

Report of the Planning Manager

This report is public

Purpose of the Report

- To explain the process of granting permission in principle for residential development on previously developed land through the Brownfield Land Register.
- To seek approval for granting permission in principle for residential development on the former Bolsover Hospital site located off Welbeck Road in Bolsover.

1 Report Details

Part 1 of the Brownfield Land Register

- 1.1 Under the Town and Country Planning (Brownfield Land Register) Regulations 2017, the Council is required to prepare and maintain a register of previously developed land within the District which —
 - a) has an area of at least 0.25 hectares or is capable of supporting at least 5 dwellings;
 - b) is suitable for residential development; and
 - c) is available for residential development; where
 - d) residential development of the land is achievable
- 1.2 Sites which meet these criteria should be entered on to Part 1 of the Brownfield Land Register, which is then made publically available.
- 1.3 In summary, the Part 1 Register is a list of brownfield sites that the Council considers to be suitable for residential development and can include sites with or without any form of planning permission.

The Site of the former Bolsover Hospital

- 1.3 The former Bolsover Hospital site should be entered on to Part 1 of the Brownfield Land Register for the following reasons.

- 1.4 Firstly, the site is 2.5ha in area; it is previously developed land and following demolition of the hospital buildings; it would be available for residential development.
- 1.5 Secondly, the current landowner's stated intentions are to sell the site on to a house-builder and there are no obvious technical or physical constraints that would prevent the site being used for residential development (see indicative plan, below). In addition, the site lies within the settlement framework in the adopted Local Plan and within Bolsover's development envelope in the new Local Plan.

Indicative Layout



- 1.6 Finally, there are no concerns that residential development on the site would have any direct impacts on any heritage asset or any significant impact on the setting of any designated or non-designated heritage asset located within the local area.
- 1.7 Therefore, it can be considered that as 'a matter of principle'; the site is available and suitable for housing and residential development of at least 5 dwellings can be achieved on this site.
- 1.8 Consequently, the former Bolsover Hospital site should be entered on to Part 1 of the Council's Brownfield Land Register, which would be a pre-requisite of entering the site on to Part 2 of the Council's Brownfield Land Register.

Part 2 of the Brownfield Land Register

- 1.9 The Council has the power to grant permission in principle for residential development on sites listed in Part 1 of the Register, which the Council wishes to allocate for housing. Part 2 of a Brownfield Land Register would comprise of sites listed in Part 1 of the Register that have subsequently been granted 'permission in principle' for residential development.
- 1.10 In other words, once a site has been entered on to Part 2 of a Brownfield Land Register it will have also been granted 'permission in principle' by the Council. A developer would then need to apply for a technical details consent before starting any development on site.
- 1.11 This two-step process is similar to the process of obtaining outline planning permission then seeking reserved matters once it has been established that development would be acceptable on a particular site by the grant of outline permission.
- 1.12 However, granting permission in principle for residential development only establishes that housing would be acceptable on that site; unlike an application for outline planning permission, which would also need to include various technical reports and address various technical matters.
- 1.13 Therefore, an application for technical details consent will not only need to include details of layout, landscaping, access, external appearance and scale, which are normally included in a reserved matters application; it would also need to include relevant technical reports to deal with drainage, ground conditions, ecology, traffic generation and so on.
- 1.14 Consequently, by granting permission in principle for a site by listing it on Part 2 of a Brownfield Land Register: a developer would benefit by gaining certainty that a specified amount of housing development would be acceptable on that site without first having to apply for outline planning permission with all the costs associated with making this type of application.
- 1.15 In these respects, listing the former Bolsover Hospital site on Part 2 of a Brownfield Land Register would promote and accelerate housing delivery within the District by reducing the risk and cost to the developer of first submitting an application for outline planning permission and then submitting a reserved matters application.
- 1.16 However, granting 'permission in principle' would not remove the requirement for contributions towards local infrastructure including on-site provision of 10% affordable housing and contributions to off-site open space and recreation provision if appropriate.
- 1.17 Therefore, a completed s.106 legal agreement would also be needed to support an application for technical details consent which should also include contributions towards education and health.
- 1.18 In this particular case, the CCG would request a contribution of c.£37,000 towards improvements at one of the three medical practices in Bolsover and the County Council would request:

- £100,873.44 for the provision of 6 infant places at Bolsover Infant and Nursery School
- £134,497.92 for the provision of 8 junior places at Bolsover C of E Junior School; and
- £253,328.90 for the provision of 10 secondary places at The Bolsover School

2 Conclusions and Reasons for Recommendation

- 2.1 In conclusion, entering the Bolsover Hospital site on Part 2 of the Brownfield Land Register and granting permission in principle for residential development on this site would accord with the Council's adopted planning policies and promote and accelerate housing delivery on a brownfield site.
- 2.2 The requirement for technical details consent thereafter would allow the Council to seek contributions towards local infrastructure and ensure that a high quality scheme is delivered on site.
- 2.3 Therefore, it is recommended that the Bolsover Hospital site is first entered on Part 1 of the Brownfield Land Register and then permission in principle is granted for residential development on this site by entering it on to Part 2 of the Brownfield Land Register.
- 2.4 However, before the Council could grant permission in principle for residential development on this site: it must carry out publicity by way of a site notice and information published on the Council's website. The Council must also consult with Old Bolsover Town Council and Derbyshire County Council.
- 2.5 Therefore, it is recommended that before any resolution to approve the proposal to enter the former Bolsover Hospital site on to Part 2 of the Council's Brownfield Land Register is taken into effect; public consultation is carried out and the permission only be granted if there are no overriding objections nor any significant amount of adverse representations arising from consultation on these proposals.
- 2.6 The regulations also require the Council to specify the minimum and maximum units granted permission in principle if it were to enter a site on Part 2 of the Brownfield Land Register.
- 2.7 In this case, the landowner has submitted an indicative drawing showing 70 units on the site and this amount of housing has been screened and found not to be EIA development.
- 2.8 However, this amount of housing would mean that a commuted sum would be required to mitigate for the absence of on-site provision of public open space or a playground that would normally be required by the Council's Local Plan policies.
- 2.9 So, a 'better' balance between the efficient use of the land and on-site provision of appropriate amenities for the local community and future occupants of any housing development on the site could be achieved if a lesser number of houses were stipulated as a minimum requirement of any permission in principle for this site.

- 2.10 It is therefore recommended that if the former Bolsover hospital site were to be entered on to Part 2 of the Brownfield Land Register; permission in principle should be granted for a minimum of 50 new houses and a maximum of 70 houses.

3 Consultation and Equality Impact

- 3.1 If the proposals to list the former Bolsover Hospital site on Part 2 of a Brownfield Land Register are approved, formal consultation will be required before the associated 'permission in principle' can be granted (as described at para 2.4 above).
- 3.2 However, the proposals are unlikely to have any negative impact on any person with a protected characteristic or group of people with a shared protected characteristics not least because Bolsover Hospital is no longer in operation and consent has already been granted for the demolition of the hospital buildings.

4 Alternative Options and Reasons for Rejection

- 4.1 A 'do nothing' option was considered but rejected because the intention of the current proposals is accelerate housing delivery on a site that has the potential to quickly detract from the character, appearance and amenities of the local area if it is left vacant.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 The requirement for technical details consent prior to development taking place on the site reduces the risk of inappropriate development on the site and ensures all technical matters will be addressed properly through the planning system.
- 5.1.2 These proposals do however give rise to a potential loss of fee income insofar as an application for outline planning permission would no longer be required if permission in principle for residential development were granted.
- 5.1.3 Nonetheless, the fees charged for an application for technical details consent are equivalent to the fees charged for an application for reserved matters approval or full planning permission. Therefore, the proposals would have a negligible impact on fee income.

5.2 Legal Implications including Data Protection

- 5.2.1 The Brownfield Land Register and the process of granting permission in principle for residential development on previously developed land is regulated through the Town and Country Planning (Brownfield Land Register) Regulations 2017, associated regulations and through the planning acts.
- 5.2.2 The 'permission in principle' process does not give rise to any specific data protection issues other than the personal details of any consultees responding to consultation on these proposals would be dealt with in accordance with the Planning Service's existing privacy statement.

5.3 Human Resources Implications

- 5.3.1 These proposals do not give rise to any significant increase in existing workloads and any forthcoming application for technical details consent would be incorporated into the normal day to day work of the Planning Service.

6 Recommendations

- 6.1 Subject to the outcome of public consultation, it is recommended that the former Bolsover Hospital site is entered on to Parts 1 and 2 of the Brownfield Land Register and permission in principle be granted for a minimum of 50 new houses and a maximum of 70 houses on this site.
- 6.2 Prior to entering the site on to Parts 1 and 2 of the Brownfield Land Register, the Council will consult with Derbyshire County Council and Old Bolsover Town Council and publicise the proposals by way of a site notice and information published on the Council's website. 42 days will be allowed for responses.
- 6.3 A resolution to grant permission in principle for residential development on the former Bolsover Hospital site shall take effect following this public consultation subject to no substantial objections being received on substantive planning grounds as a result of this consultation.
- 6.4 These proposals will be returned to the Planning Committee for further consideration in the event that the Town Council or County Council object to these proposals with reference to relevant planning considerations and/or in the event the proposals give rise to twenty or more individual representations containing objections made on valid planning grounds.

7 Decision Information

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

8 Document Information

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

Appendix 1: Site Location Plan

