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To: Chair & Members of the Planning  
Committee

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Tuesday, 6<sup>th</sup> May 2025

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 on Wednesday, 14<sup>th</sup> May, 2025 at 10:00 hours.

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 on page 3 onwards.

Yours faithfully,



Solicitor to the Council & Monitoring Officer

## **Equalities Statement**

Bolsover District Council is committed to equalities as an employer and when delivering the services it provides to all sections of the community.

The Council believes that no person should be treated unfairly and is committed to eliminating all forms of discrimination, advancing equality and fostering good relations between all groups in society.

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**PLANNING COMMITTEE  
AGENDA**

**Wednesday, 14<sup>th</sup> May, 2025 at 10:00 hours taking place in the Council Chamber, The Arc,  
Clowne**

<b>Item No.</b>		<b>Page No.(s)</b>
1.	<b>Apologies For Absence</b>	
2.	<b>Urgent Items of Business</b>	
	To note any urgent items of business which the Chairman has consented to being considered under the provisions of Section 100(B) 4(b) of the Local Government Act 1972.	
3.	<b>Declarations of Interest</b>	
	Members should declare the existence and nature of any Disclosable Pecuniary Interest and Non Statutory Interest as defined by the Members' Code of Conduct in respect of:	
	a) any business on the agenda	
	b) any urgent additional items to be considered	
	c) any matters arising out of those items	
	and if appropriate, withdraw from the meeting at the relevant time.	
4.	<b>Minutes</b>	4 - 15
	To consider the minutes of the last meeting held on 16 <sup>th</sup> April 2025.	
	<b><u>APPLICATIONS TO BE DETERMINED UNDER THE TOWN &amp; COUNTRY PLANNING ACTS</u></b>	
5.	<b>Application no. 23/00439/FUL - Land At The Rear Of The White Swan Market Place, Bolsover</b>	16 - 46
6.	<b>Application no. 23/00180/OUT - Bolsover Business Park, Woodhouse Lane, Bolsover</b>	47 - 104
7.	<b>Application no. 23/00562/OUT - Land To The West Of Cartwright Lane Alongside The Mansfield Road, South Normanton</b>	105 - 139
	<b><u>REPORT OF THE DEVELOPMENT MANAGEMENT AND LAND CHARGES MANAGER</u></b>	
8.	<b>Update report following resolution to approve application code ref. 17/00640/OUT - Land North of Clowne, Including Section Of Town Centre, Hickinwood Lane, Clowne</b>	140 - 187

## PLANNING COMMITTEE

Minutes of a meeting of the Planning Committee of the Bolsover District Council held in the Council Chamber on Wednesday, 16<sup>th</sup> April 2025 at 10:00 hours.

### **PRESENT:-**

Members:-

Councillor Tom Munro in the Chair

Councillors John Ritchie, Phil Smith, Janet Tait, Deborah Watson and Carol Wood.

Officers:- Jim Fieldsend (Director of Governance and Legal Services & Monitoring Officer), Sarah Kay (Assistant Director of Planning and Planning Policy), Chris Whitmore (Development Management and Land Charges Manager), Chris McKinney (Senior Devolution Lead for Planning Policy, Strategic Growth and Housing), Mark Giles (Assistant Director for Streetscene, Community Safety and Enforcement), Jon Hendy (Principal Planning Policy Officer), Neil Oxby (Principal Planning Policy Officer) and Matthew Kerry (Governance and Civic Officer).

### **PL151-24/25 APOLOGIES FOR ABSENCE**

Apologies for absence were received on behalf of Councillors Rob Hiney-Saunders, Chris Kane and Duncan McGregor.

### **PL152-24/25 URGENT ITEMS OF BUSINESS**

There was no urgent business to be considered at the meeting.

### **PL153-24/25 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.

There were no declarations made at the meeting.

### **PL154-24/25 MINUTES**

Moved by Councillor Phil Smith and seconded by Councillor John Ritchie

**RESOLVED** that the minutes of a meeting of the Planning Committee held on 19<sup>th</sup> February 2025 be approved as a true and correct record.

### **PL155-24/25 CRESWELL GROWTH PLAN UPDATE**

The Senior Devolution Lead for Planning Policy, Strategic Growth and Housing presented the report to the Committee.

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Work had commenced on the Creswell Growth Plan in April 2022, in accordance with the Council's Local Development Scheme. It had been subject to three public consultations during its preparation.

At a meeting of the Local Plan Implementation and Advisory Group (LPIAG) on 5<sup>th</sup> February 2025, Members had provided a steer that they recognised the need to plan for additional residential and employment growth in Creswell, but that this could not be supported until:

- the new GP surgery had been built and opened;
- that any additional growth met and was accompanied by the necessary increase in infrastructure capacity; and
- deliver increased levels of affordable housing (i.e., greater than the Local Plan for Bolsover District policy requirement of 10% affordable housing provision).

Based on the latest information from Welbeck Estates about the delivery of the new GP surgery, it was understood that they had agreed to dispose of the planned GP surgery site to a specialist medical facility builder and that the Integrated Care Board would take a lease on the property.

From this point, it was understood that this legal process would be completed end of May 2025, potentially enabling a start on site the summer of 2025 and the facility being open to the public in late 2025.

While the Council awaited the delivery of the new GP surgery, should the steer provided by LPIAG be approved officers would pause work on writing up the preferred option for the final Creswell Growth Plan.

Work would continue on the assessment of the sites promoted to the Council through the Land Availability Assessment (LAA) process and the consideration of infrastructure provision will also continue.

Related to the preparation of a Growth Plan for Creswell, the Council had received a letter from the Creswell and Elmtton Residents Action Group dated 10<sup>th</sup> February 2025. This letter was attached at Appendix 1 to the report.

The letter from the Creswell and Elmtton Residents Action Group requested that the Committee consider the public consultation feedback against further growth in Creswell and take no further action on any of the potential options within the Consultation Draft Creswell Growth Plan.

The above request would provide an alternative recommendation to that from the LPIAG on the next steps for the preparation of the Creswell Growth Plan work.

If the Committee paused work on the writing of the final Creswell Growth Plan (to enable the GP surgery to be completed and opened, as the LPIAG had recommended), a future report would be provided potentially December 2025.

However, it was appropriate for Members to note the request from the Creswell and Elmtton Residents Action Group to take no further action on the preparation of a Growth Plan for Creswell and decide whether they wished to follow this alternative approach.

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Should this alternative decision be taken, no further work would take place on the preparation of a Growth Plan for Creswell and the Council would omit this document from its planned Local Development Scheme.

The Chair read out part of a letter written by Elmton with Creswell Parish Council's Locum Clerk and Responsible Financial Officer, attached in the Supplementary document. The Committee was asked to reconsider the proposed Growth Plan, and it was request that further consultation took place.

The Committee discussed the options available, with the Senior Devolution Lead for Planning Policy, Strategic Growth and Housing providing guidance.

It was noted that if the Council did not plan for growth, the UK Government could reclaim that responsibility and proceed as it thought best (with no local input accepted).

It was noted that while the Council had planned affectively, other local authorities had not and were either struggling to meet national targets or losing control of their growth plans.

It was shared that with the divergence of views at LPIAG, it proved difficult to plan for growth. A growth plan was necessary for Creswell, but the completion of the GP Surgery was important. A pause would affect the Local Plan, but no planned growth could result in losing control to the UK Government.

Moved by Councillor Tom Munro and seconded by Councillor Carol Wood

**RESOLVED** that the Planning Committee: 1) Notes the steer from the Local Plan Implementation Advisory Group on the next steps for the preparation of the Creswell Growth Plan as set out in the report;

- 2) Notes the request from the Creswell and Elmton Residents Action Group to carry out no further action on any of the Creswell Growth Plan options as set out in Appendix 1;
- 3) Notes the request from Elmton-with-Creswell Parish Council to carry out further consultation on the Creswell Growth Plan options to explore alternative strategies that align with sustainable development goals while preserving the unique historical and environmental character of Elmton-with-Creswell Parish;
- 4) Approves the next steps for the preparation of the Creswell Growth Plan.

The meeting was adjourned at 10:36 hours to allow members of the public to leave the meeting and those attending for Applications to take their seats.

The meeting was reconvened at 10:42 hours.

### **PL156-24/25      APPLICATION NO. 23/00439/FUL - LAND AT THE REAR OF THE WHITE SWAN MARKET PLACE, BOLSOVER**

Committee considered a report in relation to the above application presented by the Development Management and Land Charges Manager, who gave details of the application and highlighted the location and features of the site and key issues. The

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planning application sought approval for 2 three-storey buildings and 1 two-storey building that would deliver 9 one-bedroom flats at the ground floor and 9 two-bedroom two-storey flats, that would be delivered on the second and third floors of the building.

Updated information was provided in the supplementary document.

Stephen K. Haslam spoke in favour of the application (on behalf of Mitchell Proctor Architects, the agent).

To a question on the provision of private vehicles, the Committee was informed parking had been considered and it was decided no private parking would be permitted on site. Any unauthorised parking would need to be handled by future residents. The Chair added signage would likely be required.

A Member noted the limited provision of S.106 funds and lack of provision of affordable housing. The Development Management and Land Charges Manager advised that the Council's affordable housing policy applied to developments of 25 or more dwellings. Some of the units were one bedroomed and therefore did not require an education contribution to be made as it would be unlikely that school aged children would reside at such properties (hence £91,928.37 expected for education).

It was asked whether a lesser contribution could be requested, or project viability be reviewed during construction. It was explained by the Development Management and Land Charges Manager that it had been demonstrated that the development would not return a sufficient level of profit with any contributions at this time, to make the project a viable proposition to a developer. If a contribution was sought, this would jeopardise the development and be an unreasonable request to make in this respect.

It was, however, considered reasonable to require a review of project viability towards the end of the build programme to gauge an understanding of construction costs and sales values, to determine whether any super profit (above an agreed profit percentage) had been made and to require that this contributes to any deferred contributions in a S.106 legal agreement.

*Councillor Phil Smith left the meeting at 11:04 hours.*

3 in favour  
1 against

Moved by Councillor Tom Munro and seconded by Councillor John Ritchie

**RESOLVED** that application no. 23/00439/FUL be deferred until a future meeting to allow officers to enter into negotiations with the applicant to secure a viability review mechanism that would enable developer contributions to be made in circumstances where the development proves to be more profitable than envisaged in the viability assessment.

### **PL157-24/25      APPLICATION NO. 24/00480/FUL - 1 ELM CLOSE, BOLSOVER**

Committee considered a report in relation to the above application presented by the Development Management and Land Charges Manager, who gave details of the application and highlighted the location and features of the site and key issues. The

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planning application sought approval for the change of use of the existing four-bedroom dwelling to a six-bedroom assisted living property.

The proposal included a single-storey extension to the front and a two-storey side and rear extension which would provide the additional accommodation. The proposal included the loss of the existing garage but provided a replacement parking space on the site frontage such that there would be three spaces in total on the site.

The application had been referred to committee by Councillor Anne Clarke, Bolsover East, due to concerns about insufficient parking spaces for the application leading to highway safety implications, the harmful impact on local residents, and the impact on the drainage system. There had also been objections to the proposal from 27 households.

Councillor Anne Clarke spoke against the application.

Alan Hodkin spoke against the application.

Questions were asked on the allegations of Anti-Social Behaviour (ASB) not being reported and the sound pollution of residents and transport for the existing assisted living property.

Michelle Fox spoke against the application.

The Development Management and Land Charges Manager informed the Council was not aware of acts of ASB taking place at the current assisted living property – if ASB was taking place, it was not being reported / reaching the Council.

Michael Bust spoke against the application.

Councillor Joan Dixon of Derbyshire County Council (DCC) spoke against the application.

The Development Management and Land Charges Manager read out a letter sent by the applicant that was attached in the supplementary document.

A Member raised concerns on the need of such services, though it was noted a current assisted living property was already present on the estate.

To concerns raised, the Chair noted DCC Highways had stated there would not be an unacceptable impact on highway safety or a severe impact on congestion.

3 in favour

2 abstain

Moved by Councillor Carol Wood and seconded by Councillor Janet Tait

**RESOLVED** that application no. 24/00480/FUL be **REJECTED** for the following reasons:

The proposed development, by reason of its scale and nature, would result in increased movements to and from the site, associated general disturbance and noise levels that would be incompatible with the tranquil location within which it would be located, to the detriment of the residential amenity of the occupants of neighbouring dwellings. The development would therefore be contrary to Policies SC1, SC3 and SC11 of the Local Plan for Bolsover (2020).

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The meeting was adjourned at 12:00 hours for a comfort break.

The meeting was reconvened at 12:17 hours.

### **PL158-24/25      APPLICATION NO. 24/00500/VAR - LAND SOUTH WEST OF BROCKLEY WOOD, OXCROFT LANE, STANFREE**

Committee considered a report in relation to the above application presented by the Development Management and Land Charges Manager, who gave details of the application and highlighted the location and features of the site and key issues. The planning application sought approval for material amendments to the residential development approved under planning reference 22/00402/FUL.

The original scheme was "*Full planning application comprising proposed link road between Shuttlewood Road and Oxcroft Lane, including demolition of Boleappleton Farm and associated outbuildings, ground level changes, and construction of 161 dwellings with public open spaces, access routes, landscaping and associated works (major revisions from hybrid, part outline/part full application to full planning application)*". The development had commenced insofar that parts of Boleappleton Farm had been demolished.

The proposed amendments comprised updates to the Sudbury and Westbury house types comprising internal alterations and adjustments to positioning within their plots, and revised parking arrangements adjacent to plots 96 – 102.

The application had been referred by reason that the previous application, 22/00402/FUL, had been determined by the Committee and that the Council's adopted Committee functions policy required applications that proposed the removal or variations of conditions or obligations imposed on a permission granted that were more than non-material minor amendments to the original permission should be determined by the Committee.

Darren Abbott spoke in favour of the application (applicant).

A Member voiced their intention to vote against the application.

4 in favour

1 against

Moved by Councillor Tom Munro and seconded by Councillor John Ritchie

**RESOLVED** that application no. 24/00500/VAR, following the endorsement of a memorandum on the face of the Deed dated 22<sup>nd</sup> July 2024, which secures the developer contributions relating to the original planning permission, that the application be **APPROVED** with the conditions as set out in the officer's report.

### **PL159-24/25      APPLICATION NO. 24/00560/FUL - LAND AT HARVESTER WAY, CLOWNE**

Committee considered a report in relation to the above application presented by the Development Management and Land Charges Manager, who gave details of the

## PLANNING COMMITTEE

application and highlighted the location and features of the site and key issues. The planning application sought approval for the retention of the use of the land for the keeping of horses and the retention of the two field shelters.

The site lied beyond the southwestern edge of the settlement of Clowne and immediately to the north of a housing estate built out by Avant Homes known as 'The Edge'. With the area of public open space to the west of the housing estate and protected playing fields to the north of the site, the land comprised protected green space in the Local Plan for Bolsover District (2020).

The application had been referred to the Committee because it was recommended for approval on a temporary basis and was contrary to planning policies in the development plan.

Ian Biggs spoke against the application.

John Allsop spoke in favour of the application.

Dom Webb spoke against the officer recommendation.

3 against  
2 in favour

Moved by Councillor Carol Wood and seconded by Councillor Deborah Watson  
**RESOLVED** that temporary planning permission be **REJECTED** for application no. 24/00560/FUL for the following reason:

The site is allocated as protected green space in the development plan. The proposed development prejudices the future use of the site as such, which would provide a benefit to the local community contrary to the requirements of Policy ITCR6 of the Local Plan for Bolsover District (2020).

### **PL160-24/25      OUTCOME OF CONSULTATION ON AND RECOMMENDATION TO ADOPT A LOCAL VALIDATION CHECKLIST (LOCAL LIST) FOR PLANNING APPLICATIONS**

The Development Management and Land Charges Manager presented the report to the Committee.

Paragraph 45 of the National Planning Policy Framework stated local planning authorities should publish a list of their information requirements for applications seeking planning permission.

These requirements should be kept to the minimum needed to make decisions and should be reviewed at least every two years. Local planning authorities should only request supporting information that was relevant, necessary and material to the application in question.

Planning practice guidance advised that a local planning authority could request additional supporting information with a planning application. These requirements should be specified on a formally adopted 'local list'.

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It was stressed that ensuring planning applications were supported by enough information was crucial to ensure effective service delivery. It would also provide certainty for applicants, the Local Planning Authority, consultees and other interested parties, and accelerate the decision-making process.

If a planning application was not supported by the information required by the national information requirements or an adopted local list, an application would not be registered as valid and the formal process of considering and determining the planning application would not begin.

The adoption of a local list would enable the Council to capture all key information required to determine an application at the validation stage. This would allow it to make decisions in a timely manner post registration / validation.

The consultation comments from the nine interested parties received had been reviewed and the Local Validation Checklist had been amended (where appropriate) to ensure that the information requirements were clear and met the statutory tests.

None of the consultation comments raised objections to the Council adopting a local validation checklist.

The report detailed the outcomes of the consultation exercise.

Moved by Councillor Tom Munro and seconded by Councillor Deborah Watson

**RESOLVED** that the Planning Committee resolve to adopt the Local Validation Checklist at Appendix 2 with any minor corrections / alterations as appropriate from the 1<sup>st</sup> June 2025, following the creation of a new page on the Council's website to direct service users to its existence / requirements and other supporting documentation and approval of the Equality Impact Assessment.

### **PL161-24/25      CONSULTATION ON THE PROPOSED IMPLEMENTATION OF A PRE-APPLICATION (PLANNING) ADVICE CHARGING SCHEDULE / SERVICE**

The Assistant Director of Planning & Planning Policy presented the report to the Committee.

The development industry widely accepted that a charge to access pre-application (planning) advice was necessary, and many relied upon access to professional officer advice to inform and support their planning application submissions. The Council currently provided this service for free.

Pre-application engagement by prospective applicants could offer significant potential to improve both the efficiency and effectiveness of the planning application system and improve the quality of planning applications and their likelihood of success.

However, the provision of pre-application (planning) advice contributed to officer workload across the Planning Service, which was under pressure from rising costs associated with the administration of the whole Planning Service (inc. planning application publication, consultation, officer time, and access to professional expertise such as ecology, urban design, and conservation).

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Section 93 of the Local Government Act 2003 provided local authorities the power to charge for discretionary services, including the provision of pre-application (planning) advice, subject to the income from the charge levied not exceeding the cost of the service provision.

Based on current market conditions and market insight, it was proposed a discretionary charge was introduced by the Council for the provision of pre-application (planning) advice services (the Council was the only local planning authority in the County to not charge for pre-application (planning) advice services).

The report detailed the previous 5 years of pre-application (planning) enquiries the Planning Service had registered and provided a written response to. The provision of a written response to an average of 700 enquiries per year was currently a cost absorbed by the Planning Service.

Estimated time and costs of services provided were detailed in the report.

It was estimated that the introduction of a pre-application (planning) charging schedule would potentially generate an income between £20,000-£30,000 per annum. That income would be re-invested in the Planning Service to continue to support the availability of officers to provide pre-application (planning) advice.

It was recommended a 4 week public consultation be undertaken in respect of the adoption of a charge for a discretionary service.

The Committee discussed the merits of retaining the free consultation model and charging applicants for accessing the Planning Team's services in line with other local authorities.

2 in favour  
2 against  
1 abstained

Chair's casting vote.

Moved by Councillor Tom Munro and seconded by Councillor John Ritchie

**RESOLVED** that the Planning Committee agrees to: 1) approve the preparation of a final draft charging schedule and undertake a 4 week public consultation exercise on the proposed introduction of a Pre-Application (Planning) Charging Schedule / Service;

- 2) Give delegated authority to the Assistant Director of Planning & Planning Policy, in consultation with the Chair / Vice Chair of Planning Committee to finalise the text of the draft consultation documents prior to commencing the programme public consultation exercise; and,
- 3) Receive a further outcome report of the public consultation exercise in due course, to enable Planning Committee to make a final recommendation to Council on the introduction of a Pre-Application (Planning) Charging Schedule / Service.

## PLANNING COMMITTEE

### PL162-24/25 PREPARATION OF A NEW LOCAL DEVELOPMENT SCHEME

The Senior Devolution Lead for Planning Policy, Strategic Growth and Housing presented the report to the Committee.

The Local Development Scheme (LDS) was a timetable for the production of the Council's planning documents – it was intended that it would assist the understanding and involvement in the plan-making process and enable the development industry, infrastructure providers and other key stakeholders to coordinate their investment programmes.

The Council last published the current LDS in February 2022. This was the seventh LDS that the Council had formally produced and the first one since the adoption of the Local Plan for Bolsover District in March 2020.

The current LDS had set out a programme of work to cover the carrying out of a Local Plan Review, the preparation of Growth Plans for Shirebrook and Creswell and the preparation of Supplementary Planning Documents (SPDs).

The document had also outlined the timetable for the remaining stages of the preparation of the Tibshelf Neighbourhood Plan.

Since the publication of the current LDS, the Council had carried out several stages of preparation on the Shirebrook and Creswell Growth Plans, seen the adoption of a new Local Parking Standards SPD and progress on preparing drafts of the updated Successful Places and the Historic Environment SPDs, together with progress on several Local Plan Implementation Projects and other statutory monitoring work.

Crucially, the Council had completed the Local Plan Review work and this had been reported to the Committee at its meeting in February 2025.

Based on the outcome of the First Review, it was concluded that the Local Plan for Bolsover District had been very successful in delivering development within the District.

While fundamental changes to national policy (e.g., increased Local Housing Need targets, the operation of Green Belt policy, etc.) meant that it could not be concluded that the Council's strategic policies could be carried forward for a further five years – an update was necessary though not immediately.

The Council was working on a number of non-statutory Growth Plan documents that were intended to sit on top of the Local Plan for Bolsover District and identify where additional growth would be acceptable to the Council. These Growth Plans were intended to ultimately be adopted as material considerations in the planning processes.

The timetables for the remaining stages of the Growth Plans were as follows:

- Shirebrook Growth Plan:
  - April 2025 – Engagement with infrastructure providers and landowners on how preferred Growth Plan option; and,
  - December 2025 – Adoption of Shirebrook Growth Plan

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- Creswell Growth Plan (following considerations earlier in the meeting):
  - April 2025 – Pause awaiting progress on new Creswell GP surgery;
  - October 2025 – Review of progress on new Creswell GP surgery; and,
  - December 2025 – Potential adoption of Creswell Growth Plan.

The Local Plan for Bolsover District advised that the Council would prepare a number of SPDs. The remaining documents to be prepared were:

- Successful Places;
- Historic Environment; and,
- Section 106 Planning Contributions (covering affordable housing provision and green space and play provision).

Work had progressed on the first two of these documents. Work was due to commence on the third summer 2025.

The next steps would be to seek the authority to commence public consultation exercises on each of these documents – this would be reported to the Committee at future meetings.

Based on the conclusions of the First Review of the Local Plan for Bolsover District, the Council had decided it would not seek to update the Local Plan under the existing legislative framework before the UK Government's deadline of December 2026.

Instead, it was planned to commence work on an updated / new Local Plan mid-2027 under the provisions of the UK Government's intended new plan-making system as introduced by the Levelling-up and Regeneration Act 2023.

At present, this new plan-making system was expected to be implemented later in 2025.

One aspect of the new plan-making system was expected to be the need to have plans prepared and adopted within a 30-month timeframe. This would result in the proposed timeframe:

- June 2027 – Commencement of plan-making work;
- October 2027 – Initial public consultation on Local Plan;
- October 2028 – Pre-submission public consultation on Local Plan;
- February 2029 – Submission of Local Plan for Examination;
- June & July 2029 – Potential dates for Examination Hearings;
- October 2029 – Potential date for receipt of Inspector's Report; and,
- December 2029 – Potential date for Adoption.

It was intended that work would take place on updating the Council's Statement of Community Involvement in advance of commencing plan-making work (as set out in the timetable above). Work on updating the Statement of Community Involvement would start March 2026 and be completed November 2026.

In December 2024, the UK Government asked all local planning authorities to produce an updated LDS and to submit this to them no later than 6<sup>th</sup> March 2025.

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In accordance with this request, following consultation with the Portfolio Holder for Growth, this proposed LDS and work programme was submitted to the Government on 5<sup>th</sup> March 2025. Whilst acknowledged, no feedback on the contents and work programme was received.

Behind this formal timetable, the Council would need to carry out further evidence based work to ensure it would be able to meet the expected gateway assessment prior to commencement on a new Local Plan.

This evidence based work would focus on the assessment of all of the sites across the District promoted to the Council. However, it was also clear that a new Green Belt Review assessment would be required in the immediate term to help the Council respond to the changes to national planning policy – a project plan to ensure that the Council would be ready for commencement in June 2027 would be prepared.

The Planning Policy and Housing Strategy Team had undertaken a large number of statutory planning monitoring tasks for the Council (works to deliver the planning components of the Housing Strategy and led on a range of Local Plan Implementation Projects).

The demands on the team had increased recently as the team also led on the Council's obligations under the Environment Act 2021.

Moved by Councillor Tom Munro and seconded by Councillor John Ritchie

**RESOLVED** that Planning Committee approve the adoption of the new Local Development Scheme (as attached at Appendix 1) so that it takes effect on 17<sup>th</sup> April 2025 and be publicised on the Council's website.

The Chair thanked all those in attendance.

The meeting concluded at 13:31 hours.

**PARISH** Old Bolsover Parish

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**APPLICATION** Proposed 9 x 1 bed (ground floor flats) and 9 x 2 bed, 2 storey (first and second floor flats)  
**LOCATION** Land At The Rear Of The White Swan Market Place Bolsover  
**APPLICANT** Mr Steve Botham 10 Corner Pin Close Netherthorpe Staveley Chesterfield S48 8LN  
**APPLICATION NO.** 23/00439/FUL **FILE NO.**  
**CASE OFFICER** Mr Jonathan Gaynor  
**DATE RECEIVED** 21st August 2023

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## SUMMARY

This full planning application is for 2 three storey buildings and 1 two storey building that will deliver 9 one bed flats at the ground floor and 9 two bed 2 storey flats, that will be delivered on the second and third floors of the building.

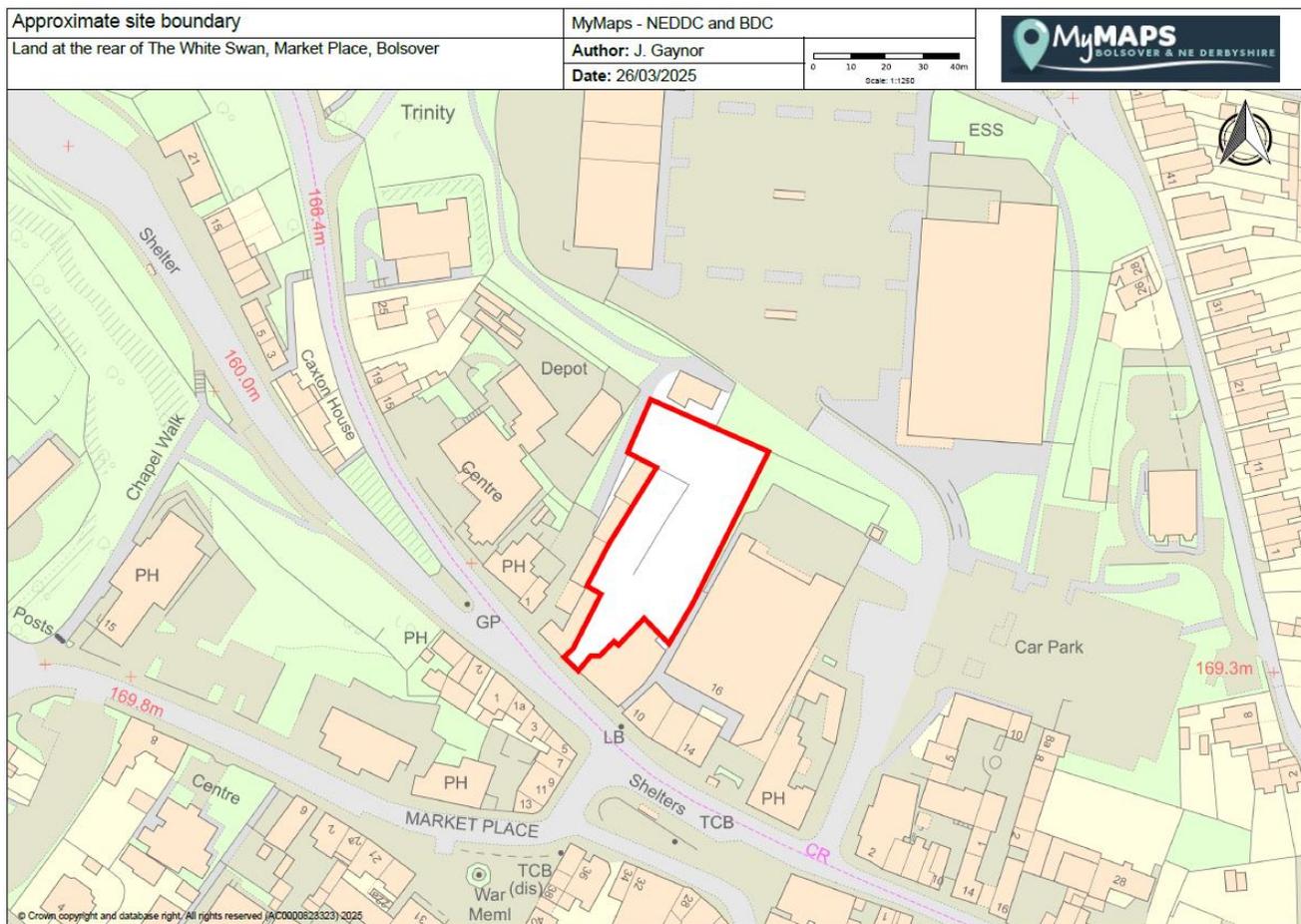
The site is a brownfield site situated within Bolsover Town Centre and as such, the development is acceptable in principle. The scheme has been revised in consultation with the Conservation Officer and Urban Design Officer as is now considered acceptable in all other planning regards, except viability.

A viability assessment has been submitted which concludes that for the scheme to be viable, no s106 contributions can be provided, contrary to the policy expectation totalling £136,746 towards education, open space and playing pitches. This assessment has been independently reviewed and the findings have been verified.

A recommendation to grant planning permission without requiring any s106 contributions is made on the basis that the development will secure the regeneration of a vacant brownfield site in the town centre and deliver high quality residential development in a sustainable location that has been designed to respond positively to the site and its context.

It was resolved at the 16<sup>th</sup> April 2025 planning committee meeting that the item be deferred until a future meeting to allow officers to enter into discussions with the applicant to discuss the potential for a viability review mechanism to enable developer contributions to be made in circumstances where the development proves to be more profitable than envisaged in the viability assessment. These discussions have now taken place and are referred to in the assessment section of this report.

## Site Location Plan



## OFFICER REPORT ON APPLICATION NO. 23/00439/FUL

### SITE & SURROUNDINGS

The site lies within Bolsover town centre close to the Market Place. It falls within the Bolsover Conservation Area and is within the vicinity of Bolsover Castle. The White Swan public house is a prominent un-listed heritage asset within the street, next to Dane Bank House which also has a distinct civic quality and status as a former bank. Both relate to the setting of the Market Place. The entrance to the site falls between these 2 buildings. There are several listed buildings along with many non-designated heritage assets in the town centre with a close-knit pattern of development and domestic scale.

The long extended narrow plots off the main street have been shown on historical plans to have outbuildings extending to the rear as part of a pattern of development of medieval burgage plots. The development will conform with this historical pattern.

There are stone boundary walls to the eastern and northern boundaries which are characterful and to be retained. The plot shows a split in level between the boundary of the rear of the White Swan and Dane Bank house. This is seen as a ramped footing/retaining wall along the centre line of the courtyard.

The site is relatively contained behind the two main street buildings. The substantial mass of the White Swan and the adjacent Dane Bank House almost completely blocks the views to the main street. There are glimpses though from the street that are typical of the experience of walking down the street and looking through to the rear.

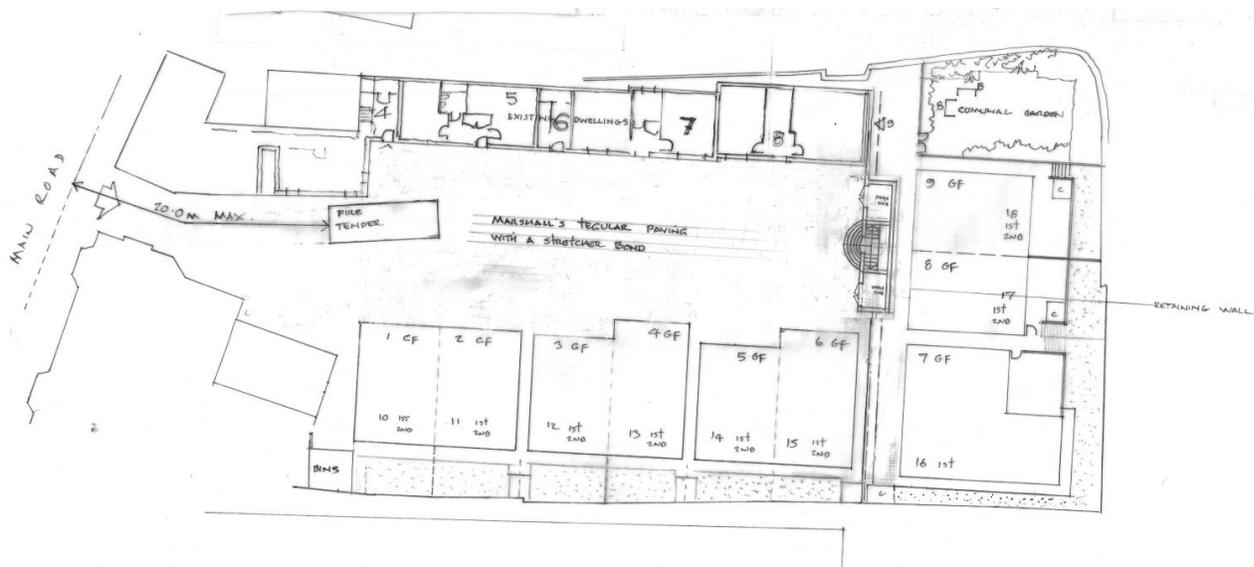
There are views from the north from a sloped bank to Morrisons service road and car park and to the east from Town End Car park beyond the rear of the B&M building which screens most of the development from the east. The west is completely enclosed by the recently developed mews buildings behind Dane Bank house.

While the development forms part of the rear of these properties there is potential for views of the upper parts of the site to be seen from other areas within the town.

## PROPOSAL

The application proposes 2 three storey buildings and 1 two storey building that will deliver 9 one bed flats at the ground floor and 9 two bed 2 storey flats, that will be delivered on the second and third floors of the building.





## AMENDMENTS

Amendments to the overall design of the scheme, which involved extensive discussions with the Conservation Officer and Urban Design Officer.

## EIA SCREENING OPINION

The development does not constitute Schedule 1 or 2 development under the (Environmental Impact Assessment) Regulations 2017. There is therefore no requirement to screen the development as to the likely environmental effects.

## HISTORY

17/00082/OUT	Granted Conditionally	Outline application with all matters reserved for residential development on land to the rear of the White Swan and the conversion of the pub to create retail use at ground floor with 3 or 4 apartments to the first floor.
17/00377/REM	Granted Conditionally	Approval of Reserved Matter for the erection of 10 dwellings

## CONSULTATIONS

- **DCC Highways**

The Highway Authority's previous consultation response raised a highway issue in connection with the highway improvements conditioned within Decision Notice 17/00377/REM and in the intervening period a number of discussions have taken place to try and resolve the highway issues, which has culminated in the recently submitted revised drawing (Proposed Site Plan – Amended Plan), so from a highways aspect the drawings are now considered acceptable in principle. Conditions relating to access,

bicycle parking and the submission of a Construction Management Plan are requested, as well as informative notes.

- **BDC Planning Policy**

The starting point for decision-making are the policies set out in the development plan, which comprises the Local Plan for Bolsover District. The Local Plan sets out a spatial strategy and distributes development to the large and more sustainable settlements in Bolsover District. As the Plan was only adopted in 2020, it is considered to be up-to-date and has been delivering significantly more dwellings in recent years than is required under the Local Plan provisions.

The location within Bolsover town centre is considered to be a sustainable location and this meets strategic policy requirements, and subject to more detailed policy considerations such as Archaeology and Conservation would be acceptable in policy terms, unless material considerations indicate otherwise.

Such material considerations that should also be considered are:

- The Government's drive for more housing
- The Council's excellent delivery record of delivering housing in recent years.
- The unviable nature of the development and the consequent lack of contribution towards infrastructure including school. Playing pitches and open space.

- **BDC Streetscene and Waste Services**

After looking at the plans, we will not be able to service the bins from outside the homes, there's no chance we'll get a refuse vehicle up there, either driving in and trying to turn around or reversing in off the Main Road, all bins must be presented at the bottom near the Main Road, possibly within a bin storage area. *Following updated plans*, unfortunately our decision remains the same the bins would have to be brought to the entrance of the development near to the road, all the properties will have individual 180ltr black bins, 240ltr burgundy bins, 240ltr green bins (if requested/required) and 23ltr food waste caddy (this starts in April 2026) this is why a bin storage area near to the entrance would be ideal.

- **DCC Public Right of Way Officer**

The amended plans do not appear to further affect Bolsover FP 19, therefore the RoW section has no objection, and comments remain as previously stated.

- **DCC Planning Policy and DCC Adult Social Care**

*Early comments outlined necessary S106 contributions.* However, Derbyshire County Council appreciate that an independent review of the viability of the development has taken place which agrees with the applicant's evidence that the scheme cannot viably support any S106 contributions.

Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. However,

the County Council understand that the particular circumstances of some developments may justify the need for a viability assessment at the application stage.

The County Council accepts the conclusion of the independent viability report i.e. that the development cannot support any S106 contributions.

Derbyshire County Council would also like to make the following comments from our Public Health and Adult Social Care Team:

*As this development is fewer than 100 dwellings and relates to general housing, ASCH are unable to provide specific feedback. However, we would appreciate the following general design principles being considered to comply with the NPPF's requirement for developments to 'create places that are safe, inclusive and accessible and which promote health and well-being, with high standards of amenity and flexibility for existing and future users.'*

- *Dwellings meet national space and/or M4(2) standards to encourage independent living for all ability and mobility levels*
- *Good internal space standards, ceiling heights, natural light levels*
- *Stairways, walls and ceilings capable of accommodating stair lifts or hoists should these be required in future; large internal cupboards which could be converted for through floor lifts at a future date*
- *A mix of tenures and types: affordable accommodation is important to help ensure the stability of the domiciliary care market*
- *Having a proportion of dwellings built on one level (stacked or bungalow) and ensuring this type of provision is located near public transport routes and/or urban centres*

- **Urban Design Officer**

I've now checked the amended plans and consider all amendments acceptable and in line with my previous requests, in particular:

- to move the steps away from the window of the existing mews building,
- Relocated the bin area to remove the unsightly wooden fence in front of the rear extension of the White Swan,
- Removal of trees from the courtyard.
- Including wider French style windows to the rear to improve light and amenity.

Agrees with Conservation Officer regarding details of materials and therefore happy to recommend approval. I only wish to ensure that a detailed soft and hard works landscape scheme for the area is submitted showing details of steps, planter walls, coping stones, and balustrades, and any paving scheme, including threshold paving. The character of the courtyard needs to be simple but to as high a standard as the buildings. *Details of courtyard finish now agreed in consultation with Urban Design Officer.*

- **Conservation Officer**

The revised scheme had addressed a number of the concerns raised in our previous comments and was generally considered to be moving in the right direction and more aligned with the previously approved scheme which relied on a 'stepped' change in

levels to preserve the character of the courtyard.

The architect has provided the following justification:-

- *The revised development is predominantly two-and- half storey in height with the transition from the courtyard to the upper level which is accessed via steps*
- *All this is in line with the design advice previously produced by Solstice Design and materials have been chosen with a combination of local limestone with occasional use of red brick. Roofs are a mix of pantiles and Welsh slate.*
- *Development now occurs in short rows with variation in roof height. Conservation rooflights are included to the courtyard with dormer windows to the rear. There is now no single theme nor repetition of similar house types.*
- *The disposition of buildings to the rear has been re-considered so that the buildings to the upper ground level do not overlook the entrance to the completed units ( i.e., Dane bank Flat 9).*

The changes to the detailing and materials are welcomed.

Given the sensitivity of the site it is imperative that the detailed design and materials of construction respect the local vernacular and deliver a high-quality courtyard development which will enhance the conservation area. To avoid any confusion at a later date, it would be beneficial to agree the general palette of materials at this stage.

The revised scheme proposes the following materials:-

#### West elevation - First plot to rear of White Swan

Magnesian limestone to front / red pantile roof – see comments below

Magnesian limestone – acceptable but sample of stone and lime pointing to be conditioned

Stone kneelers and coping – acceptable

Stone heads and cills – acceptable – sample of stone required

Stone stringcourse – details required

Cast aluminium rainwater goods on rise and fall brackets – acceptable

Conservation Rooflights – acceptable – details required

Painted timber flush casement windows set back in 100mm reveal - acceptable 1:20 details to be conditioned

Timber boarded doors – acceptable details to be conditioned

Ridge tiles – no details

The use of magnesian limestone on this plot is welcomed but it is not clear whether the return gable would be in stone. Given the visibility of this plot and relationship with the White Swan and Dane Bank House it would be preferable if the gable end was constructed in stone. Having considered the proposed mix of roof materials, it is considered that the use of slate throughout the development is the preferred option rather than a mix of slate and pantile.

#### West elevation - remainder of block

Front elevation - Brick with projecting stone gables – comments below  
Slate roof – acceptable – sample required  
Stone kneelers and coping – acceptable – details required  
Stone heads and cills – acceptable – sample of stone required  
Stone stringcourse – details required  
Cast aluminium rainwater goods on rise and fall brackets – acceptable  
Conservation Rooflights – acceptable – details required  
Painted timber flush casement windows set back in 100mm reveal - acceptable details to be conditioned  
Full height door opening to gable with fully glazed screen – details required by condition  
Timber boarded doors – acceptable details to be conditioned  
Ridge tiles – no details

I had some reservations about the mix of stone (to gables) and brick facades but if it is well detailed it could add some visual interest and provide a common theme/ detail across the site.

#### Rear elevation

Red brick - acceptable – sample and sample panel required  
Rear gable verge details – details required (is it proposed to use a brick dentil course or traditional pointed verge detail)  
Slate roof – acceptable – sample of slate required  
Stone kneelers and coping – acceptable – details required  
Stone heads and cills – acceptable – sample of stone required  
Stone stringcourse – details required  
Cast aluminium rainwater goods on rise and fall brackets – acceptable  
Conservation Rooflights – acceptable – details required  
Painted timber flush casement windows set back in 100mm reveal - acceptable 1:20 details to be conditioned  
Full height door opening to gable with fully glazed screen – details required by condition  
Timber boarded doors – acceptable details to be conditioned  
Ridge tiles – no details

#### Plot 7, 8, 9 16, 17, 18

The materials are the same as above and will be covered by conditions.

The elevated positioning of these plots makes them very dominant, but the revised scheme is not dissimilar to the approved layout. The blank elevation to unit 7 is poorly detailed despite being screened by adjacent properties and it may be worth revisiting this element of the design to see if it can be improved.

The proposed stepped access to the upper level and introduction of a fully glazed balustrade is a more acceptable design solution.

## Heritage Impacts

In heritage terms the main issue for consideration is the impact of the proposed development on the character and appearance of the Conservation Area and setting of the designated and non-designated assets in accordance with the policies contained in the Bolsover District Local Plan and the NPPF as outlined above.

The applicant concludes that the revised scheme has addressed the heritage concerns as outlined below:-

*In conclusion, we feel that the character of our revised scheme now accords with the principals of the previously approved development and the reduction in ridge heights ensures that the scheme has little, if any, impacts from views from the Castle. The ridge heights are shown on the elevations are subservient to those of the White swan and the Supermarket building to the North-East.*

*Given the above we see no reason that a new Heritage Statement would be necessary given the changes made to reflect those previously approved.*

Whilst I am of the opinion that the revised scheme does address many of the concerns raised it is considered that there will be a degree of harm caused to the character and appearance and setting of the wider (albeit less than substantial at the low end of the scale). In accordance with the requirements set out in the NPPF (para 208) it must be demonstrated that the level of harm will be outweighed by the public benefits of the scheme.

*Later comments:* We have agreed the general detailing and materials including the use of slate and stone to end gable.

I am ok with the revised plans, and I understand that a revised Heritage Impact Statement is being prepared to satisfy the DCC archaeologist.

### Suggested conditions

- Sample of brick and stone
  - Sample of slate / ridge tiles
  - Sample panel of lime pointing to be agreed.
  - Details of stone stringcourse
  - Windows to be set back in 100mm reveal.
  - 1:20 details of windows and doors
  - Details of glass balustrade and screen to full height openings
  - Details of conservation rooflights
  - Details of cast aluminium rainwater goods / rise and fall brackets.
  - Removal of limited pd rights
  - Hard and soft landscaping
  - Details of steps
- **Leisure Officer**  
Open Space

Policy ITCR5 of the Local Plan for Bolsover (March 2020) sets out standards to improve green space and play provision in the district.

Applying the policy in the standard below, a proposal for 25 dwellings would require the provision of 0.10 ha of Formal Green Space and 0.06 ha of Semi natural Green Space.

Formal Green Space could be either amenity green space, informal recreation grounds, or equipped play areas, or a combination, bearing in mind that all residents should be within 400 metres of an equipped play area.

As noted above, Policy ITCR5 sets out new Green Space Quantity Standards. Any residential development of 25 or more dwellings will be required to make provision for an equipped play area and new or enlarged green space either on site or within 400 metres walking distance in accordance with the following minimum standards:

- a) 1.86 ha. of Formal Green Space (Amenity green space, Recreation Grounds, and Equipped Play Areas) per 1,000 population
- b) 1.2 ha. of Semi-natural green space per 1,000 population
- c) In settlements where the current provision for either formal or semi natural green space exceeds minimum standards a reduction will be made in the relevant requirement to reflect the percentage of the development site that is within 400 metres walking distance from the edge of existing publicly accessible formal and/or semi-natural green space of at least 0.5 hectares in size.

In addition new residential developments of more than 10 units will be expected to make reasonable financial contributions, either for new green spaces, playing pitches or to improve green spaces or playing pitches falling within the following walking distances:

- Spaces of a minimum size of 10 ha within 7.5 km
- Spaces of a minimum size of 4 ha within 2 km
- Spaces of a minimum size of 2 ha within 800 m
- Spaces of a minimum size of 0.5 ha or equipped play areas within 400m

The Council will prioritise contributions to achieve minimum quality standards of 60% for green spaces and standard for playing pitches.

In line with Policy ICTR5 and using the current policy formula the commuted sum would be £19,152) (18 dwellings x £1,064 per dwelling). This amount is based on 2023 prices and should be index linked to the RPI in terms of timing of payment.

The commuted sum would be invested in the creation, enhancement and / or improvement of open green spaces or playing pitches as outlined in Policy ICTR5.

#### Built & Outdoor Sports Facilities

Under Policy ICTR7: Playing Pitches: When considering development proposals the Council will use the Sport England Playing Pitch Calculator and the Playing Pitch Strategy and Assessment to consider whether new playing pitch provision or improvements to existing pitches will be needed.

Policy ICTR5 also refers to Quality Improvements to Playing Pitches: new residential development of more than 10 dwellings will be expected to make financial contributions to the improvement of playing pitches and / or their ancillary facilities.

As the proposed development is not of sufficient scale to require any dedicated on-site built / outdoor sports facilities, it is normally recommended that a suitable commuted sum is negotiated in lieu of any formal on-site requirement. However, as the contribution requested under ICTR5 also includes 'playing pitches', a separate / additional contribution is not being sought in this case.

- **Derbyshire Wildlife Trust**

We previously provided comments on this application on 16th October 2023, requesting that swift bricks are used instead of sparrow terraces and that the box locations were amended.

We note that the most recent Elevations Plan (Rev. A) was updated to swap the bat box to the eastern elevation and the terrace to the northern elevation, however it has not swapped out the terrace for swift bricks. The most recent version of the Hard and Soft Landscaping Plan (Rev. D) also still refers to a sparrow terrace, despite our recommendations to swap this for swift bricks.

We would also refer to the comments provided by Derbyshire Swift Conservation Trust and echo the advice to install bricks in accordance with the British Standard BS 42021:2022 at a ratio of 1:1 with dwellings. The new-build apartments provide an ideal opportunity to incorporate a meaningful number of swift bricks in a suitable building.

We advise that the bat and bird box details should be agreed via submission of a revised Elevation Plan, to include a greater number of integral swift bricks, in groups at eaves level on suitable elevations (avoiding south). Once the bat and bird box details have been agreed, they can be secured via a compliance condition with the relevant plans. Alternatively, a condition could be attached for a Bat and Bird Box Plan, in line with BS 42021:2022, but details would have to be agreed prior to any works above foundation level to ensure the boxes are incorporated.

Conditions recommended relating to nesting birds and lighting.

- **Historic England**

On the basis of this information, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

- **Integrated Care Board (NHS)**

I can confirm that this application falls under our threshold for a S106 request.

- **Environmental Health**

I can confirm that whilst I have no objection to the proposals in principle, given the location of the proposed development and the previous land uses, conditions are recommended in relation to measures to minimise dust during construction,

construction working hours, a scheme of sound insulation, a contamination assessment and any remediation works undertaken.

- **Yorkshire Water**

The developer is proposing to discharge surface water to public sewer however, sustainable development requires appropriate surface water disposal. Yorkshire Water promote the surface water disposal hierarchy and the developer must provide evidence to demonstrate that surface water disposal via infiltration or watercourse are not reasonably practical before considering disposal to public sewer.

As a last resort, and upon receipt of satisfactory evidence to confirm the reasons for rejection of other methods of surface water disposal, curtilage surface water may discharge to public sewer. Surface water discharges to the public sewer must have a minimum of 30% reduction based on the existing peak discharge rate during a 1 in 1 year storm event. The developer will be required to provide evidence of existing positive drainage to a public sewer from the site to the satisfaction of Yorkshire Water and the Local Planning Authority by means of physical investigation. On-site attenuation, taking into account climate change, will be required before any discharge to the public sewer network is permitted.

A condition is requested to that effect.

- **DCC Archaeology**

I have reviewed the resubmitted WSI and confirm that it is fit for purpose and can be implemented

- **Old Bolsover Town Council**

No response received.

- **BDC Engineers**

My comments regarding the above application are as follows :

1. Subject to acceptance of the SuDS design by DCC (LLFA), we must ensure the developer submits an Operation and Maintenance Plan (in accordance with section 32 of the SuDS Manual) which provides details of the arrangements for the lifetime management and maintenance of the SuDS features together with contact details. ( a copy to be kept by Engineering Services )
2. The sewer records show a public sewer within the area of the proposed work (plan enclosed). The applicant should also be made aware of the possibility of unmapped public sewers which are not shown on the records but may cross the site of the proposed works. These could be shared pipes which were previously classed as private sewers and were transferred to the ownership of the Water Authorities in October 2011. If any part of the proposed works involves connection to / diversion of / building over / building near to any public sewer the applicant will need to contact Yorkshire Water in order to determine their responsibilities under the relevant legislation.
3. All proposals regarding drainage will need to comply with Part H of the Building Regulations 2010.
4. It is essential that any work carried out does not detrimentally alter the structure or surface of the ground and increase or alter the natural flow of water to cause flooding

to neighbouring properties. The developer must also ensure any temporary drainage arrangements during construction gives due consideration to the prevention of surface water runoff onto the public highway and neighbouring properties.

- **Ramblers Association**

We would reiterate that we have no objection or comment to offer in relation to the proposal as presented.

- **Peak and Northern Footpath Association**

No response received.

- **Lead Local Flood Authority**

I checked through the public folder but found n reports relating to the flood risks and drainage strategy, although this development is considered as a "Major Development".

May you please ask the applicant to provide the FRA and Drainage Strategy for the LLFA to review and response?

- **Derbyshire Fire and Rescue**

No objections subject to the following:

- Access for emergency service vehicles, both during the demolition and construction phases of the proposal, should be provided in accordance with Approved Document B (Vols 1 and 2) Section B5.
- Site details should be provided to Derbyshire Fire and Rescue Service with contact details and expected timeframes for the build.
- A full Building Regulations Consultation.

- **Severn Trent Water**

No response received.

*All consultation responses are available to view in full on the Council's website.*

## **PUBLICITY**

The application has been publicised by way of neighbour notification, site notice and a press notice. One representation has been received from Derbyshire Swift Conservation Project and is summarised below:

The submission shows a sparrow terrace on the southern elevation but best practice is to use integrated nest bricks as they become a permanent feature of the building, require zero maintenance, are aesthetically integrated with the design of the building, are less vulnerable to vandalism and have better thermal regulation with future climate change in mind. The latter point also means such bricks can be safely installed on all aspects of new developments. Additionally, such bricks are considered a universal nest brick for urban bird species, including red-listed species such as Common Swift, House Sparrow, House Martin, and Starling.

The number of integral nest boxes on new residential developments shall at least equal the

number of dwellings. A condition is recommended to secure the above.

*All representations are available to view in full on the Council's website.*

## **POLICY**

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

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

- SS1 – Sustainable Development
- SS3 – Spatial Strategy and Distribution of Development
- LC3 – Type and Mix of Housing
- WC5 - Town and Local Centres
- SC1 – Development within the Development Envelope
- SC2 – Sustainable Design and Construction
- SC3 – High Quality Development
- SC7 – Flood Risk
- SC9 – Biodiversity and Geodiversity
- SC10 – Trees, Woodland and Hedgerows
- SC11 – Environmental Quality (Amenity)
- SC14 – Contaminated and Unstable Land
- SC16 – Development Within or Impacting upon Conservation Areas
- SC17 – Development affecting Listed Buildings and their Settings
- SC19 – Bolsover Area of Archaeological Interest
- SC21 – Non Designated Local Heritage Assets
- ITCR10 - Supporting Sustainable Transport Patterns
- ITCR11 – Parking Provision

### National Planning Policy Framework (“the NPPF”)

The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied. The overarching aims of the NPPF is therefore a material consideration in the determination of this application and have been taken into account.

### Supplementary Planning Documents and other Considerations

*Successful Places: A Guide to Sustainable Housing Layout and Design, Adopted 2013:*

The purpose of the Successful Places guide is to promote and achieve high quality residential development within the District by providing practical advice to all those involved in the design, planning and development of housing schemes. The guide is applicable to all new proposals for residential development, including mixed-use schemes that include an element of housing.

### *Local Parking Standards:*

This document relates to Policy ITCR11 of the Local Plan by advising how the parking standards contained in appendix 8.2 of the local plan should be designed and implemented with development proposals. This SPD does not revise the standards contained in the Local Plan but does provide suggested new standards for parking matters not set out in the Local Plan, such as cycle parking. The design supersedes the parking design section included within the existing Successful Places SPD (2013).

### *Biodiversity Net Gain Design Note:*

In light of the requirement for mandatory 10% biodiversity net gain, the Council has prepared a planning advice note to provide advice on the background to the introduction of mandatory 10% Biodiversity Net Gain, how this statutory provision relates to policy SC9: Biodiversity and Geodiversity in the Local Plan for Bolsover District, and how we will expect those preparing applications to approach this new legal requirement.

### *Planning (Listed Buildings and Conservation Areas) Act 1990:*

Section 72 requires that “Special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.”

S66(1) requires that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard is had to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses.

### *Bolsover Conservation Area Appraisal 2021.*

## **ASSESSMENT**

### **Key issues**

It is considered that the key issues in the determination of this application are:

- the principle of the development;
- design and heritage;
- archaeology;
- residential amenity;
- the impact of the development on the local road network;
- biodiversity;
- contamination;
- drainage; and,
- viability.

These issues are addressed in turn in the following sections of this report

### **Principle**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

To achieve sustainable development, Policy SS3 of the Local Plan sets out a settlement hierarchy which seeks to distribute development firstly to the district's larger and more sustainable settlements. Bolsover is listed under Policy SS3 as a small town and sits at the top of settlement hierarchy. Therefore, it is considered that the urban form of development proposed (residential) complies with Policy SS3.

The site is located within the development envelope of Bolsover where new housing development is supported in accordance with Policy SC1 of the Local plan, subject to meeting design and compatibility criteria, and subject to accordance with other relevant policies of the Local Plan. In addition, Policy WC5 of the Local Plan states that support will be given to proposals, which maintain or enhance the vitality and viability of town centres such as Bolsover. While this policy could be viewed as being directed towards retail and leisure development, the proposed residential development would bring additional footfall to Bolsover town centre when occupied, which is likely to help boost the local economy through increased use of town centre offerings.

Therefore, the principle of residential development is acceptable subject to the acceptability of the other matters discussed in this report.

## **Design and Heritage**

Local Plan Policy SC16 relates to development within or impacting on Conservation Areas and states that development proposals within or impacting upon Conservation Areas will be permitted where they preserve or enhance the character and appearance of the area and its setting. Applications will be considered in relation to how well the design and location of the proposal has taken account of a) The development characteristics and context of the conservation area, in terms of important buildings and important open spaces, b) Landscapes, walls, trees and views into or out of the area, and c) The form, scale, size and massing of nearby buildings, together with materials of construction.

Local Plan Policy SC3 (a) states that development will be required to achieve high quality of design in terms of place making, buildings and landscaping, create good quality, attractive, durable, and connected places through well designed locally distinctive development that will integrate into its setting.

NPPF paragraph 215 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Paragraph 135 of the NPPF states that planning decisions should ensure developments function well and add to the quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping and which are sympathetic to local character and history.

As set out above, the site falls within the Bolsover Conservation Area and within the vicinity of Bolsover Castle. The White Swan public house is also a prominent undesignated heritage asset within the street, next to Dane Bank House. There are also several listed buildings along with many non-designated heritage assets in the town centre with a close-knit pattern of

development and domestic scale. Therefore, heritage and design needs to be carefully considered as part of the assessment.

The original scheme submitted in August 2023 was reviewed by the Conservation Officer and Urban Design Officer and was not supported. It was considered that the character of the scheme had substantially changed from the scheme approved through an earlier permission (17/00377/REM). The strengths of the previously approved scheme were that the courtyard was generally retained at the same level and was wider, the first building retained a subservience in ridgeline to the main White Swan building, and most of the ridgeline was two storeys with no dormers and occasional step change in ridgeline. A centralised gable frontage portion and gabled fronted end portion allowed for step changes in height and was used to transition up to the buildings at the rear of a higher level.

The scheme submitted in August 2023 proposed buildings that had roofs with regular stepping, which would follow the sloping topography and consistency in gables, dormers, doors, and ginnels, which altogether gave a more suburban feel to the scheme. The scheme at that time had very little resemblance to the architecture of the public house and was less subservient than the previous scheme. The consistency and repetition were considered to be out of character with the mix of styles generally found in the town centre and did not reflect the industrial/workshop character. Overall, neither the Conservation Officer nor the Urban Design Officer supported the scheme in design terms.

Following the comments made by the Conservation Officer and Urban Design Officer, the applicant worked proactively to amend the scheme, and a revised scheme was submitted in late 2023. The revised scheme submitted in design terms, is predominantly two and half storey in height with the transition from the courtyard to the upper level, which would be accessed via steps. The development now occurs in short rows with variation in the roof height, which is similar to the previously approved scheme. Conservation rooflights are included in the courtyard, with dormer windows to the rear, and the deposition of buildings to the rear has been reconsidered so that the buildings to the upper ground level do not overlook the entrance to the completed units: i.e., Dane Bank Flat 9. There does not appear to be any single theme nor repetition of similar house types, and the ridge heights have been reduced.

The Conservation Officer and Urban Design Officer have reviewed the revised scheme and they have noted that the revisions have addressed many of the concerns raised in respect of the initial scheme submitted. It was considered that the revised scheme now aligns much more closely with what was approved previously as part of the earlier reserved matters scheme and could be supported in principle. The Conservation Officer noted that given the sensitivity of the site it is imperative that the materials proposed respect the local vernacular and deliver a high-quality courtyard development which will enhance the Conservation Area. The applicant put forward a detailed breakdown of what materials will be used for each elevation on the revised plans submitted, and for the most these have been accepted by the Conservation Officer (in principle). However, conditions would still be needed for the following in order to agree the use of materials in full:

- Sample of brick and stone
- Sample of slate / ridge tiles
- Sample panel of lime pointing to be agreed.
- Details of stone stringcourse

- Windows to be set back in 100mm reveal.
- 1:20 details of windows and doors
- Details of glass balustrade and screen to full height openings
- Details of conservation rooflights
- Details of cast aluminium rainwater goods / rise and fall brackets.
- Details of steps

The Conservation Officer has also requested that a condition is attached, which removes Permitted Development Rights in order to preserve the appearance of the Conservation Area post development, which is considered to be both reasonable and necessary. Given that flats do not benefit from permitted development rights applicable to 'dwellinghouses', it is only considered necessary to remove rights around boundary treatments and renewable energy, that could otherwise result in uncontrolled means of enclosure and additions around the buildings such as solar panels, that may be acceptable but only in a controlled manner. A condition for the submission of a hard and soft landscaping scheme was also requested by the Conservation Officer. Details have now been provided by the applicant showing Marshall's Tegular paving with a stretcher bond across the whole courtyard in accordance with the Urban Design Officer's advice. This is considered acceptable.

Overall, the Conservation Officer and Urban Design Officer now support the revised scheme, as this now resembles the scheme that was previously approved on the site under reserved matters application reference 17/00377/REM. Notwithstanding the support given to the revised scheme, the Conservation Officer does conclude that the development would have a degree of harm to the character and appearance of the Conservation Area, which would amount to 'less than substantial harm' at the low end of the scale. Therefore, in accordance with the NPPF at paragraph 215 the public benefits of the scheme need to be weighed up against the harm.

The public benefits include:

1. Bringing the site back into a viable use that would provide additional housing for people to live. Housing provision is high on the Government agenda, and the provision for additional housing on a brownfield site would be a strong public benefit.
2. The development would bring additional footfall to the town centre of Bolsover that would provide additional expenditure to local shops and businesses, which is also a public benefit.

It is considered that the public benefits set out above would outweigh the low level of less than substantial harm identified by the Conservation Officer. Therefore, it is considered that the development would comply with Local Plan Policies SC3, SC16 and SC17, and sections 12 & 16 of the NPPF.

## **Archaeology**

The site is within the Bolsover Area of Archaeological Interest. Local Plan Policy SC19 requires application within this area that involve ground disturbance to be accompanied by the results of a suitable archaeological assessment appropriate to the scale and type of development. It sets out that proposals will be supported where the significance of

archaeological assets is sustained and enhanced. Where harms to archaeological assets are considered to be outweighed by development benefits, provision should be made for their excavation and recording before development takes place.

The NPPF at paragraph 207 states that in determining applications, LPAs should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation

A Written Scheme of Investigation has been submitted by the applicant and sets out a scheme of archaeological mitigation by watching brief during the planned development. The Derbyshire County Council Archaeologist is satisfied with the information, subject to a condition ensuring implementation is in accordance with it.

### **Residential Amenity**

Local Plan Policy SC3(n) sets out a requirement to achieve a good standard of amenity for the occupants of existing neighbouring properties as well as the future occupants of new development, including levels of privacy and light, position and avoiding overbearing relationships and the provision of adequate amenity space.

Local Plan Policy SC11 states that development likely to cause, or experience, a loss of residential amenity because of light, noise, dust, odour or vibration, or a loss of privacy must be supported by a relevant assessment. If necessary, appropriate mitigation must be put in place. Applicants will need to demonstrate that a significant loss of amenity would not occur because of the development or throughout its construction and operation.

The NPPF paragraph 198 states that planning policies and decisions should mitigate and reduce to a minimum potential adverse impact resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life. NPPF Paragraph 135(f) states that development should create places that have a high standard of amenity for existing and future users.

The Successful Places SPD also sets out minimum standards for separation distances and garden areas in the interests of residential amenity.

The proposed layout of the properties has been considered relative to one another and surrounding uses. As with the previously approved reserved matters application for the site (ref: 17/00377/REM), which considered a layout for 10 dwellings, the garden sizes and front to front separation distances within the courtyard are lower than would typically be expected. However, the site is seeking to achieve a particular design approach, which is a 'mews type appearance', preserving the historic building pattern and with a communal garden area. Given these considerations and town centre location, there is sufficient reason to depart from more

typical separation and garden size standards used for assessing more conventional housing layouts. It is common for development in locations such as town and city centres to demonstrate lower levels of separation and smaller garden sizes because of the density of the environment. In this case, it is considered that there would not be any adverse effects on neighbouring properties in terms of residential amenity. In terms of overbearing, overshadowing or overlooking between the new properties, the north eastern building is close to the side elevation of the southern building, however the design is such that windows are limited to avoid significant impact and the level change helps with this.

It is noted that there are non-residential uses in the vicinity of the site such as retail, a public house, industrial and offices, as would be expected in a town centre location. Residential uses around the site already exist and it is considered that further residential properties would not be subjected to unreasonable noise or other amenity impacts from existing surrounding uses or restrict their ongoing operation.

To ensure that the construction phase of development does not have any adverse impacts in terms of noise, vibration, and harm from additional construction traffic during the build phase, a suitable worded planning condition would be attached to ensure that a Construction Management Plan was submitted and agreed.

### **The Impact of the Development on the Local Road Network**

Local Plan Policy ITCR10 states that development proposals which are likely to have significant amounts of movements will need to be supported by a Transport Statement or Transport Assessment in order to understand their impact on existing transport networks. Policy ITCR11 and Appendix 8.2 of the Local Plan sets out parking standards for various types of development. For dwelling, the expectation is generally two spaces for 2-3 bed dwellings and 3 spaces for 3+ bed dwellings, subject to exceptions where the context allows / requires. An exception must be justified and not lead to negative impacts on health and safety or unacceptably impact upon amenity.

In this circumstance, the site is a town centre location that is considered to be sustainable. There are a wide array of day to day amenities and access to public transport within walking distance. While there would be space for some parking within the courtyard, any significant amount of spaces would visually dominate streetscene and detract from the design to maintain a burgage style plot behind a main street. Also, the flats to the west side of the courtyard have been constructed without integral garages and external parking, and the design relies on some continuity of space provided by the minimal courtyard finished in Marshall's Tegular paving. Some soft landscaping was proposed in front of the buildings but its removal was discussed with the Urban Design Officer to maintain a clean authentic courtyard that's quality would not be eroded by poor maintenance of vegetation. The open space also allows for access by emergency and service vehicles.

Given the above, no parking provision is considered acceptable in this instance and this should not be considered a departure from the relevant Local Plan policies.

## **Biodiversity**

This application was received before the mandatory 10% biodiversity net gain came into force and therefore is exempt from that provision. However, Local Plan Policy SC9 states that development proposals should seek to conserve and enhance the biodiversity and geodiversity of the district and to provide net gains where possible. Proposals for development must include adequate and proportionate information to enable a proper assessment of the implications for biodiversity and geodiversity.

Derbyshire Wildlife Trust have been consulted and consider that given the nature of the site, it is unlikely that any habitat impacts will result from the proposals. They do however recommend conditions in relation to lighting, breeding birds, and the submission of a biodiversity enhancement plan. Derbyshire Wildlife Trust do concur with the comments from Derbyshire Swift Conservation Project to use swift bricks instead of sparrow terraces as they provide an ideal opportunity to incorporate a meaningful number of swift bricks in a suitable building. It is considered that an acceptable situation can be achieved via conditions in accordance with Policy SC9.

## **Contamination**

Local Plan Policy SC14 states that development proposals will not be permitted unless it can be demonstrated that any contaminated or unstable land issues will be addressed by appropriate mitigation measures to ensure that the site is suitable for the proposed use, and which does not result in unacceptable risks which would adversely impact upon human health, and the built and natural environment.

The site is brownfield and subject to a number of historic uses. Environmental Health have been consulted and have no objections to the development in principle but given the location and previous uses, recommend conditions in relation to a land contamination assessment and the implementation of any necessary remediation, a scheme of sound insulation, a programme of measures to minimise the spread of airborne dust from the site during the demolition and construction phase, and the control over construction working hours.

With the imposition of the conditions recommended by the Environmental Health Officer, the proposal is considered to be acceptable in accordance with Policy SC14.

## **Drainage**

No detailed drainage details have been submitted with the application, although a drainage strategy prepared to support a previous application for 10 dwellinghouses on the site was submitted to demonstrate that acceptable drainage can be achieved.

Yorkshire Water has been consulted and noting that surface water is proposed to be discharged into the public sewer, state that the developer must provide evidence to demonstrate that surface water disposal via infiltration or watercourse are not reasonably practical before considering disposal to a public sewer. As a last resort, and upon receipt of satisfactory evidence to confirm the reasons for rejection of other methods of surface water disposal, curtilage surface water may discharge to public sewer. Surface water discharges to the public sewer must have a minimum of 30% reduction based on the existing peak

discharge rate during a 1 in 1 year storm event. The developer will be required to provide evidence of existing positive drainage to a public sewer from the site to the satisfaction of Yorkshire Water and the Local Planning Authority by means of physical investigation. On-site attenuation, taking into account climate change, will be required before any discharge to the public sewer network is permitted. They request a condition to secure the above. The Lead Local Flood Authority (LLFA) at Derbyshire County Council have also been consulted and requested a Flood Risk Assessment and Drainage Strategy. The site is within Flood Zone 1 which is the lowest risk of flooding, and only slightly encroached by areas at low risk of surface water flooding.

A recommendation to approve would therefore be subject to no objections from the LLFA and conditioned to require the relevant information to accord with policy SC7 of the Local Plan.

## **Viability**

Given the scale of the proposed development, a s106 contribution totalling £136,746 is expected, comprising £91,928.37 for education, £20,338 for open space and £24,480 for playing pitches.

The above amount for education was the amount Derbyshire County Council originally requested, however they updated their comments after the viability assessment had been received with an increased request of:

- £20,299.61 towards the provision of additional education facilities at Bolsover Infant and Nursery School;
- £20,299.61 towards the provision of additional education facilities at Bolsover C Of E Junior School; and,
- £61,175.40 towards the provision of additional education facilities at The Bolsover School.

However, a further response on 26 February 2025 states that “The County Council accepts the conclusion of the independent viability report i.e. that the development cannot support any S106 contributions”.

With regard to open space and playing pitches, the comments of the Leisure team dated 19 October 2023 set out a request for a commuted sum of £19,152. The two amounts stated above relate to an updated figure for open space and take account of a separate and additional requirement for a Playing Pitches contribution under policy ITCR7. The amounts stated above mirror those considered by the applicant’s viability assessment and what was reviewed for the Council independently.

The Viability Assessment submitted that suggests that a minimum of 20% profit on cost is usually required to maintain a viable development, and that the development will only return a developer profit of 18% with the inclusion of zero s106 contributions.

In order to test and verify the submitted information, the Council has had an independent review conducted. This initially run an appraisal with the full s106 contribution and found a residual land value below the benchmark land value and therefore deemed the development to be unviable. The contribution was then reduced to establish at what point, if any, it returned a viable outcome. With nil s106 contributions, the scheme still fails to meet the viability

threshold, even considering a view that the applicant's appraisal's figures are optimistic and no contingency has been built in. If the various elements were adjusted to mid-range expectations, the viability outcome would be even worse. The independent review therefore concludes that the scheme cannot viably support any s106 payments, and that these costs should be removed in order to give the scheme the best chance to be delivered.

Granting planning permission without securing the above contributions is a negative of the development. Policy II1 states that where the needs for infrastructure and other requirements arising from development is proven to exceed that which can be viably made, priority will be determined by the District Council based on the importance of the infrastructure and other requirements, to the delivery of the Local Plan. This is a consideration in the assessment of the various sustainability costs and benefits in a planning balance.

The site is a brownfield town centre site and is considered highly sustainable in planning terms relative to the district. It is considered that there is significant benefit to bringing the site back into use for residential purposes in this sustainable town centre location. The amendments to the buildings design and appearance will also result in a form of development that will make a more positive contribution to the site and its context. While it is unfortunate that contributions cannot be made in this instance, the viability position is clearly evidenced and verified and the less than substantial harm to the conservation area would be outweighed by the public benefits to be derived in this case.

It was asked at planning committee on the 16<sup>th</sup> April 2025 whether a lesser contribution could be requested, or project viability be reviewed during construction. It was explained that it had been demonstrated that the development would not return a sufficient level of profit with any contributions at this time, to make the project a viable proposition to a developer. If a contribution was sought, this would jeopardise the development and be an unreasonable request to make in this respect. It was, however, considered reasonable to require a review of project viability towards the end of the build programme to gauge an understanding of construction costs and sales values, to understand whether any super profit (above an agreed profit percentage) had been made and to require that this contributes to any deferred contributions in a s106 legal agreement.

This approach is supported in the national Planning Practice Guidance (Paragraph: 009 Reference ID: 10-009-20190509), which states:

*“Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities’ ability to seek compliance with relevant policies over the lifetime of the project.”*

Planning Practice Guidance on viability shows that profit is a reflection of risk and is subject to adjustment to take into account site specific circumstances. The guidance suggests that developer profit should fall within a range of 15% to 20% on revenue, unless firm evidence suggests otherwise (whilst this is within the context of Local Plan viability testing, the

independent viability review states that a recent viability consultation process suggested that this was a reasonable range to apply to decision making viability assessments). It is therefore suggested as reasonable that 70% of any profit made over 20% profit on revenue is paid to the Council up to whatever the indexed contribution would have been. Following discussions with the applicant, they have agreed to enter into a s106 agreement with such a mechanism which will enable the Local Planning Authority to seek compliance with relevant policies over the lifetime of the project and goes some way to addressing the concerns raised at planning committee on the 16<sup>th</sup> April 2025.

## **CONCLUSION / PLANNING BALANCE**

The site is in a sustainable town centre location where the principle of residential development is acceptable. The design of the scheme has evolved through consultation with the Conservation Officer and Urban Design Officer, such that it is now considered acceptable. The scheme is acceptable or can be made acceptable by condition in all other planning regards, except viability. In this instance, it is considered that the benefits of remediating the site and bringing it back into residential use without s106 contributions should be afforded more weight than leaving the brownfield town centre site vacant, particularly if a S106 agreement is entered into to allow for the viability situation to be reviewed prior to completion of the development requiring contributions to be made should profit be achieved that is significantly above what is currently expected.

## **RECOMMENDATION**

**Upon no objections being received from the Lead Local Flood Authority (LLFA), that delegated authority be given to the Development Management and Land Charges Manager or Principal Planners to APPROVE the development subject to the following conditions and any other conditions recommended by the LLFA and upon completion of a s106 agreement to secure a viability review mechanism at a suitable stage in the build out of the site, to enable the education, open space and playing pitch developer contributions to be made in circumstances where the development proves to be more profitable than envisaged in the viability appraisal.**

### Conditions

1. The development shall be begun before the expiration of three years from the date of this permission.
2. The development hereby approved shall be implemented in accordance with the following plans unless specifically stated otherwise in the conditions below:
  - Revised Location Plan (received 17 January 2025);
  - Site Plan and Ground Floor Plan Plots 1-6 (Drawing no. 23 946 2 Rev. B, received 17 January 2025);
  - Ground Floor Plots 7-9 and First Floor Plots 10-15 (Drawing no. 23 946 3 Rev. A, received 28 March 2025);
  - Rooms in Roof Plots 10-15 and First Floor Plots 16-18 (Drawing no. 23 946 4 Rev. A, received 28 March 2025);
  - Elevations (Drawing no. 23 946 5 Rev. C, received 28 March 2025);

- Sections (Drawing no. 23 946 6 Rev. A, received 28 March 2025);
  - Hard and Soft Landscaping (Drawing no. 23 946 7 Rev. D, received 17 January 2025).
3. Before the commencement of construction works including any demolition in connection with the development hereby approved, a programme of measures to minimise the spread of airborne dust from the site during construction and demolition periods shall be submitted to and approved in writing by the Local Planning Authority. The construction shall be undertaken in accordance with the approved scheme.
  4. Construction works on the site and deliveries to the site shall be undertaken only between the hours of 7.30am to 6pm Monday to Friday and 7.30am to 1pm on Saturday. There shall be no work undertaken on site or deliveries to the site on Sundays or public holidays.
  5. Prior to the first occupation of the dwellings hereby approved 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 scheme shall take account of the need to provide adequate ventilation, which will be by mechanical means where an open window would not achieve the following criteria. Unless otherwise agreed, the scheme shall be designed to achieve the following criteria with the ventilation operating:
    - Bedrooms 30 dB LAeq (15 Minutes) (2300 hrs – 0700 hrs)
    - Living/Bedrooms 35 dB LAeq (15 Minutes) (0700 hrs – 2300 hrs)
    - All Other Habitable Rooms 40 dB LAeq (15 Minutes) (0700 hrs – 2300 hrs)
    - All Habitable Rooms 45 dB LAmax to occur no more than 6 times per night (2300 hrs – 0700 hrs)
    - Any outdoor amenity areas 55 dB LAeq (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.

6. Development other than that required to be carried out as part of an approved scheme of remediation must not commence until:
  - a) A Phase I contaminated land assessment (desk-study) shall be undertaken and approved in writing by the local planning authority.
  - b) The contaminated land assessment shall include a desk-study with details of the history of the site use including:
    - the likely presence of potentially hazardous materials and substances,
    - their likely nature, extent and scale,
    - whether or not they originated from the site,

- a conceptual model of pollutant-receptor linkages,
- an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments,
- details of a site investigation strategy (if potential contamination is identified) to effectively characterise the site based on the relevant information discovered by the desk study and justification for the use or not of appropriate guidance. The site investigation strategy shall, where necessary, include relevant soil, ground gas, surface and groundwater sampling/monitoring as identified by the desk-study strategy

The site investigation shall be carried out by a competent person in accordance with the current U.K. requirements for sampling and analysis. A report of the site investigation shall be submitted to the local planning authority for approval.

7. Before the commencement of the development hereby approved:

Where the site investigation identifies unacceptable levels of contamination, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall have regard to relevant current guidance. The approved scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The scheme shall 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.

The developer shall give at least 14 days notice to the Local Planning Authority and Environmental Health Division prior to commencing works in connection with the remediation scheme.

8. No dwellings hereby approved shall be occupied until:

- a) The approved remediation works required by 7 above have been carried out in full in compliance with the approved methodology and best practice.
- b) If during the construction and/or demolition works associated with the development hereby approved any suspected areas of contamination are discovered, which have not previously been identified, then all works shall be suspended until the nature and extent of the contamination is assessed and a report submitted and approved in writing by the local planning authority and the local planning authority shall be notified as soon as is reasonably practicable of the discovery of any suspected areas of contamination. The suspect material shall be re-evaluated through the process described in 6b to 7 above and satisfy 8a above.

- c) Upon completion of the remediation works required by 7 and 8a above a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved remediation standard, together with the necessary waste management documentation shall be included.
9. The development hereby approved shall not be brought into use until the access facilities have been provided as shown on drawing 'Site Plan and Ground Floor Plan Plots 1-6' (Drawing no. 23 946 2 Rev. B, received 17 January 2025).
10. No dwelling in the development hereby approved shall be occupied until sheltered, secure and accessible bicycle parking has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. The storage area shall be maintained for this purpose thereafter.
11. Prior to commencement of the development hereby permitted details of a construction management plan shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:
- Parking of vehicles of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
  - Locations for loading/unloading and storage of plant, waste and construction materials; Method of preventing mud and dust being carried onto the highway;
  - Arrangements for turning vehicles;
  - Arrangements to receive abnormal loads or unusually large vehicles;
  - Highway Condition survey;
  - Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.
12. Prior to their use on the development, details of the below shall be submitted to and approved in writing by the local planning authority:
- Sample of brick and stone;
  - Sample of slate / ridge tiles;
  - Sample panel of lime pointing;
  - Details of stone stringcourse;
  - 1:20 details of windows and doors, including showing windows set back in 100mm reveal;
  - Details of glass balustrades and screen to full height openings;
  - Details of conservation rooflights;
  - Details of cast aluminium rainwater goods / rise and fall brackets;

- Hard and soft landscaping (details of steps, retaining walls / features, coping stones, balustrades, and any paving scheme, including threshold paving).

The development shall be implemented and retained in accordance with the approved details.

13. Notwithstanding the provisions of Parts 2 and 14 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking and re-enacting that Order) none of the dwellings hereby permitted shall be altered externally, including: the erection of gates, fences or walls; exterior painting; or the installation of solar panels or any other external energy equipment, unless planning permission has first been granted by the Local Planning Authority.
14. No clearance of scrub or trees should be undertaken between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before the work is commenced. If any active nests are discovered then these should be left undisturbed until the birds have fledged with an appropriate buffer surrounding the nest.
15. Prior to the installation of external lighting fixtures, a detailed lighting plan shall be submitted to and approved in writing by the local planning authority to ensure luminaires are positioned to avoid lightspill to biodiversity features, including bat and bird boxes. This should provide details of the chosen luminaires, their locations, and any mitigating features such as dimmers, PIR sensors and timers. Guidelines can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). Such approved measures will be implemented in full.
16. Notwithstanding the Sparrow Terraces shown on the approved Elevations Plan (Drawing no. 23 946 5 Rev. C), Swift Bricks shall be installed instead of the Sparrow Terraces, in accordance with the British Standard BS 42021:2022, at a ratio of 1:1 with the dwellings hereby approved.
17. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation undertaken by Archaeological Research Services Ltd (report 2024/49), received 01 July 2024.
18. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.
19. Prior to occupation of any of the dwellings hereby approved, full details of bin storage facilities, including plans of the enclosure and provisions for refuse collection, shall be submitted to and agreed in writing by the Local Planning Authority.

20. There shall be no piped discharge of surface water from the development prior to the completion of surface water drainage works, details of which will have been submitted to and approved by the Local Planning Authority. If discharge to public sewer is proposed, the information shall include, but not be exclusive to:-
- a. evidence to demonstrate that surface water disposal via infiltration or watercourse are not reasonably practical;
  - b. evidence of existing positive drainage to public sewer and the current points of connection; and
  - c. the means of restricting the discharge to public sewer to the existing rate less a minimum 30 % reduction, based on the existing peak discharge rate during a 1 in 1 year storm event, to allow for climate change.
21. Subject to acceptance of any SuDS design by Derbyshire County Council (Lead Local Flood Authority), an Operation and Maintenance Plan (in accordance with section 32 of the SuDS Manual) must be submitted to and approved in writing by the Local Planning Authority prior to occupation of any of the dwellings, which provides details of the arrangements for the lifetime management and maintenance of the SuDS features together with contact details.

### Informatives

1. The development hereby approved and any associated highway works required, is likely to impact on the operation of the highway network during its construction (and any demolition required). You are advised to contact the Highway Authorities Network Management Team at [www.derbyshire.gov.uk/transport-roads/roads-traffic/roadworks/roadworks.aspx](http://www.derbyshire.gov.uk/transport-roads/roads-traffic/roadworks/roadworks.aspx) before undertaking any work, to discuss any temporary traffic management measures required, such as footway, Public Right of Way, carriageway closures or temporary parking restrictions a minimum of eight weeks prior to any activity on site to enable Temporary Traffic Regulation Orders to be prepared and a programme of Temporary Traffic Management measures to be agreed.
2. It is expected that contractors are registered with the Considerate Constructors scheme and comply with the code of conduct in full, but particularly reference is made to “respecting the community” this says: Constructors should give utmost consideration to their impact on neighbours and the public
  - Informing, respecting and showing courtesy to those affected by the work;
  - Minimising the impact of deliveries, parking and work on the public highway;
  - Contributing to and supporting the local community and economy; and
  - Working to create a positive and enduring impression, and promoting the Code.
3. The Construction Management Plan should clearly identify how the principal contractor will engage with the local community; this should be tailored to local circumstances. Contractors should also confirm how they will manage any local

concerns and complaints and provide an agreed Service Level Agreement for responding to said issues.

4. Contractors should ensure that courtesy boards are provided, and information shared with the local community relating to the timing of operations and contact details for the site coordinator in the event of any difficulties.
5. The proposed development is situated within a Smoke Control Area. This has legal implications for the type of solid fuel appliance which may be installed in the proposed development and types of solid fuel which may be burnt in these appliances. Further information is available at <https://www.gov.uk/smoke-control-area-rules>.
6. The sewer records show a public sewer within the area of the proposed work. The applicant should also be made aware of the possibility of unmapped public sewers which are not shown on the records but may cross the site of the proposed works. These could be shared pipes which were previously classed as private sewers and were transferred to the ownership of the Water Authorities in October 2011. If any part of the proposed works involves connection to / diversion of / building over / building near to any public sewer the applicant will need to contact Yorkshire Water in order to determine their responsibilities under the relevant legislation.
7. All proposals regarding drainage will need to comply with Part H of the Building Regulations 2010.
8. It is essential that any work carried out does not detrimentally alter the structure or surface of the ground and increase or alter the natural flow of water to cause flooding to neighbouring properties. The developer must also ensure any temporary drainage arrangements during construction gives due consideration to the prevention of surface water runoff onto the public highway and neighbouring properties.
9. The developer is proposing to discharge surface water to public sewer however, sustainable development requires appropriate surface water disposal. Yorkshire Water promote the surface water disposal hierarchy and the developer must provide evidence to demonstrate that surface water disposal via infiltration or watercourse are not reasonably practical before considering disposal to public sewer.
10. The developer will be required to provide evidence of existing positive drainage to a public sewer from the site to the satisfaction of Yorkshire Water and the Local Planning Authority by means of physical investigation. On-site attenuation, taking into account climate change, will be required before any discharge to the public sewer network is permitted.
11. Derbyshire Fire and Rescue Service have no objections subject to the following:

- Access for emergency service vehicles, both during the demolition and construction phases of the proposal, should be provided in accordance with Approved Document B (Vols 1 and 2) Section B5.
- Site details should be provided to Derbyshire Fire and Rescue Service with contact details and expected timeframes for the build.
- A full Building Regulations Consultation.

12. The proposed development is situated within a Smoke Control Area. This has legal implications for the type of solid fuel appliance which may be installed in the proposed development and types of solid fuel which may be burnt in these appliances. Further information is available at <https://www.gov.uk/smoke-control-area-rules>

### **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** Old Bolsover Parish

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**APPLICATION** Outline planning application with access detail only, for mixed-use development comprising of up to 6,500 sqm of employment units, retention of existing 2,270 sqm offices, 2 retail units (total gross area up to 3,200 sqm, one being for discount food retail), and a drive-thru take-out unit including associated parking, infrastructure and access.

**LOCATION** Bolsover Business Park Woodhouse Lane Bolsover

**APPLICANT** Welbeck Estates Limited C/O Agent P&DG Pure Offices, Lake View Drive Sherwood Park, Nottingham, NG15 ODT

**APPLICATION NO.** 23/00180/OUT **FILE NO.** PP-12005600

**CASE OFFICER** Mr Chris Whitmore

**DATE RECEIVED** 4th April 2023

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## SUMMARY

This application has been referred to planning committee because it is considered that the final decision on the application is of strategic importance to the District.

The application has also been called in by Bolsover North and Shuttlewood Ward Cllr. Donna Hales. In doing so, Cllr. Hales cites the following concerns:

- Impacts on Bolsover town centre businesses as there are a number of vacant shop premises.
- The request for housing development does not fall within local plan/development envelope (SC1).
- There are concerns about the potential effects on current businesses on the existing site.
- Potential impacts on residents surrounding the area and effects on biodiversity etc SC9/10.
- The East gate entrance, which exits onto Woodhouse Lane has incredibly poor visibility on exiting the site. There would undoubtedly be increased vehicular activity which would impact on existing infrastructure/traffic congestion.
- Require detailed information about S106 contributions.

The site is allocated for employment use and is currently under-utilised, with a significant amount of floorspace left vacant due to either not being financially viable to rent out or within buildings that do not meet modern employment standards. The application, as amended, proposes up to 6500 sqm of replacement employment floorspace in a range of more modern purpose-built units, the retention of 2,270 sq. m of employment floorspace and 2 retail units (total gross area up to 3,200 sqm, one being for discount food retail). Such development maximises the employment potential of the site and proposes a mix of units, in addition to the building to be retained that will meet the needs of a wide range of businesses and will facilitate new employment and job creation. These are significant economic benefits deriving from the development.

While the development would draw trade away from Bolsover town centre, the magnitude of

impact has been demonstrated to be below 'significant adverse' in practice and there would be benefit in providing additional customer choice, in respect of grocery and bulky comparison goods shopping in the area.

The application proposes to retain the Former Colliery Headquarters building which contributes positively to the history and context of the site. The loss of the remaining Bolsover colliery buildings, which are deemed non-designated heritage assets, will result in less than substantial harm to the significance of the conservation area and associated listed buildings that would be outweighed by the public benefits from the regeneration of the site, job creation and other benefits to be derived.

The development will not result in significant harm to the character, quality, distinctiveness or sensitivity of the landscape and would deliver net gains for biodiversity and sustainable drainage improvements.

When considered in the round the sustainability costs and benefits of the proposal are considered to weigh in favour of the development and a recommendation or approval is put forward on this basis.

## **SITE & SURROUNDINGS**

The application site comprises part of Bolsover Business Park which is located on the western edge of Bolsover. The site extends to 8.5ha and includes Bolsover Colliery land and remnant buildings, including the former pithead baths, goods sheds, headquarters building and former manager's house, known as Portland House. A wide range of small to medium sized businesses operate from the site, from within the former colliery buildings and series of new buildings of varying types and designs.

To the east of the site is Woodhouse Lane, which is lined by residential dwellings on its eastern side. The A632 (Station Road) runs along the southern boundary of the site, which is the main arterial route into the centre of Bolsover Town from the west.

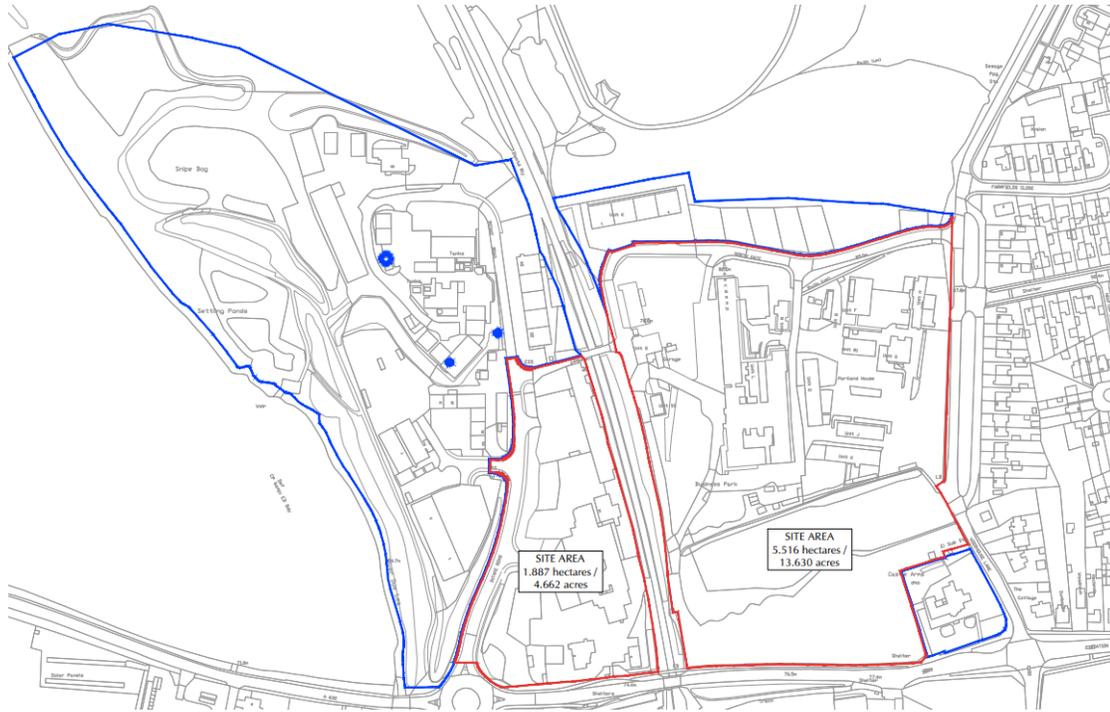
The surrounding area to the east is largely residential in nature. To the north and west is further employment development. Access to the former pithead baths and goods sheds is off Intake Road, which is serviced off the roundabout arm to the southwest. Access to the businesses within and surrounding the headquarters building and Portland House is achieved from Woodhouse Lane, with two ingress and egress points to the northeast and southeast. There is a footbridge link over the former railway line, which provides a connection across the site from east to west.

The railway cutting and a small area of land to the west is shown to be in an area at high risk of surface water flooding. The river Doe Lea is 40m to the west of the site at its closest point. The site includes two undulating fields to the south, which abut the A632 (Station Road). The land rises generally from west to east, with the land on the western side of the former railway line set at a lower level.

To the east of the fields is an Indian restaurant on land controlled by the applicant, located at the Station Road and Woodhouse Lane junction. Further south is pockets of industrial / commercial development surrounding by countryside, beyond which is Carr Vale Nature

Reserve. The boundary of Bolsover Conservation Area is also to the south of the site. The Conservation Area includes the Grade II listed model village and nearby villas built by the Bolsover Colliery Company to house its workforce.

The site is visible in views from Bolsover Castle; a Grade I Listed designated heritage asset to the east on higher ground. The full extent of the site is shown edged red below:



## PROPOSAL

This application seeks outline planning permission with access detail only, for mixed-use development comprising of up to 6,500 sqm of employment units, retention of existing 2,270 sqm offices, 2 retail units (total gross area up to 3,200 sqm, one being for discount food retail), and a drive-thru take-out unit including associated parking, infrastructure and access.

An indicative layout plan; Drawing No. 1986(03)018 Rev K was submitted with the application as originally submitted which showed the layout of the proposed development.



In May 2024 an alternative development option (Option D) was presented to the Local Planning Authority for consideration. Drawing 9586-CPMG-01-00-D-A-0001 Rev P01 below is based on this development option, which shows the retention of the headquarters building:



Through negotiations with the applicant, the housing component of the application has been omitted and the amount of new employment floorspace increased further to maximise employment opportunities within the site. This has resulted in a revised layout that includes some large employment units and no development on the undeveloped land to the southeast of the existing employment site, with the exception of surface water drainage infrastructure. The amended layout below (Site Layout reference: 9586-CPMG-01-00-D-A-0003 Rev.P2 - 06 March 2025) sets out the development for which planning permission is now sought:



In support of the application, the applicant advises that the development will provide a mix of purpose built, sustainable and energy efficient employment spaces and retail units which will generate local employment and income into Bolsover. The mix and amount of employment floorspace is enhanced further in the revised layout, which provides for the following breakdown of uses:

**ACCOMMODATION SCHEDULE**

(Areas are approximate)

Industrial

Unit 1:	500 sq.m / 5,382 sq.ft	B2-B8
Unit 2:	160 sq.m / 1,722 sq.ft	B2-B8
Unit 3:	160 sq.m / 1,722 sq.ft	B2-B8
Unit 4:	170 sq.m / 1,830 sq.ft	B2-B8
Unit 5:	170 sq.m / 1,830 sq.ft	B2-B8
Unit 6:	240 sq.m / 2,583 sq.ft	B2-B8
Unit 7:	150 sq.m / 1,615 sq.ft	B2-B8
Unit 8:	150 sq.m / 1,615 sq.ft	B2-B8
Unit 9:	200 sq.m / 2,153 sq.ft	B2-B8
Unit 10:	150 sq.m / 1,615 sq.ft	B2-B8
Unit 11:	116 sq.m / 1,249 sq.ft	B2-B8
Unit 12:	180 sq.m / 1,938 sq.ft	B2-B8
Unit 13:	900 sq.m / 9,688 sq.ft	B2-B8
Unit 14:	900 sq.m / 9,688 sq.ft	B2-B8
Unit 15:	286 sq.m / 3,078 sq.ft	B2-B8
Unit 16:	330 sq.m / 3,552 sq.ft	B2-B8
Unit 17:	223 sq.m / 2,400 sq.ft	B2-B8
Unit 18:	223 sq.m / 2,400 sq.ft	B2-B8
Unit 19:	223 sq.m / 2,400 sq.ft	B2-B8
Unit 20:	223 sq.m / 2,400 sq.ft	B2-B8
Unit 21:	223 sq.m / 2,400 sq.ft	B2-B8
Unit 22:	223 sq.m / 2,400 sq.ft	B2-B8
Unit 23:	223 sq.m / 2,400 sq.ft	B2-B8

total 6323 sq.m

Offices

(Former Colliery Headquarters)  
 Ground Floor: 1,480 sq.m / 15,930 sq.ft  
 First Floor: 790 sq.m / 8503 sq.ft

E(c)-E(g)

Retail

R1: 1,060 sq.m / 11,410 sq.ft  
 R2: 1,980 sq.m / 21,313 sq.ft

E

L1: 85 sq.m / 915 sq.ft

Although reserved matters, the indicative layout and landscape strategy propose to retain boundary vegetation where possible and to construct a series of surface water attenuation features for the management of surface water, including below ground storage and a series of basins to the south of the site as set out on the revised site layout plan.

Units 1 - 23 and the existing headquarters building to be retained will be accessed via a 7.3m wide access road off Woodhouse Lane.

The retail buildings will be accessed via two 6.5m wide roads off Intake Road. The footbridge link connecting the two sites is shown to remain.

The application is accompanied by supporting documentation / information, including:

- Indicative Layout Plan
- Surface Water Drainage Strategy Plan
- Landscape and Visual Impact Assessment

- Landscape Strategy
- Planning and Retail Impact Statement
- Design and Access Statement
- Transport Assessment and subsequent addendum
- Travel Plan
- Business Retention Strategy
- Land Contamination Assessment
- Flood Risk Assessment
- Ecological Appraisal
- Bat Survey Report
- Heritage Impact Assessment
- Statement of Community Involvement
- Phase 1 Geotechnical & Geo-environmental Site Investigation
- Retail Impact Assessment, and subsequent addendums.
- Business Retention & Economic Strategy

All of these documents and plans form part of the public file and have been examined and commented on by consultees and a retail impact expert appointed by the Local Planning Authority. They are referred to, where necessary, and pertinent in the assessment section of this report.

## **AMENDMENTS**

Alternative development proposals have been presented to officers during the consideration of the application which has culminated in the submission of an amended plan (9586-CPMG-01-00-D-A-0003 Rev.P2 (CPMG, 06 March 2025)) which omits housing development, excludes development from the fields / undeveloped land to the southeast of the existing employment site / north of the A632 (with the exception of surface water drainage infrastructure), retains the headquarters building; a non-designated heritage asset and increases the amount and mix of employment development.

## **EIA SCREENING OPINION**

The proposals that are the subject of this application are not Schedule 1 development, but they can be construed as industrial estate development projects and/or an urban development project described in criteria 10 a) and b) of Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and exceed the applicable thresholds within both criteria.

Having regard to the selection criteria in Schedule 3 of the Regulations it has been determined that the development does not constitute environmental impact assessment development.

This conclusion was reached having regard to criteria identified in Schedule 3 relating to the characteristics of the development, National Planning Practice Guidance, the sensitivity of its location and the characteristic of its potential impact.

It was not considered that the effects arising from the development upon environmental considerations would be significant for the purposes of the (Environmental Impact Assessment) Regulations 2017.

## RELEVANT HISTORY

None relevant to the application site and development proposals.

## CONSULTATIONS

### 1. Old Bolsover Town Council (19<sup>th</sup> May 2023 and 19<sup>th</sup> July 2024):

**Object** for the following reasons:

1. The development is outside the housing provision set out in the Local Plan; Policy LC1: Housing Allocations, Policy SS4: Strategic Site Allocation - Bolsover North and is contrary to Policy SS2: Scale of Development, which has already set out sufficient land to accommodate the delivery of dwellings and employment land.
2. The impact to the Town Centre while existing properties remain vacant in the town is contrary to objective set out in the Local Plan; Objective P: Town Centres To sustain and improve retail, service and leisure provision in town and local centres. This will create distinctive places and sustain and enhance the vitality and viability of the District's town centres and larger villages. Furthermore, the effectiveness of the regeneration funding allocated to the town could be compromised.
3. The impact to existing tenants on the site.
4. The impact to historical buildings on the site contrary to Policy SC21 : Non-Designated Local Heritage Assets. The Council would reinforce the comments submitted by Derbyshire County Council's archaeologist and Historic England in relation to the heritage assets on the site.

The Town Council also reinforce the concerns raised by the Economic Development Team at Bolsover District Council regarding the impact to the town centre, the connectivity to the town centre and the potential loss of employment land.

### 2. Local Highway Authority (Derbyshire County Council):

28th April 2023 – Expressed concern that the application was not accompanied by a Transport Assessment and advised that such an assessment should be submitted to meet national planning policy. Reservations were also expressed as to why six accesses to the residential element of the site off Woodhouse Lane were required.

12<sup>th</sup> May 2023 – With regard to the accesses of Intake Road the Local Highway Authority advised that no provision for cycle storage has been made despite many of the objectives in the submitted TP being linked to encouraging cycling. The same issue was raised in respect of the access off Woodhouse Lane. It was also questioned why the access road was 7.3m wide and why no vehicle tracking had been shown.

The Local Highway Authority referred the need for appropriate levels off street parking to be provided generally and sought clarification on the following matters:

- The carriageway narrowing and footway provision works to Woodhouse Lane.
- The adoption of internal roads
- The requirement to provide street trees.
- The ability of large refuse vehicles to service the site and the need for bin dwell areas.

- Measures to prevent surface water run-off from entering the public highway from any areas at a higher level.
- Methods to permanently close any redundant vehicular and pedestrian accesses
- Pedestrian crossing locations or tactile paving within the site.
- Local design guide and requires 1 in 30 for the first 10m for a priority junction and 1 in 20 for the remainder of the site. It also applies different gradient for footways and cycleways.
- Consideration of “Inclusive mobility” and “LTN 1/20” both of which address key considerations to promote active travel and ensure that persons with protected characteristics are catered for.

In conjunction with the above, detailed comments (dated May 2023) concerning the Travel Plan, which set out numerous suggestions / amendments and update comments from the Sustainable Travel Team at the Local Highway Authority were received.

27<sup>th</sup> June 2024 – Clarification sought on the following matters:-

*Travel plan*

Provision of EV charge points and cycle storage on the commercial development, and (ii) provision of walkways on the residential development.

Reiterate that a Travel Plan Monitoring fee of £1,265.00 pa x five years - total £6,325.00 is required.

*Comments on the Transport Assessment (TA) dated June 2024*

Parking bay sizes have not been annotated on any revised drawing.

Clarification required on the inspections carried out and mechanism for adopting Intake Lane and the type of development to come forward.

Unclear on the mechanism for securing traffic calming works to Woodhouse Way approved under application code ref. 16/00463/OUT, which are essential to ensuring pedestrian access to the site without walking in the carriageway. ‘Proposed Option D’ no longer shows a footway.

Comments also made on the width of and the priority crossings to be provided at the access to the business park and housing development off Woodhouse Lane. It was advised that inclusive mobility should be considered. The Local Highway Authority also questioned whether the street trees to be provided would be acceptable and if highways within the site are to be adopted.

10<sup>th</sup> January 2025:

From a highway aspect the proposals are now considered acceptable, but it should be noted that in order to implement the scheme a separate construction approval processes with the HA will need to be progressed – this scrutinises construction details and will be necessary in order for the HA to enter into any Section 184/38/278 Agreements for any works, so street

lighting/highway drainage design will need to be formally approved by the HA as part of any Section 278/38 Agreements pursued for these works, but it is likely that amendments will be required to the proposals submitted and therefore no formal HA approval is given at this stage.

The construction of the works will inevitably lead to considerable disruption in the area which will affect several existing dwellings, so a Construction Management Plan (CMP) will therefore be an essential element, to be secured by Condition. The submitted Travel Plan (TP Rev B) dated December 2024 is a live document that evolves with the site and will require continual monitoring, especially through the early years of the development, so the HA would wish to be involved in this process to ensure the aspirations of the TP and development accords with the assumptions made at this stage within the transport modelling.

Responsibility for the monitoring of the TP ultimately rests with the developer and any fee paid to Derbyshire County Council will cover reasonable costs incurred by the Authority in the processing of submitted progress reports, undertaking site visits, and attending meetings as appropriate, to ensure the TP meets its agreed targets. Whilst the revised information is generally acceptable in highway safety terms there are, a number of issues that would require further input before the proposals would be fully acceptable in terms of highway adoption but it is considered that the remaining issues may be addressed by appropriate Conditions/Informative Notes appended to the consent issued for this development and on this basis the HA recommend Section 106 content (to cover travel plan monitoring), conditions and information notes.

### 1<sup>st</sup> May 2025: Comments on the addendum to the Transport Assessment

Note that the application removes the residential element of the development and replaces it with additional employment units (increases the total employment use to 6,500 sqm as opposed to the original 5000sqm) but also removes the previously proposed 35 residential dwellings. They confirm that the Local Highway Authority has no objections, subject to conditions and financial obligations as set out in their consultation comments dated 10<sup>th</sup> January 2025.

Having reviewed the recommended conditions, it is however considered that condition 5 is no longer appropriate as none of the internal roads are to be adopted as publicly maintainable highway, therefore, the requirement for details of 'street trees' within the public highway is not relevant.

Also, condition 6 requires a highway improvement to be undertaken on Woodhouse Lane. This improvement relates to a different application and a different development and is covered by condition in the relevant consent. It is considered that the requirement for the improvement on Woodhouse Lane would not be necessary for this application to be acceptable to the LHA and therefore would not meet the relevant tests in the NPPF.

### 3. Bolsover District Council Senior Engineer – 18<sup>th</sup> April 2023:

Subject to acceptance of the SuDS design by DCC (LLFA), we must ensure the developer submits an Operation and Maintenance Plan (in accordance with section 32 of the SuDS Manual) which provides details of the arrangements for the lifetime management and maintenance of the SuDS features together with contact details. (a copy to be kept by

Engineering Services).

The sewer records do not show any public sewers within the curtilage of the site. However, the applicant should be made aware of the possibility of unmapped public sewers which are not shown on the records but may cross the site of the proposed works. These could be shared pipes which were previously classed as private sewers and were transferred to the ownership of the Water Authorities in October 2011. If any part of the proposed works involves connection to / diversion of / building over / building near to any public sewer the applicant will need to contact Yorkshire Water in order to determine their responsibilities under the relevant legislation.

All proposals regarding drainage will need to comply with Part H of the Building Regulations 2010.

It is essential that any work carried out does not detrimentally alter the structure or surface of the ground and increase or alter the natural flow of water to cause flooding to neighbouring properties. The developer must also ensure any temporary drainage arrangements during construction gives due consideration to the prevention of surface water runoff onto the public highway and neighbouring properties.

#### 4. Lead Local Flood Authority (LLFA) (Derbyshire County Council):

18<sup>th</sup> March 2025 - We are recommending an objection on the proposed development as it is not possible to provide an informed comment until such a time that the applicant has submitted further technical information, required to confirm that the principles set out in the outline drainage strategy provided by the applicant will meet relevant local and national requirements.

25<sup>th</sup> April 2025 - Derbyshire County Council as the Lead Local Flood Authority (LLFA) has reviewed the additional information submitted for this application, which was received on 24/04/2025. The LLFA has no objection subject to conditions and advisory footnotes.

#### 5. Coal Authority – 25<sup>th</sup> April 2023:

The Coal Authority considers that the content and conclusions of Phase 1 Geotechnical & Geo-environmental Site Investigation (7 March 2023) are sufficient for the purposes of the planning system in demonstrating (based on the professional opinion of Eastwood Consulting Engineers) that the application site is safe and stable for the proposed development (NPPF paras. 183 and 184). The Coal Authority has **no objection** to the proposed development.

They recommend that it would be add a footnote to contact the Coal Authority should any coal mining features are unexpectedly encountered during development.

The Coal Authority also recommends that the local planning authority consider any gas hazards that may exist and that the developer seeks the advice of a technically competent person to ensure that a proper assessment is made of the potential interaction between hydrology, the proposed drainage system and ground stability, including the implications this may have for any mine workings which may be present beneath the site.

## 6. Development Control Archaeologist - 25<sup>th</sup> April 2023:

### **Holding objection.**

In terms of below ground archaeology further archaeological works will be necessary. This office was consulted pre-application in 2015 on the southern portion of the site where we advised “the proposal area is a previously undeveloped site of just over 2ha, and given the multi-period archaeological interest in Bolsover and its environs I advise that there is potential for previously undiscovered below-ground archaeology within the site. Any planning application should therefore include the results of archaeological evaluation, to comprise geophysical survey in the first instance (detailed magnetometry) supplemented by trial trenching where indicated by the geophysics results.”

I would see therefore that though a HIA has been produced further archaeological work remain necessary, pre-determination, to determine the significance of impacts on heritage assets in greater depth. In terms of below ground archaeology this should be in the form of geophysical survey in the first instance followed by archaeological evaluation trenching as appropriate on the portion of land to the west of the Castle Arms and this work should be undertaken in accordance with an approved WSI for archaeological works. This in accordance with the provisions of para 194 of NPPF.

This application does not therefore meet the information requirement at NPPF para 194 and should not therefore be granted consent in its current form.

## 7. Environmental Health (BDC) – 24<sup>th</sup> April 2023:

No objections to the proposals in principle, subject to conditions to investigate and remediate any contamination found on site, agree a sound insulation scheme in respect of the proposed dwellings, secure dust suppression measures and control construction time and deliveries to site.

## 8. Economic Development (Bolsover District Council) – 15<sup>th</sup> May 2023:

In principle, the redevelopment of Bolsover Business Park to provide new employment units is welcomed to address the poor condition of the existing units that are past their useful economic life. The Department recognises the need for the Landlord to make investment in to the site, however, it cannot support the change of uses on this site to include for 2 retail units, a drive-thru, and the 35 dwellings also proposed for this site, as these all contribute to the reduction in overall employment land available for redevelopment.

The lack of alternative provision demonstrated within the report supports the Policy and the need to protect this employment space from development for alternative uses. The proposal will provide an additional 587m<sup>2</sup> of commercial units to what is currently on the site; however the proposed retail units would result in an overall net loss of 2,600m<sup>2</sup> of office / industrial use. This loss of employment space would be detrimental to the sustainability and growth of the local SME base and would contract economic growth for the town of Bolsover.

Advise that the retail development is neither located to minimise its impact on the town’s amenities, nor is it accessible by appropriate levels of public transport. They advise that it is

disconnected from the town, and its location will largely serve the car-user. It will not, it is considered, support the retail and service functions of the town, as it will, it is claimed, largely draw out service users and reduce the 'footfall' on the town. This footfall is considered to be important to a town centre such as Bolsover, as it supports the independent retailers and other services within the town.

The Business Growth Team advise that they cannot support a proposal which negatively impacts on the vitality of the town. It would be contrary to the business case made as part of the recent Levelling Up Fund application for investment into the town and the need to support investment in the high street to grow the town centre's offer.

#### 9. DCC Strategic Infrastructure 2<sup>nd</sup> May 2023:

- **Primary Level** - Analysis of the current and future projected number of pupils on roll, together with the impact of approved planning applications shows that the normal area primary school would have sufficient capacity to accommodate the 4 infant and 4 junior pupils arising from the proposed development.
- **Secondary Level** - Analysis of the current and future projected number of pupils on roll, together with the impact of approved planning applications shows that the normal area secondary school would not have sufficient capacity to accommodate the 7 secondary pupils arising from the proposed development. The County Council therefore requests a financial contribution of £208,074.79 towards the provision of 7 secondary places at The Bolsover School + education facilities.
- If viability issues arise, there may be some flexibility in the payment triggers.
- If the development cannot enable the necessary provision, the proposed development may not provide for a sustainable form of development.
- **Broadband** - developers should look to provide for NGA broadband infrastructure services as an integral part of the development scheme at the outset.
- **Local Authority Collected Waste** The County Council is currently reviewing its approach to assessing the impact of housing development on waste services.
- **Public Health and Adult Social Care** Our recently published All-Age Accommodation Strategy notes a modest need to develop 'care ready' type housing for rent or affordable retirement living properties; none of the proposed dwellings meet this type of need.
- **Employment and Skills** The County Council would wish to work collaboratively to support the District/Borough Councils to identify where activities or contributions are required to deliver employment and skills development where they are supported by policies in the local plan.
- **Monitoring fees** In line with the revised Community Infrastructure Levy Regulations 2010 (as amended) Regulation 122 2(a), we will seek a monitoring fee towards the monitoring and reporting of S106 contributions.

#### 10. Safeguard Planning Manager HS2 – 3<sup>rd</sup> May 2023:

It is evident that the proposed employment and residential plots are located outside of the published safeguarding area. However, please note there is a minor overlap with HS2 safeguarded interests in the area of existing/proposed vegetation in the southwest corner of the retail plot adjacent to Station Road (identified as required for highways works associated

with the high-speed railway) and also a Utilities Construction Zone area (shown shaded purple on map extract) along Intake Road.

Whilst there is no objection in principle to the application proposals it is requested that appropriately worded pre-commencement planning conditions are attached to any outline planning consent to ensure practicalities associated with respective construction programmes in this location can be managed.

#### 11. Integrated Care Board – 30<sup>th</sup> May 2023:

The development falls under their threshold for requesting a S106 contribution.

#### 12. Derbyshire Wildlife Trust:

13<sup>th</sup> June 2023 - Several buildings have been assessed to have some level of potential for roosting bats and therefore nocturnal surveys are required. All surveys for protected species should be submitted prior to determination.

Reptile surveys have been recommended in the Ecological Appraisal (Rachel Hacking Ecology, March 2023). This may record GCN in terrestrial habitats. Mitigation for these species will be dependent on the results of the reptile surveys, however there is likely to be some requirement for precautionary measures during site clearance and consideration should be given to any requirement for GCN licencing.

Advise that a greater focus should be given to grassland retention and enhancement to retain habitat for reptiles and amphibians in the southern part of the site.

Biodiversity net gain comments:

A net gain of +7.03 (52.81%) habitat units, +0.47 (6.53%) hedgerow units and +0.01 (0.22%) watercourse units is currently predicted and trading rules are satisfied.

A significant percentage of the post-development units are achieved through woodland and urban trees, however this may not be the best outcome for the species using the site i.e. herptiles. The metric may need re-running should proposals change to incorporate more open habitats.

We advise that bird boxes are in line with British Standard BS 42021:2022 for integral nest boxes, with additional bat and external boxes also provided. Advise that such enhancements can be secured via condition.

Advise that other conditions are likely to include a lighting plan, CEMP, LBEMP and control / eradication protocol for Japanese knotweed - once all protected species surveys have been undertaken and the scope of development agreed.

#### 13<sup>th</sup> January 2025:

*Bats:*

The submitted Bat Survey Report (Ramm Sanderson, October 2024) provides the results of nocturnal bat surveys for Buildings B, D, K and Ni, based on the initial building assessment undertaken in June 2023 by Rachel Hacking Ecology.

Survey work recorded 2 No. summer days roosts in Building D, each of a single common pipistrelle bat. These were both located behind fascia boards above windows on the western elevation. The report refers to demolition of Building D, however it now appears that this building will be retained and converted to residential use. The Bat Survey Report should therefore be updated to reflect this and provide appropriate mitigation details, specifically whether the roosts can be retained in situ and licensing is still required.

The report currently provides broad enhancement details. We would anticipate full enhancement details being secured via a specific species enhancement condition for the application based on the final layout, to include bat box provision in new buildings and on retained trees (along with other species features).

*Reptiles (inc. GCN):*

DWT note that the layout of the south-eastern dwellings has been somewhat revised but they are still proposed within the scheme. The existing southern hedgerow would seem like a natural boundary to the northern development area and it is disappointing that plans still propose to fragment this to create a new road to access a new row of 6No. dwellings. This will reduce the existing area of grassland and bring dwellings closer to the existing scrub and line of the watercourse, increasing the risk of human disturbance to these habitats and the wildlife that use them. The herptile survey should inform the design of the scheme, however DWT cannot see that this has yet been undertaken.

*BNG:*

Whilst DWT acknowledge that this application is not subject to mandatory 10% Biodiversity Net Gain (BNG), there is still a requirement to achieve at least some level of gain under the NPPF (2023 at time) and Bolsover Local Plan Policy SC9. We understand that landscaping will likely be agreed at the Reserved Matters stage but we would draw attention to our previous comments and add that the existing BNG assessment should be updated based on the final agreed layout at that time.

25<sup>th</sup> February 2025:

Note that the updated PEA includes the reptile survey data from May 2023.

Advise that their comments in respect of bat enhancement / mitigation remain and had not been addressed.

DWT advise to minimise the risk to herptiles during site works, a CEMP, which includes methods for site clearance should be agreed through condition.

With regard to BNG they advise that they do not currently have enough information to advise if the predicted net gains are reasonable.

Further information, in terms of how uncommon orchid species in the grassland to be retained will be managed was also requested.

## 12. Heritage Conservation Manager (BDC) – 15<sup>th</sup> June 2023:

This is a prominent site on the approach to the historic town of Bolsover with uninterrupted views of Bolsover Castle on the escarpment above.

The proposed development site comprises part of the former Bolsover Colliery and surviving buildings and part of the former Doe Lea branch of the Bolsover Colliery mineral railway.

One of the issues raised in the HIA is the potential for some of the surviving buildings to be considered of heritage interest and meet the criteria for designation as non-designated heritage assets. The DCC archaeologist is also of the view that “any buildings extant within the curtilage of the PDA that are related to mineral extraction, or the history of mineral extraction are considered heritage assets.”

Bolsover District Council has a policy for identifying non designated heritage assets within conservation areas but does not have a local list. Given that this site lies outside the boundary of the Bolsover Conservation Area the former colliery buildings have not been formally identified as part of the appraisal process. The NPPF Planning Policy Guidance provides advice on how non designated heritage assets are identified but it also recognises that “in some cases, local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications” Paragraph: 040 Reference ID: 18a-040-20190723

In this case, I am of the opinion that the following buildings on the site meet the criteria for consideration as non-designated heritage assets and should be considered as such for the purposes of the assessment of the impact of the development on heritage assets:-

- Portland House – former Managers house
- Former Headquarters/ office building
- Former pithead baths
- Former goods shed

In this respect, consideration should be given in the first instance to the retention and re-use of all or some of these heritage assets as part of the re-development of the site. The total loss of these assets would be considered to cause harm (less than substantial) and in accordance with NPPF guidance paragraph 202 this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

### *Impact on setting of Bolsover Castle / SAM/ Registered Park and garden:*

The fact that the Terrace and Viewing Platform were designed to exploit the views across the vale is of exceptional significance for Bolsover Castle. The proposed development will result in a change in the format and arrangement of buildings on the site together with associated requirements for retail signage etc it is considered that the proposal will have an impact on the wider setting of the Castle and registered park and garden, and this will amount to less than substantial harm.

### *Bolsover Conservation Area*

There is an historical association between the Model Village and the surviving historic buildings found on the application site. The proposed re-development of the site will sever that relationship and as a result is considered to cause harm to the significance and wider setting of the Model Village. The level of harm is considered to be less than substantial.

**Recommendation:-** the proposed development is considered to cause harm (less than substantial ranging) to a number of designated and non-designated heritage assets as set out above. The applicant is requested to consider the potential re-use of some the non-designated assets on the site to mitigate the level of harm caused. In accordance with NPPF guidance paragraph 202 the harm caused should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

#### 13. Historic England - 9<sup>th</sup> May 2023:

Advise that there would be some harm to the significance of the scheduled, Grade I listed Bolsover Castle as a result of changes to its setting albeit a lower end of less than substantial harm. We note the indicative site layout plan submitted with the application suggests an area of open space could be included as any proposal which would help mitigate impact. However, this could change at reserved matters should this outline application be approved.

The surviving Bolsover Colliery buildings, on part of the application site, contribute to the significance of the nearby designated assets as set out above. As such the complete demolition of these non-designated assets would cause harm to the significance of the conservation area and associated listed buildings, albeit at a lower level of less than substantial harm.

We note that the access is included for approval at this stage of the planning process and would wish to highlight that this may not provide for a heritage led approach to any reserved matters scheme should the outline application be approved.

Historic England has concerns regarding the application on heritage grounds as the proposal would result in a loss of non-designated assets that contribute to the significance of the setting of the Bolsover Conservation Area.

Should the Council consider that public benefits of the proposal outweigh the harm to the heritage assets, Historic England refer the Council to its own expert heritage advisors to consider matters for appropriate conditions in respect of the non-designated industrial heritage. They advise that there could be opportunity to consider a heritage-led masterplan at reserved matters stage.

#### 31<sup>st</sup> May 2024:

Historic England advise that they commented on the outline planning application in May 2023 and had concerns regarding the destruction of non-designated heritage assets comprising Bolsover Colliery. They welcome the retention of the former Bolsover Colliery HQ building

within the amended scheme. However, they maintain their position regarding the destruction of other non-designated assets within the site and the harm that would arise to the significance of nearby designated assets as a result of this.

#### 14. Planning Policy BDC 19<sup>th</sup> July 2023:

The application is not supported by sufficient supporting information in relation to the existing business retention strategy and would appear to put the business park at risk. No evidence is provided to demonstrate that the land or buildings are no longer suitable for employment uses. For these reasons, the application is contrary to policy WC2: General Principles for Economic Development.

Furthermore, in relation to the retail elements the impact test for the foodstore has not been undertaken properly. It is based on an out-of-date household survey and parts of the PPG checklist are missing. The impact test for the other retail unit has been omitted, and that is a reason for refusal as stated in paragraph 91 of the NPPF.

The sequential test has not been met. Despite the stated operational requirements, the applicant has not demonstrated any flexibility in respect of the requirements of the foodstore or of the other retail unit – the space for which could currently be met in the vacant floorspace that is available in Bolsover town centre.

Furthermore, the site is poorly connected to the town centre in view of the distance from the town centre and the very steep slope to access it. The proposed foodstore and other retail unit through its size and location will have a significant negative impact on the vitality and viability of Bolsover town centre and for these reasons the proposal is contrary to Policy WC 5 and the NPPF.

Based on the above summary, it is considered that the application should be refused or withdrawn to allow a more informed and appropriate strategy to be prepared, in partnership with the Council, for the investment in the business park to help securing its role as an economic driver in Bolsover District.

#### 15. Planning Policy DCC – 13<sup>th</sup> July 2023:

Detailed comments have been received from the County Council on the acceptability of the proposals having regard to the relevant provisions of the development plan and national planning policy.

Comments have been made in respect of the following areas, which have not already been assessed by other consultees:

##### *Principle*

The re-use of a large proportion of the site for non-employment uses to include two retail units, a drive-through and 35 residential units would not accord with the general allocation in the (Local plan for Bolsover District 2020) BDLP as an existing and protected employment site, particularly taking into account the fact that the local plan is up-to-date having only been adopted in 2020. The submitted Planning and Retail Statement makes reference to the fact

that the use of the site for mixed-use development, as proposed, has been promoted to the District Council through the local plan process. It can be assumed, therefore, that in allocating the site as an existing employment site, the District Council did not consider that the site was suitable for allocation as a mixed-use development.

It is considered that the retail proposals would be contrary to the provisions of national policy for town centres and retailing in the NPPF and adopted BDLP on the basis that the proposals would not satisfy the requirements of the sequential test and would be likely to have an adverse harmful impact on the vitality and viability of Bolsover town centre.

#### *Retail development*

It is considered that the applicant's sequential assessment is not robust and that the requirements of the sequential test have not been demonstrated satisfactorily as it would appear that there is a sequentially preferable alternative available site within Bolsover town centre that has the potential to accommodate the proposed foodstore, albeit with some flexibility required to its scale and format.

It is considered that the retail proposals would be likely to adversely harm the health and vitality and viability of Bolsover town centre, contrary to the provisions of national policy in the NPPF and local policies in the adopted BDLP, which seek to ensure that new retail developments do not have adverse on the vitality and viability of town centres. With regard to other town centres, there is likely to be some impact level of trade draw and impact on Clowne but it is expected that the vast majority of the impact would fall on the Tesco and Aldi stores, which are both significantly overtrading so the levels of impact would be unlikely to have any significant implications for the health and viability of Clowne town centre.

#### *Residential development*

The acceptability of housing development on the site is finely balanced as the site could provide for new housing development in a reasonably sustainable location, located in the District's most sustainable settlement and as part of a mixed\_use employment, retail and housing development on previously developed land for which there is much support in terms of national and local plan policy. On the negative side, the District Council is able to demonstrate a 10-year housing land supply so there is no justification for housing on the site in terms of land supply shortage. It may be that the balance of the assessment could be tilted in favour of housing development on the site if it included an element of affordable housing in accordance with BDLP Policy LC2. If that is the case, then the District Council is requested to seek clarification and confirmation on this issue from the application prior to the determination of the application.

#### *Employment development*

The proposed retail uses would not appear to be in the spirit of being classed as employment generating uses in the context of Policy WC2: General Principles for Economic Development of the BDLP and if that is the case then there would be a net loss of employment land on the site created by the application proposals.

16. Leisure Facilities Planning and Development Manager – 4<sup>th</sup> May 2023:

*Open Space:*

Using the current policy formula the commuted sum would be £37,240 (35 dwellings x £1064 per dwelling). This amount is based on 2023 prices and should be index linked to the RPI in terms of timing of payment.

A contribution will be sought to improve the following area of green space, which currently falls below the 60% quality standard:

Recreation Ground: Houfton Road Recreation Ground (within 800m walking distance).

*Built & Outdoor Sports Facilities:*

As the proposed development is not of sufficient scale to require any dedicated on site built / outdoor sports facilities, it is recommended that a suitable commuted sum is negotiated in lieu of any formal on site requirement.

Using the current policy formula the commuted sum would be £45,360 (35 dwellings x £1 per dwelling). This amount is based on 2021 prices and should be index linked to the RPI in terms of the timing of payment.

Such a commuted sum would be invested in improving the playing pitches and their ancillary facilities at Castle Leisure Park.

We would expect to receive a commuted sum for a period of 10 / 15 years following completion of the development for any land adopted by the district council.

*Other comments:*

There are numerous references in the submitted documentation to the former Bolsover Branch Line, many erroneously stating that this is already an active travel corridor / multi-user trail.

The former Bolsover Branch line is currently undeveloped, although it is identified as a future greenway in both the Local Plan for Bolsover District (March 2020) and as part of Derbyshire County Council's Key Cycle Network (KCN).

Redevelopment of the former Bolsover Branch Line as a multi-user trail to the north of the development site is currently not possible due to the ongoing redevelopment of former Coalite site, which has removed a section of the former railway either side of Buttermilk Lane.

Additional pedestrian links are also highlighted, most of which also don't currently exist on the ground. All of these would be beneficial and should, wherever possible, include access for cyclists and people with disabilities.

There is no reference in any of the documentation to the recently developed A632 Greenway (new tarmac surfaced cycle path alongside the A632) linking the Stockley Trail / Intake Road to Markham Vale and beyond, despite this having been developed by Derbyshire County

Council in 2021/22.

The Cycle section of Travel Plan is particularly poor as there are no references to the existing cycle routes within the immediate vicinity of the development site (A632 Greenway and Stockley Trail) due to the use of National Cycle Network data, suggesting that this section of the plan was no more than a desktop exercise.

It is recommended that, as part of the development, there should be a contribution to the development of the former Bolsover Branch Line either as a planning condition or financial contribution, particularly as the application uses the former railway corridor as a benefit / selling point. This should include (at least) the section that runs through the development site (although this is outside the red line boundary), with a link into the retail block between Station Road (A632) and R1 Proposed Retail with an onward link to Intake Road and the A632 Greenway as well as a connection to the reclaimed colliery open space to the north of the proposed development.

Ideally, the section to the south of the A632 (effectively a northerly continuation of the railway path section of the Stockley Trail) should also be developed as this would provide access for pedestrians, cyclists and mobility scooter users from the south west side of Bolsover (Carr Vale, New Bolsover and the Bainbridge Road / Valley Road estate).

#### 17. Environment Agency – 7<sup>th</sup> June 2023:

From a flood risk perspective, the development falls within flood zone 1 and therefore we have no fluvial flood risk concerns associated with the site. The Environment Agency point the District Council to their standing advice in respect of flood risk management and advise that there are no other environmental constraints associated with the site.

### **PUBLICITY**

The application has been publicised by way of a site and press notice.

166 residents and local businesses were notified about the application.

As of the 2<sup>nd</sup> May 2025 ten representations have been received by the Local Planning Authority, including representations on behalf of the Campaign to Protect Rural England (CPRE) and Chesterfield Royal Hospital.

Half (5) of the representations received object to the proposals and the other half (5) are neutral, with one expressing support in principle. The comments raise the following matters:

#### *Principle*

- Objection to a housing proposal due to its conflict with the Bolsover Local Plan.
- Concern that housing proposals will encroach on undeveloped land.

#### *Economic impact*

- Business Disruption Risk: The development could potentially disrupt existing businesses and lead to closures, impacting employment and the local economy.
- Consideration of Riverside Way Availability: The Riverside Way site, under contract with a discount supermarket operator, should be considered in economic planning decisions.
- Prioritising Existing Retail Spaces: Utilising empty retail spaces in Bolsover first could prevent adverse effects on the town centre's economy.
- Rent and Rate Concerns: Increased rent and rates may lead to business closures, affecting economic stability.
- Need for Tenant Support: Businesses require a transition period and support for relocation to minimise economic disruption.
- Comprehensive Property Analysis: Evaluating all commercial properties, including those not listed on major websites, is essential for informed economic decisions.
- Potential Impact on Town Centre: There is uncertainty around how new retail developments might economically impact the existing town centre.

### *Environmental Impact*

- Ensure construction work includes dust minimisation strategies, focusing on tool selection and damping methods.
- Preserve sensitive landscapes and maintain the countryside as a climate change buffer, aligning with NPPF guidelines.
- Propose the presence of an environmental health officer from the council to oversee job methods, particularly asbestos-related work.
- Advocate for accessible, nature-rich green spaces to address the climate emergency and enhance wellbeing.
- Develop a comprehensive landscape management plan for the business park, with emphasis on green space, tree preservation, and wildlife conservation.
- Mandate asbestos surveys and safe removal by qualified contractors if demolition is involved.
- Retain existing large trees on the site to support wildlife habitats and nesting.
- Address the destruction of major wildlife habitats due to tree-cutting activities.

### *Impact on Existing Businesses*

- Concern that the grant from Bolsover Council during the COVID pandemic would be ineffectual if businesses are not relocated within the park.
- Anxiety about the fate of businesses during the period when old premises are demolished, but new ones are not yet developed.
- Criticism directed at the applicant for not offering tenants relocation opportunities as promised.
- Suggestion to consider Riverside Way's availability in the relocation decision-making process.
- Reminder to consider businesses outside the planning application that are part of the business park.

### *Highways Impact*

- Woodhouse Lane experiences high traffic volumes and is unsuitable for heavy vehicles due to its narrowness.
- The development of the Enterprise Park is expected to exacerbate traffic issues on Woodhouse Lane.
- The deteriorating condition of Woodhouse Lane, worsened by increased traffic, requires urgent repairs.
- Frequent accidents at the junction between Woodhouse Lane and Station Road highlight the need for safety improvements.
- Concerns are raised about increased traffic and noise disturbing the area’s peaceful nature.
- Limited visibility for larger vehicles exiting the park onto Woodhouse Lane poses a safety risk.
- Planned changes to the main access road could negatively impact customer access.

### *Accessibility*

- Ensure bus stops are easily accessible for improved transportation options.
- Include good, wide, user-friendly walkways for safe and easy pedestrian movement.
- Provide information about changes to the north gate entrance to understand impacts on accessibility.
- Advocate for accessible green spaces to promote inclusivity and tackle the climate emergency.

### *Other Matters*

- Objection to the loss of green space due to the housing proposal.
- Concerns over inaccurate claims about property vacancy rates in the business park.
- Request for clear development timescales to reduce local impact.
- Concerns about potential road use issues and nuisance to residents during planning permissions.
- Safety concern regarding proposed landscaping on the horse field, which could distract drivers.
- Emphasis on the importance of services to local people and negative impacts of development.
- Request for site owners to hire a road sweeper for cleanliness on Woodhouse Lane during the project.
- Support for development that considers local needs, especially in open countryside or greenfield sites.

In commenting on the application, Chesterfield Royal Hospital advise that initial modelling suggests that the impact of this development is up to £47K.

## **POLICY**

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

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

- SS1: Sustainable Development
- SS2: Scale of Development

- SS3: Spatial Strategy and Distribution of Development
- LC2: Affordable Housing through Market Housing
- LC3: Type and Mix of Housing
- WC2: General Principles for Economic Development
- WC5: Retail, Town Centre and Local Centre Development
- WC9: Hot Food Takeaways
- SC1: Development within the Development Envelope
- SC2: Sustainable Design and Construction
- SC3: High Quality Development
- SC7: Flood Risk
- SC8: Landscape Character
- SC9: Biodiversity and Geodiversity
- SC10: Trees, Woodland and Hedgerows
- SC16: Development within or Impacting Upon Conservation Areas
- SC21: Non-designated Local Heritage Assets
- ITCR2: The Multi-User Trails Network
- ITCR4: Local Shops and Community Facilities
- ITCR5: Green Space and Play Provision
- ITCR 9: Local Transport Improvement Schemes
- ITCR10: Supporting Sustainable Transport Patterns
- ITCR11: Parking Provision
- II1: Plan Delivery and the Role of Developer Contributions
- II2: Employment and Skills

#### 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 – 14: - Achieving sustainable development.
- Paragraphs 48 - 51: Determining applications.
- Paragraphs 56 - 59: Planning conditions.
- Paragraphs 96 - 108: Promoting healthy and safe communities.
- Paragraphs 109 - 118: Promoting sustainable transport.
- Paragraphs 124 - 128: Making effective use of land.
- Paragraphs 131 – 141: Achieving well-designed places.
- Paragraph 161, 163, 164, and 166: Meeting the challenge of climate change.
- Paragraph 170 - 182: Planning and Flood Risk.
- Paragraphs 187, 193 and 195: Conserving and enhancing the natural environment.
- Paragraphs 196 - 201: Ground conditions and pollution.
- Paragraphs 207 - 221: Conserving and enhancing the historic environment.

#### Supplementary Planning Documents and Advice Notes:

##### *Local Parking Standards Supplementary Planning Document (January 2024):*

This document relates to Policy ITCR11 of the Local Plan by advising how the parking standards contained in appendix 8.2 of the local plan should be designed and implemented

with development proposals. This SPD does not revise the standards contained in the Local Plan but does provide suggested new standards for parking matters not set out in the Local Plan, such as cycle parking. The design supersedes the parking design section included within the existing Successful Places SPD (2013).

*Biodiversity Net Gain Design Note:*

In light of the requirement for mandatory 10% biodiversity net gain, the Council has prepared a planning advice note to provide advice on the background to the introduction of mandatory 10% Biodiversity Net Gain, how this statutory provision relates to policy SC9: Biodiversity and Geodiversity in the Local Plan for Bolsover District, and how we will expect those preparing applications to approach this new legal requirement.

## **ASSESSMENT**

1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for the purposes of the Act is the Local Plan for Bolsover District (2020). The National Planning Policy Framework (NPPF) (2024) is a material consideration in respect of this application.
2. Paragraph 11 d) of the National Planning Policy Framework requires that where there are no relevant policies, or if the most relevant Local Plan policies for determining a planning application are 'out of date' planning permission should be granted, unless policies including those related to designated and other heritage assets or archaeological significance provide a strong reason for refusing permission or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the framework as a whole.
3. The term "out-of-date" is defined in Footnote 8 of the NPPF. The Local Plan is considered out of date where there is a lack of five-year supply (or four-year supply for authorities which are progressing a new Local Plan in accordance with Paragraph 226 of the NPPF) or where the Housing Delivery Test indicates that the delivery of housing was below 75% of the requirements for the past three years. The Local Plan for Bolsover (2020) is not considered to be out-of-date as defined in Footnote 8.
4. There are other ways that a Local Plan or specific policy may be considered to be out of date, such as if it no longer performs its intended role, or if certain material considerations mean that the policy can no longer be relied upon or given weight. These matters need to be considered through individual planning applications, and the level of weight given to them is a matter for the decision-taker.
5. Having regard to the consultation responses and representations received and the relevant provisions of the development plan and guidance contained within the National Planning Policy Framework, the main issues to assess are:
  - The principle of the development
  - The impact of the retail component of the application on the vitality of and viability

of Bolsover Town Centre

- Impact on designated and other heritage assets of archaeological significance
- Landscape and visual impact of the proposed development
- Impact on wildlife and biodiversity.
- Highway and pedestrian safety, connectivity impact on the local road network and parking provision
- Developer contributions and open space provision
- Residential amenity considerations and compatibility of uses, and;
- Other issues, including drainage and contamination.

### The principle of the development

6. Achieving sustainable development is a fundamental aim and vision of the Local Plan for Bolsover, which was adopted in March 2020 and the NPPF. Policy SS1 sets out the criteria against which the Council will consider the sustainability of a proposal. It is recognised that proposals may be able to positively address some of the criteria in Policy SS1, to a greater or lesser degree, but not others. The Policy does not require any proposal to achieve a benefit against every criterion, but it seeks to provide a basis on which to recognise the various sustainability costs and benefits of a proposal, which will then be considered by the Council in the overall 'Planning Balance'.
7. In order to contribute to sustainable development in the Bolsover District Policy SS1 advises that development proposals should support the local economy by providing employment opportunities suitable for local people, promote the efficient use of land and the re-use of previously developed land in sustainable locations, locate development in close proximity to trip generators with the aim of reducing the need to travel by non-sustainable modes of transport, reduce the need for energy in new development and ensure that it can use energy efficient through the life time of the development, promoting high standards of low carbon and energy efficient design and renewable energy production where possible and appropriate, support the hierarchy of centres and / or enhance their role as a focus for new services and facilities, protect and enhance the character, quality and settings of towns and villages and heritage assets through an appropriate mix of good quality, well-designed development and protect, create and / or enhance the character, quality and diversity of the District's green infrastructure and local landscapes, the wider countryside and ecological and biodiversity assets amongst other considerations.
8. To support the hierarchy of centres and / or enhance their role as a focus for new services and facilities the Local Plan gives a clear steer on the scale and direction of development. Policy SS2 states that the Local Plan will accommodate new growth and investment in Bolsover District by making provision for sufficient land to meet its housing needs and to accommodate 92 hectares of employment land across the period 2015 to 2033. As part of the review of the Local Plan the latest employment land evidence indicates that the land allocated in the local plan for employment is required to meet the District's employment needs over the plan period.
9. Policy SS3 seeks to direct growth towards the District's more sustainable settlements, such as Bolsover, in order to take advantage of their greater employment opportunities,

better transport links and services and facilities.

10. The site lies within the development envelope of Bolsover, with the land to the south being undeveloped. Policy SC1 states that development within development envelopes will be permitted where it is appropriate in scale, design and location to the character and function of the area, is compatible with, and does not prejudice any existing or intended use of adjacent sites and would not have an unacceptable environmental impact.
11. With the exception of the fields to the south of the site and west of the Indian restaurant the land is entirely covered over by an existing employment allocation, protected by Policy WC2.

#### *Employment development*

12. Local Plan Policy WC2: General Principles for Economic Development supports the sustainable growth of the district's economy by both:
  - encouraging proposals which help create a higher wage, higher skilled, low carbon economy which develops, retains and enhances local skills;
  - protecting a series of identified existing employment sites that are important and act as key economic drivers for the District.
13. As stated earlier in the assessment section of this report, the latest evidence base indicates that the land allocated in the local plan for employment is required to meet the District's employment needs over the plan period. The industrial estates and business parks in the district are home to a large proportion of jobs in the district and an important element of the district's employment portfolio. The release of employment land without clear and convincing justification would create a demand for additional employment land over the plan period. In a small town such as Bolsover employment land is important to ensure settlement sustainability and help reduce travel out of the area and by unsustainable means to access employment opportunities.
14. Policy WC2 indicates that the protection will be sustained unless it can be shown that the land or building is no longer physically suitable for employment uses and there is no realistic prospect of re-use or redevelopment for such uses by providing evidence that the site has been marketed for a reasonable period of time; details of enquiries received for the site; and evidence to demonstrate the site is not financially viable for continued employment development.
15. The revised application proposes up to 6500 sqm of replacement employment floorspace in a range of more modern purpose-built units, the retention of 2,270 sq. m of employment floorspace within the former colliery headquarters building and 2 retail units (total gross area up to 3,200 sqm, one being for discount food retail). The application site currently accommodates a wide range of business, retail, leisure, commercial and industrial units. The applicant advises that only 5714 sq. m is occupied by businesses and only 2328 sq. m is re-useable. The applicant explains in supporting information that the site has become under-utilised and a number of buildings have been left vacant due to either not being financially viable to rent out or do not meet EPC ratings and

standards. It is advised that there are currently 82 units on the site but 41 are not lettable so 50% of the units are not viable for letting.

16. The amended scheme maximises the employment potential of the site and proposes a mix of units, in addition to the existing floorspace within the Former Headquarters Building that will meet the needs of a wide range of businesses and will facilitate new employment and job creation. The amount and nature of new employment to be provided is considered to comply with the relevant provisions of the development plan in this respect.
17. It is recognised that while not a traditional 'B' use, the retail units also provide a form of employment on the site. The suitability of retail use must be considered in conjunction with the requirements of Policy WC5 in respect of new development so as to not undermine the purpose and viability of the Town Centre and any other service centres. The impact of the retail development of the application on the vitality of and viability of Bolsover Town Centre is considered in a later section of this report.
18. The application is accompanied by a Business Retention Strategy. This strategy has been developed following a survey of existing tenants, the results of which have not been provided due to being commercially sensitive. Of the tenants surveyed it is understood that 60% are likely to remain within the new development with the percentage of employees retained to be approximately 75%. These estimates are, however, subject to numerous variables, including the cost of rent. The applicant points to the layout providing a range of comparative spaces to accommodate existing businesses and allow them to move up and provide for new start-up businesses. This has been enhanced further with the increase in employment floorspace and greater range of retail units.
19. Alongside the potential retention of existing employment it is also advised that there will be opportunities for new higher quality and higher skilled jobs, and these will be in addition to the existing employee numbers on the business park.
20. Whilst it is acknowledged that there will be occupiers who require cheap rate accommodation that is not to modern standards, the applicant advises that there is alternative low-grade accommodation available elsewhere in the district e.g. across Station Road. The applicant advises that the modest reduction in inefficient, poor-quality employment floorspace is not a reason to prevent significant investment in the regeneration of a legacy industrial brownfield site in an area where policy supports a move to high skilled, high waged employment opportunities, which is a District objective as set out in the Local Plan. Conditions to secure employment schemes to maximise employment opportunities, skills and training as part of the construction and delivery of the units are recommended to help deliver this policy objective.

The impact of the retail component of the application on the vitality of and viability of Bolsover Town Centre

21. The application proposes two retail units (up to 3200 sqm, with one being for discount food retail) and a small drive thru (Sui Generis) with a floorspace of 85 sq. m.

22. Local Plan Policy WC5: Retail, Town Centre and Local Centre Development supports retail development within town centres. The policy states that when considering out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. A sequential test and retail impact assessment are required for applications in out of centre locations for over 500 m<sup>2</sup> of retail space. Only shops which do not harm the vitality and viability of the town centre will be approved.
23. Policy WC5 and paragraph 91 of the NPPF requires “applications for main town centre uses to 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”.
24. Paragraph 92 of the Framework states that 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.
25. Paragraph 94 of the NPPF sets out a twin impact test, stating that ‘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 2,500 sq.m of gross floorspace). This should include assessment of:
  - 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
  - the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).’
26. Paragraph 95 indicates that, where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors, it should be refused.
27. Following concerns regarding the robustness of the Retail Impact Assessment contained within the Planning Statement the applicant submitted a Supplementary Retail Statement by Lichfields (dated May 2024). The District Council commissioned a retail impact assessment expert to review this statement.
28. The District Council’s retail impact expert has reviewed the sequential alternative sites identified by the applicant (and undertook their own additional research) and do not believe that there is any site which is situated in a sequentially preferable location and is both available and suitable to support the proposed use at this time. In this respect, the expert concludes that the proposal accords with the requirements of the NPPF sequential test.
29. With regard to the impact test a number of defects and concerns were raised. In assessing the significance of impacts arising from development, it is necessary to reflect upon the advice set out in the Town Centres Planning Practice Guidance (PPG). In this

regard, paragraph 018 states that:

*‘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.’*

30. It should also be recognised that impacts will arise with all retail developments, but that these will not always be unacceptable, not least because development often enhances choice, competition, and innovation. It is therefore necessary to differentiate between those developments that will have an impact and those that will undermine the future vitality and viability of established centres, i.e. have a ‘significant adverse’ impact.

31. Paragraph 015 of the Town Centres PPG is also of relevance in considering how the impact test should be applied. It states that:

*‘As a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector (e.g. it may not be appropriate to compare the impact of an out of centre DIY store with small scale town centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities.’*

32. In this instance, the application proposal seeks to provide:

- a foodstore which is capable of meeting some main food shopping needs;
- a comparison goods retail unit; and
- a drive thru unit.

33. The types of retail uses accommodated at the site will impact on the patterns of trade diversion arising from the development in practice.

34. The retail impact expert based their appraisal on the proposal’s compliance with the two key impact tests identified by paragraph 94 of the NPPF.

35. The District Council’s retail impact expert pointed to the failure of the Supplementary Retail Statement to recognise the allocation of £15m of Levelling Up Regeneration Fund monies which is to be spent by March 2026 within the District boundary.

36. Key projects of relevance to Bolsover town centre include:

- *Project 1: Public Realm*

*Public realm improvements in Bolsover town and across key town centres to include: hard and soft landscaping; street furniture and signage; improved welcome entry points; improved lighting and safety considerations; resurfacing and reconfiguration of the market square; green routes and planting; and visual wayfinding.*

- *Project 2: Shopfront Improvement Scheme*

*The scheme will provide capital funding to support: new shopfronts; repair and*

*replacement of shopfronts; new and replacement signage and awnings; and other physical work which improves the visual aspect of the front elevation of a property.*

- *Project 3: Former Co-operative Building, Town End, Bolsover*

*Proposed acquisition, demolition and clearance of the former Co-operative Food store. This will enable the creation of a new public boulevard and urban green space.*

- *Project 5: Bolsover Community Business Centre*

*Proposed acquisition and refurbishment of the White Swan public house and conversion into community building. This will provide flexible accommodation to allow access to finance, health and wellbeing support services, as well as workspace to bring together CVS/non-profit organisations and community groups.*

- *Project 8: Creative Makers Retail Outlet*

*Investment into the existing retail unit at 36 and 26a Market Place, Bolsover to provide a 'pop-up' marker space for local artists and creatives. The funding will provide for the acquisition of the freehold of the property and its refurbishment.*

37. Notwithstanding the above, it was opined that each of the above investments was wholly different in nature to that proposed at the application site. None of the above was considered to relate to the proposed retail development. It was considered that the successful implementation of the above investment should not be contingent on whether planning permission is granted for the Bolsover Business Park application proposals.
38. With regard to the second test, namely the impact of the proposals on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment a number of concerns were raised in respect of the Supplementary Retail Statement by Lichfields (dated May 2024). In particular, the following defects were identified:
- the submitted assessment failed to identify how convenience goods expenditure has been apportioned between main and top-up food shopping;
  - the assumed inflow allowances are higher than expected and are not appropriately justified;
  - the assumed sales densities for both convenience and comparison goods floorspace appeared too low;
  - the submitted assessment identifies zonal trade draw but this was largely meaningless as trade diversion had not been presented on a zonal basis;
  - the assumption that 10% of the turnover of the proposal would be drawn from outside the Study Area was considered to be flawed; and
  - not all the destinations subject to trade diversions were identified in the assessment.
39. To address these defects, the applicant submitted a Retail Addendum Briefing Note dated November 2024, prepared by Lichfields. This was further reviewed by the District Council's retail impact expert.

40. The expert advised that the submitted assessment failed to demonstrate that there would be no significant adverse impact arising from the proposed development at Bolsover town centre. Furthermore, the scale, nature, and format of the development was such that the magnitude of impact arising at the centre merited further consideration.
41. In arriving at the above conclusion, the retail expert noted the following concerns with the methodology
  - the underestimation of the turnover of the proposal;
  - the overestimation of the application proposal turnover drawn as inflow from outside the defined Study Area;
  - the underestimation of the level of diversion which would occur from local facilities, including the Morrisons at Oxcroft Lane in Bolsover; and
  - the level of trade diversion forecast from stores outside of the Study Area.
42. The applicant addressed the above concerns in a Further Retail Addendum Briefing Note dated March 2025 and prepared by Lichfields.
43. The applicant reduced the proportion of proposal turnover that is derived from 'beyond the Study Area' to 5% and recalibrated the impact of the development on existing retail operators within Bolsover town centre.
44. This Further Retail Addendum Briefing Note was reviewed by the District Council's retail expert. In further comments received on the 23<sup>rd</sup> April 2025 they have advised that the most substantial trade diversion will occur at the Morrisons store at Oxcroft Lane. They agree that lesser impacts would arise at the B&M and Farmfoods stores, and that the impact on other local traders will not be of material consequence (given that the application proposal is fundamentally different in character and scale to such retailers).
45. With regard to the impacts on the Morrisons store, the post-implementation convenience goods turnover of £20.85m reflects strong trading performance and is such that the store will continue to trade well above company average subsequent to the implementation of the proposal. Given the above, it is not considered that there would be any loss in town centre convenience goods provision as a consequence of the proposal. The foodstore most substantially impacted (i.e. Morrisons) would continue to trade strongly going forward.
46. They advise that the comparison goods impacts arising from both the foodstore and second unit comparison floorspace would be limited to moderate, as a consequence of a proposed bulky goods condition.
47. The District Council's retail expert does not anticipate that there will be a substantive loss of linked trips arising from the proposal. They advise that although some shoppers will be tempted away from the centre to undertake grocery shopping, the offer associated with a foodstore of the scale proposed is relatively limited and does not replicate the wider retail, service and leisure offer contained within Bolsover town centre. They continue that the proposed bulky goods unit would principally trade against other

out of centre retailers and that shoppers would still have a need to visit Bolsover town centre, albeit the linking of any such trips would likely take place by car rather than on foot.

48. With regard to the current health of the town centre, the District Council's retail expert acknowledges that the town centre has been the subject of significant changes in recent years as a consequence of the Morrisons/Sykes Field Retail Park scheme being delivered. They advise that the vacancy rate in respect of available units is not a cause for concern and the centre now accommodates a satisfactory range of retailers and service providers.
49. In summary, District Council's retail expert has found that:
- Bolsover town centre is relatively vital and viable and has a low vacancy rate in respect of the proportion of vacant units;
  - whilst the proposal will divert approximately £5.97m of expenditure from Bolsover town centre, this diversion principally occurs from the Morrisons store, which they anticipate will continue to trade strongly going forward; and
  - the application proposal will not replicate the overall town centre offer and there will still be a general need to visit the centre to make some types of comparison goods purchases and to visit service providers (through linked trips by car or at other times).
50. Having regard to the above, the development would have a negative impact on Bolsover town centre, however the magnitude of impact that would arise would be below 'significant adverse' in practice and there would be benefit in providing additional customer choice, in respect of grocery and bulky comparison goods shopping in the area, which is advocated by national planning policy.
51. To ensure that there will be no unacceptable impacts on Bolsover town centre it will be necessary to impose restrictive conditions relating to gross and net sales areas, as the impacts have been assessed based on this amount of retail, and to restrict the comparison unit to the sale of bulky goods, namely DIY goods, garden goods, furniture, carpets and floor coverings, electrical goods, camping, boating and caravanning goods, motor and cycle goods only.
52. With such restrictions the development would conform with to the second part of the impact test as articulated by paragraph 94 of the NPPF and by Local Plan Policy WC5 'Retail, Town Centre and Local Centre Development'.

#### Impact on designated and other heritage assets of archaeological significance

53. Policy SC16 of the Local Plan for Bolsover (2020) deals with development within or impacting upon conservation areas. It states that such development will be permitted where they preserve or enhance the character and appearance of the area and its setting.

54. It goes on to state that applications will be considered in relation to how well the design and location of the proposal has taken account of the development characteristics and context of the conservation area, in terms of important buildings and important open spaces, landscapes, walls, trees and views into or out of the area and the form, scale, size and massing of nearby buildings, together with materials of construction.
55. Policy SC17 of the Local Plan for Bolsover (2020) states that proposals for alterations to, or changes of use of listed buildings will be supported where they protect the significance of the heritage asset (including its setting), including impacts on the character, architectural merit or historic interest of the building.
56. The National Planning Policy Framework at Chapter 16 sets out the manner in which impacts on heritage assets should be assessed.
57. Paragraph 207 states “where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.”
58. Paragraph 210 states that in determining applications, local planning authorities should take account of:
  - a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
  - b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
  - c) the desirability of new development making a positive contribution to local character and distinctiveness.
59. Paragraph 215 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
60. Paragraph 216 of the Framework states that “the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”
61. In addition to the above policy requirements there are separate legal duties in respect of heritage assets. In exercising planning functions, Local Planning Authorities must ‘have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses’ (Section 66(1)) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Similar provisions are contained within the Act at section 72 in respect of conservation areas.
62. As can be seen from the consultation responses received from Historic England, the Development Control Archaeologist (County Council) and the District Council’s Heritage

Conservation Manager concern has been raised with regard to the assessment of the development on archaeology and its impact on designated and non-designated heritage assets.

63. The application site is located within the setting of the Grade I listed Bolsover Castle and to the north of Bolsover Conservation Area; both of which are designated heritage assets. The existing employment site contains buildings that are low lying and are contained within the landscape and by existing landscape features. The land to the south remains undeveloped and contributes to the setting of the castle, in terms of its rural context and association with its historic deer park.
64. The application proposals no longer seek to extend development beyond the confines of the existing employment site. A condition which prohibits such development and restricts the maximum height of buildings to two stories will ensure that there will be no harm to the setting Grade I listed Bolsover Castle.
65. With regard the impact on other heritage assets, the surviving Bolsover Colliery buildings, on part of the application site are considered to contribute to the significance of Bolsover Conservation Area and Grade II listed model village. Historic England advise that the area of Bolsover Conservation Area nearest to the site includes the Grade II listed model village and nearby villas built by the Bolsover Colliery Company to house its workforce. The village was a pioneering development at the time of its construction in 1891 and was built to improve the quality of living for the workers of the colliery. The site is inextricably linked to the village as the instigator of its construction and historic use. The County Council make similar comments on the value of the former colliery buildings on site. Photographs of these buildings are provided below:





66. The loss of the surviving Bolsover colliery buildings, which are deemed non-designated heritage assets and to contribute the significance of the nearby designated assets would cause harm to the significance of the conservation area and associated listed buildings, albeit again at the lower level of less than substantial harm. Again, this harm must be weighed against the benefits of the proposal and a balanced judgement reached on the loss of non-designated heritage assets.

67. The applicant has submitted a Heritage Impact Assessment with the application, upon which the consultees have based their comments. Revisions to the layout and supplementary comments on the heritage impacts were submitted by the applicant on the 8<sup>th</sup> May 2024.
68. The amended scheme has since omitted development on the open land to the north of the A632, whilst still retaining the headquarters building which would, alongside the former railway cutting, retain a meaningful but still fragmentary connection between the location of the former colliery and the New Bolsover Village.
69. The Heritage Impact Assessment does not consider that the pit baths share the same historical genesis and its loss is not considered to result in harm. Retention of Portland House and the good shed would, it is considered, do little to embellish the tenuous relationship that exists. Accounting for the retention of the colliery headquarters building, the degree of harm brought about by the demolition of other colliery buildings upon the setting and significance of the Bolsover Conservation Area, it is considered that the impact would be negligible at most.
70. This assessment indicates some harm. Historic England welcomed the retention of the former Bolsover Colliery HQ building within the amended scheme. However, they maintain their position regarding the destruction of other non-designated assets within the site and the harm that would arise to the significance of nearby designated assets as a result of this. They refer to their previous advice in this respect. Similar concerns have been expressed by the District Council's Heritage Conservation Manager.
71. The loss of the remaining Bolsover colliery buildings, which are deemed non-designated heritage assets and to contribute the significance of the nearby designated assets would cause less than substantial harm to the significance of the conservation area and associated listed buildings. As required by national planning policy, this needs to be weighed against the public benefits to be derived.
72. Whilst it is acknowledged that there will be some public benefits associated with the development through the regeneration of the site and job creation, this is tempered by the unwarranted nature of the housing development and the loss of the colliery buildings to accommodate retail development that will undermine and adversely affect the vitality and viability of the town centre.
73. The Development Control Archaeologist has advised in terms of below ground archaeology that further archaeological works is necessary prior to the determination of the application. They advise that prior to the submission of the application the applicant was informed that "the proposal area is a previously undeveloped site of just over 2ha, and given the multi-period archaeological interest in Bolsover and its environs that there is potential for previously undiscovered below-ground archaeology within the site and that any planning application should therefore include the results of archaeological evaluation, to comprise geophysical survey in the first instance (detailed magnetometry) supplemented by trial trenching where indicated by the geophysics results.
74. The applicant considers that a standard and reasonable approach is to impose a pre-

commencement condition requiring further site investigation before development proceeds and that they are willing to work with the Council's archaeological advisor to agree an appropriate strategy for further assessment and mitigation as part of the detailed design stage. They have since omitted the development housing from the undeveloped land. The potential requirement for sustainable urban drainage infrastructure on the land and relatively small area this would cover is such that a Written Scheme of Investigation in respect of any below ground archaeology is considered to be proportionate in this case.

#### Landscape and visual impact of the proposed development

75. Policy SC1 of the Local Plan is supportive of development where it is appropriate in scale, design and location to the character and function of the area. Policy SC2: Sustainable Design and Construction permits development that protects and enhances the distinctiveness, character, townscape and setting of settlements and conserves and enhances heritage assets and their setting amongst other considerations.
76. Policy SC3 seeks to deliver high quality development which responds positively to the context and contributes to local identity and heritage in terms of height, scale massing, density, layout and materials and which protects important local and longer distance views of important landmarks or landscapes, such as Bolsover Castle. The policy also requires development to respond to the established character and local distinctiveness of the surrounding landscape.
77. Policy SC8 of the Local Plan states that proposals for new development will only be permitted where they would not cause significant harm to the character, quality, distinctiveness or sensitivity of the landscape, or to important features or views, or other perceptual qualities such as tranquillity unless the benefits of the development clearly outweigh the impacts.
78. The application seeks outline planning permission, with all matters reserved other than access. In setting broad scale parameters the indicative layout indicates that the employment units will be a mixture of single and two storey buildings surrounding the existing Colliery Headquarters Building.
79. The applicant advises that the layout balances the retention and enhancement of landscape, the strengthening of key environmental features along with the need to redevelop a purpose-built business park, retail opportunity and additional housing along an enhanced gateway into Bolsover. It is advised that the design of the indicative layout and road network enables the siting of landmark dwellings at key visual nodes, maximising legibility, the creation of active frontages, and opportunities for natural surveillance through the orientation of employment units and dwellings.
80. Occupying a gateway location on the western approach into Bolsover, the applicant advises that the proposed development will create a locally distinctive and visually interesting scheme which will readily integrate into the local context and provided an attractive landscaped frontage to Station Road (A632). This approach to layout and design would need to be considered in the context of minimising the impact on key visual receptors, including views from Bolsover Castle. Through careful consideration of

the reserved matters, it is considered that development could come forward in a manner that would not result in harm to the character and context of this part of the settlement, subject to constraints on the extent of development.

81. The application is accompanied by a Landscape and Visual Appraisal, which considers the landscape and visual effects of the development.
82. A slight adverse effect is predicted on the landscape character, reducing to potentially beneficial if the recommended design principles are implemented and proposed woodland framework established to break up the mass of the business park.
83. The appraisal advises that the landscape has been impacted upon in the last thirty years by the further development of the business park. The majority of the site lies within the 'urban' landscape character classification. Small peripheral parts of the site lie within the local landscape character type 'Wooded Farmlands'.
84. The landscape strategy submitted with the application aims to restore the woodland setting and enhance the character of this landscape.
85. Recommendations including minimising external lighting and the use of dark and natural in finish (timber, dark metal etc.) materials to ensure that the buildings are visually recessive are recommended. It is also recommended that signage should respect and match the materiality and form of the proposed buildings.
86. In the long term, with appropriate landscape mitigation and restoration is predicted to reduce visual amenity effects to slight adverse with the completion of construction. It is considered that some beneficial effects would be possible with planting reinforcing existing woodland boundaries, creating 'green connections' through the development and providing an additional degree of visual screening.
87. It is recognised that the most sensitive visual receptors within the study area are those from Bolsover Castle, rights of way users and residential receptors. These visual receptors generally experience an expansive view either west from Bolsover or from the east of the study area towards Bolsover. The omission of the housing development on currently undeveloped land and the restriction on the height of development (which will need to be controlled by condition) is such that development would not result in significant harm to the character, quality, distinctiveness or sensitivity of the landscape.

#### Impact on wildlife and biodiversity

88. The application was submitted to Bolsover District Council prior to the 10% mandatory Biodiversity Net Gain requirements coming into force at the beginning of 2024. As such, in accordance with policy SC9 of the adopted Local Plan, it is expected that a development of this nature will provide no net loss of biodiversity and will seek to provide net gains where possible. These provisions are supported by the NPPF, paragraph 187 (paragraph 180 in an earlier iteration) of which advises that planning decisions should provide net gains for biodiversity.

89. The Local Planning Authority also has a duty to protect European Protected Species (EPS) under the Conservation of Habitats and Species Regulations 2017 (as amended). Government advice at paragraph 99 of the Office of the Deputy Prime Minister Circular 06/2005 states that it is essential to establish the extent to which EPS may be affected by a proposal.
90. An Ecological Appraisal (Rachel Hacking Ecology, March 2023), which included a Biodiversity Net Gain (BNG) assessment was submitted with the application. This was assessed by the Derbyshire Wildlife Trust.
91. In consultation comments dated 13<sup>th</sup> June 2023, Derbyshire Wildlife Trust (DWT) advised that several existing buildings had been assessed to have some level of potential for roosting bats and therefore nocturnal surveys were required. DWT also advised that that habitats on site were suitable for grass snake (and that a record existed) and Great Crested Newts. Reptile surveys had been recommended. It was recommended that a greater focus should also be given to grassland retention and enhancement to retain habitat for reptiles and amphibians in the southern part of the site.
92. With regard to biodiversity impacts, Derbyshire Wildlife Trust requested a copy of the metric and post development habitat plan to have certainty that the predicted net gain of habitat (+7.03, 52.81%), hedgerow (+0.47, 6.53%) and watercourse (+0.01, 0.22%) units can be delivered.
93. Following receipt of these comments and further consultation comments dated 25<sup>th</sup> February 2025, the applicant has undertaken bat surveys and method statement for how this protected species will be safeguarded during construction works.
94. With respect to reptiles and amphibians, including Great Crested Newts (GCN), the applicant has advised the Preliminary Ecological Appraisal (PEA) updated by Rachel Hacking Ecology in June 2023, along with the letter dated 6th February 2025, confirms that no reptiles or amphibians were recorded during surveys undertaken in May 2023. They have advised that clearance works will be undertaken in accordance with a Construction Environmental Management Plan (CEMP: Biodiversity), which will secure appropriate safeguards for any species that may be present. The applicant is also open to considering District Level Licensing (DLL) for Great Crested Newts to provide further flexibility and ensure that, should any individuals be encountered, this can be managed efficiently without unnecessary delays to the development.
95. In relation to BNG, the applicant has submitted updated BNG metric information along with UKHabs plans showing both baseline and post-development habitats. The proposed mitigation and enhancement measures set out in the PEA, such as the retention and enhancement of the southern grassland, improved hedgerow planting, and the installation of bat and bird boxes will contribute towards achieving measurable net gains in biodiversity.
96. In respect of the botanical interest within the site, the updated PEA (June 2023) included an enhanced botanical survey of Target Note 17 (TN17), the northern of the two southern grassland fields. This identified a population of approximately 99 orchid spikes,

primarily marsh orchid with some common spotted orchid. The revised scheme now removes the six dwellings previously proposed in this area, ensuring that the orchid population will be retained. Future management of this area can be managed by condition.

97. The above information seeks to address Derbyshire Wildlife Trust's concerns and provide them with the information they require to be able to recommend support of the application and set out any necessary conditions. They have been consulted on this new information. In order to ensure compliance with Policy SS9 of the development plan and that the District Council can meet its legal duty any recommendation to grant planning permission would need to be subject to confirmation being received from Derbyshire Wildlife Trust that all ecological and BNG matters have been satisfactorily addressed.

Highway and pedestrian safety, connectivity impact on the local road network and parking provision

98. The application seeks approval for access. Access covers accessibility for all routes to and within the site, as well as the way they link up to other roads and pathways outside the site.
99. Policy SS1 'sustainable development' of the Local Plan seeks to locate development in close proximity to trip generators with the aim of reducing the need to travel by non-sustainable modes of transport. Policy SC3 seeks to deliver high quality development and requires proposals to provide a positive sense of place through well designed streets and spaces which are safe, attractive and appropriate to their context.
100. Policy ITCR2 'The Multi-User Trails Network' states that planning permission will be granted for proposals providing that they would not prejudice the use of existing Multi-User Trails which includes a greenway along the former Bolsover branch line.
101. Policy ITC10 of the Local Plan 'Supporting Sustainable Transport Patterns states that planning permission will be granted where new development and the provision of services are located so as to support sustainable transport patterns and the use of the District's sustainable transport modes. The policy requires development that will likely have significant amounts of movements to be accompanied by Transport Statement or Assessment and Travel Plan. The policy goes on to state that all development proposals should provide convenient, safe and attractive access via footpaths, footways, bridleways, cycle paths and public realm areas. Policy WC2 requires that proposals likely to create over 50 jobs to be accompanied by site specific travel plans to promote sustainable travel choices.
102. The site is accessed to the north and south off the A632; a main arterial route into the Town from the west. The retail element of the proposals will be accessed off Intake Road, with modifications to existing access points into the site. The business park and housing elements of the proposals are to be accessed off the existing southern gateway entrance to the site off Woodhouse Lane, which again is to be modified to encourage and facilitate walking and cycling.
103. The application is accompanied by a Travel Plan and Transport Assessment, which was

amended following the omission of the housing development and increase in employment development. The County Council in their capacity as the Local Highway Authority have reviewed the highway related information submitted with the application. In their earlier consultation responses, a number of highway issues were raised. The applicant has submitted revised drawings/information to address these.

104. The travel plan has been amended to incorporate the comments made by the Sustainable Travel Team at the County Council, however, the provision of some of the measures contained therein are unclear based on the submitted application drawings (provision of walkways to front doors and cycle parking). It is, however, considered that such provision could be effectively controlled by condition. The Travel Plan seeks to appoint a Travel Plan Coordinator for the commercial elements of the proposals. Other measures include reducing the need to travel, promotion of car share websites/datasets, personalised travel planning, a travel notice board and walking and cycling facility awareness to minimise car borne journeys and promote travel choice. These measures are considered to be acceptable. The Local Highway Authority have requested a financial contribution of £6,325 to monitor the Travel Plan over a 5 year period, which would need to be secured by a s106 agreement.
105. Parking provision for vehicles and cycles is to be provided in accordance with appendix 8.2 of the Local Plan, as required by Policy ITCR11. The parking should relate well to the proposed Development, be well designed, taking account of the characteristics of the site and the locality, provide a safe and secure environment, minimise conflict with pedestrians and / or cyclists, make provision for service and emergency access and accord with guidance contained within the Local Parking Standards Supplementary Planning Document (January 2024). The development provides for parking in line with Bolsover District Council requirements. The retail development provides marginally less parking than required, however, the applicant advises that it is likely visitors coming to the retail site will visit both units in one trip. Given the accessibility of the site, and implementation of measures contained within the Travel Plan an acceptable level of parking will be provided.
106. With regard to the impacts of the development on the local road network and highway safety, Paragraph 116 of the National Planning Policy Framework advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.
107. The Local Highway Authority have advised that this level of movement can be accommodated by the local road network without severe impacts.
108. The Leisure Facilities Planning and Development Manager has expressed concerns regarding the lack of information / proposals to link to existing and proposed multiuser trails running within and outside of the development site. This is unfortunate, however, is a matter that could still be explored and delivered through the redevelopment of the site and approval of reserved matters. The proposed development would not prejudice these opportunities. A condition is recommended to maximise connectivity to footpath and cycle infrastructure, including existing and proposed multi-user trails, to facilitate travel to

the site by means other than the private motor vehicle as part of any approval of reserved matters submission, to achieve this objective.

#### Developer contributions

109. To aid plan delivery Policy II1 of the Local Plan advises that planning obligations will be sought where the implementation of a development would create a need to provide additional or improved infrastructure, amenities or facilities or would exacerbate an existing deficiency. Alongside infrastructure delivery, planning obligations will also be sought where the implementation of a development would necessitate the delivery of other policy objectives.
110. Following the omission of the residential development there is no requirement to make any education or open space contributions.
111. The application is accompanied by a Travel Plan which seeks to minimise car borne journeys and promote travel choice. In order to assess the effectiveness of this plan a period of monitoring is required. The Local Highway Authority have requested a financial contribution of £6,325 to monitor the plan over a 5-year period. Such a contribution is considered to be CIL regulations compliant and would need to be secured by a s106 legal agreement.

#### Residential amenity considerations and compatibility of uses

112. The application site is located close to existing housing development. Policy SC11 of the Local Plan advises states that development likely to cause, or experience, a loss of residential amenity as a result of light, noise, dust, odour or vibration, or a loss of privacy must be supported by a relevant assessment and if necessary, appropriate mitigation must be put in place. Applicants must demonstrate that a significant loss of amenity would not occur as a result of the development or throughout its construction and operation. Policy WC5 states in respect of retail development that it must be located and designed to minimise its impact on the amenity of adjoining or nearby properties and that any impact will be at an acceptable level. Finally, Policy SC3 'High Quality Development' states that development should ensure a good standard of amenity is maintained for the occupants of existing neighbouring properties as well as the future occupants of new development, including levels of privacy and light, position and avoiding overbearing relationships and the provision of adequate amenity space. Similar provisions are included in 'Hot Food Takeaways' Policy WC9 which seeks to minimise the impact of such development on residential amenity with added considerations relating to litter and opening hours, in addition to minimising anti-social behaviour and crime.
113. New employment development would be located within the confines of the existing employment site, where a wide range of business activities take place without restriction. The District Council's Environmental Health Team have raised no objection to the development in principle, subject to conditions to investigate and remediate any contamination found on site and secure dust suppression measures and an informative which recommends reasonable times for construction and deliveries associated with such activity. Such conditions and an informative are considered necessary and

reasonable. No concerns have been raised in respect of the drive thru take out unit based on its size and indicative location. The acceptability of the final layout of the development will be subject to residential amenity and visual impact considerations.

#### Other issues, including drainage and contamination

##### *Contamination and land stability*

114. Policy SC14 of the Local Plan states that development proposals will not be permitted unless it can be demonstrated that any contaminated or unstable land issues will be addressed by appropriate mitigation measures to ensure that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact upon human health, and the built and natural environment.
115. The application is accompanied by a Geotechnical and Geo-environmental Assessment by Eastwood Consulting Engineers.
116. The report advises that before more definite information regarding the properties on the ground and any contamination present can be given, an intrusive ground investigation will be required. It also recommends that cable percussion boreholes may be required to confirm the depth of the made ground, for pile design and for the installation of ground gas/groundwater monitoring wells and that geotechnical testing should be carried out on clay soils to determine their volume change potential.
117. The Environmental Health Team have raised no objections to the recommendations and have suggested conditions relating to contamination.

##### *Flood risk and drainage*

118. Policy SC7 'Flood Risk' states that all development proposals will be required to consider the effect of the proposed development on flood risk, both on-site and off-site, commensurate with the scale and impact of the development. With regard to surface water flood risk it must be demonstrated that there will be no net increase in surface water runoff for the lifetime of the development on all new development and that part of the development site is set aside for surface water management and uses measures to contribute to flood risk management in the wider area. Such measures should supplement green infrastructure networks and contribute towards mitigating the effects of climate change.
119. The application is accompanied by a Flood Risk and Drainage Strategy by BSP. The report recognises that there are a number of areas indicated to be at an increased risk of surface water flooding. Within the western development parcel there is a large area to the south which is shown to be at low risk (0.1% AEP) of surface water flooding; with a small area indicated to be at medium (0.1% AEP) to high (3.33% AEP) risk of surface water flooding at the known location of an existing Yorkshire Water sewage pumping station. As this area of the site is served by a combined sewer network, which is not represented in the EA's surface water model, BSP advise that it is likely that the extent of surface water flooding shown below does not occur in reality.

120. The report advises that in order to maintain the surface water flood flow paths across the southern area of the eastern development parcel, all development is to be restricted to the north of an unnamed watercourse. In accordance with best practice, they advise that external ground levels should comprise falls away from the proposed dwellings in order to encourage surface water runoff away from the dwellings and towards drainage features. In areas where there is an increased risk of surface water flooding, BSP advise that finished floor levels should be raised by a minimum of 150mm above external ground levels to prevent internal flooding.
121. A Sustainable Urban Drainage system for the site has been designed, having regard to Part H of the Building Regulations 2010. This is designed to attenuate surface water so that it does not discharge from the site at a rate greater than existing run off rates, with additional capacity built in for climate change (40%). A series of underground storage facilities and attenuation basins are shown. Such a scheme appears to be deliverable and, with the flood risk recommendations can be controlled by condition to ensure that the site is appropriately drained and will not result in flooding on site or increase the risk of flooding elsewhere.
122. The applicant has provided further technical evidence to demonstrate that an acceptable sustainable urban drainage scheme can be delivered on site to satisfy the Lead Local Flood Authority's requirements and they have subsequently raised no objections, subject to conditions.
123. The HS2 Safeguard Planning Manager has indicated that there is a minor overlap with HS2 safeguarded interests in the area of existing/proposed vegetation in the southwest corner of the retail plot adjacent to Station Road (identified as required for highways works associated with the high-speed railway) and also a Utilities Construction Zone area (shown shaded purple on map extract) along Intake Road. Conditions are recommended to ensure practicalities associated with respective construction programmes in this location can be managed.

#### *Other concerns raised*

124. Some concern has been raised in the representations received regarding the poor communication with existing businesses / tenants on the business park and implications of the development on them. Whilst these concerns are noted, the redevelopment of the site for a mixture of uses, including employment uses will generate new employment opportunities for existing and new tenants. The planning system cannot intervene in a free market. It concerns building and land use in the public interest and must be assessed against the relevant provisions of the development plan.
125. The concerns expressed regarding the safe removal of asbestos are also noted. Other environmental controls / regulations exist to ensure the safe removal of asbestos from the site as part of the construction process. A condition is recommended to minimise dust to protect residential amenity.

#### Summary

126. As stated at the beginning of this section of the report, achieving sustainable

development is a fundamental aim and vision of the Local Plan for Bolsover District, which was adopted in March 2020, and the NPPF. Policy SS1 sets out the criteria against which the Council will consider the sustainability of a proposal. It is recognised that proposals may be able to positively address some of the criteria in Policy SS1, to a greater or lesser degree, but not others. The Policy does not require any proposal to achieve a benefit against every criterion, but it seeks to provide a basis on which to recognise the various sustainability costs and benefits of a proposal, which will then be considered by the Council in the overall 'Planning Balance'.

127. The policies contained within the local plan are considered to be up to date and the tilted balance in favour of the development, in full or part, is not considered to be engaged. The decision taker is effectively required to undertake a flat balance, having regard to all relevant provisions of the development plan and any other material considerations.
128. The site is allocated for employment use and is currently under-utilised, with a significant amount of floorspace left vacant due to either not being financially viable to rent out or within buildings that do not meet modern employment standards. The application, as amended, proposes up to 6500 sqm of replacement employment floorspace in a range of more modern purpose-built units, the retention of 2,270 sq. m of employment floorspace and 2 retail units (total gross area up to 3,200 sqm, one being for discount food retail). Such development maximises the employment potential of the site and proposes a mix of units, in addition to the building to be retained that will meet the needs of a wide range of businesses and will facilitate new employment and job creation. These are significant economic benefits deriving from the development.
129. While the development would draw trade away from Bolsover town centre, the magnitude of impact has been demonstrated to be below 'significant adverse' in practice and there would be benefit in providing additional customer choice, in respect of grocery and bulky comparison goods shopping in the area.
130. The application proposes to retain the Former Colliery Headquarters building which contributes positively to the history and context of the site. The loss of the remaining Bolsover colliery buildings, which are deemed non-designated heritage assets, will result in less than substantial harm to the significance of the conservation area and associated listed buildings that would be outweighed by the public benefits from the regeneration of the site, job creation and other benefits to be derived.
131. The development will not result in significant harm to the character, quality, distinctiveness or sensitivity of the landscape and would deliver net gains for biodiversity and sustainable drainage improvements.
132. When considered in the round the sustainability costs and benefits of the proposal are considered to weigh in favour of the development and a recommendation or approval is put forward on this basis.

## RECOMMENDATION

Following written confirmation being received from Derbyshire Wildlife Trust that all ecological and BNG matters have been satisfactorily addressed, delegated authority be given to the Assistant Director of Planning and Planning Policy or Principal Planners to **GRANT** planning permission, subject to the following conditions, any conditions that Derbyshire Wildlife Trust recommend and the prior entry into a s106 legal agreement to secure a travel plan monitoring contribution:

1. Application for approval of all reserved matters must be made not later than the expiration of three years from the date of this permission. The development hereby permitted must be begun not later than the expiration of two years from the final approval of the reserved matters, or in the case of approval of such matters on different dates, the date of the final approval of the last such matter to be approved.

Reason:

This is a statutory period which is specified in Section 92 of the Town and Country Planning Act 1990.

2. An application for details of the following matters (hereafter referred to as the “reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before the commencement of any works:-
  - a) the scale of the development;
  - b) the layout of the development;
  - c) the external appearance of the development, and;
  - d) the landscaping of the site.

The development shall thereafter be implemented in accordance with the approved details.

Reason:

The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5(1) of the Town and Country Planning (Development Management Procedure) Order 2015.

3. The development hereby permitted shall be carried out in accordance with the following approved drawings (insofar as the general location of the different land uses and access arrangements) and documents unless specifically stated otherwise in the conditions below:
  - Location Plan (Rayner Davies Architects, 20 February 2023), reference: 1989(02)001 Rev.B
  - Site Layout (CPMG, 06 March 2025), reference: 9586-CPMG-01-00-D-A-0003 Rev.P2
  - Design and Access Statement (P&DG, received 02 May 2023) insofar as it relates

- to the approved site layout
- Landscape and Visual Appraisal (DSA, 07 March 2023) insofar as it relates to the approved site layout
  - Heritage Impact Assessment (Marrons, March 2023), reference: 22-039 insofar as it relates to the approved site layout
  - Flood Risk Assessment & Drainage Strategy (bsp Consulting, 22 April 2025), reference: BBPD-BSP-XX-XX-T-W-0001-P06\_Flood\_Risk\_Assessment
  - Surface Water Drainage Strategy Plan (bsp Consulting, 22 April 2025), reference: BBPD-BSP-XX-XX-DR-W-0001 Rev.P06
  - Phase 1 Geotechnical & Geo-environmental Site Investigation (Eastwood, 07 March 2023), reference: 47985-ECE-XX-XX-RP-C-0001
  - Transport Assessment (M-EC Consulting, December 2024), reference: 21227-TRAN-0801 Rev B
  - Transport Assessment Addendum (M-EC Consulting, April 2025), reference: 21227-TRAN-0803
  - Travel Plan (M-EC Consulting, December 2024), reference: 21227-TRAN-0802 Rev B
  - Proposed Access Design and Vehicle Tracking (M-EC Consulting), reference: 21227\_08\_020\_04 Rev.F
  - Supporting Planning & Retail Statement (P&DG, March 2023)
  - Business Retention & Economic Strategy (P&DG, May 2024)
  - Supplementary Retail Statement (Lichfields, May 2024)
  - Retail Addendum Briefing Note (Lichfields, 18 November 2024), reference: 67394/01
  - Further Retail Addendum (Lichfields, 06 March 2025), reference: 67394/01
  - BNG Metric (received 04 April 2025)
  - Ecological Appraisal (Rachel Hacking Ecology, June 2023)
  - Bat Survey Report (RammSanderson, February 2025) reference, and; RSE\_8359\_R1\_V2.

Reason:

For the avoidance of doubt and to set out the scope of the permission granted.

#### Use and General Restrictions

4. The development shall include the retention of the Former Colliery Headquarters building and be in accordance with the mix of new uses set out on Site Layout Plan dated 6<sup>th</sup> March 2025, numbered 9586-CPMG-01-00-D-A-0003 Rev P2. The units and/or floorspaces for each use shall not exceed the following:

<b>Use</b>	<b>Maximum Floorspace</b>
Convenience (Food Store) Retail	1 no. unit with a maximum gross internal area of 1,886 sq. m and maximum net sales area of 1,320 sq. m
Comparison (Bulky Goods) Retail	1 no. unit with a maximum gross internal floorspace of 1,150 sq. m and maximum net sales area of 805 sq. m.
Employment E(g) (i), (ii) and (iii), B2 and B8	6500 sq. m
Drive Thru (Sui Generis)	85 sq. m

5. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any Order revoking, re-enacting, or modifying those Orders, the 1 no. comparison retail unit shall be used for the retail sale of DIY goods, garden goods, furniture, carpets and floor coverings, electrical goods, camping, boating and caravanning goods, motor and cycle goods only and used for no other purposes, including any other activity within the same class of the schedule to the Use Classes Order.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no subdivision, addition, extension or enlargement of the 2 no. retail units hereby approved.
7. Notwithstanding the provisions of the Town and Country Planning (Uses Classes) Order 1987 and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any Order revoking, re-enacting, or modifying those Orders the new employment floorspace shall be used for E(g) (i), (ii) and (iii), B2 and B8 use only and for no other purposes, including in the case of use class E (g) (i), (ii) and (iii) any other activity within the same class of the schedule to that Order.

#### Highways

8. The Development hereby approved shall not be brought to use/occupied until the access, parking and turning facilities have been provided as shown on drawing 21227-08-020-04 Rev F.
9. The Travel Plan (TP Rev B) hereby approved, dated December 2024 shall be implemented and monitored in accordance with the regime contained within the Plan. In the event of failing to meet the targets within the Plan a revised Plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of access to and from the site. The Plan thereafter shall be implemented and updated in agreement with the Local Planning Authority and thereafter implemented as amended.
10. Prior to commencement of the development hereby permitted details of a Construction

Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:

- Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- Advisory routes for construction traffic;
- Any temporary access to the site;
- Locations for loading/unloading and storage of plant, waste and construction materials;
- Method of preventing mud and dust being carried onto the highway;
- Arrangements for turning vehicles;
- Arrangements to receive abnormal loads or unusually large vehicles;
- Highway Condition survey;
- Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

#### Contamination and Air Quality

11. Before the commencement of the development hereby approved:

The site investigation strategy as identified in the Desk Study report Ref 47985-XX-XX-CO-C-0001 submitted with the application shall be undertaken by a competent person in accordance with the current UK requirements for sampling and analysis.

Where the site investigation identifies unacceptable levels of contamination, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall have regard to relevant current guidance. The approved scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The scheme shall 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.

The developer shall give at least 14 days notice to the Local Planning Authority (Environmental Health Division) prior to commencing works in connection with the remediation scheme.

12. No development hereby approved shall be occupied until:

- a) The approved remediation works required by condition 11 above have been carried out in full in compliance with the approved methodology and best practice.
- b) If during the construction and/or demolition works associated with the development

hereby approved any suspected areas of contamination are discovered, then all works shall be suspended until the nature and extent of the contamination is assessed and a report submitted and approved in writing by the local planning authority and the local planning authority shall be notified as soon as is reasonably practicable of the discovery of any suspected areas of contamination. The suspect material shall be re-evaluated through the process described in the Phase I contaminated land assessment (desk-study) ref 47985-XX- XX-CO-C-0001 submitted with the application and through the process described in condition 11 above.

c) Upon completion of the remediation works required by condition 11 above a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved remediation standard, together with the necessary waste management documentation shall be included.

13. Before the commencement of construction works, including any demolition in connection with the development hereby approved, a programme of measures to minimise the spread of airborne dust from the site during construction and demolition periods shall be submitted to and approved in writing by the Local Planning Authority. The construction shall be undertaken in accordance with the approved scheme.

#### Drainage

14. 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. Additional information in response to LLFA comments, Tom Hall, 17/04/2025, Revised Site Layout, NG, Revision P2, 06/03/2025, Surface Water Drainage Strategy Plan, Tony Goddard, Revision P06, 22/04/2025, Flood Risk Assessment & Drainage Strategy, Tom Hall, Revision P06, 22/04/2025.

b. And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015), have been submitted to and approved in writing by the Local Planning Authority.

15. 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 56 Reference ID: 7-056-20220825 of the planning practice guidance.

16. Prior to commencement of the development, the applicant shall submit for approval to the Local Planning Authority 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.

17. The site shall be developed with separate systems of drainage for foul and surface water on and off site.
18. No development shall take place until details of the proposed means of disposal of foul water drainage for the whole site, including details of any balancing works, off-site works and phasing of the necessary infrastructure have been submitted to and approved by the Local Planning Authority. Furthermore, unless otherwise approved in writing by the Local Planning Authority, no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.
19. No construction works shall commence until measures to protect the public sewerage infrastructure that is laid within the site boundary have been implemented in full accordance with details that have been submitted to and approved by the Local Planning Authority. The details shall include but not be exclusive to the means of ensuring that access to the pipe for the purposes of repair and maintenance by the statutory undertaker is retained at all times.

#### HS2 Safeguarding

20. No development shall commence, including any works of demolition, until a detailed Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include, but not be limited to, the following details (where appropriate):
  - i. a construction programme including a 24-hour emergency contact number;
  - ii. complaints procedures, including complaint response procedures;
  - iii. air quality mitigation measures, including dust suppression;
  - iv. parking of vehicles of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
  - v. arrangements to demonstrate how any concurrent construction with HS2 works shall not impede the construction of the HS2 works;
  - vi. arrangements to minimise the potential for noise and vibration disturbance,
  - vii. locations for loading/unloading and storage of plant and materials used in constructing the development;
  - viii. details showing the siting, design and maintenance of security hoardings;
  - ix. wheel washing facilities and measures to control the emission of dust and dirt during construction;
  - x. site lighting details;
  - xi. site drainage control measures;
  - xii. tree protection measures in accordance with BS 5837:2012;
  - xiii. details of ecological mitigation measures including an operational lighting scheme for bats;
  - xiv. details of specific mitigation in relation to breeding or foraging black redstart;
  - xv. details of biodiversity and arboricultural mitigation measures including a pre-commencement check by an ecological clerk of works (ECoW) to determine whether

nesting birds are present;

xvi. a scheme for recycling/disposing of waste resulting from demolition and construction works in accordance with the waste hierarchy and circular economy principles;

xvii. An Unexploded Ordnance assessment to be undertaken; xviii. Membership of the Considerate Constructors Scheme.

The development, including any works of demolition, shall only be carried out in accordance with the approved CEMP.

21. No development shall commence, including any works of demolition, until a detailed Construction Logistics Plan (CLP) has been submitted to and approved in writing by the Local Planning Authority. The CLP shall include information on:

i. forecast programme and construction trips generated;

ii. booking systems;

iii. consolidated or re-timed trips; and

iv. secure off-street loading and drop off facilities;

v. use of logistics and consolidation centres;

vi. re-use of materials on-site; vii. collaboration with other sites in the area;

viii. use of rail and water for freight; and

ix. implementation of a staff travel plan

x. any areas for the parking of vehicles of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction).

The development, including any works of demolition, shall only be carried out in accordance with the approved CLP.

### Biodiversity and Ecology

TBC

### Heritage and Archaeology

22. No excavation of land outside of the developed part existing employment site shall take place until a Written Statement of Investigation (WSI) has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include an assessment of the significance and research questions; and

a. The programme and methodology of site investigation and recording.

b. The programme for post investigation assessment.

c. Provision to be made for analysis of the site investigation and recording.

d. Provision to be made for the publication and dissemination of the analysis and records of the site investigation.

e. Provision to be made for archive deposition of the analysis and records of the site investigation.

- f. Nomination of a suitably qualified, competent and experienced archaeological contractor or organisation to undertake the works set out within the Written Statement of Investigation.

No demolition works shall be undertaken other than in accordance with the Written Scheme of Investigation as approved by the Local Planning Authority.

The development shall not be operational/brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out within the approved Written Scheme of Investigation and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Any historic or archaeological features not previously identified which are revealed when carrying out the works hereby permitted shall be retained *in-situ* and reported to the Local Planning Authority in writing within 2 working days. Works shall cease in the area/part of the building affected until provision has been made for the retention and/or recording in accordance with details submitted to and approved in writing by, the Local Planning Authority.

23. An appropriate programme of building recording (including architectural/historical analysis) shall be carried out in respect of the former colliery buildings, including the pithead baths, goods sheds and former manager's house prior to their demolition. This record shall be carried out by an archaeologist/building recorder or an organisation with acknowledged experience in the recording of standing buildings which is acceptable to the Local Planning Authority. The recording shall be carried out in accordance with a written specification, and presented in a form and to a timetable, which has first been agreed in writing by the Local Planning Authority.

#### Other

24. 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. 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.
25. Within 6 weeks prior to any new employment unit falling within Use Class E(g) (i) (ii) (iii), B2 and B8 hereby approved being brought into first use, an Employment Scheme to enhance and maximise employment and training opportunities at the premises, 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.
26. The development hereby approved shall not exceed 2 storeys in height and, other than the surface water drainage infrastructure, no development shall take place on the undeveloped fields to the southeast of the existing employment site and north of the A632.

27. Any future approval of reserved matters application shall seek to maximise connectivity to footpath and cycle infrastructure, including existing and proposed multi-user trails, to facilitate travel to the site by means other than the private motor vehicle.

28. Prior to works commencing on the superstructure of the retail and employment buildings hereby approved a scheme setting out the measures to be incorporated into construction of the units to help address and adapt to climate change shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

## **INFORMATIVES:**

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

The applicant is advised that construction work and deliveries associated with such activity shall be undertaken only between the hours of 7.30am to 6pm Monday to Friday and 7.30am to 1pm on Saturday. There shall be no construction work or deliveries associated with such activity to the site on Sundays or public holidays.

The applicant is advised that the application site is located partially within land that may be required to construct and/or operate Phase 2b of a high-speed rail line from the West Midlands to Leeds, known as High Speed Two. Powers to construct and operate High Speed Two are to be sought by promoting a hybrid Bill in Parliament. More information can be found at: <https://www.hs2.org.uk/in-your-area/local-community-webpages/eastern-leg/>

The development hereby approved includes the construction of new highway. To be considered for adoption and ongoing maintenance at the public expense it must be constructed to the Highway Authority's standards and terms for the phasing of the development. You are advised that you must enter into a highway agreement under Section 38 of the Highways Act 1980. The development will be bound by Sections 219 to 225 (the Advance Payments Code) of the Highways Act 1980. Contact the Highway Authority's Implementation Team at [development.implementation@derbyshire.gov.uk](mailto:development.implementation@derbyshire.gov.uk). You will be required to pay fees to cover the Council's costs in undertaking the following actions:

- Drafting the Agreement
- Set up costs
- Approving the highway details
- Inspecting the highway works.

You should enter into discussions with statutory undertakers as soon as possible to co-ordinate the laying of services under any new highways to be adopted by the Highway Authority. The Highway Authority's technical approval inspection fees must be paid before any drawings will be considered and approved. Once technical approval has been granted a Highway Agreement under Section 38 of the Highways Act 1980 must be completed and the bond secured.

The development hereby approved includes the carrying out of work on the adopted highway. You are advised that before undertaking work on the adopted highway you must enter into a highway agreement under Section 278 of the Highways Act 1980 with the County Council, which would specify the works and the terms and conditions under which they are to be carried out. Contact the Highway Authority's Implementation team at [development.implementation@derbyshire.gov.uk](mailto:development.implementation@derbyshire.gov.uk) allowing sufficient time for the preparation and signing of the Agreement. You will be required to pay fees to cover the Council's costs in undertaking the following actions: Drafting the Agreement A Monitoring Fee Approving the highway details Inspecting the highway works Planning permission is not permission to work in the highway. A Highway Agreement under Section 278 of the Highways Act 1980 must be completed, the bond secured, and the Highway Authority's technical approval and inspection fees paid before any drawings will be considered and approved.

The construction of a new access may require a footway crossing from the carriageway under the Highways Act 1980 - Section 184 and the Applicant is required to obtain the permission of Derbyshire Highways details can be found at [www.derbyshire.gov.uk/transport-roads/roads-traffic/licences-enforcements/vehicularaccess/vehicle-accesses-crossovers-and-dropped-kerbs.aspx](http://www.derbyshire.gov.uk/transport-roads/roads-traffic/licences-enforcements/vehicularaccess/vehicle-accesses-crossovers-and-dropped-kerbs.aspx) or email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) before commencing any works on the highway.

Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.

It is expected that contractors are registered with the Considerate Constructors scheme and comply with the code of conduct in full, but particular reference is made to "respecting the community" this says: Constructors should give utmost consideration to their impact on neighbours and the public a. Informing, respecting and showing courtesy to those affected by the work; b. Minimising the impact of deliveries, parking and work on the public highway; c. Contributing to and supporting the local community and economy; and d. Working to create a positive and enduring impression, and promoting the Code. The CMP should clearly identify how the principal contractor will engage with the local community; this should be tailored to local circumstances. Contractors should also confirm how they will manage any local concerns and complaints and provide an agreed Service Level Agreement for responding to said issues. Contractors should ensure that courtesy boards are provided, and information shared with the local community relating to the timing of operations and contact details for the site coordinator in the event of any difficulties. This does not offer any relief to obligations under existing Legislation.

The development hereby approved, and any associated highway works required, is likely to impact on the operation of the highway network during its construction (and any demolition required). You are advised to contact the Highway Authorities Network Management Team at [www.derbyshire.gov.uk/transportroads/roadtraffic/roadworks/roadworks.aspx](http://www.derbyshire.gov.uk/transportroads/roadtraffic/roadworks/roadworks.aspx) before undertaking any work, to discuss any temporary traffic management measures required, such as footway, Public Right of Way, carriageway closures or temporary parking restrictions a minimum of eight weeks prior to any activity on site to enable Temporary Traffic Regulation Orders to be prepared and a programme of Temporary Traffic Management measures to be agreed.

All new streets must be tree lined as required in the National Planning Policy Framework. All proposed street trees must be suitable for transport corridors as defined by Trees and Design Action Group (TDAG). Details should be provided of what management systems are to be included, this includes root protections, watering and ongoing management. Street trees are likely to be subject to a commuted sum.

In respect of surface water drainage matters, the applicant's attention is drawn to the detailed informative set out in the consultation comments received from the Lead Local Flood Authority dated 25<sup>th</sup> April 2025.

Severn Trent Water have advised that any surface water run-off from hardstanding (equal to or greater than 800 square metres) and/or communal car parking area(s) of more than 50 spaces must pass through an oil, petrol and grit interceptor/separator of adequate design prior to any discharge to an existing or prospectively adoptable sewer.

This planning permission shall be read in conjunction with the accompanying legal agreement under Section 106 of the Town and Country Planning Act 1990 dated .....

### **Statement of Decision Process**

The Local Planning Authority have worked positively and proactively with the applicant to secure amendments to the proposals and additional information which have overcome concerns with regard to the impact of the development on the landscape, heritage, viability of Bolsover Town Centre and ecology.

### **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** South Normanton Parish

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**APPLICATION** Employment development comprising the erection of two Class B2/B8 employment units with ancillary office floorspace, car parking, service yards and site works with details of access, layout and scale submitted for approval.

**LOCATION** Land To The West Of Cartwright Lane Alongside The Mansfield Road South Normanton

**APPLICANT** Mr Marcus Jolly Limes House Middle Street Burton Park Lincoln LN1 2RB

**APPLICATION NO.** 23/00562/OUT **FILE NO.** PP-12508380

**CASE OFFICER** Mr Jonathan Gaynor

**DATE RECEIVED** 3rd November 2023

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## SUMMARY

This is an outline application for the erection of two Class B2/B8 employment units with ancillary office floorspace, car parking, service yards and site works with details of access, layout and scale submitted for approval. Details of appearance and landscaping are reserved for subsequent approval. The development proposed a total of 38,196 square metres of gross internal floorspace, comprising 12,888m<sup>2</sup> of warehouse and 1,112m<sup>2</sup> of office in unit 1 and 22,600m<sup>2</sup> of warehouse and 1,596m<sup>2</sup> of office in unit 2.

The application site comprises approximately 12.2ha, split roughly between Bolsover District and Ashfield District. As such, planning applications have been submitted to both respective local planning authorities.

The site is situated within the countryside and the proposal is contrary to policy SS9 of the Local Plan for Bolsover District. An assessment has therefore been made as to whether the benefits of the development outweigh the loss of the agricultural land and small countryside gap. The site is sandwiched between similar units in Bolsover District to the west and the South Fulwood Industrial Estate in Ashfield District to the east. The visual benefit of the site as countryside is therefore limited. The land is low agricultural grade and the footpath through the site and derelict dwellings near the site on cartwright Lane appear to have been subject to anti-social behaviour and fly-tipping.

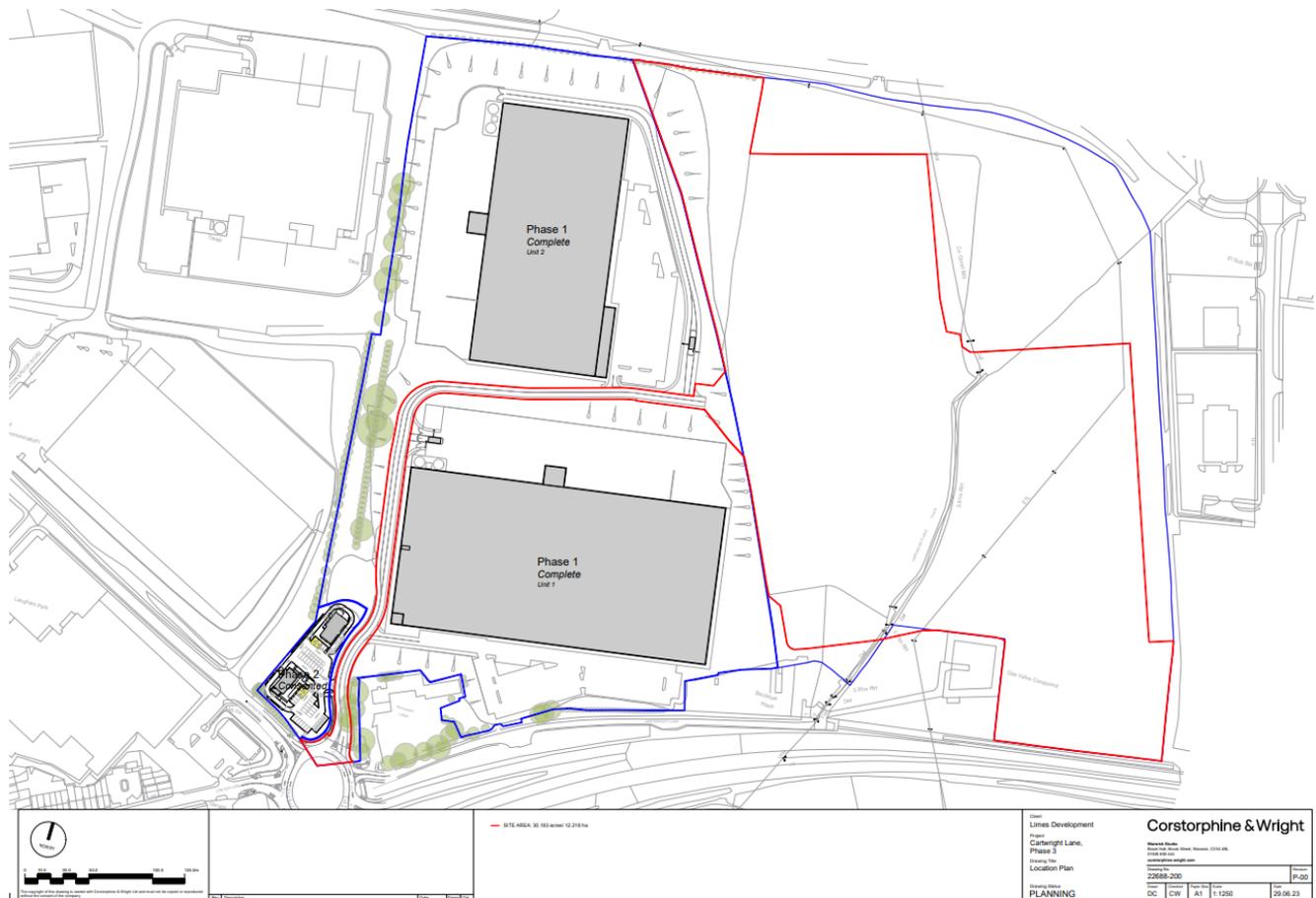
The proposal will bring economic benefits and can be conditioned to secure skills and employment opportunities, as well as good sustainability credentials with regard to the build. Effective landscaping can mitigate loss of the countryside land and rerouting the footpath within this landscaping along with the likely increased footfall may increase use of the land for recreation and leisure, and deter anti-social behaviour.

It has been demonstrated that there is a longer-term need for such development in the east Midlands area, particularly close to the Strategic Road Network. The site is well positioned along the A38 with easy access to the M1 motorway.

Taking all of the above into account, a finely balanced recommendation to grant outline

planning permission is made, concluding that the benefits outweigh the policy conflict.

## **Site Location Plan**



## **OFFICER REPORT ON APPLICATION NO. 23/00562/OUT**

### **SITE & SURROUNDINGS**

The site comprises approximately 12.2 hectares of farmland to the north of the A38, bound by the recently completed Panattoni Park / Park 38 development to the west and the Fulwood Industrial Estate to the east. To the north is Normanton Brook and a land forming a railway tip which has previously had unimplemented temporary planning permission for a storage use. The proposed scheme is in essence a phase 2 to the Panattoni Park. The site is irregular in shape as it excludes areas for biodiversity enhancement for the 'phase 1'. The site encompasses approximately 7.6 hectares of land in Bolsover District at the west side and 4.7 hectares in Ashfield District at the east side. The site levels drop significantly from the southern to the northern by approximately 25 metres.

The site is in a small countryside break between the settlement of South Normanton to the west and industrial estate to the east, with the larger Ashfield District settlements of Sutton-in-Ashfield and Kirkby-in-Ashfield further east. The East Midlands Designer Outlet is to the south beyond the A38.

## PROPOSAL

This is an outline application for the erection of two Class B2/B8 employment units with ancillary office floorspace, car parking, service yards and site works with details of access, layout and scale submitted for approval. Details of appearance and landscaping are reserved for subsequent approval. The development proposed a total of 38,196 square metres of gross internal floorspace, comprising 12,888m<sup>2</sup> of warehouse and 1,112m<sup>2</sup> of office in unit 1 and 22,600m<sup>2</sup> of warehouse and 1,596m<sup>2</sup> of office in unit 2.

Phase 1 to the west already has a newly created access from the roundabout between the Berristow Lane and Cartwright Lane exits, and this proposal utilises that new access continuing it into this site. There is currently a footpath through the middle of the site that will be re-routed around the fringe as part of the development. While appearance is a reserved matter, it is expected that the development will reflect phase 1. This outline application seeks to establish the principle of development for employment use on the site.

As the application involves land across two authorities, both Bolsover District Council and Ashfield District Council are processing the application.

### Supporting Documents

#### Drawings

- Site Location Plan Drawing Ref 22688-200-P-00
- Existing Site Plan Drawing Ref 22688-201-P-00
- Existing Site Sections Drawing Ref 22688-202-P-00
- District Boundaries Plan Drawing Ref 22688-203-P-00
- Proposed Masterplan Drawing Ref 22688-300-P-02
- Proposed Site Sections Drawing Ref 22688-301-P-00
- Proposed Masterplan B2 Drawing Ref 22688-302-P-02
- Highways General Arrangement Drawing Ref SNE-BWB-HGW-OO-DR-TR-101
- HGV Tracking Drawing Ref SNE-BWB-HGW-OO-DR-TR-110
- Large Car Tracking Unit 1 Drawing Ref SNE-BWB-HGW-OO-DR-TR-111
- Large Car Tracking Unit 2 Drawing Ref SNE-BWB-HGW-OO-DR-TR-112

#### Documents

- Design and Access Statement Corstorphine + Wright July 2023
- Planning Statement Q+A Planning Ltd October 2023
- Transport Assessment BWB Consulting October 2023
- Framework Travel Plan BWB Consulting October 2023
- Air Quality Assessment BWB Consulting October 2023
- Flood Risk Assessment BWB Consulting October 2023
- Sustainable Drainage Statement BWB Consulting October 2023
- Phase 1 Geo-Environmental Assessment BWB Consulting October 2023
- Coal Mining Risk Assessment BWB Consulting October 2023
- Ecological Appraisal BSG Ecology October 2023
- Biodiversity Metric Calculation BSG Ecology October 2023
- Arboricultural Report Wharnccliffe October 2023
- Geophysical Survey Report Magnitude Surveys February 2024

- Noise Impact Assessment BWB Consulting March 2024
- Archaeological Assessment BWB Consulting July 2024
- Archaeological Assessment Heritage Appendices BWB Consulting June 2024
- Economic Benefits Statement Q+A Planning October 2024
- Supplementary Note in Relation to Policy SS1 - 'Sustainable Development' (received 27 February 2025)

## AMENDMENTS

Following consultation with the Senior Urban Design Officer, unit 2 nearest the A38 has been turned around so that the service yard faces into the site and does not front the A38. Also, given that the site is within a countryside location in planning policy terms and therefore contrary to policy SS9 (Development in the Countryside) of the Local Plan for Bolsover District, an Economic Benefits Statement has been provided to support justification for a departure from the development plan in this instance by demonstrating wider overriding benefits. A supplementary note has also been provided to demonstrate how the proposal responds to the criteria set out in policy SS1 (Sustainable Development) of the Local Plan for Bolsover District.



## EIA SCREENING OPINION

Given the type, scale, location, characteristics of the development and characteristics of the potential impact, the proposals are not considered to be EIA development considering the

schedules set out in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

## HISTORY

17/00232/SCREEN	Environmental Assessment Not Required	Mixed use retail, leisure and employment development
18/00471/OUT	Granted Conditionally	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)
20/00295/OUT	Granted Conditionally	Employment development comprising the erection of Class B8 employment units with ancillary office floorspace, car parking and service yards with details of access, layout and scale submitted for approval.
21/00248/DISCON	Discharged	Discharge of Condition 5a (Written Scheme of Investigation) of Planning Permission 20/00295/OUT
21/00261/DISCON	Discharged	Discharge of Condition 11 (Non-Licensed Great Crested Newt Method Statement April 2021 - BSG Ecology) of planning permission 20/00295/OUT
21/00405/VAR	Granted Conditionally	Variation of Condition 4 (approved plans), 8 (Construction Phase Environmental management plan), 9 Ecological mitigation and management plan, 11 (Great crested newt licence), 14 (Surface Water Drainage Details), 26 (Badger Licence & mitigation) of Planning Permission 20/00295/OUT
21/00634/DISCON	Discharged	Discharge of condition 12 (contamination) and 13 (coal mining risks) of planning permission 21/00405/VAR
21/00635/REM	Granted Conditionally	Application for Approval of reserved matters of appearance and landscaping (following outline planning permission 20/00295/OUT as varied by permission

21/00405/VAR)

22/00022/DISCON	Discharged	Discharge of condition 18 (employment scheme) of planning permission 21/00405/VAR
22/00024/DISCON	Discharged	Discharge of Condition 14 (Surface Water Drainage) and 17 (Foul Sewage Disposal) of Planning Permission 21/00405/VAR
22/00025/DISCON	Discharged	Discharge of Condition 6 (Construction Management Plan) & 15 (Surface water run-off during construction) of Planning Permission 21/00405/VAR
22/00080/FUL	Granted Conditionally	Earthworks associated with employment development on adjacent site in accordance with approved plans and s278 details
22/00194/DISCON	Discharged	Discharge of Condition 5 (Archaeology) of planning permission 21/00405/VAR
22/00396/DISCON	Discharged	Discharge of Condition 13 (Mine Shaft Treatment Completion Report) of planning application 21/00405/VAR (following partial discharge of condition 13 under application 21/00634/DISCON).
22/00416/MINAM	Granted Unconditionally	Minor amendment to application 21/00635/REM - Introduction of sub station within the service yard of unit 1 and amendments to landscaping plan
22/00495/DISCON	Discharged	Discharge of Condition 23 (Lighting Amenity Impacts) of planning permission 21/00405/VAR
23/00191/DISCON	Discharged	Discharge of Condition 22 (Noise Mitigation) of planning application 21/00405/VAR
23/00196/DISCON	Discharged	Discharge Condition 16 (Drainage Verification Report

and Management Co detail) of planning permission  
21/00405/VAR

23/00397/FUL      Granted      Installation of sprinkler tanks alongside Units 1 & 2  
                         Conditionally

## **CONSULTATIONS**

Amber Valley Borough Council –  
No comments to make.

Ashfield District Council –

The applicant has submitted applications to both Ashfield District Council and Bolsover District Council for the development as it would represent a 'cross-boundary' application. Having reviewed the possible constraints within the District of Ashfield, the Council has the following comments to make to Bolsover on this consultation request:

1. The site is within designated Countryside (Local Plan Policy EV2), and consideration would need to be given to whether the proposal would represent an 'appropriate' form of development in this location.
2. A significant portion of the site along the western edge falls within safeguarded land associated with HS2.
3. A high-pressure gas pipeline runs through sections of the site to the south and east.
4. A public right of way runs through the middle of the site, running north-south and north-east-southwest.
5. There are local wildlife sites within close proximity, with protected species having been identified previously on these sites.
6. Some areas of the site are within a coal mining 'high risk' area.
7. Potential highway impacts.
  - a. No highway related consultation comments have yet been received by Ashfield District Council in relation to our outline planning application V/2023/0628.
  - b. Would query the consultation comments you have received from National Highways, who raise no objections to your application. National Highways have registered a holding objection to a nearby planning application within the District off Ashfield due to concerns over capacity issues of the M1 Motorway and the A38 dual carriageway.

The above matters would need to be weighed against the benefits and/or need for the proposed development, and it should be ensured that the necessary reports/consultations have been received/undertaken.

Blackwell Parish Council –  
No objections.

Bolsover District Council (Arts Officer) –  
No comments received.

Bolsover District Council (Engineers) –

1. Subject to acceptance of the SuDS design by DCC (LLFA), we must ensure the developer submits an Operation and Maintenance Plan (in accordance with section 32 of the SuDS Manual) which provides details of the arrangements for the lifetime management and maintenance of the SuDS features together with contact details.
2. The sewer records do not show any public sewers within the curtilage of the site. However, the applicant should be made aware of the possibility of unmapped public sewers which are not shown on the records but may cross the site of the proposed works. These could be shared pipes which were previously classed as private sewers and were transferred to the ownership of the Water Authorities in October 2011. If any part of the proposed works involves connection to / diversion of / building over / building near to any public sewer the applicant will need to contact Severn Trent Water in order to determine their responsibilities under the relevant legislation.
3. All proposals regarding drainage will need to comply with Part H of the Building Regulations 2010.
4. It is essential that any work carried out does not detrimentally alter the structure or surface of the ground and increase or alter the natural flow of water to cause flooding to neighbouring properties. The developer must also ensure any temporary drainage arrangements during construction gives due consideration to the prevention of surface water runoff onto the public highway and neighbouring properties.

Bolsover District Council (Environmental Health) –

No objections to the proposals in principle. I would advise that a noise impact assessment to evaluate the impact of noise upon neighbouring sensitive receptors, in particular the care home adjacent to the access road, should be undertaken, and the scope of this should include other committed development adjacent to the proposed site. The air quality assessment should also be revisited to ensure that committed development is also factored into the 'with development' scenario. Conditions recommended.

Bolsover District Council (Leisure) –

The development as proposed will affect the alignment of Sutton in Ashfield FP41, which runs from Cartwright Lane, South Normanton in Bolsover district to Nunn Brook Road, Huthwaite in Ashfield district. This path also connects to the Blackwell Trail, which runs from Westhouses to Huthwaite.

I note that the Proposed Masterplan (drawing no. 22688-300 Rev P-01) shows the 'indicative line of new PRoW' heading east from Cartwright Lane and south of unit 2, before heading north along a line just west of the Fulwood Industrial Estate off Common Lane, Huthwaite.

Where the realigned PRoW runs to the west of the industrial estate it is very close to the 'leisure route' that was developed by Nottinghamshire County Council along an infilled section of the former Great Central Railway. This has become overgrown and fallen into disrepair in recent years, mainly due to the route having been blocked further south. However, this route is still used by pedestrians as there is evidence on the ground which shows that the blockage is simply being bypassed to gain access to the onward informal route under the A38.

However, it would be possible to connect the realigned PRow to this 'leisure route' north of Export Drive and to Export Drive where there is an existing shared use pedestrian / cycle path. If the realigned PRow were suitably surfaced and of a suitable width it would provide a much better alternative connection to Huthwaite than the existing suboptimal cycle path running from Cartwright Lane alongside the A38 which is very narrow, unfenced and in close proximity to a very busy road.

Ideally such a path would be 2.5 to 3.0m wide with a sealed surface (tarmac or Flexi-Pave™).

I also note that there is significant provision of cycle parking (42 spaces for unit 1 and 72 spaces for unit 2, a total of 114 spaces) with access along the 3m wide combined footway/cycleway linkage into development formed as part of phase 1. However, it is not clear from the submitted plans and documents that this combined footway/cycleway linkage will continue into phase 2.

If FP41 were upgraded as suggested to a path suitable for use by cyclists and connected to Export Drive, additional cycle access could be created on the east side of the development (much closer to the proposed cycle parking) as well as providing a more direct link for employees from the east of the proposed development, i.e. Huthwaite / Sutton in Ashfield. I do note the potential difference in levels between the realigned PRow and the proposed units, but this should not be insurmountable.

The submitted Travel Plan (page 13-14) and Transport Assessment (page 24-25) both make the following assessment regarding cycle access:

“3.21 In terms of infrastructure, there are shared pedestrian/cycle facilities available at the A38 / Berristow Lane / Carter Lane East / Cartwright Lane roundabout connecting the site with the East Midlands Designer Outlet to the south. Furthermore, cyclists can benefit from a cycle infrastructure provision along the A38 leading towards Sutton-in-Ashfield. There is also a cycle trail available to the north of the site providing connection with Hilcote, South Normanton and Alfreton, which is shown in Figure 7”.

Whilst the facilities named above do exist on the ground, they are not particularly useful for onward travel as the roundabout facilities don't actually connect to the designer outlet (you are forced onto the road just before another roundabout, which is part of the access to / from the A38) and there is no signage suggesting that there is a cycle route along Cartwright Lane / alongside the A38 (there is an 'End of Cycle Route' sign just after the roundabout). The cycle trail (Blackwell Trail) to the north of the site cannot currently be accessed from the site by cycle, only by pedestrians using FP41. Additional pedestrian / cycle links are suggested.

Bolsover District Council (Planning Policy and Strategic Housing) –

From an assessment of the principle of this proposal, it is considered that the proposal would be contrary to the policies of the Local Plan for Bolsover District.

Therefore, I would recommend that the proposal should be refused from this point of principle unless:

a) the economic benefits of the proposal are judged to outweigh the loss of further countryside to development over and above that planned through the Local Plan site allocations; and

b) the proposal is able to demonstrate a high degree of performance against the factors set out in Policy SS1: Sustainable Development.

In the event that the above two points were satisfied, it is considered that a decision-taker may be able to conclude that the material considerations in this case could indicate a decision to approve.

Bolsover District Council (Senior Urban Design Officer) –

Initial recommendation to refuse on townscape and landscape grounds, but following revisions: I have viewed the updated masterplan and I agree that this is a much-improved layout with the service areas to Unit 2, now located at the rear of the building which will reduce any impact on the A38 corridor. The result will be a more characterful public frontage with office accommodation seen from the front to give more architectural interest. The corridor and views from the public footpath to the east will be improved also with a landscape strip that will frame the building.

The applicant previously agreed to send a montage with colour options for the buildings as we previously considered the extension of the white cladding would be accumulatively too stark along this corridor. I had suggested a more recessive colour and suggested a treatment of striped browns and greens to give more interest to the building but also reflect its position within this narrow green gap between two industrial estates.

Cadent Gas –

No objection but request an informative note in relation to their intermediate pressure gas pipeline running in the south and east boundary of the site.

Coal Authority –

The Coal Authority's Planning & Development Team concurs with the recommendations of the Coal Mining Risk Assessment; that coal mining legacy potentially poses a risk to the proposed development and that investigations are required, along with possible remedial measures, in order to ensure the safety and stability of the proposed development. No objection subject to conditions being imposed on any planning permission granted.

Derbyshire County Council (Archaeology) –

The submitted Geophysical Survey of the site shows that the site contains probable field systems and possibly also settlement of pre-industrial date – comparison with the neighbouring site suggests that these may be of prehistoric (Iron Age) or Roman date. These archaeological remains are likely to be locally or regionally important and have potential to contribute to research questions concerning the chronology and development of field systems across north-eastern Derbyshire in later prehistory and into the Roman period.

This archaeological interest should be addressed at the post-consent stage by planning conditions to secure a scheme of archaeological investigation and recording in line with NPPF para 211 (now para 218). This will comprise an initial phase of field evaluation by trial trenching to establish preservation, character and significance, and (where significant remains are present) a second phase of mitigation excavation to record and advance understanding of the archaeological remains insofar as they will be impacted by the proposed development.

Derbyshire County Council (Flood Team) –

We are recommending an objection on the proposed development as it is not possible to provide an informed comment until such a time that the applicant has submitted further information to resolve the following concerns:

- The applicant has discounted infiltration to groundwater as an option for drainage discharge at the site, based on BGS data and a Phase 2 Geo-Environmental Assessment conducted on the adjacent site. However, the assessment from the adjacent site has not been provided so it is not clear what the results from this were and how relevant they are to the proposed development site. In the absence of detailed site-specific information available for the site, we'd expect the applicant to continue to consider infiltration as a potential discharge location, until more detailed site-specific testing is undertaken at detailed design stage.
- Discharge to the Normanton Brook has been proposed by the applicant. However, no information has been provided on the downstream connectivity and capacity of any surface water drainage features between the site and this watercourse. It is therefore not clear that drainage from the site will reach the Normanton Brook without having adverse impacts on downstream development or third party land. We also note that the proposed swale immediately downstream of the site drainage system is not located within the site's application boundary so it is not clear how this will be delivered.
- The proposed attenuation basin is located on sloping land and existing ground levels in this area are, in places, substantially lower than the proposed basin top-of-bank and invert levels. It is not clear how ground levels in this area are proposed to be modified to accommodate this basin at the required level.
- The proposed drainage system relies on pipes that are buried at significant depth (3-4m of cover) to convey water from the proposed drainage basin to towards the site outfall. Additionally, these are located close to proposed buildings. No evidence has been provided to demonstrate that consideration has been given to whether it will be feasible to inspect and maintain these pipes and undertake any required repairs, whilst avoiding damage to the nearby building.
- The following concerns have been identified within the drainage calculations provided by the applicant and these require amendment to demonstrate that the drainage system will operate as proposed and in line with guidance:
  - A CV value of 0.75 has been used in the calculations. Derbyshire County Council Drainage Guidance requires that this is set to 1.
  - A MADD Factor value of 2 has been used. Derbyshire County Council Drainage Guidance requires that this is set to 0.
  - The calculations of greenfield run-off rates and greenfield runoff volume do not appear to have used the same SAAR value.
  - Only a limited range of storm durations have been tested. In particular, we would expect 15 and 30 minute storm durations to be included in the analysis to demonstrate how the proposed drainage system will respond to intense rainfall events.
  - The 1 in 1-year event has not been tested in the model and it is therefore not clear whether the proposed system will meet the requirements of the national non-statutory technical standards for sustainable drainage systems (Defra, 2015).

- The drainage calculations show flooding in some locations in the 1 in 100-year with climate change event. No information has been provided on how this will be managed to avoid flooding of buildings on site and to prevent run-off from leaving the site in this event.

As a statutory consultee for surface water the minimum details required on all major planning applications are as follows:

- Site plan and impermeable area
- Topographic survey of the site
- Appropriate evidence to support how the site will drain, including confirmation of where the surface water will outfall to (photographs / maps / a confirmation letter from a water company)
- Basic calculations of the greenfield/brownfield runoff and discharge rates
- A quick storage estimate to show the required storage volume of surface water on site and an indication of the likely location
- Calculations should include allowances for the current Environment Agency guidance for climate change and urban creep
- Basic ground investigation (desktop survey as a minimum)
- Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate (as per National Planning Policy Framework). A range of sustainable drainage techniques must be considered prior to or in conjunction with the planning layout.
- How the sustainable drainage systems integrate with the open space and green infrastructure should be described and what multifunctional benefits they provide should be stated, as per paragraph 59 of planning practice guidance (Aug 2022).

These details are required at the early planning stage to demonstrate that the proposed site is able to drain and that due consideration has been given to the space required on site for surface water storage.

Please note the level of detail submitted should be proportionate to the size and scale of the development.

#### Derbyshire County Council (Highways) –

It is noted that the trip rates and growth forecast factors have been agreed with National Highways and Nottinghamshire County Council and Derbyshire County Council has no reason to dispute the agreed assessment parameters which have been used to inform the impact assessment of the proposed development. The TA includes junction analysis of the A38/Berristow Lane/Carter Lane East/Cartwright Lane roundabout junction with the analysis indicating that the junction will operate well within capacity in the future year scenario. The TA also includes assessment of other junctions within Nottinghamshire; it is assumed that NCC will comment on the acceptability of the modelling outputs at those junctions within Nottinghamshire. However, the assessments undertaken indicate that those junctions assessed will operate within capacity in the future year scenario.

The application proposes a large number of on site parking spaces for both of the proposed

units are based on NCC's parking standards. The number of spaces does seem very high; however, it is presumed that you will assess if the spaces accord with your own parking standards.

There are no reasons to raise issue with the conclusions made in the TA.

The internal access roads which serve the existing and proposed units are not intended to be adopted as publicly maintainable highway; however, the swept path analysis does indicate that proposed layout is suitable to accommodate those vehicles predicted to access the proposed premises. It is also noted that the internal 2 access roads do not include any trees within the 'street' layout. Derbyshire County Council would encourage the internal layout to include trees within the street scene which would accord with paragraph 131 of the NPPF and with Derbyshire County Council's commitments and aspirations to combat climate change and reduce carbon emissions.

The TA states that an existing PRoW within the site is to be diverted. DCC's PRoW records do not indicate that there are any public footpaths or bridleways which run through the site. It would be useful for the applicant/agent to check with DCC's PRoW team via [ETC.PROW@derbyshire.gov.uk](mailto:ETC.PROW@derbyshire.gov.uk).

Based on the details submitted, there are no objections to the application subject to conditions.

Derbyshire County Council (Policy / S106) –

No comments received.

Derbyshire Wildlife Trust –

We have reviewed the Ecological Appraisal (BSG, October 2023) and the accompanying biodiversity metric (V4.0) (BSG, October 2023). Habitat surveys were undertaken at an appropriate time of year and we welcome the detailed explanations provided in Sections 2.17 – 2.22 to aid our understanding of the metric assessment.

Areas of the site that overlap with the previously consented adjacent development have been included in the baseline habitats, reflecting the target habitats secured as part of the adjacent permission. These areas are limited in size and current proposals fully compensate for impacts. The main mitigation area, secured as part of the 106 Agreement for the adjacent application, remains unaffected.

A net gain of +1.65 habitat units (+6.29 %) and +3.04 hedgerow units (+17.63 %) is predicted. We are pleased to see that proposed trees have not been overvalued within the metric (i.e. trees are recorded as 'small') but we do recommend that a number of 'medium' size native trees are provided in suitable open locations to allow them to establish into large specimen trees and compensate for the loss of the mature ash trees.

Trees 3 and 6 have low suitability for roosting bats and should be subject to an inspection prior to felling or pollarding works, depending on the chosen option. Whilst no setts are present on site, badgers are known to be present locally and therefore best practice working methods should be secured via a CEMP (see Sections 4.14). We consider that this and the Phase 1 development will significantly alter the immediate landscape for the known (offsite)

badger sett. However, some green space will be created / retained and green corridors have been maintained from the sett as part of Phase 1. No major barriers are present to offsite habitats in the north and we anticipate that badgers will utilise foraging habitat in this direction.

Based on the knowledge of GCN obtained during Phase 1 surveys and current assessment / surveys, we support the proposal to register the site under District Level Licencing (DLL). At least two ponds approx. 250 m from the site have tested positive for GCN in 2020 / 2022. We consider that sufficient information is available to determine the application but advise that a condition is secured for a GCN Mitigation Strategy detailing the chosen approach to licencing / reasonable avoidance measures. We welcome a well-designed balancing pond on site suitable for amphibians.

Whilst ground nesting birds are ruled out in the Ecological Appraisal, we do have some residual concerns that the two main fields could be used by species such as skylark, particularly if management practices change in the interim. We advise that as part of the nesting bird condition, the two main fields are stripped outside the nesting season (March – August) unless preceded by a walkover to check for ground nesting birds. Conditions are recommended.

#### Health and Safety Executive –

The proposed development site which you have identified does not currently lie within the consultation distance (CD) of a major hazard site or major accident hazard pipeline; therefore at present HSE does not need to be consulted on any developments on this site. However, should there be a delay submitting a planning application for the proposed development on this site, you may wish to approach HSE again to ensure that there have been no changes to CDs in this area in the intervening period.

#### HS2 Ltd –

As you may be aware, on 4th October 2023 the Prime Minister announced the cancellation of this section of high-speed rail between Birmingham to Leeds. The Network North: Transforming British Transport Command Paper states that safeguarding throughout Phase 2b is to be amended by Summer 2024 to allow for safeguarding needed for Northern Powerhouse Rail, and at this time it is not fully understood what land will remain in safeguarding.

However, we have reviewed the proposal for the above application and can confirm that we have no objections in planning terms. However, please be minded should the local authority grant planning permission, it is requested the following informative is included on the decision notice for awareness:

“Informative: The applicant is advised that part of the application site falls within land that is currently safeguarded for construction and/or operation of HS2 Phase 2b (Crewe to Manchester and Birmingham to Leeds). Although the Government have announced the cancellation of this section of high-speed rail line, Safeguarding Directions are still in place. However, in line with the commitments made in the accompanying Network North Command Paper, safeguarding is to be amended for HS2 Phase 2b by summer 2024 to allow for any safeguarding needed for Network North schemes.

As such, the applicant is advised to closely follow ongoing progress of the Network North

programme for any updates at: [https://www.gov.uk/government/publications/network-north.](https://www.gov.uk/government/publications/network-north)”

National Highways –

National Highways were consulted on this proposal at the scoping stage and in March 2023 provided advice including recommendations for higher trip rates to be adopted due to the age of the data used by the applicant. We have compared the trip rates in the current TA to those proposed at the scoping stage, and the adopted trip rates are higher, but more in line with our recommendations. We consider that this provides a robust assessment of likely traffic generation, and as presented in TA Table 11, this results in 85 two-way vehicle trips in the AM peak and 105 in the PM.

The advice at the scoping stage concluded that impacts of 55 two-way vehicles in the worst case AM peak shall route via M1 junction 28. As these vehicles are all expected to distribute evenly across the multiple approaches and exits of J28 we do not consider that the impacts will result in any material change to junction performance.

We expect the traffic impacts to remain unchanged and therefore recommend that no objections be raised to the application.

Pinxton Parish Council –

No comments received.

Severn Trent Water –

No comments received.

South Normanton Parish Council –

No comments received.

National Grid Electricity Transmission Asset Protection Team –

There are no National Grid Electricity Transmission assets affected in this area. This response is only in reference to National Grid Electricity Transmission assets only. National Grid Electricity Distribution (formerly WPD) and National Gas Transmission (formerly National Grid Gas) should be consulted separately where required.

*All consultation responses are available to view in full on the Council’s website.*

**PUBLICITY**

The application has been publicised by site notice, press notice (Derbyshire Times) and letters sent to seven adjacent properties / businesses. One representation was received:

My main objection to this development is the great increase in the amount of traffic, both private cars and commercial vehicles which will be entering and exiting the development presumably 24 hours a day. They will be using the same access road already there for the two units already constructed and the two takeaways. There is surely going to be an increase in both noise and fumes. I also note that the two units already constructed have as I am aware of not yet been occupied, so why have more units standing empty.

*All representations are available to view in full on the Council's website.*

## **POLICY**

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

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

- Policy SS1: Sustainable Development
- Policy SS2: Scale of Development
- Policy SS3: Spatial Strategy and Distribution of Development
- Policy SS9: Development in the Countryside
- Policy WC2: General Principles for Economic Development
- Policy WC3: Supporting the Rural Economy
- Policy SC2: Sustainable Design and Construction
- Policy SC3: High Quality Development
- Policy SC5: Change of Use and Conversions in the Countryside
- Policy SC7: Flood Risk
- Policy SC8: Landscape Character
- Policy SC9: Biodiversity and Geodiversity
- Policy SC10: Trees, Woodland and Hedgerows
- Policy SC11: Environmental Quality (Amenity)
- Policy SC12: Air Quality
- Policy SC13: Water Quality
- Policy SC14: Contaminated and Unstable Land
- Policy SC18: Scheduled Monuments and Archaeology
- Policy ITCR3: Protection of Footpaths and Bridleways
- Policy ITCR10: Supporting Sustainable Transport Patterns
- Policy ITCR11: Parking Provision
- Policy I12: Employment and Skills

### 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 - 12: Achieving sustainable development.
- Paragraphs 39, 46: Decision Making.
- Paragraph 48: Determining applications.
- Paragraphs 56 - 58: Planning conditions and obligations.
- Paragraphs 85, 87: Building a strong, competitive economy.
- Paragraph 96: Promoting healthy and safe communities.

- Paragraphs 109, 110, 115 - 118: Promoting sustainable transport.
- Paragraphs 124, 125, 129: Making effective use of land.
- Paragraphs 131, 135 – 137, 139 - 141: Achieving well-designed and beautiful places.
- Paragraph 161, 164, 166: Meeting the challenge of climate change.
- Paragraph 181, 182: Planning and Flood Risk.
- Paragraphs 187, 193: Conserving and enhancing the natural environment.
- Paragraphs 196 - 201: Ground conditions and pollution.
- Paragraph 207, 218: Conserving and enhancing the historic environment.

## Supplementary Planning Documents

### *Local Parking Standards:*

This document relates to Policy ITCR11 of the Local Plan by advising how the parking standards contained in appendix 8.2 of the local plan should be designed and implemented with development proposals. This SPD does not revise the standards contained in the Local Plan but does provide suggested new standards for parking matters not set out in the Local Plan, such as cycle parking. The design supersedes the parking design section included within the existing Successful Places SPD (2013).

### *Biodiversity Net Gain Design Note:*

In light of the requirement for mandatory 10% biodiversity net gain, the Council has prepared a planning advice note to provide advice on the background to the introduction of mandatory 10% Biodiversity Net Gain, how this statutory provision relates to policy SC9: Biodiversity and Geodiversity in the Local Plan for Bolsover District, and how we will expect those preparing applications to approach this new legal requirement.

## **ASSESSMENT**

### **Key issues**

It is considered that the key issues in the determination of this application are:

- The principle of the development;
- Landscape and visual impact;
- Highway impacts and whether the development would be provided with a safe and suitable access;
- Contamination and land stability;
- Archaeology;
- Drainage and flood risk;
- Biodiversity and ecological impacts;
- HS2 safeguarding zone; and
- Whether material considerations overcome conflict with Local Plan policies

These issues are addressed in turn in the following sections of this report.

### Principle

The proposal comprises two large commercial units for general industry or storage and distribution outside of but adjacent to the development envelope of South Normanton. While adjacent to the development envelope and recently completed similar units to the west that are inside the development envelope, and although South Fulwood Industrial Estate in Ashfield District is to the east, the site is defined as countryside in planning policy terms, and the development proposal therefore needs to be considered against the criteria provided by policy SS9: Development in the Countryside, which is the Local Plan's strategic policy for development outside of development envelopes.

Policy SS9 sets out circumstances where development proposals in countryside locations may be considered acceptable. The policy states that development proposals in the countryside outside development envelopes will only be granted planning permission where it can be demonstrated that they fall within one or more of the following categories:

- a) Involve a change of use or the re-use of previously developed land, provided the proposed use is sustainable and appropriate to the location;
- b) Are necessary for the efficient or viable operation of agriculture, horticulture, forestry or other appropriate land based businesses, including the diversification of activities on an existing farm unit;
- c) Are small scale employment uses related to local farming, forestry, recreation or tourism;
- d) Secure the retention and / or enhancement of a community facility;
- e) Secure the retention and / or enhancement of a vacant or redundant building that makes a positive contribution to the character or appearance of the area and can be converted without complete or substantial reconstruction;
- f) Are in accordance with a made Neighbourhood Development Plan; or,
- g) The building is of exceptional quality or innovative design.

The proposal does not accord with any of the categories provided by policy SS9 and therefore the principle of development does not accord with the development plan.

### Landscape and visual impact

The site is currently a parcel of agricultural land sandwiched between employment uses to the west within the development envelope of the settlement of South Normanton and the South Fulwood Industrial Estate to the east in Ashfield District. Being adjacent to the busy A38, the site does provide a visual break and distinction between the two areas, although this has been eroded somewhat by the units to the west which were allocated in the Local Plan for Bolsover District, and extensions to the car park at the East Midlands Designer Outlet and other units to the south of the A38 in Ashfield District that have recently been developed. As such, while the development of the site would inevitably result in landscape and visual impacts, the impacts are considered limited within the existing context of the wider surroundings.

Initially, the Council's Senior Urban Design Officer recommended that the application be refused on townscape and landscape grounds, on the basis that the expansion of the scheme will lead to a loss of settlement identity and impact on views from open countryside. She considered that the additional phase of warehousing will be prominent at this height (despite significant levelling) and result in a long monotonous frontage along the A38. This cumulative effect tips the balance between acceptable design and reduced quality of placemaking on

approach into South Normanton. She stated that if the applicant can propose amendments to reduce this effect and maintain settlement identity by further minimising the impact of the development and providing more character, then she would be happy to explore with them how this can be achieved.

One of the issues was that the service yard of unit 2 was fronting the A38, which meant that the unit was set back from the A38 and further back than the unit to the west such that it could be considered to prevent a continuous or monotonous frontage, however having the service yard outward facing was not considered acceptable. Revised plans were received reversing the layout of unit 2 while still retaining some setback and space for landscaping. The Senior Urban Design Officer was reconsulted and confirmed that the layout was much improved and would reduce any impact on the A38 corridor. The result will be a more characterful public frontage with office accommodation seen from the front to give more architectural interest. The corridor and views from the public footpath to the east will be improved also with a landscape strip that will frame the building. It was suggested that white cladding would be cumulatively too stark alongside the other completed units to the west and that more recessive colours of perhaps striped browns and greens could give more visual interest and reflect its position in the small gap between the two industrial areas. Landscape and appearance of the development are however reserved matters for later approval, but from the layout and scale submitted as part of this outline application, it is expected that sufficient landscaping and suitable design elements could be achieved that would make the development acceptable in its context. As such, it is considered that the development could be acceptable in landscape and visual terms, in accordance with those elements of policies SS1, SC2, SC3, and SC8 of the Local Plan for Bolsover District.

#### Highway impacts and whether the development would be provided with a safe and suitable access

Access is proposed from an extension to the new access road constructed to serve the two recently completed warehouse and distribution units to the west, utilising the new arm from the roundabout between the Berristow Lane and Cartwright Lane exits.

National Highways have been consulted and offer no objections to the proposed development. Derbyshire County Council Highways also have no objections subject to conditions being imposed. They note that trip rates and growth forecast factors have been agreed with National Highways and Nottinghamshire County Council and they have no reason to dispute the agreed assessment parameters. The Transport Assessment includes junction analysis of the A38/Berristow Lane/Carter Lane East/Cartwright Lane roundabout junction with the analysis indicating that the junction will operate well within capacity in the future year scenario. With regard to other junctions assessed within the Transport Assessment that are in Nottinghamshire, Nottinghamshire County Council Highways have indicated that the modelling allows for valid comparisons of the before and after situations, and while the flows do have an impact on the performance of both the Common Road and Pinxton Lane junctions, the impact is relatively low. They acknowledge that the junctions are being pushed towards their Practical Reserve Capacity limit, but that any possible mitigation would only make a minimal difference and may be difficult to argue successfully. This in essence indicates that they would not sustain an objection to the development.

Derbyshire County Council Highways did query the high level of proposed parking provision,

but this is commensurate with adopted parking standards for the proposed uses.

The application proposes two different site layout plans with regard to the parking provision. This is because the application is for a flexible B2/B8 use and each use has a different parking requirement. Discussion has taken place as to whether the larger parking provision should be required or whether an appropriately worded condition could be imposed to allow for the lower parking provision plan for each respective unit to be implemented until and unless either of the units are in a B2 use, which requires the higher provision. It is considered that this approach would provide an acceptable way forward, allowing for potentially less 'wasted' land with unused parking if a B2 use is not implemented.

While the internal access roads are not proposed to be adopted as publicly maintainable highway, Derbyshire County Council Highways notes that the submitted Swept Path Analysis indicates that the proposed layout is suitable for the vehicles predicted to be accessing the units. They also encourage trees to be incorporated within the streetscene, however landscaping is a matter reserved for later determination.

The application proposes to divert a public right of way (FP41) shown to run through the centre of the site to the site's perimeter. Its relocation around the development is considered acceptable.

Given the above, the proposal is considered to accord with policies ITCR10 and ITCR11 of the Local Plan.

#### Contamination and land stability

The Council's Environmental Health team raise no objections to the proposals in principle. They initially advised that a noise impact assessment should be required to evaluate the impact of noise upon neighbouring sensitive receptors, in particular the care home adjacent to the access road, and the scope of this should include other committed development adjacent to the proposed site. They also requested that the air quality assessment should be revisited to ensure that committed development is also factored into the 'with development' scenario. Following the submission of further information, the Environmental Health Officer was satisfied.

The Coal Authority's Planning & Development Team concurs with the recommendations of the Coal Mining Risk Assessment; that coal mining legacy potentially poses a risk to the proposed development and that investigations are required, along with possible remedial measures, in order to ensure the safety and stability of the proposed development. They raise no objection subject to conditions being imposed on any planning permission granted.

With the imposition of the suggested conditions, it is considered that contamination and land stability considerations can be acceptably addressed in accordance with Local Plan policies SS1, SC2 and SC14.

#### Archaeology

Derbyshire County Council's Archaeologists have been consulted and they note that the submitted Geophysical Survey of the site shows that the site contains probable field systems

and possibly also settlement of pre-industrial date. Comparison with the neighbouring site suggests that these may be of prehistoric (Iron Age) or Roman date. These archaeological remains are likely to be locally or regionally important and have potential to contribute to research questions concerning the chronology and development of field systems across north-eastern Derbyshire in later prehistory and into the Roman period. They advise that the archaeological interest should be addressed by the imposition of conditions to secure a scheme of archaeological investigation and recording in line with the National Planning Policy Framework. This will comprise an initial phase of field evaluation by trial trenching to establish preservation, character and significance, and (where significant remains are present) a second phase of mitigation excavation to record and advance understanding of the archaeological remains insofar as they will be impacted by the proposed development.

Ashfield District Council who are also considering the same application given the site spans both districts reported that initially, Nottinghamshire County Council's Archaeologists requested intrusive investigations prior to determination of the application. However, they are now also satisfied that the matter can be dealt with post determination by way of conditions.

The proposal is therefore considered to accord with the provisions of Local Plan policy SC18.

#### Drainage and flood risk

The site is in flood zone 1 which is the lowest risk of flooding. The Lead Local Flood Authority has been consulted and has requested further information to resolve their concerns. The concerns relate to the method of drainage discharge, the location of discharge, the land levels of the proposed attenuation basin, the proposed depth of pipes and the drainage calculations used in the submission.

The application is only in outline and the applicant has provided a response including proposed conditions to deal with drainage. This information is currently being considered by the Lead Local Flood Authority. As such, a recommendation to grant planning permission would be subject to the response from the Lead local Flood Authority and any conditions they consider necessary.

#### Biodiversity and ecological impacts

The application was received prior to the introduction of the mandatory 10% biodiversity net gain requirement, however Local Plan policy SC9 still requires proposals to conserve and enhance biodiversity, and provide net gains where possible. The policy requires applications to be accompanied by sufficient information to be able to assess the implications on biodiversity and support will be given where significant harm can be avoided or mitigated where that is not possible, and where there will be no harm to: the conservation status of key species; nationally, regionally or locally designated sites; key or irreplaceable habitats; and, harm to linkages connecting designed sites and key habitats.

Derbyshire Wildlife Trust has been consulted and has reviewed the Ecological Appraisal (BSG, October 2023) and the accompanying biodiversity metric (V4.0) (BSG, October 2023) submitted with the application.

They confirm that habitat surveys were undertaken at an appropriate time of year and note

that areas of the site that overlap with the previously consented adjacent development (immediately to the west) have been included in the baseline habitats, reflecting the target habitats secured as part of the adjacent permission, but these areas are limited in size and the current proposals fully compensate for impacts. The main mitigation area secured as part of the S106 Agreement for the adjacent application remains unaffected.

A net gain of +1.65 habitat units (+6.29 %) and +3.04 hedgerow units (+17.63 %) is predicted. Derbyshire Wildlife Trust recommends that a number of 'medium' size native trees are provided in suitable open locations to allow them to establish into large specimen trees and compensate for the loss of mature ash trees. Landscaping is a reserved matter but it is considered that it is possible to achieve acceptable landscaping on the site.

Derbyshire Wildlife Trust identifies that two trees have low suitability for roosting bats and should be subject to an inspection prior to felling or pollarding works, depending on the chosen option and that whilst no setts are present on site, badgers are known to be present locally and therefore best practice working methods should be secured via a Construction and Environmental Management Plan. They consider that this proposal and the Phase 1 development will significantly alter the immediate landscape for the known (offsite) badger sett. However, some green space will be created / retained and green corridors have been maintained from the sett as part of Phase 1. No major barriers are present to offsite habitats in the north and they anticipate that badgers will utilise foraging habitat in this direction.

Based on the knowledge of Great Crested Newts obtained during Phase 1 surveys and current assessment / surveys, Derbyshire Wildlife Trust support the proposal to register the site under District Level Licencing (DLL). At least two ponds approximately 250m from the site have tested positive for Great Crested Newts in 2020 / 2022. Derbyshire Wildlife Trust consider that sufficient information is available to determine the application but advise that a condition is secured for a Great Crested Newt Mitigation Strategy detailing the chosen approach to licencing / reasonable avoidance measures. They would welcome a well-designed balancing pond on site suitable for amphibians.

Whilst ground nesting birds are ruled out in the Ecological Appraisal, Derbyshire Wildlife Trust do have some residual concerns that the two main fields could be used by species such as skylark, particularly if management practices change in the interim. They advise that as part of a nesting bird condition, the two main fields are stripped outside the nesting season (March – August) unless preceded by a walkover to check for ground nesting birds.

Given the submitted information and comments of Derbyshire Wildlife Trust, the proposal is considered to be able to accord with Local Plan policies SS1, SC3, SC9 and SC10.

### HS2 safeguarding zone

On the 4th October 2023 the Prime Minister at that time announced the cancellation of the section of high-speed rail between Birmingham to Leeds. The Network North: Transforming British Transport Command Paper stated that safeguarding throughout Phase 2b was to be amended by Summer 2024 to allow for safeguarding needed for Northern Powerhouse Rail, and at that time it was not fully understood what land would remain in safeguarding. To date, the Safeguarding Directions have not been withdrawn or amended and therefore still remain in place, despite the earlier commitments.

Most of the western half of the site falls within land that is therefore currently safeguarded for construction and/or operation of HS2 Phase 2b (Crewe to Manchester and Birmingham to Leeds). HS2 Ltd, as the agent acting for the Department for Transport on the matter, have been consulted on the application and based on the current position, have no objections, subject to an informative note advising the applicant to closely follow ongoing progress of the Network North programme and any updates.

Given that HS2 Ltd have confirmed they have no objections based on the current position despite Safeguarding Directions remaining in place at this time, the proposal is not considered contrary to Local Plan policy ITCR10 in terms of the scheme conflicting with HS2 prospects and therefore the fact that the site is currently impacted by the safeguarding zone does not present a reason for refusal.

#### Whether material considerations overcome conflict with Local Plan policies

The strategic Local Plan policy for development in the countryside is policy SS9. As set out in the 'Principle' section of this assessment, this proposal does not accord with any of the criteria where development may be considered acceptable in the countryside, and therefore there is conflict with local planning policy.

S38(6) of the Planning and Compulsory Purchase Act 2004 states that: "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This legislates that the Local Plan is the starting point for any decision and the application should be refused if it doesn't accord with the Local Plan unless there is an overriding planning consideration that should be afforded more weight.

In this case, the applicant has submitted an Economic Benefits Statement that sets out a need for such development, particularly on or near to the strategic road network. It also sets out that Bolsover and Ashfield Districts have lower than national average employment and skills rates, and that the development would provide jobs that could benefit local residents and the local and wider economies. Further information was provided to demonstrate how the proposal contributes to the sustainability criteria set out in Local Plan policy SS1 (Sustainable Development). This additional information includes an Assessment of Benefits with an emphasis on the job opportunities both direct and indirectly that will be generated both during the construction phase, through the occupation of the units and the local supply chain and secondary spending. It is estimated that 17.2 full-time jobs would be created during the construction phase of the project, excluding likely further employment associated with highways and utilities works. Once built and occupied, the proposal is estimated to create 650 jobs in operation, spread across the two units, including warehouse and office employment. Additionality analysis shows that there will be a net gain of 694 jobs when multiplier effects from the development are taken into account.

These considerations need to be weighed against the loss of the countryside that would result from the development. The site comprises a small countryside gap on the north side of the A38 separating the recently completed and similar development Panattoni Park, described as 'phase 1' to the proposed development, to the west in Bolsover District, and the South Fulwood Industrial Estate to the east in Ashfield District. This gap between settlements has to

some extent been eroded on the south side of the A38 in Ashfield District by further development at the Castlewood Business Park. Furthermore, the Local Plan for Bolsover District identifies 'Important Open Breaks' in policy SS11 to prevent development that would detract from the objective of maintaining an open character which contributes to the separation of settlements and their individual identity and sense of place. Given this site was not designated as an Important Open Break, it may be considered that any coalescence in this location would not have an unacceptable impact on individual settlement identity and sense of place as commercial and industrial uses are on both sides.

The main opportunity where the gap is experienced is when driving along the A38 and it is reasonable to remark that it would likely not be noticed or appreciated given the falling land levels and hedgerow / trees that line the highway. Furthermore, amendments to the layout of the proposed unit closest to the A38 and scope for significant landscaping have overcome the Urban Design Officer's concerns. While a footpath runs through the centre of the site currently, the approach along Cartwright Lane is secluded and unappealing, with two boarded up / derelict dwellinghouses and evidence of anti-social behaviour and fly-tipping. The improvement of any publicly accessible areas through new landscaping, in addition to natural surveillance from the unit's offices and from increased occupancy and usage by staff, would likely improve the usability and perception of the space.

In terms of the loss of agricultural land, national policy and guidance seeks to protect the best and most versatile (BMV) agricultural land. BMV agricultural land is graded 1 – 3a. The site has an agricultural land classification of grade 4: poor quality agricultural land. The site is also less than 20 hectares and therefore below the threshold to consult Natural England on its loss when not in accordance with an approved development plan. The loss of the land for agricultural purposes is therefore not considered particularly harmful.

This does not detract from the policy conflict but consideration of the quality and importance of the local landscape does help attribute whether its loss would be lesser than the benefit of the proposed development.

The applicant is accepting of conditions to secure employment and skills benefits, as well as achieving a 'very good' BREEAM rating, which would represent good sustainability credentials. There is a general need for strategic logistics in the East Midlands area, and this location is well placed for the Strategic Road Network. Bolsover District the Council has commissioned an updated Economic Needs Assessment Study (2025) jointly with Chesterfield Borough Council and North East Derbyshire District Council. The Study included a consideration of the demand for employment land at a local and strategic level to 2033 to establish whether needs had changed significantly for the plan period of the Local Plan, and to 2044 to inform any future plan-making. The Study concludes that in relation to the local employment land requirements there is a significant surplus of supply over the demand to 2033. In relation to the years beyond the current plan period to 2044, other than based on a scenario using past take up rates, there would be a small shortfall in local needs varying from 1.47 ha to 2.27 ha. In relation to Strategic Logistics, the Study identifies these as being a unit under Class B8 of the Town and Country Planning (Use Classes) Order 1987 as amended, which comprises 9,000 sq. m or more. The Study confirms that the M1 corridor is a prime location for new strategic logistics development and identifies that there are opportunities to capture more of the jobs, investment and productivity the sector supports within the Study area by allocating sufficient land in the right locations.

It is noted that this proposal is for B2 or B8 uses, so it not guaranteed to come forward for storage and distribution, although the location is still suited to general industry and will bring the other benefits listed above. Over the longer term to 2044, the Study sets out that the results of the analysis supports *“a conclusion that there could be a residual need for the three North Derbyshire Districts to provide between 2 and 3 further strategic B2/B8 parks of at least 25 hectares in size, or between 1 and 2 larger logistics parks of which one could be 50 ha or more in size.”*

While this need could be catered for elsewhere (outside of the district), the proposal would secure benefits within the district to help meet future needs and is not expected to impact on the occupation of already committed sites.

On balance, it is considered that the benefits of the development would outweigh the policy conflict.

## **CONCLUSION / PLANNING BALANCE**

While the site is situated within the countryside in policy terms, it is flanked on both the east and west by employment uses, such that its value in landscape terms and contribution to the wider character and appearance of the countryside is limited. A visual gap could be maintained by effective landscaping and improved usability of the public footpath could be achieved through improvements conditioned through the granting of planning permission. Economic, employment and skills benefits will be brought through the construction and operation of the development, and the site represents a suitable location for such development with regard to accessibility to the Strategic Road Network, contributing towards an expected future need within the East Midlands area.

The application is in outline with appearance and landscaping reserved for future consideration, but it is considered acceptable details with regard to these matters can be achieved.

The benefits listed above can be secured through planning condition at outline stage and would, it is considered, outweigh the conflict with Local plan policy SS9. A recommendation of approval is put forward on this basis.

## RECOMMENDATION

**Upon no objections being received from the Lead Local Flood Authority (LLFA), that delegated authority be given to the Development Management and Land Charges Manager or Principal Planners to APPROVE the development subject to the following conditions and any other conditions recommended by the LLFA,**

1. Approval of the details of the appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development to which this permission relates shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
3. The development hereby permitted shall be carried out in accordance with the following approved drawings and documents unless specifically stated otherwise in the conditions below:
  - Proposed Masterplan Drawing Ref 22688-300-P-02
  - Proposed Site Sections Drawing Ref 22688-301-P-00
  - Proposed Masterplan B2 Drawing Ref 22688-302-P-02
  - Highways General Arrangement Drawing Ref SNE-BWB-HGW-OO-DR-TR- 101
  - HGV Tracking Drawing Ref SNE-BWB-HGW-OO-DR-TR-110
  - Large Car Tracking Unit 1 Drawing Ref SNE-BWB-HGW-OO-DR-TR-111
  - Large Car Tracking Unit 2 Drawing Ref SNE-BWB-HGW-OO-DR-TR-112
  - Design and Access Statement Corstorphine + Wright July 2023
  - Planning Statement Q+A Planning Ltd October 2023
  - Transport Assessment BWB Consulting October 2023
  - Framework Travel Plan BWB Consulting October 2023
  - Air Quality Assessment BWB Consulting October 2023
  - Flood Risk Assessment BWB Consulting October 2023
  - Sustainable Drainage Statement BWB Consulting October 2023
  - Phase 1 Geo-Environmental Assessment BWB Consulting October 2023
  - Coal Mining Risk Assessment BWB Consulting October 2023
  - Ecological Appraisal BSG Ecology October 2023
  - Biodiversity Metric Calculation BSG Ecology October 2023
  - Arboricultural Report Wharnccliffe October 2023
  - Geophysical Survey Report Magnitude Surveys February 2024
  - Noise Impact Assessment BWB Consulting March 2024
  - Archaeological Assessment BWB Consulting July 2024
  - Archaeological Assessment Heritage Appendices BWB Consulting June 2024
  - Economic Benefits Statement Q+A Planning October 2024

4. No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
  - a. The programme and methodology of site investigation and recording
  - b. The programme for post investigation assessment
  - c. Provision to be made for analysis of the site investigation and recording
  - d. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - e. Provision to be made for archive deposition of the analysis and records of the site investigation
  - f. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation
5. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition 4.
6. The development shall not be occupied until the site investigation and post investigation reporting has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition 4 and the provision to be made for publication and dissemination of results and archive deposition has been secured.
7. Before the commencement of the development hereby approved:

The site investigation strategy as identified in the Desk Study report Ref SNE-BWB-EGT-XX-RP-LE-0004\_Ph1 submitted with the application shall be undertaken by a competent person in accordance with the current UK requirements for sampling and analysis.

Where the site investigation identifies unacceptable levels of contamination, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall have regard to relevant current guidance. The approved scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The scheme shall 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.

The developer shall give at least 14 days notice to the Local Planning Authority (Environmental Health Division) prior to commencing works in connection with the remediation scheme.

8. No buildings hereby approved shall be occupied until:

- a) The approved remediation works required by 7 above have been carried out in full in compliance with the approved methodology and best practice.
  - b) If during the construction and/or demolition works associated with the development hereby approved any suspected areas of contamination are discovered, then all works shall be suspended until the nature and extent of the contamination is assessed and a report submitted and approved in writing by the local planning authority and the local planning authority shall be notified as soon as is reasonably practicable of the discovery of any suspected areas of contamination. The suspect material shall be re-evaluated through the process described in the Phase I contaminated land assessment (desk-study) ref SNE-BWB-EGT-XX-RP-LE-0004\_Ph1 submitted with the application and through the process described in 7 above.
  - c) Upon completion of the remediation works required by 7 above a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved remediation standard, together with the necessary waste management documentation shall be included.
9. Before the commencement of construction works including any demolition in connection with the development hereby approved, a programme of measures to minimise the spread of airborne dust from the site during the construction phases, shall be submitted to and approved in writing by the Local Planning Authority and include a dust risk assessment. The construction shall be undertaken in accordance with the approved scheme.
  10. No vegetation clearance shall take place between 1st March and 31st August inclusive, unless preceded by a nesting bird survey undertaken by a competent ecologist no more than 48 hours prior to clearance. This includes site strip of the two main onsite fields. If nesting birds are recorded, an appropriate exclusion zone will be implemented and monitored until the chicks have fledged. No works shall be undertaken within exclusion zones whilst nesting birds are present. If ground nesting birds are recorded, suitable mitigation and compensation shall be agreed with the LPA.
  11. Prior to commencement of works on site (including vegetation clearance), a statement shall be submitted to the LPA confirming the approach to safeguarding great crested newts during development. If this includes licensing, confirmation of the licence being granted by Natural England / a signed Impact Assessment and Conservation Payment Certificate (IACPC) shall also be submitted. All works shall proceed strictly in accordance with the approved strategy / licence.

12.No development shall take place (including demolition, ground works, vegetation clearance and movement of plant, machinery and materials) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall be based on recommendations made in the Ecological Appraisal (BSG, October 2023) and include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of “biodiversity protection zones”.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

13.A Landscape and Biodiversity Enhancement and Management Plan (LBEMP) shall be submitted to, and be approved in writing by, the LPA prior to the commencement of the development. The aim of the LBEMP is to provide details for the creation, enhancement and management of habitats and species on the site post development, in accordance with the proposals set out in the submitted Biodiversity Metric (BSG, October 2023). The LBEMP should combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. It shall include the following:-

- a) Description and location of features to be retained, created, enhanced and managed, as per the approved biodiversity metric.
- b) Aims and objectives of management, in line with desired habitat conditions detailed in the metric.
- c) Appropriate management methods and practices to achieve aims and objectives.

- d) Prescriptions for management actions.
- e) Preparation of a work schedule (including a 30-year work plan capable of being rolled forward in perpetuity).
- f) Details of the body or organization responsible for implementation of the plan.
- g) A monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 2, 3, 5, 10, 15, 20, 25 and 30 years.
- h) Monitoring reports to be sent to the Council at each of the intervals above.
- i) A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.
- j) Detailed habitat enhancements for wildlife, in line with British Standard BS 42021:2022.
- k) Details of offset gullies and drop kerbs in the road network to safeguard amphibians.
- l) Detailed specifications for open water habitats to provide biodiversity benefits.
- m) Requirement for a statement of compliance upon completion of planting and enhancement works.

The LBEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

14. Prior to either of the units hereby approved being brought into use for Class B2 purposes, the access, parking provision and turning facilities for that unit shall have been fully implemented in accordance with drawing Ref. 22688-302 Rev P-02 and be free from impediment to its intended use as a parking area. Otherwise, the parking provision shall have been implemented in accordance with drawing Ref. 22688-300 Rev. P-02 and free from impediment to its intended use prior to the first use of the units hereby approved.
15. Prior to commencement of the development hereby permitted details of a construction management plan shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:
  - Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);

- Advisory routes for construction traffic;
- Locations for loading/unloading and storage of plant, waste and construction materials;
- Method of preventing mud and dust being carried onto the highway;
- Arrangements for turning vehicles;
- Arrangements to receive abnormal loads or unusually large vehicles;
- Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

16. An electric vehicle infrastructure strategy and implementation plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of any building hereby permitted. The plan shall contain details of the number and location of all electric vehicle charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851, and Derbyshire Highway Design Guide. Buildings and parking spaces that are to be provided with charging points shall not be brought into use until associated charging points are installed in strict accordance with approved details and are operational. The charging point installed shall be retained thereafter unless replaced or upgraded to an equal or higher specification.

17. The Development hereby approved shall not be brought into use until the submitted Travel Plan that promotes sustainable forms of travel to the development site has been approved in writing by the Local Planning Authority in consultation with the Local Highway Authority. The submitted details shall use Modeshift STARS Business to carry out this process and include mechanisms for monitoring and review over the life of the development and timescales for implementation. The approved Travel Plan shall be implemented, monitored and reviewed in accordance with the approved details.

18. No development shall commence until;

- a) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past coal mining activity; and
- b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

19. Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

20. Subject to acceptance of the SuDS design by the Lead Local Flood Authority at Derbyshire County Council and prior to commencement of development, an Operation and Maintenance Plan (in accordance with section 32 of the SuDS Manual), which provides details of the arrangements for the lifetime management and maintenance of the SuDS features together with contact details, must be submitted to and approved in writing by the Local Planning Authority.
21. 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. 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.
22. 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.
23. Before occupation of the development hereby approved an external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be designed to reduce light spill and shall have regard to the "Guidance Note 01/21, The Reduction of Obtrusive Light" produced by the Institution of Lighting Professionals. The approved lighting scheme shall be implemented in full before the lighting is first used and shall be retained thereafter.
24. A scheme for the details of footpath diversion and enhancement through the site, including cycleway provision where possible, shall be submitted to and approved by the Local Planning Authority. The scheme shall include details of a suitable bound material and details of connection onto Export Drive. The approved scheme shall be implemented in full prior to first occupation of either of the units hereby approved.
25. The development hereby approved shall be designed and constructed to a BREEAM rating of 'Very Good' or higher. Confirmation of this achievement shall be submitted to the Local Planning Authority within two months of the final rating being awarded.

**Informatives:**

1. Cadent own and operate an Intermediate pressure gas pipeline running in the south and east boundary of the application site. Cadent hold a deed of grant for an easement on this gas pipeline and no development including alterations of ground levels is permitted inside the easement without Cadent written permission. There are building proximity distances that must be adhered to from the Intermediate pressure gas pipeline. Cadent must be contacted and liaised with before any construction commences as there will be restrictions required for the siting of the units and construction processes in the vicinity of the easement.
2. The applicant is advised that part of the application site falls within land that is currently safeguarded for construction and/or operation of HS2 Phase 2b (Crewe to Manchester and Birmingham to Leeds). Although the Government have announced the cancellation of this section of high-speed rail line, Safeguarding Directions are still in place. However, in line with the commitments made in the accompanying Network North Command Paper, safeguarding is to be amended for HS2 Phase 2b by summer 2024 to allow for any safeguarding needed for Network North schemes.

As such, the applicant is advised to closely follow ongoing progress of the Network North programme for any updates at:

<https://www.gov.uk/government/publications/network-north>

3. Drainage arrangements shall be provided to ensure that surface water from the site does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.
4. The applicant should note that Permission is required from the Mining Remediation Authority's Permitting & Licensing Team before undertaking any activity, such as ground investigation and ground works, which may disturb Mining Remediation Authority property. Any comments that the Mining Remediation Authority may have made in a Planning context are without prejudice to the outcomes of a Permit application. Under the Coal Industry Act 1994 any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Mining Remediation Authority since these activities can have serious public health and safety implications. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain permission to enter or disturb our property will result in the potential for court action. Application forms for Mining Remediation Authority permission and further guidance can be obtained from the Mining Remediation Authority's website at: [www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property](http://www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property).
5. Where SuDS are proposed as part of the development scheme consideration will need to be given to the implications of this in relation to the stability and public safety risks posed by coal mining legacy. The developer should seek their own

advice from a technically competent person to ensure that a proper assessment has been made of the potential interaction between hydrology, the proposed drainage system and ground stability, including the implications this may have for any mine workings which may be present beneath the site.

6. In areas where shallow coal seams are present caution should be taken when carrying out any on site burning or heat focused activities.
7. The sewer records do not show any public sewers within the curtilage of the site. However, the applicant should be made aware of the possibility of unmapped public sewers which are not shown on the records but may cross the site of the proposed works. These could be shared pipes which were previously classed as private sewers and were transferred to the ownership of the Water Authorities in October 2011. If any part of the proposed works involves connection to / diversion of / building over / building near to any public sewer the applicant will need to contact Severn Trent Water in order to determine their responsibilities under the relevant legislation.
8. All proposals regarding drainage will need to comply with Part H of the Building Regulations 2010.
9. It is essential that any work carried out does not detrimentally alter the structure or surface of the ground and increase or alter the natural flow of water to cause flooding to neighbouring properties. The developer must also ensure any temporary drainage arrangements during construction gives due consideration to the prevention of surface water runoff onto the public highway and neighbouring properties.

### **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.



**Bolsover District Council**

**Meeting of the Planning Committee on 14<sup>th</sup> May 2025**

**Update report following resolution to approve application code ref. 17/00640/OUT – Land North of Clowne Including Section Of Town Centre, Hickinwood Lane, Clowne**

<b>Classification</b>	This report is Public
<b>Report By</b>	Chris Whitmore Development Management and Land Charges Manager
<b>Contact Details</b>	01246 242294 <a href="mailto:chris.whitmore@bolsover.gov.uk">chris.whitmore@bolsover.gov.uk</a>

**PURPOSE / SUMMARY OF REPORT**

- To update planning committee members on events that have taken place since the resolution to approve planning application code ref. 17/00640/OUT at the meeting of the 17<sup>th</sup> September 2024 planning committee and any changes that could be viewed as being material to the decision that was taken, and;
- To enable the planning committee members to review the statement of decision on the environmental effects and the publicity arrangements for notifying the public, the developer and consultees on the final decision.

**REPORT DETAILS**

**1. Background**

1.1 This report follows the resolution at Planning Committee on the 17<sup>th</sup> September 2024 to grant planning permission for outline planning application with all matters reserved for mixed use development including up to 24ha of employment land (B1, B2, B8), up to 1800 residential dwellings, green infrastructure, educational and recreational uses, a retirement village, neighbourhood centre, hotel, restaurant, health and care, and leisure uses, demolition of existing Station Road Industrial Estate where applicable, demolition of dwelling/outbuilding as applicable, and construction of new link road with in-principal points of access at Land North of Clowne Including Section of Town Centre Hickinwood Lane, Clowne subject to prior entry into a s.106 legal agreement containing the following planning obligations:

Infrastructure Type	Contribution
Highways	<ul style="list-style-type: none"> <li>• The delivery of Treble Bob Roundabout Scheme</li> </ul>

	<ul style="list-style-type: none"> <li>• The delivery of the M1 Jct 30 Interim and Full Schemes</li> <li>• Active Travel &amp; Passenger Transport Strategy</li> <li>• Travel Plan</li> </ul>
Affordable Housing	<ul style="list-style-type: none"> <li>• 10% Provision and Tenure Type</li> </ul>
Education	<ul style="list-style-type: none"> <li>• The transfer of serviced and accessible land to Derbyshire Country Council Education</li> <li>• The delivery of a new primary school by the applicant <u>or</u> a full contribution of £9,500,000 to Derbyshire Council Education for the delivery a new Primary School</li> <li>• Secondary School Contribution of £8,258,879</li> </ul>
Health Care	<ul style="list-style-type: none"> <li>• £1,800,000 contribution towards to the Integrated Care Board to improve health care facilities.</li> </ul>
Open Space	<ul style="list-style-type: none"> <li>• Open Space Management Provisions</li> </ul>
Ecology	<ul style="list-style-type: none"> <li>• Provision for delivery of Skylark mitigation</li> </ul>
Viability	<ul style="list-style-type: none"> <li>• Viability Reappraisal to establish the amount (if any) which is available for calculation of the Deferred Contributions.</li> </ul>
Deferred Contributions	<ul style="list-style-type: none"> <li>• SEND Contribution: Payment of £1,463,597 towards the provision of Special Educational Needs and Disability</li> <li>• Library Contribution: Payment of £126,840.00 towards local library stocks and measures to increase capacity.</li> </ul>

and conditions as set out in the officer's report.

- 1.2 Since the resolution to approve the application, significant progress has been made on drafting the obligations within a s106 agreement in favour of both the District and County Council to secure the above contributions. This report appends the latest draft of the agreement at Appendix 1 for members information.
- 1.3 This report seeks to update members on the progress that has been made to date and residual matters relating to the s106 agreement and to update members on the materiality of the changes to the National Planning Policy Framework in December 2024 on the decision that was taken, the validity of the viability appraisal work that was undertaken in August 2024 and the duty under Regulation 30 of The Town And Country Planning (Environmental Impact

Assessment) Regulations 2017 to inform the public and the secretary of state of final decision.

## **2. Progress and Residual Matters relating to the S106**

- 2.1 The District and County Council have both engaged solicitor's to act on their behalf in respect of the obligations in their favour / for which they are responsible. The number and complexity of obligations has necessitated several meetings between the parties to the agreement to ensure that it is suitably robust and secures the necessary contributions to make the development acceptable in planning terms and which accords with the planning committee resolution.
- 2.2 The financial contributions are clearly set out in the latest version of the draft agreement (Appendix 1) and correspond with the infrastructure asks of the various consultees. It remains that only the library and SEND contributions are deferred following a review of project viability.
- 2.3 The triggers within the agreement have been drafted to reflect the assumptions that fed into the viability review modelling work undertaken on behalf of the District Council, namely:
- Treble Bob Improvement: £5,293,907 - trigger point is prior to occupation of any phase of development.
  - M1 Jct. 30: £535,764 - trigger point is prior to occupation of any phase of development.
  - Healthcare Contribution: £1,800,000 - the trigger point proposed is the occupation of the 600th unit for the entire contribution.
  - Travel Plan: £50,000 – divided into the ten instalments triggered on year 6 of the development.
  - Primary School: £9,500,000 – divided into 3 instalments on occupation of the 375th, 600th and 800th dwelling.
  - Secondary School: £8,258,679 divided into 3 instalments on occupation of the 375th, 600th and 800th dwelling instead of 10 equal payments from the occupation of 1,030 dwellings.

or preferences of beneficiaries in terms of infrastructure delivery, their monitoring requirements or to assist project viability.

- 2.4 There remains some drafting corrections to resolve and review, including the expression of some of the financial contribution definitions as equations, based on the total amount of development to be delivered in recognition that the application seeks outline planning permission.
- 2.5 As there is a possibility that external funding could be secured to deliver the Treble Bob and M1 junction improvement works, it is important that this is appropriately captured in the eighth schedule (Basis of Viability Review). Paragraph 11 of the PPG on Viability explicitly provides that "grant and other external sources of funding should be considered" when defining gross development value for viability assessments. This could mean that the development becomes more viable and that the deferred contributions can be

paid (in full or part). To assist with this a wider definition of surplus has been agreed in the draft s106 to cover any form of grant funding.

- 2.6 The County Council have requested that the primary school and the payment of the Secondary Education Contribution should be completely excluded from the viability process following viability review – which aligns with the committee resolution. This will require some minor tweaks to some of the provisions in the education section and revisions to the “Critical Infrastructure Obligations” definitions.
- 2.7 In the latest draft the County Council have tightened up the provisions relating to the delivery of the school. These provisions need to be agreed with the developer and relevant landowners.
- 2.8 In respect of compensatory habitat for farmland birds (expressed as provision for delivery of Skylark Mitigation in the Officer’s Report to planning committee on the 17th September 2024) it is not yet known how much offsite land will be required and how this will be managed (across the different landowner’s estates). The applicant has advised that the development will come forward in phases and may include some on site provision in the earlier phases. Derbyshire Wildlife Trust (DWT) in consultation comments have expressed that such provision will need to be controlled by condition/legal agreement. Advice has been sought on the most appropriate mechanism for securing a strategy and sufficient compensatory habitat. Subject to advice from DWT it may be appropriate to supplement recommended condition 5 to include the agreement of a mitigation strategy linked to the approved phases (with an expectation that the applicant would need to enter into a separate agreement to include any additional land outside of the application site), with any habitat delivery and management provisions included in the s106.
- 2.9 It is envisaged that agreement will have been reached between the parties on a final draft towards the end of May 2025. Following agreement to the content there will be a short delay distributing the final agreement to all signatories for engrossment. Following resolution of the above matters and engrossment of the agreement, it is recommended that the Local Planning Authority proceeds to issue the decision.

### **3. Publication of a new National Planning Policy Framework in December 2024. (NPPF).**

- 3.1 The Ministry for Housing, Communities and Local Government (MHCLG) published its revised NPPF on 12th December 2024.
- 3.2 Changes impacting development management decisions are effective from the date of publication of the NPPF.
- 3.3 In respect of housing the new NPPF puts a strong emphasis on the need to deliver housing in sustainable locations. The government has introduced mandatory minimum housing targets across the country. The formula to calculate Local Housing Need (LHN), the Standard Method, has been updated. The Standard Method now uses an LPA’s housing stock as the

basis for the calculation of an LHN, which is then subject to an affordability uplift.

- 3.4 The requirement for all councils to annually report a five-year housing land supply (5YHLS) was reinstated and buffers to the 5YHLS were reintroduced.
- 3.5 The District Council currently has a deliverable housing land supply of 6.12 years for the period 2024/25 to 2028/29 based on the housing monitoring figures on 1st April 2024 and the revised local housing need introduced on 12<sup>th</sup> December 2024 with a requirement, including a 5% buffer, of 371 dwellings per annum.
- 3.6 If the Council was unable to demonstrate a 5YHLS paragraph 11(d) of the NPPF now requires a "strong" reason, rather than a "clear" reason, for refusing planning permission for development that aligns with sustainable development principles. This "tilted balance" favours granting permission unless the framework indicates a strong reason for refusal. Furthermore, policies directing development to sustainable locations, making effective use of land, securing well-designed places, and providing affordable housing are given special regard.
- 3.7 In the case of application 17/00640/OUT, the development plan is not considered to be out of date. The site and proposed development are allocated in the Local Plan for Bolsover District (2020) and it remains that the development is considered to be acceptable when considered against the policies contained within this document and all other material considerations.
- 3.8 The changes place a stronger emphasis on delivering socially rented homes. The mandatory requirement for First Homes has been revoked, although it remains an option for delivery where locally judged appropriate. In the case of application 17/00640/OUT the tenure of the units is to be agreed as part of the submission of an affordable housing scheme (given the length of the build programme), with affordable housing units defined as per the definition in the updated NPPF.
- 3.9 The updated NPPF includes new provisions in relation to the Green Belt. As the site and development is allocated in the Development Plan and does not involve built development in the Green Belt, the new provisions are not considered to materially impact on the resolution made.
- 3.10 Other changes to NPPF policy include the replacement of the 'predict and provide' approach to transport planning to a 'vision-led' approach. The development has been planned based on anticipated vehicle flows with sustainable travel initiatives to be included in the Travel Plan and Active Travel and Sustainable Passenger Strategy. Furthermore, to support the implementation of this updated policy, the government advised that they would publish updated Department for Transport guidance alongside the policy coming into effect. This requires new guidance on how transport assessments should be prepared, consulted on, and made available. This has not yet been issued. The changes do not therefore materially change the approach towards transport planning and assessment.

- 3.11 Finally, the requirements for Sustainable Drainage Systems (SuDS) has been widened. As the application proposes major development it includes SuDS proposals and this has been conditioned accordingly.
- 3.12 In summary and for reasons set out above, the changes to the NPPF in December 2024 that concern decision making / development management are not considered to materially impact on the decision of the planning committee on the 17<sup>th</sup> September 2024 to resolve to approve planning permission, subject to the prior completion of a legal agreement to secure the planning obligations set out in the officer's report.

#### **4. Validity of the Viability Appraisal Work**

- 4.1 The assessment of project viability concluded in August 2024. The District Council's viability expert's latest report was dated 2nd August 2024. The findings / conclusions within viability reports usually remain valid for 6 months. It is therefore considered appropriate to consider whether economic conditions have changed since February 2025 in a manner that would be favourable to the District Council to justify a further review of project viability. Worsening viability has not been raised by the applicant since the planning committee resolution.
- 4.2 The Council has sought advice from its viability expert and they have advised that there is some flexibility on the 6 month 'shelf-life' referred to in their report of the 2<sup>nd</sup> August 2024.
- 4.3 In terms of market conditions, they have advised that there have been some early signs of improvement, aided by recent (November and February) cuts in the Bank of England base rate. They also advise that build cost inflation remains low so it could be argued that there has been a marginal improvement in the market. However, as the global economic picture is currently uncertain this undermines any positive gains that could favour the District Council, such that the maintenance of the status quo is appropriate.
- 4.4 Taking the above into consideration if an agreed position is reached on the s106 obligations by the end of May 2025 or soon after, ahead of circulation to the landowners for engrossment, the Council's viability expert has advised that the findings in the 2<sup>nd</sup> August 2024 assessment can be relied upon.
- 4.5 Notwithstanding the above, it will be some time before development commences on site and the s106 agreement contains provisions for viability to be reviewed at five years post commencement of development or prior to the occupation of the 800<sup>th</sup> dwelling, which will enable the District Council to establish whether the project has been profitable enough at that stage for the deferred contributions to be made.

#### **5. Duty under Regulation 30 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 to inform the public and the secretary of state of final decision**

- 5.1 Under regulation 30 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 there is a duty to inform the public and the Secretary of State of final decisions.
- 5.2 Where an Environmental Impact Assessment application is determined by a local planning authority, the authority must promptly—
- (a) inform the Secretary of State of the decision in writing;
  - (b) inform the consultation bodies of the decision in writing;
  - (c) inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
  - (d) make available for public inspection at the place where the appropriate register (or relevant part of that register) is kept a statement containing—
    - (i) details of the matters referred to in regulation 29(2) (*namely to provide the developer with the following information if the decision is to grant planning permission or subsequent consent:*
      - (aa) *the reasoned conclusion of the relevant planning authority or the Secretary of State, as the case may be, on the significant effects of the development on the environment, taking into account the results of the examination referred to in regulation 26(1)(a) and (b);*
      - (bb) *any conditions to which the decision is subject which relate to the likely significant environmental effects of the development on the environment;*
      - (cc) *a description of any features of the development and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset, likely significant adverse effects on the environment; and*
      - (dd) *any monitoring measures considered appropriate by the relevant planning authority or the Secretary of State, as the case may be)*
    - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
    - (iii) a summary of the results of the consultations undertaken, and information gathered, in respect of the application and how those results (in particular, in circumstances where regulation 58 applies, the comments received from an EEA State pursuant to consultation under that regulation) have been incorporated or otherwise addressed.

- 5.3 The Secretary of State is aware of the decision to be taken by the Local Planning Authority as a result of the call in process. After the planning committee resolution, the Secretary of State decided not to call the application in under Article 31 in a decision dated 11<sup>th</sup> February 2025 (provided at Appendix 2). She was content that the application should be determined by the local planning authority.
- 5.4 Following completion of the legal agreement it will, however, be prudent to notify them and the consultation bodies of the final decision. In order to satisfy the requirements of regulation 30 (c) an advertisement has been provided at Appendix 3. A separate statement of decision on the environmental effects to satisfy the requirements of regulation 30 (d) is provided at Appendix 4. This will be placed on the public record following completion of any agreement. It is recommended that such publicity and notification required by regulation 30 is undertaken promptly following determination of the application by the District Council in its capacity as the Local Planning Authority.

## **6 Reasons for Recommendation**

- 6.1 Given the time that has passed since the planning committee resolution to approve application 17/00640/OUT in September 2024, the recommendation is presented to planning committee members to enable them to review the latest draft of the s106 agreement, note the progress that has been made and residual concerns to be addressed, to be satisfied that any final decision taken would remain within the scope of the original committee resolution and to consider and comment on the changes to the National Planning Policy Framework in December 2024 and the validity of the viability appraisal work in terms of whether this has a bearing on their decision.
- 6.2 The recommendation also enables planning committee members to consider / review the statement of decision on the environmental effects and the publicity arrangements for notifying the Secretary of State, public, the developer and consultation bodies on the final decision prior to being issued by the District Council.

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

- 7.1 The District Council could choose not to provide details of the draft s106 agreement or set out the progress made to date, the changes to the National Planning Policy Framework in December 2024 and the validity of the viability appraisal work. This would deny the public and planning committee members the opportunity to comment on matters which could be deemed material to the consideration of the application and the resolution to approve planning permission on 17<sup>th</sup> September 2024.
- 7.2 It is also considered good practice to set out the statement of decision on the environmental effects and the publicity arrangements to be followed to enable scrutiny of the legislative requirements and any comments to be made that may inform the content.

## **RECOMMENDATION(S)**

1. That approval is given to the general provisions contained within the draft s106 agreement provided at Appendix 1, with delegated authority being given to the Assistant Director of Planning or the Development Management and Land Charges Manager to make any minor amendments to address the residual matters set out in this report and agree any management provisions in relation to farmland birds and proceed to complete the agreement.
2. That members note the changes to the National Planning Policy Framework and validity of the viability appraisal work that was undertaken and endorse that this does not materially impact on the resolution to grant planning permission at planning committee on the 17<sup>th</sup> September 2024.
3. That members approve the statement of decision at Appendix 3 on the environmental effects and the publicity arrangements to be followed as set out at Section 5 of this report.

### **IMPLICATIONS:**

**Finance and Risk:**            Yes             No

**Details:** There are no specific finance or risk issues arising from this report other than the potential risks and costs arising from any application for judicial review of any planning decision taken.

On behalf of the Section 151 Officer

**Legal (including Data Protection):**            Yes             No

**Details:** There is a risk that by not following correct procedure with regard to publicity and consultation on the statement of decision on the environmental effects or considering all material planning considerations, following the original committee resolution that a claim for judicial review could be made.

On behalf of the Solicitor to the Council

**Environment:**            Yes             No

*Please identify (if applicable) how this proposal / report will help the Authority meet its carbon neutral target or enhance the environment.*

**Details:** There are no environmental implications.

**Staffing:**            Yes             No

**Details:** There are no staffing implications.

On behalf of the Head of Paid Service

## **DECISION INFORMATION**

<p><b>Is the decision a Key Decision?</b>  A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <b>No significant impact on two or more district wards or expenditure above the thresholds.</b></p> <p>Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/>  <input checked="" type="checkbox"/> Please indicate which threshold applies</p>	No
<p><b>Is the decision subject to Call-In?</b>  (Only Key Decisions are subject to Call-In)</p>	No

<b>District Wards Significantly Affected</b>	Clowne
<p><b>Consultation:</b>  Leader / Deputy Leader <input type="checkbox"/> Executive <input type="checkbox"/>  SLT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/>  Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/></p>	No

<b>Links to Council Ambition: Customers, Economy, Environment and Housing.</b>
<ul style="list-style-type: none"> <li>Economy, Environment and Housing – Meeting the Council’s ambitions for growth and change in the district.</li> </ul>

<b>DOCUMENT INFORMATION</b>	
<b>Appendix No</b>	<b>Title</b>
1	Latest Draft S106 Agreement
2	SoS Call in Decision – 11 <sup>th</sup> February 2025
3	Local Advertisement to Notify the Public of the Decision
4	Statement of Decision on the Environmental Effects
<b>Background Papers</b>	
<i>(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 Executive you must provide copies of the background papers).</i>	

DATED \_\_\_\_\_ 2025

(1) BOLSOVER DISTRICT COUNCIL

(2) THE HONOURABLE JAMES MORYS BRUCE, ROBERT STURDEE MASON  
and TIMOTHY EDWARD SHULDMAN

(3) LGK FARMS LLP

(4) WAYSTONE LIMITED

(5) DERBYSHIRE COUNTY COUNCIL

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**PLANNING OBLIGATION BY WAY OF AN AGREEMENT  
UNDER SECTION 106 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990**  
relating to  
Land at Clowne, Derbyshire

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1 Cornhill  
London  
EC3V 3ND

Tel: 03330 143 401

Email: [sam.ashoka@gunnercooke.com](mailto:sam.ashoka@gunnercooke.com)

**THIS DEED** is made the

day of

2025

**BETWEEN:-**

- (1) **BOLSOVER DISTRICT COUNCIL** of The Arc High Street Clowne S43 4JY ("the Council")
- (2) **THE HONOURABLE JAMES MORYS BRUCE** of **ROBERT STURDEE MASON** and **TIMOTHY EDWARD SHULDHAM** c/o Mr T E Shuldman of Fisher German LLP Unit 2 Carolina Court Doncaster DN4 5RA ("the First Owners ")
- (3) **LGK FARMS LLP** (LLP Regn. No. OC361744 of 8 Ebor Court Malton Way Adwick Le Street Doncaster South Yorkshire DN6 7FE("LGK") ("the Second Owner")
- (4) **WAYSTONE LIMITED** (Company Number 02451184) whose registered office is situate at CP House Otterspool Way Watford By Pass Watford Hertfordshire WD25 8JJ ("the Developer")
- (5) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, Derbyshire DE4 3AG ("the County Council")

**WHEREAS:-**

- (A) The Council is the local planning authority for the area within which the Application Site is situated and is the local planning authority by whom this Agreement is enforceable for the purposes of Section 106 of the Act
- (B) The County Council is the education authority and highway authority for the area in which the Site is situated.
- (C) On 14 December 2017 the Developer submitted the Planning Application to the Council and the Council has resolved that the Planning Permission shall be granted subject to a legal agreement being entered into making provision for the planning obligations herein contained
- (D) [The First Owners are the owners with freehold title absolute of part of the Site registered at the Land Registry under Title Numbers [ ]
- (E) The Second Owner is the owner with freehold title absolute of part of the Site registered at the Land Registry with Title Number DY462468
- (F) Waystone intends to acquire legal and/or equitable interests in the Third Party Land and agrees that once it does so it will (unless the Council shall first agree the interest acquired is not required to be bound by this Agreement) procure that the owners of such Third Party Land either enter into an agreement in the same form as this Agreement (mutatis mutandis) or enter into a Deed of Adherence to bind their interests in the Third Party Land by the terms of this Agreement
- (G) The Council considers it expedient in the interests of the proper planning of its area that the Planning Permission should be granted subject to the parties entering into this Agreement and this Agreement is entered into to make provision for regulating the Development and securing the matters hereinafter referred to



<b>“County Council’s Additional Funding”</b>	the 15% of the estimated cost of delivering the Primary School as specified in the approved Primary School Costs Schedule
<b>“Critical Infrastructure Contributions”</b>	means the Primary School Facility or Primary School Contribution (where payable), the Secondary School Contribution, the Health Care Contribution and the Travel Plan Contribution but shall exclude the other Contributions and obligations
<b>“Deed of Adherence”</b>	means a deed in the form set out in Annexure 2
<b>“Deferred Contributions”</b>	means the Library Contribution and the SEND Contribution
<b>“Deferred Contribution Cap”</b>	means in respect of the Library Contribution the sum of £126,840 (One Hundred and Twenty Six Thousand Eight Hundred and Forty Pounds) and in respect of the Send Contribution the sum £1,463,597.00 (One Million Four Hundred and Sixty Three Thousand Five Hundred and Ninety Seven Pounds)
<b>“Development”</b>	means the mixed use development of the Site to provide a mixed use development including up to 24 ha of Employment Land (E(g) (i) (ii) (iii), B2, B8) up to 1,800 Residential Dwellings, Green Infrastructure, Educational and Recreational uses, a Retirement Village Neighbourhood Centre, Hotel, Restaurant, Health and Care and Leisure uses, Demolition of Existing Station Road Industrial Estate where applicable, demolition of dwelling/outbuilding as applicable and construction of new Link Road with in principle points of access
<b>“Disposal”</b>	means a sale of the freehold interest or the grant of a long leasehold interest of at least 125 years
<b>“Dwellings”</b>	means the Affordable Housing Units and the Market Dwellings and a reference to Dwelling shall be construed accordingly
<b>“Fully Serviced”</b>	means fully serviced to its boundary which shall mean the provision of a permanent electricity supply, water supply, foul and surface water drainage, a duct for accommodating broadband and telecommunications and the benefit of full vehicular, cycle and pedestrian rights of way over the estate road, footpaths and cycle paths (if any) (once built) to and from the adopted road network from and to the Primary School Site [ <i>substantially in accordance with Appendix X</i> ].
<b>“Healthcare Contribution”</b>	means the sum of £1,800,000 (One Million Eight Hundred Thousand Pounds) Index Linked
<b>“Implementation”</b>	means the carrying out on the relevant part of the Site of a material operation as defined by Section 56(4) of the 1990 Act (“Material Operation”) in connection with the Development save that for the purposes of this Agreement none of the following operations shall constitute a Material Operation:- <ul style="list-style-type: none"> <li>(a) archaeological or site inspections;</li> <li>(b) site or soil surveys;</li> <li>(c) decontamination works;</li> <li>(d) demolition or site clearance;</li> </ul>

- (e) works to the existing public highways including the Treble Bob Works and provision of temporary site access and temporary internal roads;
- (f) the laying or diversion of services;
- (g) the erection of a site compound;
- (h) the erection of temporary fences or hoardings;
- (i) the display or advertisements including the erection of advertisement hoardings;
- (j) interim landscaping works; and
- (k) the servicing earthworks and infrastructure associated with creating saleable development platform(s)

and “Implement” “Implemented” and “Implementation Date” shall be construed accordingly

<b>“Index Linked”</b>	<p>means increased in accordance with the following formula:</p> <p>Amount payable = the payment specified in this deed x (A/B) where:</p> <p>A = the figure for the Index which applied immediately preceding the date the payment is due;</p> <p>B = the figure for the Index which applied when the index was last published prior to the date of this Deed</p>
<b>“Index”</b>	means the Consumer Price Index
<b>“Interest Rate”</b>	means interest at 2% per cent above the Bank of England base lending rate published from time to time
<b>“Library Contribution”</b>	means the sum of £126,840 (One Hundred and Twenty Six Thousand Eight Hundred and Forty Pounds)
<b>“Market Dwellings”</b>	means those Dwellings which are not Affordable Housing Units
<b>“Market Value”</b>	means the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction after proper marketing and where the parties had each acted knowledgeably prudently and without compulsion on the basis that it is assessed in accordance with the Royal Institution of Chartered Surveyors (RICS) Valuation – Professional Standards 2017 UK Edition commonly known as the Red Book (or any subsequent updated version)
<b>“<u>Monitoring Fees</u>”</b>	means the fee to cover the County Council’s costs of monitoring the contributions paid to them under this Agreement which shall be calculated as £77.00 (Seventy Seven Pounds) x the total number of triggers for payment of financial contributions payable to them under this Agreement
<b>“Nominations Agreement”</b>	means an agreement between the Registered Provider and the Council (or its nominee) containing arrangements for the initial; and subsequent selection and prioritisation of tenants or occupiers of the Affordable Housing Units

<b>“Occupation” and “Occupied”</b>	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
<b>“Off-Site Highway Improvements Schemes”</b>	means the schemes for the provision of off-site highway improvements proposed in connection with the Development as set out in the Fifth Schedule
<b>“Owners”</b>	means the First, Second and Third Owners and the First and Second Trustees
<b>“Planning Application”</b>	means the application for outline planning permission for the Development submitted to the Council on [14 <sup>th</sup> December 2017 ] and allocated reference number 17/00649/OUT
<b>“Planning Permission”</b>	means the planning permission to be granted for the Development in pursuance of the Application the current draft of which is annexed at Annexure 2
<b>“Phase of Development”</b>	means each phase of the Development as generally shown on drawing number CN-PP-01 REV A as may be varied from time to time and a reference to a Phase shall mean the relevant part or the whole thereof as the circumstance shall permit
<b>“Practical Completion”</b>	means the issue of a certificate of practical completion of the Primary School (or such part as may be specified) by the Owners’ architect or other project consultant appointed by the Owners and “Practical Complete” and “Practically Completed” shall be construed accordingly
<b>“Primary School”</b>	means a 2 form entry primary school capable of accommodating 420 primary age pupils to be provided pursuant to the Sixth Schedule
<b>“Primary School Approval Date”</b>	means the date on which all necessary planning permissions for the construction of the Primary School have been granted and are no longer capable of being challenged including the expiration of any relevant statutory period for judicial review without a challenge being made or, if a challenge is made, the date on which such challenge is finally determined, withdrawn, or otherwise disposed of, allowing the planning permissions to remain in full force and effect
<b>“Primary School Contribution”</b>	means £9,500,000.00 (Nine Million Five Hundred Thousand Pounds) to be paid to the County Council in accordance with the Part Three to the Sixth Schedule and used towards the construction of the Primary School
<b>“Primary School Site”</b>	means a site of not less than 1.8 ha (in the range 15,986 – 20,040 sqm) capable of delivering the Primary School, Fully Serviced and made available at a location to be agreed in writing by the Owners and the County Council (all acting reasonably)
<b>“Primary School Specification”</b>	means the detailed specification necessary for the construction of the Primary School in accordance with DfE Baseline Design guidelines for similar sized primary schools or such higher standards as may be agreed to be submitted by the County

Council for approval by the Owners in accordance with Part One to the Sixth Schedule

**“Primary School Costs Schedule”**

means a document prepared by a qualified professional which specifies the estimated cost of delivering the Primary School in accordance with the Primary School Specification to be submitted by the County Council to the Owners for approval in accordance with Part One to the Sixth Schedule

**“Public Access Areas”**

means the areas of open space and other public access routes or areas (and including play areas) to be provided within the Development for public use and ‘Public Access Area’ shall be construed accordingly

**“Public Access Strategy”**

means the public access strategy to be agreed between the Owners and the Council

**“Public Access Areas Management Plan”**

means a plan for the management and maintenance (including repair and renewal) of the Public Access Areas to include details of either stewardship or other appropriate management arrangements to deal with the future management and maintenance of the public access areas

**“Reasonable Endeavours”**

means that the following steps have been taken over a reasonable period of time in order to achieve the desired result:-

- (a) methods commercially prudent (including for the avoidance of doubt, the expenditure of money, but not such as to sacrifice the commercial interests of the Party under the obligation) and likely to achieve the desired result have been taken; and
- (b) in the event a first attempt at securing the desired result has failed (unless there are no reasonable alternatives) at least one alternative method of achieving the desired result has been pursued over a reasonable period and in accordance with paragraph (a) of this definition

**“Registered Provider”**

means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 who is registered with the regulator for affordable housing (as defined in Chapter 2 of Part 2 of the said Act) pursuant to Chapter 3 of Part 2 of the said Act and has not been removed from the register pursuant to section 118 or section 119 of that Act and who has been approved by the Council for the delivery of Affordable Housing in the Council’s area generally or in relation to the Development

**“Relevant Owner”**

means the owner of the freehold interest in part of the Site that is affected by the obligations of this Agreement and reference to Relevant Owners shall be construed accordingly

**“Reserved Matters Application”**

means a reserved matters application made pursuant to the Planning Permission for some or all of the Development or each phase of the Development

**“Reserved Matters Approval”**

means an approval by the Council of a Reserved Matters Application

<b>“SEND Contribution”</b>	means the sum of £1,463,597.00 (One Million Four Hundred and Sixty Three Thousand Five Hundred and Ninety Seven Pounds)
<b>“Secondary School Education Contribution”</b>	means
<b>“Site”</b>	means the land described in the First Schedule and identified on the Application Site Plan as being in the ownership of the Owners
<b>“Social Rent Units”</b>	means housing that is available to rent at a rent no greater than the Homes and Communities Agency Target Rent by persons in housing need via the medium of a Registered Provider and which housing remains permanently accessible for those purposes to people who for any reason cannot afford to rent or purchase suitable accommodation at prevailing market prices and ‘Social Rental’ shall be construed accordingly
<b>“Surplus”</b>	means the sum which is 50% of the figure that equates to the gross development value of the Development (which includes any grants , subsidy or financial support provided by any charity, company, financial institution or by central or local government or any linked organisation) less build costs owners profit and benchmark land value assessed in accordance with the Viability Review
<b>[“Third Party Land”</b>	means any legal or equitable interest in land forming part of the Site which is not in the ownership of the Developer and/or the Owners provided always that where a Deed of Adherence has been completed pursuant to clause 6.3 such land the subject of the Deed of Adherence shall cease to be Third Party Land and shall thereupon form part of the Site]
<b>“Transfer”</b>	<p>means a transfer of the Primary School Site in accordance with but not limited to the following:</p> <ul style="list-style-type: none"> <li>• The transfer shall be for nominal consideration of £1.000 (One Pound);</li> <li>• The transfer shall include such easements as are reasonably required to ensure the Primary School Site is Fully Serviced;</li> <li>• The transfer shall include a covenant by the County Council restricting the use of the land transferred for the purposes of the Primary School</li> </ul> <p>and such other terms as the parties may agree in writing acting reasonably, and the word “Transferred” shall be construed accordingly</p>
<b>“Travel Plan”</b>	means the long term management strategy as agreed by the County Council that encourages sustainable travel for the Development setting out transport impacts, establishes targets and identifies a package of measures to encourage sustainable travel to be implemented on the sixth anniversary of Implementation of Development
<b>“Travel Plan Contribution”</b>	means the sum of £50,000.00 (Fifty Thousand Pounds) Index Linked to be paid by the Owner to the County Council and used for the monitoring of the Travel Plan

<b>“Treble Bob Plan”</b>	means the AECOM indicative drawing Treble Bob roundabout Traffic Signals Option 2B annexed hereto at Annexure 2 and bearing reference CGV-ACM-XX-XX-DR-CE-010001 Revision P01
<b>“Treble Bob Roundabout Scheme”</b>	the scheme in accordance with the plans set out in Appendix 3
<b>“Treble Bob Roundabout Works”</b>	means the works to be carried out in accordance with the Treble Bob Scheme
<b>“Unit”</b>	means an individual unit of accommodation within the Development
<b>“Viability Review”</b>	<p>means a review of the financial viability of the Development and the extent of the Contributions which can continue to be payable such review to be carried out on the basis set out in the Eighth Schedule and further on the basis that:-</p> <ul style="list-style-type: none"> <li>(a) it is forward looking and based on that part of the Development which has yet to be completed on the date of the Viability Review;</li> <li>(b) it includes from the assessment those parts of the Development already completed;</li> <li>(c) it reflects the anticipated costs of the Development and takes into account the costs of the Development already completed;</li> <li>(d) it takes into account to Contributions already paid</li> </ul>
<b>“Working Days”</b>	means any day upon which the London clearing banks are open for business

## 2. INTERPRETATION

### 2.1 Unless the context otherwise requires:-

- (a) words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
- (b) words importing persons include firms companies other corporate bodies or legal entities and vice versa;
- (c) references to clauses sub-clauses paragraph numbers sections recitals schedules and plans are unless otherwise stated references to clauses sub-clauses paragraph numbers sections and recitals of and schedules to this Agreement and plans attached to this Agreement;
- (d) references in this Agreement to statutes, bye laws, regulations, orders and delegated legislation shall include any statute bye law regulation order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- (e) the clause and paragraph headings contained in this Agreement are included as an aid to interpretation are for reference purposes only and have no binding legal effect;

(f) where in any schedule or part of a schedule reference is made to a paragraph, such reference shall (unless the context otherwise requires) be to a paragraph of that schedule or (if relevant) part of a schedule;

(g) Reference to 'Owner' shall be a reference to the Owner of the relevant part of the Site

(h) Where approval of a party is required it shall not be unreasonably withheld or delayed

### **3. LEGAL BASIS**

3.1 This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling the Parties.

3.2 The obligations herein on the part of the Owners are planning obligations for the purposes of Section 106 of the 1990 Act and in so far as they fall within the terms of the said Section 106 are enforceable by the Council pursuant to the said Section 106 and in so far as any obligations in this Agreement fall outside of the scope of Section 106 of the 1990 Act they are entered into and are enforceable pursuant to Section 111 of the 1972 Act and/or Section 1 of the 2011 Act.

3.3 The Owners covenant and undertake with the Council and the County Council to observe and perform the obligations as set out in each of the Second, Third, Fifth Sixth Seventh and Eighth Schedules

3.4 The Council and the County Council covenant and undertakes with the Owners to observe and perform their respective obligations as set out in the Third Fourth Sixth and Eighth Schedules

### **4. PROVISIONS TO BE CONDITIONAL**

It is hereby agreed between the parties that save for clauses 1, 2, 3.1, 3.2, 4, 8, 10, 12, 13, 14, 15, 16, 18, 21, 22 and 23 the planning obligations in this Agreement will have no operative effect upon a Relevant Owner unless and until all of the following have occurred in respect of that Relevant Owner's land, namely:-

4.1 the Planning Permission has been granted; and

4.2 the Planning Permission has been Implemented on land in the ownership of the Relevant Owner in question provided always that the planning obligations will continue to have no operative effect on the remaining land which continues to remain the ownerships of the Relevant Owner unless and until the Planning Permission has been Implemented on that part

### **5. FURTHER PLANNING PERMISSIONS**

5.1 Nothing in this Agreement shall be construed as prohibiting or limiting the right of the Owners to develop any part of the Site with and to the extent permitted by a planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State on appeal or following a reference to him

5.2 If the parties shall so agree in writing in relation to any planning permission granted as a result of any application under Section 73 of the Act affecting the Planning Permission the parties shall comply with the terms of this Deed as if the definition of the Planning Permission in this Deed had been replaced by the description of the said planning permission granted as a result of any application under Section 73 of the Act affecting the Planning Permission with the intention that the provisions of this Deed will apply as if the definition of the Planning Permission in this Deed were the new planning permission granted as a result of such application and a memorandum of that agreement shall be endorsed on the face of this Deed which is recorded on the public register

5.3 If the Planning Permission expires without the Development having been Implemented or is revoked, this Agreement will cease to have effect (but without prejudice to the Parties' ability to enforce any breach of the obligations in this Agreement which occurs prior to such quashing or revocation) and upon such expiry or revocation its registration on the Register of Local Land Charges will be cancelled

## 6. **THIRD PARTY LAND**

6.1 The Owners shall not assist or facilitate in any way in the carrying out of the Development on Third Party Land unless a Deed of Adherence has been entered into in relation to all proprietary interests in such Third Party Land (save in respect of any such interest that the Council has (upon an application made by the Developer) confirmed does not need to be subject to a Deed of Adherence).

6.2 Upon any of the Owners or the Developer acquiring any proprietary interest in any part of the Third Party Land the Owner or the Developer in question shall notify the Council within twenty (20) Working Days of the acquisition of such interest and if required to do so by the Council shall enter into a Deed of Adherence in respect of any such interest AND (and for the avoidance of doubt whether or not notice of acquisition has been served on the Council under this clause 6.2) the Owners shall not carry out any works pursuant to the Development on any land acquired until a Deed of Adherence has been entered into in respect of the interest acquired or the Council has confirmed such Deed of Adherence is not required in respect of such interest

## 7. **MORTGAGEE PROVISIONS**

The Council acknowledges and declares that any mortgagee taking a charge over any part of the Site after the date of this Agreement (or any part of the Third Party Land once a Deed of Adherence has been entered into) shall not be required to perform the obligations or incur any liability under this Agreement unless it takes possession of that part of the Site (or as the case may be Third Party Land) to which the charge relates in which case it will too be bound by the obligations relating to the said part of the Site or Third Party Land as if it were a person deriving title from the owner of the said part of the Site or Third Party Land to which the charge relates to the extent that such obligations are outstanding and continue to bind the said part of the Site or Third Party Land as at the date the mortgagee exercises its powers under the relevant charge

## 8. **COUNCIL'S OBLIGATIONS**

The Council and the County Council covenant with each of the Owners separately and with the successors in title and assigns of each of them that they will comply with the obligations on part in this Agreement

## 9. **ENFORCEABILITY RELEASE AND CERTIFICATES OF COMPLIANCE**

9.1 The Owners agree with the Council to give the Council notice within 14 days of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of individual Dwellings

9.2 Upon the disposal of the whole or any part of the freehold interest of any Relevant Owner in the Site:-

(a) the Council and the County Council shall automatically be released by the Relevant Owner; and

(b) the Relevant Owner shall automatically be released by the Council and the County Council

from all the obligations and covenants under this Agreement in relation only to that interest or the relevant part thereof (as the case may be) but without prejudice to the rights of the Council the County Council or the Relevant Owner in relation to any antecedent breach of those obligations or covenants

9.3 The Council hereby covenants with each of the Owners that it will upon reasonable request from any Owner certify in writing compliance or partial compliance (as and if appropriate) with the provisions of this Agreement PROVIDED THAT any such request shall be accompanied by reasonable evidence of such compliance or partial compliance

9.4 This Agreement shall not be enforceable against:-

- (a) individual purchasers of Dwellings or occupational tenants of any Non-Residential Unit;
- (b) statutory undertakers holding an interest in the Site for the purposes of their statutory undertaking nor the mortgagee or chargee or receiver appointed by a mortgagee or chargee of such persons;
- (c) a mortgagee or chargee or receiver of a Registered Provider which has acquired an interest in the Site, save to the extent provided for in paragraph 1.6(b) of the Third Schedule

## 10. **COUNCIL'S AND COUNTY COUNCIL'S POWERS AND DUTIES**

Nothing contained in this Agreement shall fetter the statutory rights, powers or duties of the Council and the County Council nor require them to act in any way inconsistent with such rights, powers or duties

## 11. **VIABILITY REVIEW**

11.1 The Council, County Council and the Owner agree with each other that:-

11.1.1 they shall carry out a Viability Review every 5 years from the date of the Planning Permission or earlier by agreement by all the parties

11.1.2 they shall act in the utmost good faith in the carrying out of and agreement of the Viability Review

11.1.3 at the same time as the Viability Review is carried out the parties shall carry out [a review to consider and review the need for and amount of the Primary School Education Contribution and the Secondary School Contributions provided that such contributions shall not exceed the sum set out in this Agreement]

the Contributions shall be adjusted and shall be agreed following each Viability Review

11.2 The Council covenant with the Owner and the Developer that where economic conditions adversely affect the delivery and viability of the Development the Council will modify (subject to the Owner and the Developer providing appropriate financial information to justify such a request being made and such information being reviewed and agreed by an independent advisor experienced in the viability of developments of a similar size and scope of the Development appointed by the Council whose reasonable and proper fees of appointment being remunerated by the Owner/Developer subject to the agreement by the Owner/Developer of a cap thereon and if agreement cannot be reached as to the viability or deliverability cannot be reached the final decision will be subject to clause 15 of this Deed) (here meaning either reducing the Contributions suspending the payment of the Contributions varying the timing of the payment of the Contributions, amending or suspending the application of the Index or such other step as the Council considers appropriate or justifiable in the circumstances which is approved by the Owner (acting reasonably and in good faith)) the planning obligations contained in

this agreement including but not limited to the Contributions and the Affordable Housing to reflect the affordability and deliverability of the Development as evidenced within the Viability Review and the economic conditions to ensure the continued deliverability and viability of the Development provided that there shall not be a reduction in the Critical Infrastructure Contributions unless otherwise approved by the Council

- 11.3 The Owner covenant not to occupy more than 800 Dwellings until the First Viability Review has been submitted and approved by the Council and the County Council who each covenant with the Owner and the Developer that they shall act reasonably and expeditiously in reviewing each application for a Viability Review

## 12. **REGISTRATION**

The Council will promptly after the date of this Agreement register it as a Local Land Charge for the purposes of the Local Land Charges Act 1975

## 13. **APPROVALS, EXPRESSIONS OF SATISFACTION**

Where any approval, agreement, consent, certificate, confirmation or an expression of satisfaction is required under the terms of this Agreement the request for it shall be made in writing and such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed

## 14. **RESOLUTION OF DISPUTES**

- 14.1 The Parties agree that they will resolve any dispute arising out of or in connection with this Agreement in accordance with the provisions of this clause 14
- 14.2 Any Party may serve written notice of any dispute arising out of or in connection with this Agreement on all other Parties with an interest in the outcome of the dispute ("**the Notice of Dispute**"). The Notice of Dispute must specify the nature, basis and brief description of the dispute and the clause or paragraph of this Agreement pursuant to which the dispute has arisen
- 14.3 The Parties agree that, following service of a Notice of Dispute, the Parties will first attempt to resolve the dispute by negotiations which shall be conducted in good faith. Those negotiations shall include at least one meeting between representatives of the Parties ("**the Settlement Meeting**"). The Settlement Meeting shall take place as soon as reasonably practicable and in any event within twenty (20) Working Days of the Notice of Dispute being served unless the Parties to the dispute (acting reasonably) agree a longer period. The representatives who attend the Settlement Meeting on behalf of each Party shall include at least one representative who is vested with authority to settle the dispute on behalf of the Party that he or she represents
- 14.4 If the dispute remains unresolved any Party shall be entitled to serve a further written notice of the dispute ("**the Further Notice of Dispute**") which shall trigger the procedure for the determination of the dispute by an Expert
- 14.5 The Further Notice of Dispute shall be served on all other Parties with an interest in the outcome of the dispute and shall specify:-
- (a) the nature, basis and brief description of the dispute;
  - (b) the clause or paragraph of this Agreement pursuant to which the dispute has arisen; and
  - (c) the proposed Expert

- 14.6 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of fraud or manifest error) be final and binding on the Parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the Parties to the dispute in equal shares
- 14.7 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute which shall be not more than forty (40) Working Days from the date of his appointment to act unless the Parties to the dispute acting reasonably agree a longer period taking into consideration all the relevant circumstances
- 14.8 The Expert will be required to give notice to each of the said Parties inviting each of them to submit to him within ten (10) Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within ten (10) Working Days in respect of any such submission and material SAVE THAT any of the timescales in this clause may be extended by the Expert on reasonable application of any of the Parties to the dispute (all Parties to be given the opportunity to comment on such application)
- 14.9 The Parties shall agree at the time of the relevant dispute whether the individual appointed as the Expert shall be:-
- (a) a Solicitor (who shall be a member of the Law Society with a minimum of ten (10) years' recent and relevant experience in the subject matter of the dispute);
  - (b) Leading Planning Counsel;
  - (c) a specialist Chartered Surveyor (who shall be a Fellow of the Royal Institute of Chartered Surveyors with a minimum of ten (10) years' recent and relevant experience in the subject matter of the dispute); or
  - (d) a Chartered Civil Engineer (who shall be a member of the Institute of Civil Engineers with a minimum of ten (10) years' recent and relevant experience in the public or private sector)
- 14.10 If the Parties are able to agree upon the qualification of the Expert in accordance with clause 14.9 but are unable to agree upon the identity of the individual to be appointed as the Expert the parties shall apply for nomination of an individual to:-
- (a) in the case of clause 14.9(a) the President of the Law Society;
  - (b) in the case of clause 14.9(b) the Chairman of the Bar Counsel;
  - (c) in the case of clause 14.9(c) the President of the Royal Institution of Chartered Surveyors; and
  - (d) in the case of clause 14.9(d) the President of the Institution of Civil Engineers
- 14.11 If the Parties are unable to agree upon the qualification of the Expert in accordance with clause 14.9 the matter shall be referred to the President of the Law Society who shall determine the appropriate qualification for the Expert from the list set out in clause 14.9 and the President of the Law Society having determined the qualification of the Expert shall nominate an individual in the case of a Solicitor or shall refer the matter to the Chairman of the appropriate body as set out in clause 14.10

15. **THIRD PARTY RIGHTS**

Save where otherwise specified in this Agreement no person who is not a Party to the Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement

16. **NOTICES**

16.1 Any notice to be delivered to a Party under this Agreement must be in writing and be sent to it at the address referred to in this Agreement or instead, to such alternative address as may be substituted by a Party from time to time by written notification sent to all other Parties

16.2 Any such notice must be delivered by hand or recorded delivery post or sent by fax and if delivered by hand, will conclusively be deemed to have been received on the next Working Day after the date of delivery, if sent by fax on the date of despatch or, if that is not a Working Day, on the next Working Day and if sent by recorded delivery post and posted within the United Kingdom will conclusively be deemed to have been received two (2) Working Days after the date of posting

16.3 If a notice is sent by fax a copy must be sent on the same day by recorded delivery post but for the avoidance of doubt the date of service of such notice will be the date of despatch of the fax

17. **NOTIFICATION OF CERTAIN EVENTS AND MONITORING REPORTS**

17.1 The Owners shall give notice to the Council no less than five (5) Working Days prior notice of intended date of Implementation of the Development

17.2 The Owner will give notice to the Council of actual Implementation of the Development within five (5) Working Days of the same having occurred PROVIDED THAT nothing in this clause 16.2 shall prevent Implementation of the Development from having taken place in the event that any such notice shall not have been served

17.3 Without prejudice to clause 16.3 the Owners shall give the Council notice of the date of occurrence of the Milestone Payments

18. **INTEREST**

18.1 If any Party fails to pay a Contribution within fifteen (15) Working Days of the due date any sum payable by such party under this Agreement, that Party shall pay interest at the Interest Rate calculated on a day to day basis from the date the sum became payable until the date of actual payment (such Interest to accrue as well as after before any judgement)

18.2 All interest earned on the Contributions paid to the Council under this Agreement shall be taken to form part of any principal sum payable under this Agreement and may be expended by the Council and the County Council accordingly

19. **APPLICATION AND REPAYMENT OF FINANCIAL CONTRIBUTIONS**

19.1 The Council and the County Council shall only spend any Contribution for the purposes stated in the Fourth Schedule and for which the Contribution has been paid and save where otherwise specified in this Agreement the Council and County Council shall use reasonable endeavours to spend any Contribution on the stated purpose for which it has been paid within five (5) years of receipt of the relevant Contribution in full so that where a Contribution is to be paid in instalments then the said period of five (5) years shall run from the payment of the latest instalment paid to the Council or the County Council and in relation to the Council the provisions of clause 19.4 shall be applicable.

- 19.2 Any Contribution which has not been spent or contractually ( here meaning an unconditional contract ) committed to be spent on the stated purpose for which it has been paid to the Council or the County Council within the time period specified in clause 19.1 shall be repaid to the Party which paid the Contribution within one (1) calendar month of the end of the period of five years (5) years referred to in clause 19.1 together with any interest earned upon such amount
- 19.3 The Council and the County Council shall confirm to the Owners following written request the amount of unexpended monies received pursuant to this Agreement the amount of interest accrued on monies received pursuant to this Agreement, the amount of monies received pursuant to this Agreement which have been expended and the purposes on which such monies have been expended PROVIDED THAT any such requests shall not be made more than once every six (6) months
- 19.4 The Council shall have no further liability in relation to the Health Contribution once it has been paid to the Derby and Derbyshire ICB

## 20. **COUNCIL'S POWER OF ENTRY**

Without prejudice to any other specific power of entry conferred on the Council pursuant to this agreement, the Owners shall permit the Council with or without agents surveyors and others at any time during all reasonable hours, but upon giving at least five (5) Working Days prior written notice to enter upon the Site and any buildings erected on it in order to ascertain whether the obligations contained in this Agreement are being complied with PROVIDED THAT the Council shall remain on the Site and any buildings only for such period as may be reasonably necessary in order to ascertain whether the provisions of this Agreement are being complied with

## 21. **USE OF REASONABLE ENDEAVOURS**

- 21.1 Where in this Agreement a Party or Parties (not including the Council) is under an obligation to use Reasonable Endeavours or all Reasonable Endeavours to achieve a stated outcome then within twenty (20) Working Days of receipt of a written request made by the Council to the Party or Parties under the obligation to use such Reasonable Endeavours the Party or Parties will provide to the Council such written evidence as may reasonably be required by the Council to demonstrate the steps taken by the Party or Parties to achieve such outcome
- 21.2 Where in this Agreement the Council or the County Council is under an obligation to use Reasonable Endeavours to achieve a stated outcome then the provisions of clause 21.1 shall apply as if references to a Party were references to the Council or the County Council and vice versa

## 22. **MISCELLANEOUS**

- 22.1 No waiver whether express or implied by the Council of any breach or default by the Owners in performing or observing any other obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default
- 22.2 The Parties shall each act reasonably and in good faith in connection with this Agreement and fulfilment of the obligations contained in it
- 22.3 All payments made under this Agreement shall be exclusive of any value added tax properly payable
- 22.4 This Agreement shall be governed by and interpreted in accordance with the laws of England and the Parties agree to submit to the exclusive jurisdiction of the Courts of England over any claim dispute or any matter arising under or in connection with this Agreement

22.5 In so far as any clause or other provision of this Agreement is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provision of this Agreement

23. **LEGAL FEES**

The Owner will pay the sum of [ ] Pounds (£[ ]) in respect of the Council's reasonable legal fees for the preparation of this Agreement on the completion of this Agreement and the sum of [ ] Pounds ([£ ]) in respect of the County Council's reasonable legal fees for the preparation of this Agreement

24. **TREBLE BOB ROUNDABOUT**

The County Council and the Developer covenant with each other that:-

24.1 The Developer shall use its reasonable but commercial endeavours to obtain grant funding for the Treble Bob Roundabout Works; and

24.2 The County Council and the Council shall fully support the Developer in its endeavours to obtain the funding referred to at clause 24.1; and

24.3 The County Council and the Developer shall each complete the Treble Bob Roundabout Works and shall act in the utmost good faith to each other including but not limited to keeping each other fully informed of their endeavours

24.4 The County Council covenants with the Developer and the Owners that if it obtains details of any grant funding available whether in full or in part it will pass full details thereof to the Developer and the Developer full assistance to obtain such funding

24.5 If the Developer obtains grant funding whether in whole or in part for the carrying out of the Treble Bob Roundabout Works then the Developer shall carry the Treble Bob Roundabout Work

24.6 Subject to obtaining the funding the Council and the County Council and the Developer shall expeditiously enter into such statutory agreements (whether any highways or services agreements) that are required to enable the Developer to carry out and complete the Treble Bob Roundabout Works

24.7 If required the Council will use its compulsory purchase powers to expeditiously acquire any third party land required to carry out and complete the Treble Bob Roundabout Works

24.8 The County Council shall pay to the Developer any contributions it may have received from any other developer or owner of developments in the area towards the carrying out of the Treble Bob Works such contributions it has received in the past or receives in the future and such payment to be made on the commencement of the Treble Bob Works

IN WITNESS whereof this Agreement has been executed as a deed and delivered by the parties hereto on the date which appears at the head of this document

**THE FIRST SCHEDULE**  
**Site**

All those parcels of land known as land to the north of Clowne and shown edged red on the Application Site Plan

**THE SECOND SCHEDULE**  
**The Contributions**

**1. EDUCATION CONTRIBUTION**

1.1 The Owners will to pay a Secondary School Education Contribution in the sum of £2,294,077.50 (Two Million and Two Hundred and Ninety Four Thousand Seventy Seven Pounds and Fifty Pence ) plus Indexation prior to the occupation of the 500th Dwelling and the balance of the Secondary Education Contribution on each anniversary thereof at the rate of £ 4,588.15 plus Indexation for each Dwelling provided that the full contribution shall only be payable if all 1800 Dwellings are constructed

**2. TRAVEL PLAN CONTRIBUTION** [constructed within that one (1) year period]

2.1 The Owners will pay the Travel Plan Contribution Index Linked for the monitoring of a site-wide Travel Plan in accordance with the following arrangements;

2.1.1 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 6<sup>th</sup> anniversary of the Implementation of Development;

2.1.2 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 7<sup>th</sup> anniversary of the Implementation of Development;

2.1.3 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 8<sup>th</sup> anniversary of the Implementation of Development;

2.1.4 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 9<sup>th</sup> anniversary of the Implementation of Development;

2.1.5 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 10<sup>th</sup> anniversary of the Implementation of Development;

2.1.6 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 11<sup>th</sup> anniversary of the Implementation of Development

**3. HEALTHCARE CONTRIBUTIONS**

The healthcare contribution will be made to the Council as agent for the Derby and Derbyshire ICB(or any statutory successor organisation) towards the expansion/provision of healthcare facilities within Clowne and shall be payable in equal instalments prior to the occupation of the 500<sup>th</sup>, 750<sup>th</sup> and 1,000<sup>th</sup> Dwelling

**4. SEND CONTRIBUTION**

If any Viability Review shall so provide the Owners shall pay the SEND Contribution to the County Council towards the provision of Special Needs and Disability Provision within the County of Derbyshire in accordance with the Eighth Schedule

**5. LIBRARY CONTRIBUTION**

If any Viability Review shall so provide the Owners shall pay the Library Contribution to the County Council to be used towards local library stock measures in accordance with the Eighth Schedule

**THE THIRD SCHEDULE**  
**Affordable Housing**

1. The Owners covenant with the Council:-
  - 1.1 The Affordable Housing Units shall be 10% of the Dwellings constructed within the Development.
  - 1.2
    - (a) that when submitting any application for Reserved Matters Approval which includes Affordable Housing Units they shall accompany such application with an Affordable Housing Scheme in respect of the part of the Site the subject of such application;
    - (b) not to Implement any Development encompassed by any Reserved Matters Approval which includes Affordable Housing Units until the Affordable Housing Scheme) in respect of those Affordable Housing Units has been approved by the Council;
    - (c) that the Affordable Housing Units shall be designed and constructed to the same standard as the Market Dwellings
    - (d) upon Disposal of any Affordable Housing Units to a Registered Provider the Registered Provider shall enter into a Nominations Agreement with the Council
  - 1.3 The Owners covenant to use all Reasonable Endeavours over a period of twelve months from the date of the completion of the Affordable Housing Units in each Phase to enter into an Affordable Housing Agreement/Affordable Housing Agreements with a Registered Provider/Registered Providers in respect of the Affordable Housing Units and transfer the Affordable Housing Units to a Registered Provider or Registered Providers;
  - 1.4 In the event that the Owners are unable to find a Registered Provider to accept the transfer of some or all of such Affordable Housing Units within a period of 3 months from the date of the final offer to a Registered Provider the Owners shall provide written evidence of such final offer and marketing to the Council and following the Council's written approval may dispose of such Affordable Housing Units on the open market and in lieu of the on-site provision of Affordable Housing Units the Owners shall pay to the Council the Affordable Housing Commuted Sum towards the provision of alternative Affordable Housing Units within the administrative area of the Council (or whichever council may be in existence at that time);
  - 1.5 The Owners will provide the Council on request within 7 working days from such a request evidence setting out the marketing of the Affordable Housing Units to a Registered Provider or Registered Providers. The Council reserves the right if (acting reasonably) it considers that following a review of the evidence that the Owners have not made reasonable efforts to market and transfer the Affordable Housing Units to a Registered Providers or Registered Providers to request that the Owners over a further period of 3 months seek to market and transfer the Affordable Housing Units to a Registered Provider or Registered Providers.
  - 1.6 The Owners covenant with the Council that:-
    - (a) save in the circumstances referred to in paragraphs 1.7 or 1.8, the Affordable Housing Units shall not be occupied other than for Affordable Housing ;
    - (b) the Owner shall not dispose of its interest in the freehold of any of the Affordable Housing Dwellings (except by way of mortgage) other than to a Registered Provider PROVIDED THAT the covenants contained in this Agreement shall not be binding upon a mortgagee in possession (or a receiver appointed by such a mortgagee in possession or chargee or successors in title) of any

or all of the Affordable Housing Units (hereinafter called the "Mortgaged Properties") or a bona fide purchaser for value thereof from such a mortgagee in possession or chargee or receiver (except in the case of a purchaser who is a Registered Provider within the meaning of Part I of the Housing Act 1996) or the successors in title of such purchaser PROVIDED THAT the following procedures shall have been followed:-

- (i) any mortgagee in possession (or receiver appointed by such a mortgagee in possession or chargee or successor in title) entitled to exercise a right of disposal in accordance with this paragraph shall first have served written notice on the Council of its intention to exercise its right of disposal of the Mortgaged Properties;
- (ii) the mortgagee or chargee in possession (or a receiver appointed by such a mortgagee or chargee or successor in title) exercising any power of sale or leasing shall first have made every effort to the reasonable satisfaction of the Council over a period of three (3) months from the date on which it took possession to dispose of the Mortgaged Properties to an alternative Registered Provider or the Council on terms which are reasonable in all respects to enable the same to be used for the purposes specified in this Agreement;
- (iii) if any such mortgagee or chargee in possession (or a receiver appointed by a mortgagee or chargee or successor in title) is unable within the said period of three (3) months to dispose of the Mortgaged Properties in accordance with paragraph 1.13(b)(ii) above the obligations and restrictions relating to the Affordable Housing Units on this Agreement shall not be binding upon the mortgagee or chargee or successor in title and they shall be entitled to dispose of the Mortgaged Properties free of the restrictions set out in this Agreement and they and their successors in title shall be released from all obligations and covenants set out in this Agreement in perpetuity;
- (iv) any mortgagee or chargee in possession (or receiver appointed by a mortgagee or chargee or successor in title) shall act in good faith in seeking to secure the transfer of all of the Affordable Housing Units to an alternative Registered Provider or the Council on the terms specified herein
- (v) for any notice to be validly served under this paragraph 1.6 it shall be marked "Urgent Notice" and sent by recorded delivery post for the attention of the Council's Joint Head of Service (Housing and Community Safety) for the time being; and
- (vi) any mortgagee in possession is not required to agree a price which does not cover all monies due under a mortgage/charge

1.7 The covenants contained in this Agreement shall further not be binding on any tenant who:-

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or equivalent contractual right) in respect of a particular Affordable Housing Dwelling; or
- (c) has been granted a lease of a [Shared Ownership] Unit by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant or its mortgagee or chargee has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit

The covenants in this Agreement shall not be binding on any mortgagee or chargee exercising a power of sale in relation to a [Shared Ownership Unit] or any successors in title to such Unit

**THE FOURTH SCHEDULE**  
**Application of Contributions**

- 1.1 The Council covenants with the Owners that (subject to clause 20.5) it will only use the Contributions for the purposes specified in this Deed for which they are to be paid
- 1.2 The County Council covenants that it will use all sums received from the Owners under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.

**THE FIFTH SCHEDULE**  
**Off-Site Highway Improvement Schemes**

1.1 The Owners covenant with the Council and the County Council that:-

- (a) *No part of the Development shall be occupied until the improvement scheme identified for M1 junction 30 as shown in general accordance with AECOM drawing CGV-ACM-M1J30-XX-DR-CE-010001 Revision P03 is completed and open to traffic.*
- (b) *No more than 200 Dwellings shall be occupied until the improvement scheme identified for M1 junction 30, as shown in general accordance with AECOM drawing ref 60556776-M1J30-TSD001 (or revised scheme following a Stage 1 Road Safety Audit (RSA) and Walking, Cycling, Horse-riding Assessment and Review (WCHAR) is completed and open to traffic.*

**THE SIXTH SCHEDULE**  
**Primary Education**

**1. PART ONE (PROVISION OF THE PRIMARY SCHOOL SITE AND OWNER'S NOTICE)**

- 1.1 The Owners covenant to agree (acting reasonably) with the Council and County Council the location of and the proposed access to the Primary School Site and allocate the Primary School Site within the masterplan
- 1.2 The County Council shall submit an application in a form approved by the Owners (acting reasonably) for outline planning approval for the Primary School to be constructed on the Primary School Site.
- 1.3 Either before or after the planning application referred to in paragraph 1.2 the County Council shall submit a draft version of the Primary School Specification and the Primary School Costs Schedule to the Owner for written approval.
- 1.4 If the Owner indicates that the Primary School is likely to result in the Owner electing to pay the Primary School Contribution pursuant to Part Three of this Schedule the County Council may ( but shall not be obliged to ) amend the Primary School Specification and/or the Primary School Costs Schedule and submit the same to the Owner for approval and this procedure may be repeated but no more than 3 times
- 1.5 Following the grant of planning permission for the construction of the Primary School and the submission of the Primary School Specification and the Primary School Costs Schedule by the County Council to the Owner pursuant to paragraph 1.4. the Owner covenants to serve notice in writing to the County Council within 3 months thereof that it shall either:-
- 1.5.1 Perform the planning obligations listed under Part Two to this Sixth Schedule and construct the Primary School; or
- 1.5.2 Perform the planning obligations listed under Part Three to this Sixth Schedule and pay the Primary School Contribution.
- 1.6 The Owners shall not, subject to the satisfaction of the conditions in paragraph 1.5. occupy the 800<sup>th</sup> Dwellings until it has served notice on the County Council under paragraph 1.1.

**2. PART TWO (CONSTRUCTION THE PRIMARY SCHOOL)**

- 2.1 Part Two to this Sixth Schedule shall apply if the Owners serve notice in writing under paragraph 1.5 to Part One that they shall perform the planning obligations set out hereunder in this Part Two and in such circumstances Part Three of this Sixth Schedule shall cease to have legal effect.
- 2.2 The County Council covenants that it shall pay to the Owners the County Council's Additional Funding before the date which is 12 calendar months after the [ ]
- 2.3 The Owners shall Practically Complete the construction of the Primary School in accordance with the agreed Primary School Specification and all such statutory regulatory and third party consents, agreements, approvals and licenses as may be necessary to enable the delivery of the Primary School such that the Primary School is Practically Complete prior to the Occupation of the 800<sup>th</sup> Dwelling within the Development.
- 2.4 The Owners covenant that they shall not Occupy or allow the first Occupation of the 800<sup>th</sup> Dwelling within the Development until the Primary School has been Practically Completed.
- 2.5 The Owners shall Transfer the Primary School Site together with the Primary School erected thereon to the County Council within 30 working days of the Practical Completion of the Primary School.

**3. PART THREE (PRIMARY SCHOOL CONTRIBUTION)**

- 3.1 Part Three to this Sixth Schedule shall apply if the Owners serve notice in writing under paragraph 1.5 that they shall perform the planning obligations set out hereunder in this Part Three and in such circumstances Part Two to this Sixth Schedule shall cease to have legal effect.
- 3.2 The Owners shall Transfer the Primary School Site to the County Council with six months of serving notice pursuant to paragraph 1.5 of Part One of this Schedule
- 3.3 The Owners shall pay the Primary School Contribution to the County Council in accordance with the following arrangements:
  - 3.3.1 34% of the Primary School Contribution prior to the Occupation of the 375th Dwelling within the Development;
  - 3.3.2 33% of the Primary School Contribution prior to the Occupation of the 600th Dwelling within the Development; and
  - 3.3.3 33% of the Primary School Contribution prior to the Occupation of the 800th Dwelling within the Development.
- 3.4 From the Transfer of the Primary School Site to the County Council the County Council or its nominated delivery agent shall use reasonable endeavours to proceed with the construction of the Primary School.
- 3.5 The County Council shall return the Primary School Site to the Owner if construction of the Primary School has not commenced before the later of the date which is:-
  - 3.5.1 2 years after the Transfer of the Primary School Site;
  - 3.5.2 2 years after the Primary School Approval Date; or
  - 3.5.3 2 years after the first Occupation of the 375<sup>th</sup> Dwelling within the Development

**THE SEVENTH SCHEDULE**  
**Public Access and Open Space**

**The Owners covenant with the Council as follows:**

**Public Access Areas**

- 1.1 The Owners will submit to the Council ( acting reasonably and without delay ) the Public Access Strategy and Public Access Areas Management Plan during the Reserved Matters application for the relevant part or whole as the case may be in each Phase and the Owners further agree that the Development will not be Implemented in that Phase of the Development until the Public Access Strategy and Public Access Management Plan for that relevant part or whole of the Phase as the case may be have been approved by the Council in writing
- 1.2 The Owners shall provide all Public Access Areas and Complete the same in accordance with the Public Access Areas Strategy as approved by the Council
- 1.3 The Public Access Areas Strategy as approved shall prescribe the number of Dwellings or Non-Residential Units (as the case may be) within a Phase that may be Occupied prior to Completion of any Public Access Areas within such Phase
- 1.4 As from the date of Completion of any Public Access Area the Owners will permit the general public to have continuous access on foot and with pedal cycles to and from and over such Public Access Area at all times free of charge

**Management and Maintenance of Public Access Areas**

- 1.5 The Owners will at their own expense manage and maintain each Public Access Area in the Development (unless the same shall be adopted as public open space maintainable at the public expense) in accordance with the Public Access Areas Management Plan as approved by the Council

**THE EIGHTH SCHEDULE**  
**Basis of Viability Review**

1. The Owners covenant with the Council
- 1.1 [ The Owners covenant with the Council not to occupy more than 800 Dwellings comprising Market Housing Units or Affordable Housing Units until the First Viability Review has been submitted to and approved by the Council.
- 1.2 The Owners covenant with the Council that prior to construction of the 750<sup>th</sup> Dwelling to provide the financial information to the Council on an open book basis to provide the information which is set out at 1.3 .
- 1.3 The Owners agree to pay to the Council the fee for the appointment of an independent valuer to review the financial information provided that:-
  - (a) the fees are reasonable and proper and have been reasonably and properly incurred; and
  - (b) the Council has carried out its procurement policy in relation to such appointment; and
  - (c) the fees are agreed by the Owner (acting reasonably and in good faith) and are capped
- 1.4 The information to be provided as part of the Viability Review is as follows:
  - a) the actual net sales values inputted for the residential (both market value and affordable) and also the commercial and the following appraisal assumptions for the purposes of future testing to be fixed in the following form:
  - b) Plot costs should be based on BCIS lower quartile generally figure, rebased to Derbyshire and restricted to the last five years of data, at the date that the reassessment is undertaken.
  - c) Externals, 17% of the plot costs
  - d) EV charging/part Regulations should be excluded, because over time this will be incorporated into the BCIS rate
  - e) Contingency should be 3.5% of the plot costs/externals
  - f) Professional fees 7% of the plot costs/externals
  - g) Planning policy contributions as set out elsewhere in the 106 agreement (plus indexation CPI or similar)
  - h) Residential sales/marketing 3% of net sales revenue
  - i) Residential legals at £800 per unit (plus indexation) CPI or similar
  - j) Commercial sales/marketing 1% of net sales revenue
  - k) Commercial legals 0.5% of net sales revenue
  - l) Finance £5,230,954 (plus Indexation)
  - m) Developer Profit which is to be measured as residential market value at 20% on net sales revenue, residential affordable at 6% on net sales revenue and commercial land at 15% on revenue. This gives a 'blended' profit equivalent to 19.16% on the total net sales revenue for the scheme. The threshold for whether the viability has improved or not is a developer profit of 19.16% on revenue.
  - n) Fixed based abnormal costs at £5,180,813 (plus Indexation ) and the benchmark land value at £27,740,150 (plus Indexation )

- n) a separate mechanism for unforeseen costs extra over abnormals/site specific infrastructure that do not form part of the base of normal costs or build costs inflation to the developer to be agreed with the Council as part of the appraisal process enabling a reasonable review of the benchmark land value
2. If the Council do not approve the Viability Review or give cogent reasons for refusal or seek further reasonable information within 25 working days the Viability Review being submitted to it the Viability Review shall be deemed approved and the deeming provision shall apply once all the information sought by the Council has been provided to the Council and if the parties are in dispute such dispute shall be resolved in accordance with clause 15
  3. If the Viability Review demonstrates that there is a Surplus then the Deferred Contributions shall be paid from such Surplus but shall not exceed the Deferred Contribution Cap

THE COMMON SEAL of )  
**BOLSOVER DISTRICT COUNCIL** )  
was hereunto affixed in the presence of: )

Chairman/Member

Solicitor to the Council

SIGNED as a Deed by )  
**THE HONOURABLE JAMES MORY BRUCE** )  
in the presence of:- )

.....  
The Honourable James Mory Bruce

Signature of witness .....  
Name (in BLOCK CAPITALS) .....  
Address .....  
.....  
Occupation .....

SIGNED as a Deed by )  
**ROBERT STURDEE MASON** )  
in the presence of:- )

.....  
Robert Sturdee Mason

Signature of witness .....  
Name (in BLOCK CAPITALS) .....  
Address .....  
.....  
Occupation .....

SIGNED as a Deed by )  
**TIMOTHY EDWARD SHULDHAM** )  
in the presence of:- )

.....  
Timothy Edward Shuldham

Signature of witness .....  
Name (in BLOCK CAPITALS) .....  
Address .....  
.....  
Occupation .....

EXECUTED as a Deed by )  
**LGK FARMS LLP** )  
acting by )  
a director in the presence of:- )

.....  
Director

Signature of witness .....  
Name (in BLOCK CAPITALS) .....  
Address .....  
.....  
Occupation .....

EXECUTED as a Deed by )  
**WAYSTONE LIMITED** )  
acting by Stuart McLoughlin )  
a director in the presence of:- )

.....  
Director

Signature of witness .....  
Name (in BLOCK CAPITALS) .....  
Address .....  
.....  
Occupation .....

THE COMMON SEAL of  
**DERBYSHIRE COUNTY COUNCIL**  
was hereunto affixed in the presence  
of:



Ministry of Housing,  
Communities &  
Local Government

Sarah Kay  
Asst. Director of Planning & Planning Policy  
Bolsover District Council  
Chesterfield, S43 4JY

*Sent by email only:*  
[sarah.kay@bolsover.gov.uk](mailto:sarah.kay@bolsover.gov.uk)

**Please ask for:** William Cole  
**Email:** [will.cole@communities.gov.uk](mailto:will.cole@communities.gov.uk)  
**Your ref:** 17/00640/OUT  
**Our ref:** PCU/RTI/R1010/3349596

**Date:** 11 February 2025

Dear Ms Kay,

**Application by Ms Alison Barnfield (Waystone Limited), for outline planning permission (all matters reserved) for mixed use development including up to 24ha of employment land, up to 1,800 residential dwellings, green infrastructure, educational and recreational uses, a retirement village, neighbourhood centre, hotel, restaurant, health and care, and leisure uses and associated works at Land North of Clowne [Clowne Garden Village] (application no: 17/00640/OUT)**

I refer to the above application which has been the subject of third-party requests to call in for determination by the Secretary of State for Housing, Communities & Local Government.

The Secretary of State has carefully considered policy on calling in planning applications, as set out in the Written Ministerial Statement dated 26 October 2012. The policy makes it clear that the power to call in a case will only be used very selectively. This policy also gives examples of the types of issues which may lead her to conclude, in her opinion that the application should be called in.

The Secretary of State has decided not to call in this application. She is content that it should be determined by the local planning authority

In considering whether to exercise the discretion to call in this application, the Secretary of State has not considered the matter of whether this application is EIA Development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The local planning authority responsible for determining this application remains the relevant authority responsible for considering whether these Regulations apply to this proposed development and, if so, for ensuring that the requirements of the Regulations are complied with.

The Article 31 Direction issued pursuant to the Secretary of State's letter of 23 October 2024 is hereby withdrawn.

Yours sincerely

*William Cole*

**William Cole – Decision Officer  
Planning Casework Unit**

*This decision was made by the Minister of State for Housing and Planning, Matthew Pennycook MP, on behalf of the Secretary of State, and signed on her behalf*

## **THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2017**

### **DUTY UNDER REGULATION 30 TO INFORM THE PUBLIC AND THE SECRETARY OF STATE OF FINAL DECISION**

***Planning application code ref. 17/00640/OUT - Outline Planning Application with All Matters Reserved for mixed use development including upto 24ha of employment land (E(g) i, ii and iii, B2, B8), upto 1800 residential dwellings, green infrastructure, educational and recreational uses, a retirement village, neighbourhood centre, hotel, restaurant, health and care, and leisure uses, demolition of existing Station Road Industrial Estate where applicable, demolition of dwelling/outbuilding as applicable, and construction of new link road with in-principle points of access at Land North Of Clowne Including Section Of Town Centre, Hickinwood Lane, Clowne***

Bolsover District Council in its capacity as Local Planning Authority resolved to grant planning permission at a special Planning Committee held on the 17<sup>th</sup> September 2024, subject to conditions and the completion of a S106 legal agreement.

Following completion of the s106 legal agreement, the District Council hereby inform the public and Secretary of State that this decision has now been made and planning permission has been **GRANTED**.

A Statement under Regulation 30(1)(d) has been placed on the Planning Register held by Bolsover District Council It can be found on Bolsover District Council's website at ***[insert]*** using reference 17/00640/OUT.

## **STATEMENT FOLLOWING FINAL DECISION PURSUANT TO REGULATION 30(1)(D) OF THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2017 (“EIA REGULATIONS”)**

Planning application code ref. 17/00640/OUT:

Outline Planning Application with All Matters Reserved for mixed use development including up to 24ha of employment land (E(g) i, ii and iii, B2, B8), upto 1800 residential dwellings, green infrastructure, educational and recreational uses, a retirement village, neighbourhood centre, hotel, restaurant, health and care, and leisure uses, demolition of existing Station Road Industrial Estate where applicable, demolition of dwelling/outbuilding as applicable, and construction of new link road with in-principle points of access at Land North Of Clowne Including Section Of Town Centre, Hickinwood Lane, Clowne

*All documents referred to in this Statement have been uploaded to the planning register.*

This application has been **APPROVED** following the decision of Bolsover District Council's Planning Committee on 17 September 2024.

In accordance with Regulation 30(1)(d) of the EIA Regulations the Council makes the following statement:

### **The main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public**

The main reasons for the recommendation for approval of the application are set out on pages 90 and 91 of the Officer's Report.

975 public representations were received during consultation carried out in 2017/2018. Re-consultation was carried out in 2023/2024 and close to 300 representations were received. Three public consultation sessions were carried out in May and June 2023. Page 5 of the Committee Meeting minutes details representations made by the public at the Planning Committee Meeting on 17 September 2023.

### **A summary of the results of the consultations undertaken, and information gathered in respect of the application and how those results have been incorporated or otherwise addressed**

The Officer's report details consultation responses and representations that were received between May 2023 and April 2024, details of consultation carried out in 2017/18 is contained in Appendix 1 to the Officer's Report. The supplemental Officer's Report for the 17 September 2023 Committee Meeting also contains additional details of consultation responses received.

### **The reasoned conclusion of the Council on the significant effects of the development on the environment, taking into account the results of the examination referred to in regulation 26(1)(a) and (b)**

All elements of the EIA are considered and responded to in the Officer's report including:

- Transport (including Air Quality and Noise) (see page 64 & 79 & 81);

- Landscape and Visual Impacts (see page 48);
- Cultural Heritage and Archaeology (see page 50);
- Biodiversity (see page 39); and
- Socioeconomic Impacts.

**Any conditions to which the decision is subject which relate to the likely significant environmental effects of the development on the environment**

A full list of conditions is set out on pages 8 to 21 of the Planning Committee Minutes. In particular, conditions 15, 16, 17, and 19 relate to controlling the effect of the development on the environment.

**A description of any features of the development and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset, likely significant adverse effects on the environment**

As an outline application, much of the design and layout will come forward through reserve matter applications. This includes various environmental aspects including noise mitigation, lighting impacts on residential amenity, the retention of the trees and hedgerows and the provision of green space. (Conditions include 2, 3, 5, 6, 15, 18, 19, 20, 21, 22, 23, and 24).

The draft Section 106 Agreement sets out the provision of educational and health facilities to meet the needs arising from the proposed development. Condition 36 requires an Employment Scheme which is intended to enhance employment and training opportunities from the development.

The proposed highways provision and mitigation measures, including to the M1 Junction 30 and the Treble Bob roundabout, provide for the management and construction of the required road infrastructure improvements. Active travel plans are required. (Conditions include 2, 3, 4, 5, 6, 15, 25, 26, 27, 28, 29, 30, and 31).

A Flood Risk Assessment includes the appropriate allowances for climate change and drainage strategies provide for sustainable drainage systems. In addition, conditions reflect the requirement for green infrastructure and sustainable transport, which will have a direct role to play in adapting to and mitigating the impacts of climate change. (Conditions include 2, 6, 10, 11, 12, 13, 14, 15, and 31).

Conditions include measures to managing each stage of construction in terms of remediation and controls to prevent the potential for causing environmental harm arising from contamination. Within defined Coal Mining Risk Zones site investigation, including gas monitoring, are required together with any remedial works necessary. (Conditions include 2, 7, 8, and 15).

A large part of the site comprises arable land and improved and poor semi-improved grassland which are of negligible ecological value. The Environmental Impact Assessment identifies the most valuable habitat would be retained as part of the green infrastructure. The Scheme is anticipated to deliver a significant level of biodiversity net gain on site including new habitat. (Conditions include 2, 6, 15, 16, 17, 19, 34, and 41).

In terms of landscape it is acknowledged that there will be adverse impacts in the early stages of the post development stage. However, this impact will be reduced in the longer term as the landscape and green infrastructure matures.

The scheme will impact on heritage assets but the public benefits associated with the development are significant, and when they are considered together cumulatively, they outweigh the 'less than substantial harm' identified in relation to heritage assets. However, impact on specific heritage assets will be considered as part of detail development proposals submitted at reserved matters stage. In relation to archaeology, there is a requirement for appropriate investigations to be undertaken and the findings recorded and reported. (Conditions relating to this aspect include 9 and 40).

**Any monitoring measures considered appropriate by the relevant planning authority or the Secretary of State, as the case may be**

No monitoring measures are considered necessary by the Local Planning Authority in respect of the environmental effects, other than in relation to biodiversity and ecological management and the effectiveness of travel plans and strategies.

**information regarding the right to challenge the validity of the decision and the procedures for doing so**

There is a legal right for an interested third party to challenge the determination of a planning application on public law grounds. An application can be made to High Court for Judicial review of the decision to grant planning permission. This application to the High Court must usually be made within 6 weeks of the decision being made.