

**PARISH** Langwith Parish

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**APPLICATION** The demolition of the existing buildings on site, the removal of existing contamination, re-configuration of the land and the construction of 36 residential units with parking served off an associated access road.

**LOCATION** Builders Yard/Former Scrap Yard Pit Hill Whaley Thorns

**APPLICANT** Mr Ama Mandeir Oak View Lodge Newstead Abbey Park Nottingham NG15 8GE

**APPLICATION NO.** 21/00051/FUL **FILE NO.** PP-09377487

**CASE OFFICER** Mr Steve Phillipson

**DATE RECEIVED** 28th January 2021

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## **SUMMARY**

This is an application for the demolition of the old pithead baths buildings, the removal of contamination on that site and the former scrap yard to the south of it, re-profiling of the land and the construction of 36 dwellings.

This is a site within the development envelope where residential development is generally acceptable but consideration needs to be given to the loss of the pithead baths buildings and in particular whether permission should be granted without any S106 contributions for local infrastructure. Without S106 contributions the development does not fully comply with local plan policy and so it has been necessary to refer the application to Planning Committee.

In this case the viability of the development is challenged such that it cannot pay its way in terms of S106 contributions. However, in this case the capacity shortfalls identified are not considered to be critical. There is no shortage of school places and there is no identified need for affordable housing in the locality of the site (notwithstanding the districtwide need) and the existing leisure provision in the vicinity of the site is generally adequate. This means that even without S106 contributions the development is relatively sustainable.

Additional factors weighing in favour of approval include the redevelopment and restoration of a polluted brownfield site the condition of which adversely affects the character of the area at an entrance point into the village of Whaley Thorns; removal of pollution and potential harm to ground water quality; the removal of potentially non-conforming nuisance uses within a residential area; and the additional housing supply offered.

In this case it is considered that harms identified do not outweigh the benefits and so the application is recommended for approval subject to conditions.

## SITE & SURROUNDINGS



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### Application Site

Site of the former pithead baths building (now commercial units) and the adjacent yard space formerly occupied by A J S Autos with previous uses include the vehicle dismantlers and salvage, and a builder's yard. The site is located at the southern extent of Whaley Thorns. A mini-roundabout is located at NW corner of the site at the junction of Pit Hill, Kitchener Terrace and Bathurst Terrace and represents the de-facto gateway into the village.

The pithead baths building is parallel to Kitchener Terrace with terraced dwellings facing the site along the northern boundary. The land to the east is allotment gardens and to the south the boundary is marked by the party boundary with Scarcliffe House, a large detached red brick house within extensive grounds and several trees subject to a tree preservation order. To the west on the opposite side of the highway (Pit Hill) is Poulter Country Park and also the remains of the former colliery with the old shaft and pumping station. There are bus stops adjacent to the site on the Pit Hill frontage and a train station close by to the north.





There are levels changes across the site dropping from north-west to south-east with two notable steps in levels down from Kitchener Terrace and a second running east west across the middle of the site. The ground is visibly polluted as a result of its former use.

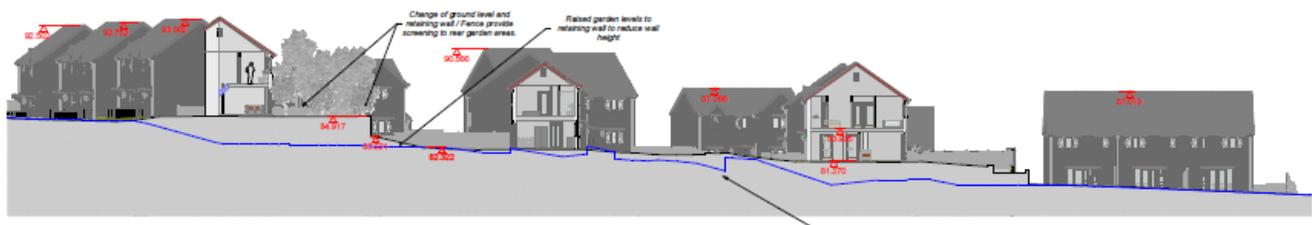
## PROPOSAL

The demolition of the existing commercial buildings on site, the removal of existing contaminated ground, re-profiling of the land and the construction of 36 residential units with parking served off a new cul-de-sac access road from Pit Hill.





The proposed dwellings on Kitchener Terrace will be at a higher ground level. The step down in levels to the next row will be supported by a retaining structure and there will also be some other retaining structures required across the site. Section below looking east from Pit Hill:



The application is supported by the following documents:-

- Coal Mining Risk Assessment
- Ecological Appraisal
- Tree Report
- Biodiversity Net Gain Assessment
- Biodiversity survey and report
- Planning and Design and Access Statement
- Geo-Environmental Report
- Transport Statement
- Viability Report (notably concludes that the development would not be viable if S106 contributions or affordable housing are required).

## AMENDMENTS

Amendments secured during the application process include revisions to design, a reduced number of dwellings (39 to 36) to meet standards, separation distance to retained trees, highway revisions and additional technical details.

A viability report has also been submitted.

## HISTORY

08/00102/OUTMAJ Outline permission was granted for residential development in 2008 with S106 obligation to cover affordable housing, public open space and public art. This was never implemented. In resolving to grant permission on that occasion it was concluded that:-

*“While the development involves the loss of an employment site, the proposal removes a use which causes materially harmful environmental problems in particular to the visual character of the area at this important entrance to the village of Whaley Thorns. There is vacant employment land available elsewhere in Whaley Thorns. It has been shown through the Design and Access Statement submitted with the planning application and the agreement to a S106 Planning Obligation to cover affordable housing, public open space and public art that a development which is sustainable both in its location, and design and layout can be accommodated on the site. The proposal for the residential development of the site therefore accords with the policies of the development plan and the local guidelines for the release of land for residential development in accordance with the provisions of PPS3. The risk of land contamination from past and present uses at the site are understood and can be dealt with by conditions. Other issues raised can be dealt with by condition or are issues of detail to be addressed with the Reserved Matters submissions.”*

21/00024/FUL (relating to the large house adjacent to the south side of the site) Permission granted for change of use to Children’s Home.

## **CONSULTATIONS**

### Environment Agency

No objections subject to conditions requiring submission and approval of a ground remediation strategy.

The EA notes that there has been a number of previous uses that have the potential to have caused contamination of the site. Notable previous uses include the vehicle dismantlers and salvage, and a builder’s yard. States that controlled waters are particularly sensitive in this location because the proposed development site is located on the Cadeby Dolostone Principal aquifer and lies within source protection zone 3.

A remediation scheme has been proposed which includes removing all made ground from the site. The EA expects additional investigation to be completed to test for contamination beneath the made ground and risks to groundwater should be assessed from any identified contamination.

### BDC Environmental Health Officer

No objections subject to a condition requiring further ground investigation and a remediation strategy to be agreed and implemented.

The EHO has reviewed the submitted Geo-Environmental Assessment. She advises that a remediation strategy has been proposed which advises made ground will be removed from the site and a capping layer of 600mm will be provided for any areas where made ground remains in site. Gas protection measures are also to be installed. Whilst not objecting to these proposals, the EHO advises that the sampling carried out is quite limited considering the previous uses of the site and general condition of the site. Therefore further information or clarification is required before we are able to agree the remediation strategy proposed as there is a possibility that the hydrocarbon contamination may be more extensive than that currently considered and the proposals may not be suitably protective of the future residents if there is a significant vapour pathway. Hence a condition is needed to require further ground

investigation and a remediation strategy to be agreed and implemented.

BDC Urban Design Officer

No objections to the revised plans subject to conditions.

Given the challenging site constraints, the revised proposals respond positively to the design issues raised previously and now achieve a more resolved layout, improved amenity standards and relate better to the surrounding context. Subject to conditions to manage materials, landscape and details for the salvage, storage and re-use of the existing stone wall, together with a sample panel of stone wall to be constructed on-site agreed with the LPA prior to construction, there are no urban design objections to the revised submission.

Force Designing Out Crime Officer

No objections to the principle of residential development at this site. The layout is acceptable with the minor amendments regarding corner turning units and passive surveillance. A full boundary detail schedule should be required by condition to include a securable garden access gate for each plot.

BDC Economic Development Officer

No objections subject to a condition to secure local opportunities for skills, training and employment in the District.

BDC Conservation Officer

Pithead Baths building is not worthy of listing (i.e. making it a listed building).

The pithead baths buildings are imposing buildings on the Pit Hill townscape. The baths are all that remains of Langwith Colliery following its closure in 1980. As it is, being the only remaining building, the former pithead baths have lost their historic and visual context. Due to their subsequent use as industrial units the interior of the baths is also gone. The character of the buildings from within and without is of light industrial units. Given the above, my view is that the former pithead baths would not be a candidate for listing.

DCC Archaeologist

No objections subject to conditions requiring a record be made of the former Pithead Baths Buildings.

There are no Historic Environment Records which directly relate to this site, however it is of some industrial archaeological interest. The red brick structures which are proposed for demolition are the former pithead baths of Langwith Colliery. They first appear on OS mapping of the area in 1938. No demolition should occur on the site until the required building recording has been undertaken.

BDC Drainage Engineer

Advisory Information. A maintenance plan for any SuDS proposed is required.

There is a public sewer within the proposed work area so the Applicant needs to contact Severn Trent to determine their responsibilities under the relevant legislation.

Compliance with Part H of Building Reg's.

Measures to prevent surface water run-off or flooding to neighbouring properties should be put in place.

### DCC Flood Risk

No objections subject to conditions as set out below in Recommendations.

### Severn Trent Water

Confirms that drainage conditions can be discharged. So has no objections.

Foul is proposed to connect into the public combined water sewer, which would be subject to a formal section 106 sewer connection approval. Surface Water is proposed to connect into the public surface water sewer, which would also be subject to a formal section 106 sewer connection approval. Informative Notes provided.

### Coal Authority

The application site does not fall within the defined Development High Risk Area and is located instead within the defined Development Low Risk Area. Standing advice.

### DCC (Highways)

No objections to the revised plan Rev J provided that the parking spaces are of sufficient dimensions (2.4m x 5.5m), and subject to conditions.

### Parish Councils

No response.

### Bassetlaw DC

No response.

## **Consultee Comments on Infra-Structure and S106 Obligations:**

### BDC Housing Strategy Officer

Notes the policy requirement for 10% affordable housing. If affordable housing is provided on site it should be 2 bedroom (4 person) or 3 bedroom (5 person) houses for Affordable or Social Rent. The homes should be transferred to a Registered Provider, with nominations for lettings taken from the Council through their Housing Register and choice - based lettings system. She also advises that if the developer is agreeable a commuted sum could be paid in lieu of providing affordable housing on site. She has calculated the financial equivalent of providing on-site affordable housing in this case to be £201,232.

### BDC Leisure Services Officer

Requests commuted sums for improving:

- Equipped Play Area(s): West Street Play Area / former play area, Poulter County Park
- Semi-Natural Green Space: Poulter Country Park £33,930; and
- Playing pitches and their ancillary facilities at Cockshutt Lane Recreation Ground, Whaley Thorns £40,404.

### BDC Arts Officer

The 2020 local plan for Bolsover District (policy SC3: P105) states that "All proposals in excess of 10,000 sq. metres floor space, or 100 dwellings, or 3 hectares in land area should make provision for new works of public art..." This proposed development is smaller than the trigger threshold.

### DCC Education

No mitigation sought with local schools having adequate capacity.

Whaley Thorns Community Primary has a net capacity of 158 with 100 currently on roll and projected numbers showing 108 within the next 5 years indicating no pressure at this school. Shirebrook Academy has a net capacity for 960 pupils with 839 pupils currently on roll. The number of pupils on roll is projected to increase to 863 during the next five years.

### CCG Primary Health Care (NHS)

The CCG has requested a contribution is made towards capacity at the local GP practices. They have requested a commuted sum of £18,816.

Chesterfield Royal Hospital – Not a formal consultee but have provided the following representation:

Requests that impact on secondary health be considered and requests a S106 contribution to mitigate impact on health.

### DCC (Countryside Services)

Would welcome a S106 contribution to off-site recreation. Suggests Poulter Country Park would benefit from enhancements to: equestrian facilities; play equipment; cycle trail improvements; or footpath access enhancements.

### CPV (Independent Viability Consultant appointed by the Council)

Concludes that even with no planning policy S106 contributions the scheme only shows a residual land value of £384,633. As this is still below the benchmark land value\* of £450,000 this is showing an unviable outcome. Therefore CPV concur with the Applicant's findings that there is a reasonable justification here to remove all of the planning policy requirements in order to give this scheme the best chance of being delivered.

*(\* Benchmark Land Value is the minimum price that a hypothetical landowner would accept and a hypothetical developer would pay for the scheme to be delivered. If the residual site value is above this "benchmark" then the scheme is viable. If the residual site value falls below this figure then the scheme is deemed to be unviable).*

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

## **PUBLICITY**

Site Notice and press notice posted. 30 properties have been consulted. Three representations received including two objections on the following grounds:-

The occupier of business unit 12 (Normans DIY and Firewood) objects to the loss of the business unit building. There are no other work units around and so nowhere to relocate to. If this goes ahead it will finish the business off.

Impact on local businesses which run from the old baths, loss of essential local services and employment they provide.

Loss of the pit head baths which were the first ones to be built in Derbyshire and therefore

should have historical and social interest to the local and wider community.

Requests consideration be made for single storey and adaptive accommodation. The plan currently has no single storey bungalows or apartments and no open plan living spaces. Provision of both would offer more flexible accommodation for an aging population.

Control of surface water flow should be a condition of this application. The site is a sloping one, rain water will run down the site and continue in a southerly direction until meeting the River Poulter alongside the A632. This river flows east into Nether Langwith where it divides to flow either side of properties on Queens Walk before emerging on the Village Green. In spate conditions there is already flood risk to properties along this route.

## **POLICY**

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:-

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

SC1: Development within the Development Envelope  
SS1 Sustainable Development  
SS2 Scale of Development  
SS3 Spatial Strategy and Distribution of Development  
WC2 General Principles for Economic Development  
LC2 Affordable Housing  
LC3 Type and Mix of Housing  
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)  
SC13 Water Quality  
SC14 Contaminated and Unstable Land  
ITCR10 Supporting Sustainable Transport Patterns  
ITCR11 Parking Provision  
ITCR II1 Plan Delivery and the Role of Developer Contributions

### National Planning Policy Framework ("the Framework")

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

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

- Paragraphs 108-111: Promoting sustainable transport
- Paragraph 118: Making effective use of land
- Paragraphs 124-128: Achieving well-designed places
- Paragraph 153: Meeting the challenge of climate change
- Paragraph 165: Sustainable Drainage Systems
- Paragraphs 170 and 175: Conserving and enhancing the natural environment
- Paragraphs 178-181: Ground conditions and pollution
- Paragraphs 203-205: Conserving and enhancing the historic environment

### Supplementary Planning Documents

#### *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.

## **ASSESSMENT**

### **Key issues**

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

- the principle of the development
  - Planning Policy
  - Loss of non-designated heritage asset
  - Loss of employment units
  - Site reclamation of brownfield land
  - Housing supply
  - S106 and infrastructure matters
- the design and visual impact of the proposed development
- residential amenity
- whether the development would be provided with a safe and suitable access and impacts on highway safety;
- impacts of trees, ecology and biodiversity
- contamination
- drainage

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

### **The Principle of Development**

#### Planning Policy

Policy SC1 of the local plan (Development within the Development Envelope) permits development proposals on sites within a development envelope, provided that the proposed development is appropriate in scale, design and location to the character and function of the area, is compatible with adjacent uses and does not result in an unacceptable environmental impact. As such residential use would be acceptable in principle in this location.

Although the land is located within the settlement envelope where development is generally

considered to be acceptable in principle, Whaley Thorns is defined as a small village in the local plan and as such is only considered suitable to support a limited amount of development under local plan policy SS3. This policy only anticipates 11 dwellings within the planned housing figure for the settlement. The amount of development proposed exceeds the amount expected within the Local Plan (2020) for this settlement. Nevertheless, bus stops and Whaley Thorns Station are situated nearby and the site is within a short walking distance of a range of services to support day to day needs, including a village school, medical centre and other amenities. The location of the site is therefore considered to be reasonably sustainable and it is considered that the provision of a number of dwellings in excess of the anticipated quantity is not in itself a reason to refuse planning permission.

However, in this case consideration also needs to be given to the loss of the former pit head baths buildings and the loss of employment units that are currently housed within these buildings and the ability of the proposal to meet infrastructure S106 policy requirements; all of which affect the sustainability of the proposal.

#### Loss of a non-designated Heritage Asset

The proposed development includes the demolition of the former Pit Head Baths buildings.



These buildings have no formal protection being neither listed nor within a conservation area and the Council has previously granted planning permission in 2008 for their demolition as part of the redevelopment of the site for residential use. However, that permission was never implemented and as is recognised in the consultation responses from the Conservation Officer and the County Archaeologist and in a public representation, the buildings are of some local historic interest.

The Conservation Officer has been asked to consider whether or not these buildings should be listed to protect them from demolition but she has concluded, having regard to the architectural and historic interest of the buildings that these buildings are not a suitable candidate for listing. She advises that the former pithead baths have lost their historic and visual context and the character of the buildings from within and without is of light industrial units.



The NPPF advises (para'203-205) 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.*

*Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.*

*Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted. “*

Having regard to the advice of the Conservation Officer and the County Archaeologist it is considered that the remaining context and character of these buildings does not warrant listing and retention of the buildings and that the condition and appearance of these buildings does not contribute positively to the character and appearance of the area at the entrance point to the village. The planning condition recommended by the County Archaeologist to require a public photographic record be made would necessary to record their remaining historic interests.

### Loss of Employment Units

The demolition of the buildings on site would also result in the loss of the employment units which they accommodate. It is understood that there are 15 employment units on site. However, the Applicant states that at present the equivalent of 5 full time employees work on site.

The building is poorly insulated, is structurally inadequate, and has asbestos sheeting on the roof. The building has been adapted over many years for different industrial uses but does not meet modern standards for commercial/industrial development.



5.View of part of the existing interior of the Pithead Baths

Two objections to their loss have been received in response to publicity on this application. However, the Council's Economic Development Officer has no objections subject to a condition to secure local opportunities for skills, training and employment during construction.

The relevant local plan policy which protects employment sites is policy WC2. However employment sites are only protected by WC2 as specifically allocated on the policies map of the local plan. This application site is not so protected. The only employment site which is allocated and protected in Whaley Thorns is a site at Park View approximately 380m north of this site.

It should also be noted that the auto salvage use has now ceased and so the majority of the site is unused and contaminated brownfield land. Hence the use which is being made of the

site is not currently very efficient.

Furthermore, the Council has previously granted planning permission in 2008 for the loss of these employment units even though the local plan policy at that time was to protect all sites in employment use. The main reason why that decision was reached was because the existing industrial type uses which are permitted on this site were creating complaints from existing residents living adjacent to the site. i.e. the existing industrial and motor salvage uses were seen as a non-conforming uses within a residential area. Although Planning Officers are not aware of any recent complaints, the site is no longer fully used and the auto salvage business has ceased. These uses could however recommence or be undertaken in a less considerate manner by future occupants of the site. As such it is considered that the removal of non-conforming uses should still be taken into consideration in the balance.

Ultimately the buildings are privately owned and so the Council has no control over the future of the business units even if a decision was made to refuse planning permission to protect the businesses i.e. there is probably nothing to stop the current owner evicting the tenants or not renewing the leases if planning permission became an obstacle to the redevelopment proposals for the site.

In summary, the proposal would result in the loss of the existing employment units on site but they are not protected by local plan policy, are of poor quality and could be extinguished by the current owner regardless of the outcome of this application. Furthermore the redevelopment of the site for residential use would prevent any future nuisance problems associated with non-conforming uses and would allow the site to be fully remediated and the visual appearance of the area to be improved.

Given that the remaining tenants of business units will need to find alternative premises the Council's Economic Development Team will be asked to provide assistance with this search.

#### Reclamation of Brownfield Land

The site has been quite heavily contaminated as a result of its former uses, particularly the auto-salvage use. In addition the site lies over a groundwater aquifer where controlled waters are particularly sensitive (as advised by the Environment Agency). Therefore the redevelopment of a scheme which can provide for the reclamation of the site and the removal of contamination weighs positively in the planning balance.

#### Housing Supply

Although the Council has identified a five year supply of housing, the provision of additional housing can be seen as a benefit of the scheme if the location of the site is deemed to be sustainable.

#### S106 and local Infrastructure

The following S106 obligations have been sought to enable the proposal to fully comply with local plan policy:-

£185,753 Affordable Housing – commuted sum for off-site provision

£31,320 Play facilities off-site

£37,296 Leisure off-site

£17,369 Primary Health GP capacity increase

(note: No mitigation sought with local schools having adequate capacity)

Total S106 request = **£271,738**.

Whilst initially agreeing to the S106 obligations requested the Applicant later took advice on the scheme's viability and submitted a consultants viability report (by S106 Management 02/12/2021). It was concluded in this report that the development cannot viably provide any S106 contributions.

The findings of this report have been tested and reviewed by the Council by appointing a second independent viability assessor (CPV Viability). Accounting for the cost of ground remediation in this case CPV came to the same conclusion.

The test of viability is whether the residual price left for the land is above the Benchmark Land Value or not. This has been assessed as being £450,000. However, the residual value of the land has been calculated to be £348,633 which is below £450,000. This shows an unviable outcome.

Therefore the Planning Officer view is that the proposal is that the scheme is technically unviable without any S106 contributions and that there is a reasonable justification here to remove all of the planning policy requirements in order to give this scheme the best chance of being delivered.

However this does not necessarily mean that planning permission should be granted. There is still a decision to make for the Council as to whether it ought to grant permission for an unviable development which cannot meet all of its policy obligations. A scheme which cannot contribute to the additional pressures that it creates on local infra-structure and services is less sustainable and in some cases could cause harm to the quality of life for others in the area. Therefore it is important to consider what the consequences/harms would be in this particular case if permission is granted without the normal S106 obligations:-

- Education  
No impact since there is excess capacity in the local schools already. In fact the number of pupils at Whaley Thorns Community Primary (100) is way below a net capacity of 158. Therefore the additional pupils created would actually help with the efficient and continued operation of the school.
- Affordable Housing  
Slight impact. The NPPF states at para'65 that "*where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership unless this would exceed the level of affordable housing required in the area*".

The Council's policy LC2 is to seek 10% on site provision. However the Housing Strategy Officer did not think on site provision was necessary in this case because Whaley Thorns is a settlement with low demand for affordable housing, partly due to the relatively low house prices and also the availability of reasonably priced private rented accommodation there. Whilst there is an overall affordable housing need in Bolsover district she doesn't consider this to be a suitable site. She advised that, subject to viability, it may be a case where a commuted sum would be more appropriate so that we could provide affordable housing in a larger settlement nearby

where the need and demand is higher.

Given a viable case has been proven and the affordable need on this site is low, it is considered that it would not be appropriate to refuse planning permission for lack of affordable housing provision.

- **Leisure**  
Slight impact. There is an existing play facility within Whaley Thorns and significant open space provision nearby at Poulter Country Park opposite the application site, as well as Cockshutt Lane recreation ground and West Street recreation ground. Residents of the new development would therefore have good access to these facilities.

The Leisure Officer has advised that although Langwith as a parish meets the standards in terms of quantity of formal and semi-natural green space for the current population, there are a number of sites in Langwith that do not achieve the minimum quality standard and so has sought contributions for improvements.

Hence whilst the absence of a S106 contribution to improve leisure facilities is unfortunate it is considered that there is existing provision which will meet the needs of existing and proposed residents of this site. As such it is considered that a leisure obligation in this case is not essential to make the development acceptable in planning terms.

- **Primary Health GP Capacity**  
Slight impact. The CCG have said that they would like to increase clinical capacity for Whaley Thorns and the surrounding area, since anticipated growth within the next 6-15 years will require additional capacity in the area. Hence there is a need to increase capacity but it is not yet an immediate need with some short term capacity remaining. The funding sought for this relatively small development, £17,369 whilst proportionate, is quite a small amount and in truth is unlikely to allow significant capacity improvements to be made. Hence it is considered that the lack of this S106 contribution would not justify refusal of planning permission.

In summary, a viability case has been proven and tested by the Council and it is accepted that the development cannot pay for the S106 obligations sought. Since the development will not pay its way in terms of additional pressures on local infrastructure its sustainability as a site for housing is reduced. But on this occasion not by much because there are no critical infrastructure capacity problems and in respect of primary education the additional pupils will assist with the current low number of pupils on roll. The consequences of the additional pressures on local infrastructure should be taken into account in the planning balance.

#### Conclusions on Principle of Development

This is a site within the development envelope where residential development is generally acceptable. However factors weighing against approval in this particular case are that:

A non-designated heritage asset of limited quality would be lost; the employment space that it provides would also be lost although much of the site outside the buildings is now unused; and the viability of the development is challenged such that it cannot pay its way in terms of

S106 contributions to increase capacity of local infrastructure although in this case the capacity shortfalls identified are not considered to be significant.

Factors weighing in favour of approval include the redevelopment and restoration of a polluted brownfield site the condition of which adversely affects the character of the area at an entrance point into the village of Whaley Thorns; removal of a potential harm to ground water quality; the removal of potentially non-conforming nuisance uses within a residential area; and the additional housing supply offered.

In this case it is considered that harms identified do not outweigh the initial policy position of accepting residential development within the development envelope especially considering the factors weighing in favour of approval. Therefore provided that there are no other unacceptable environmental impacts or technical reasons for refusal it is considered that permission should be granted.

### **Other Matters**

#### **Design and Visual Appearance**

The application has been revised to address the concerns of consultees including the Urban Design Officer, Police and County Highways. The ground level changes on site are a particular constraint with some notable retaining structures necessary. The revisions have included a reduction in the number of dwellings from 39 to 36 in order to meet the Council's standards of space about dwellings, privacy, parking space and stand-off distance to retained trees. The revised proposals are now considered to meet standards and are considered to be acceptable.

The request in representations to alter the mix of housing to include single storey and adaptive accommodation is noted. However it is considered that the proposed mix of two and three bed, two storey dwellings is not inappropriate and single storey units are generally more expensive to deliver in terms of the land they take up. Given that viability is already challenged it is not considered to be reasonable to require further changes which may harm the viability of the proposal.

#### **Residential Amenity**

As amended the level of amenity on site at the proposed development should generally meet the Council's guidance in Successful Places. There is one instance where there may be some overlooking of the rear garden of plot 36 from the upper side windows of the existing dwelling (with permission for conversion to children's home) adjacent to the south side of the site. A separation distance of 10.5m is sought whereas about 8m is available. The existing large Aspen Tree which currently provides some screening here is to be removed because it has a significant lean and is considered to be dangerous. However some replacement tree planting at this point would both provide screening and offset the loss of the existing tree. This requirement can be included within the landscaping scheme to be approved by condition. It is considered that any remaining overlooking issue from existing property is a matter of buyer beware since the new purchasers of plot 36 will be aware of the existing situation when they buy the property.

#### **Access/Highways**

As amended the County Highways Officer has no objections to the proposal subject to

conditions. Conditions are recommended as set out below in the recommendation section of this report with the following exceptions:-

The separate site compound details and wheel cleaning conditions sought can be covered by a more general construction management condition which is considered necessary because of the potential amenity impacts on adjacent residential property from ground works required. Also some of the compliance trigger timings have been altered in order to avoid unnecessary pre-commencement conditions as recommended in national planning guidance.

Subject to these conditions it is considered that there are no highway safety issues that are a constraint to development and that the site can be provided with a safe and suitable access.

### **Trees, Ecology and Biodiversity**

The Applicant has provided the following assessments:-

Arboricultural Impact Assessment and Root Protection Area Plan:

Concludes that the site is industrial which has received little maintenance over the last few years resulting in the establishment of young trees in several areas on the site. There is a small variety of species, age range and conditions. All trees within the site have been categorised as category C.

Ecology Appraisal:

Concludes that the site was of low to moderate wildlife interest. This was due to the site being dominated by buildings and areas of hard standing, with only marginal pockets of vegetation. No rare vascular plants were found, and all species recorded were common and widespread; the trees, scrub and buildings provided potential for nesting birds; there was no evidence or signs of bat occupation; however, some of the buildings had external gaps and cavities, along with numerous potential access points. The buildings were classified as having moderate suitability for roosting and/or hibernating bats. As such, it is recommended in the ecology report that a minimum of two nocturnal emergence surveys are undertaken within the optimum period (May- September inclusive) with one of the surveys comprising a dawn re-entry survey.

There is no potential for amphibians, poor habitat for reptiles and no suitable habitat for mammals. Habitat for invertebrates is poor.

Tree root protection measures should be put in place; wildlife friendly planting used in landscaping and bat and bird boxes provided.

Biodiversity Net Gain Assessment:

The on-site mitigation proposals to off-set habitat loss associated with the proposed development is sufficient to achieve an overall predicted net gain of 76% in biodiversity units. The benefits accrue from the additional tree and shrub planting to be undertaken within the proposed private garden areas.

The Officer view is that the biodiversity interests on this site are generally low. The most significant trees in the vicinity are actually adjacent to the site on the south and southwest sides of the site. They are protected by tree preservation order and, as amended, are not materially affected by the proposed development. As mentioned above a large Aspen Tree which is leaning quite badly needs to be removed from the site because it is dangerous but its

replacement can be required by condition.

There is a scrappy hedgerow which runs through the centre of the site which will need to be removed in order to properly remediate the site and deal with the step in ground levels along its line. However it is not considered to be an important hedgerow neither is it in very good condition and given the site constraints its removal is considered to be necessary. Replacement planting and landscaping should adequately mitigate for the loss.

Whilst the ecological interest on site is generally low and no evidence of bat roosts has been found, there is potential for bat roosts within the buildings and the recommended bat emergence surveys have not yet been undertaken. These will be necessary before the buildings are demolished. The bat emergence surveys and mitigation for the loss of potential roosting habitat can be required by condition.

### **Ground Contamination**

The study submitted with the application shows that the site is quite heavily contaminated from its former uses. Remediation will be required as a condition of planning permission. The removal of this contamination to facilitate the proposed development is considered to be a benefit and should also reduce the risks to the ground water aquifer.

### **Drainage**

Severn Trent Water have no objections to the proposals for disposal of foul and surface waters. However conditions will be required as recommended by the Lead Local Flood Authority and BDC Drainage Engineer to control surface waters during and post construction. Subject to conditions it is considered that there are no technical drainage reasons why planning permission should not be granted.

### **Conclusions on Technical Matters**

Subject to conditions there are no design or technical reasons why planning permission should not be granted.

### **Overall Conclusions**

This is a site within the development envelope where residential development is generally acceptable. A non-designated heritage asset of limited quality would be lost; the employment space that it provides would also be lost although it is now a poor quality building for employment use and much of the wider site is now unused; and the viability of the development is challenged such that it cannot pay its way in terms of S106 contributions to increase capacity of local infrastructure. However, in this case the capacity shortfalls identified are not considered to be critical. There is no shortage of school places and there is no identified need for affordable housing in the locality of the site and the existing leisure provision in the vicinity of the site is adequate. This means that even without S106 contributions the development is relatively sustainable.

Factors weighing in favour of approval include the redevelopment and restoration of a polluted brownfield site the condition of which adversely affects the character of the area at an entrance point into the village of Whaley Thorns; removal of a potential harm to ground water quality; the removal of potentially non-conforming nuisance uses within a residential area; and the additional housing supply offered.

In this case it is considered that harms identified do not outweigh the benefits or the initial policy position of accepting residential development within the development envelop.

There are no other unacceptable environmental impacts or technical reasons to withhold planning permission.

## **RECOMMENDATION**

**The application be APPROVED subject to the following conditions (in precis form to be formulated in full by the Head of Planning):-**

### Time Period

The development shall be begun before the expiration of three years from the date of this permission.

### Approved Plans

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:-

[List of approved documents]

### Construction Management Plan

Prior to the commencement of development a construction management plan shall have been submitted to and approved in writing by the Local Planning Authority. The plan shall include (amongst other things) details of how noise, dust and vibration will be managed and mitigated throughout the course of the development including: hours of the day such noise making activity can be undertaken; provision of wheel wash facilities where necessary to avoid mud and stones on the public highway; means to prevent surface water run-off to adjacent property or the highway and site compound location and any screening. The approved construction management plan shall be implemented throughout the course of the development.

### Bat Surveys

Before any demolition of any of the former Pithead Baths buildings takes place, a minimum of two nocturnal emergence surveys for bats within the optimum survey period (May-September inclusive) with one of the surveys comprising a dawn re-entry survey, shall have been undertaken by an appropriately qualified body and the results of the surveys together with any mitigation/licencing measures recommended shall have been submitted to and approved in writing by the Local Planning Authority. Any mitigation/licencing measures approved shall be implemented.

### Tree/Hedge Protection

Before the development is commenced and before any equipment, machinery or materials are brought on to the site to implement this planning permission, temporary fencing must be erected to protect the existing hedgerows and trees along the southern and southeast site boundaries and the trees to be retained as shown on the approved layout plan (S120/1057/2 Rev J).

The fencing shall be retained and maintained until all equipment, machinery and surplus

materials have been removed from the site. The fencing shall be at least 1.2m high, sited at least 2m from the bole of the hedge-line, strong enough to resist impacts and shall include intermittent signage along its length warning site operatives that the 'Hedge/trees are to be retained and are protected by condition of planning permission' and also advising that nothing can be stored or placed within the fenced area and the ground levels within the fenced area must not be altered nor any excavation take place, without the written consent of the Local Planning Authority.

In the event that any hedgerow or tree is removed which should have been retained in accordance with this condition, it shall be replaced in accordance with planting details submitted to and approved in writing by the Local Planning Authority within the next available planting season.

### Employment Scheme

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.

### Historic Building Recording

No development shall take place until a Written Scheme of Investigation for historic building recording has been submitted to and approved by the local planning authority in writing, until all on-site elements of the approved scheme have been completed to the written satisfaction of the local planning authority, and until the provision to be made for analysis, reporting, publication and dissemination of the results and archive deposition has been secured. The Written Scheme of Investigation shall include an assessment of significance and research questions; and

1. The programme and methodology of site investigation and recording
2. The programme and provision for post-investigation analysis and reporting
3. Provision to be made for publication and dissemination of the analysis and records of the site investigation
4. Provision to be made for archive deposition of the analysis and records of the site investigation
5. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation"

"b) No development shall take place other than in accordance with the Written Scheme of Investigation for historic building recording approved under condition (a)."

"c) 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 Written Scheme of Investigation for historic building recording approved under condition (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

### Ecology

The ecological mitigation and enhancement proposals set out at section 4 of the approved Preliminary Ecological Appraisal (ML-Ecology 25/06/2019 including amongst other things the provision of 6 nesting boxes for birds and 6 built in bat tubes) shall be implemented, before,

during the construction phase of development and prior to the occupation of any of the dwellings in accordance with the timing set out in the approved document. A validation statement, prepared by a qualified ecologist, confirming that the ecological mitigation and enhancement proposals have been fully implemented shall then be submitted to the local planning authority on completion of the development.

### Ground Remediation

Prior to each phase of development approved by this planning permission no development shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:

1. A preliminary risk assessment which has identified:
  - all previous uses
  - potential contaminants associated with those uses
  - a conceptual model of the site indicating sources, pathways and receptors
  - potentially unacceptable risks arising from contamination at the site
1. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
2. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

Prior to any part of the permitted development being brought into use, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

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

### Drainage Conditions

Prior to the commencement of development a scheme to prevent surface water run-off adversely affecting neighbouring property or the highway during the construction phase of development shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to commencement.

No development shall take place until a detailed design and associated management and

maintenance plan of the surface water drainage for the site, subject to approval by Severn Trent Water Limited and in accordance with the principles outlined within:

- a) The approved documents (FRA, Drainage Strategy) Rennard Consulting Limited (30/09/2021). Pit Hill Residential Development Flood Risk Assessment and Drainage Strategy. Revision B, including any subsequent amendments or updates to that document as approved by the Flood Risk Management Team; and
  - b) 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.

### Highway Conditions

Before any of the dwellings are occupied a new vehicular and pedestrian junction shall be formed to Pit Hill in accordance with the revised application drawing (S120/1057/2 Rev J) and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, for a distance of 43 metres in both directions measured along the nearside carriageway edge. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Before the construction of the new access and estate road commences, details of the proposed arrangements for future management and maintenance of the proposed streets shall have been submitted to and approved by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established].

Unless the new street is to be publically adopted under section 38 of the Highways Act 1980, before the construction of the new access and estate road commences full engineering, drainage, street lighting and constructional details of the streets proposed for adoption shall be submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

The carriageways of the proposed estate roads shall be constructed in accordance with Condition XXX above up to and including at least road base level, prior to the occupation of any dwelling intended to take access from that road. The carriageways and footways shall be constructed up to and including base course surfacing to ensure that each dwelling prior to occupation has a properly consolidated and surfaced carriageway and footway, between the dwelling and the existing highway. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageways, footways and footpaths in front of each dwelling shall be completed with final surface course within twelve months (or three months in the case of a shared surface road) from the occupation of such dwelling, unless otherwise agreed in writing by the Local Planning Authority.

No dwelling shall be occupied until space has been laid out within the site in accordance with the revised application drawing (S120/1057/2 Rev J) for cars to be parked. Once provided,

such spaces shall be maintained free from any impediment to their designated use for the life of the development.

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

The proposed individual driveways to the road off Pit Hill shall be no steeper than 1:14 and shall be constructed via means of a dropped kerbed access with a continuous footway across the frontage.

Before any dwelling fronting Pit Hill is occupied, the existing vehicular (and pedestrian) access to Pit Hill shall be permanently closed with a physical barrier and the existing vehicle crossover reinstated as footway (or verge) in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

#### Landscaping and Boundaries

No building shall be occupied until a scheme of both hard and soft landscape works (to include specific species proposed and to include replacement boundary tree planting for those removed at plot 36) and including a programme for implementation have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out as approved before each relevant dwelling is occupied and site wide no later than the first planting season following the completion of development.

If within a period of five years from the date of the planting of any tree or shrub (or their planned retention in accordance with the landscaping scheme) that tree or shrub may die, be removed, uprooted or become seriously damaged it shall be replaced by another of the same species during the first available planting season, unless a variation of the landscaping scheme is approved in writing with the Local Planning Authority.

No building shall be occupied until a scheme of boundary treatments has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a securable garden access gate for each plot; and in accordance with the approved layout plan the scheme shall include stone walls to Kitchener Terrace to consist of existing stone reclaimed from the existing stone walls removed as part of the development of the site. A representative sample panel of the stone wall shall be made up for approval before its general provision. The scheme of boundary treatments shall be carried out as approved before each relevant dwelling is occupied.

#### Materials

Notwithstanding the detail shown on the submitted drawings and documents, before construction progresses above foundation level on any building or wall, a materials plan and schedule for all external wall and roof areas, together with representative samples of the materials, shall first have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details and samples.

### **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.

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