

PARISH South Normanton Parish

APPLICATION Outline application for the construction of two drive-thru restaurants with takeaway facility and associated car parking, with the reserved matters being appearance and landscaping (details of access, layout and scale submitted for approval).

LOCATION 73 Mansfield Road, South Normanton, Alfreton, DE55 2EF

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

APPLICATION NO. 22/00241/OUT **FILE NO.** PP-11233071

CASE OFFICER Mr Steve Phillipson

DATE RECEIVED 10th May 2022

SUMMARY

This is an application for outline planning permission for the erection of two drive-thru restaurants with takeaway facility to the north side of the roundabout at the junction of the A38/Berristow Lane/Carter Lane East/Cartwright Lane, South Normanton.

The key issues to consider are:-

- The principle of the development including the local plan allocation and impacts on the town centre;
- Whether the development would be provided with a safe and suitable access;
- The impact of the development traffic on the busy road network;
- Impacts on trees hedges and biodiversity;
- Amenity impacts (noise, odour, traffic disturbance, litter or hours of operation)
- Air quality
- Visual impacts on the character of the area

Whilst there are aspects of local plan policy which the proposal does not align with it is considered that the proposal does comply with local plan policy as a whole. It is therefore considered that the Council should take a pragmatic view on the use now proposed in order to allow for the completion of development on the employment allocation and make efficient use of this mainly brownfield site.

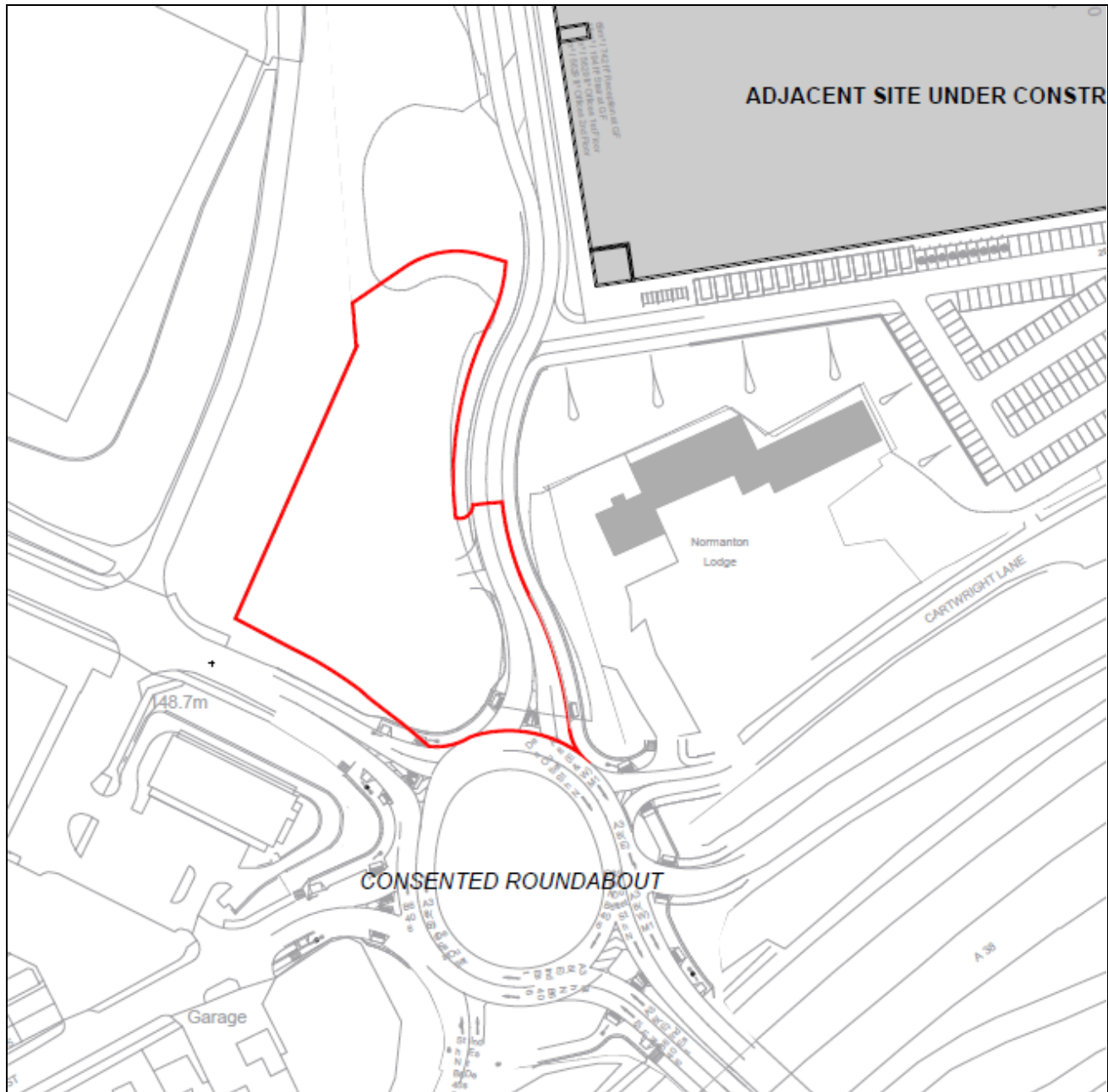
Loss of existing vegetation on site would be high but mitigation has been proposed to compensate for the loss.

Amenity impacts are not expected to be significant and there are no highway safety, traffic, air quality or other technical reasons that would justify the refusal of planning permission.

The application is recommended for approval.

The application has been called in for a committee decision by Cllr Tracey Cannon, due to concerns over noise, amenity impacts, traffic congestion, contrary to local plan, and the number of takeaways already in the village, impact on shops on the local town centre.

Site Location Plan



SITE & SURROUNDINGS

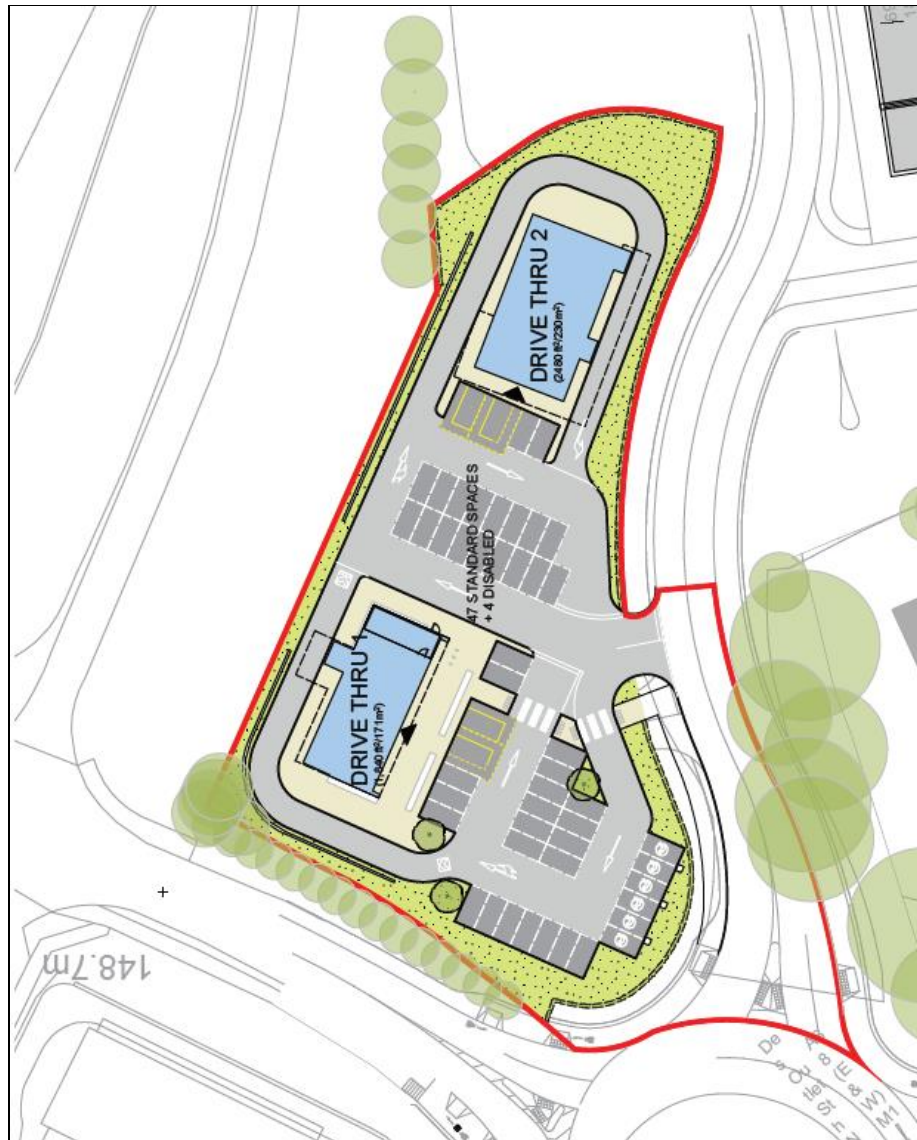
Site of the former dwelling at 73 Mansfield Road approximately 0.5ha in area, derelict for a number of years and now demolished as part of the adjacent development and its associated roundabout and access works. The site is currently being used as a construction compound associated with the adjacent development. Some trees and hedgerows remain predominantly

on the northwest and southwest boundaries.

The site is adjacent to the north side of the roundabout junction serving the A38/Berristow Lane/Carter Lane East/Cartwright Lane. Adjacent to the east side of the site is the proposed access road to serve the warehouse development currently under construction, and beyond that Normanton Lodge Care Home. To the southwest on the opposite side of Berristow Lane is McDonalds and to the west and north is commercial development within Berristow Lane Industrial Estate. There are bus stops close by on Berristow Lane and also Carter Lane East. To the southeast across the A38 is The East Midlands Designer Outlet Site. South Normanton Town centre is about 1.7km to the west of the site.

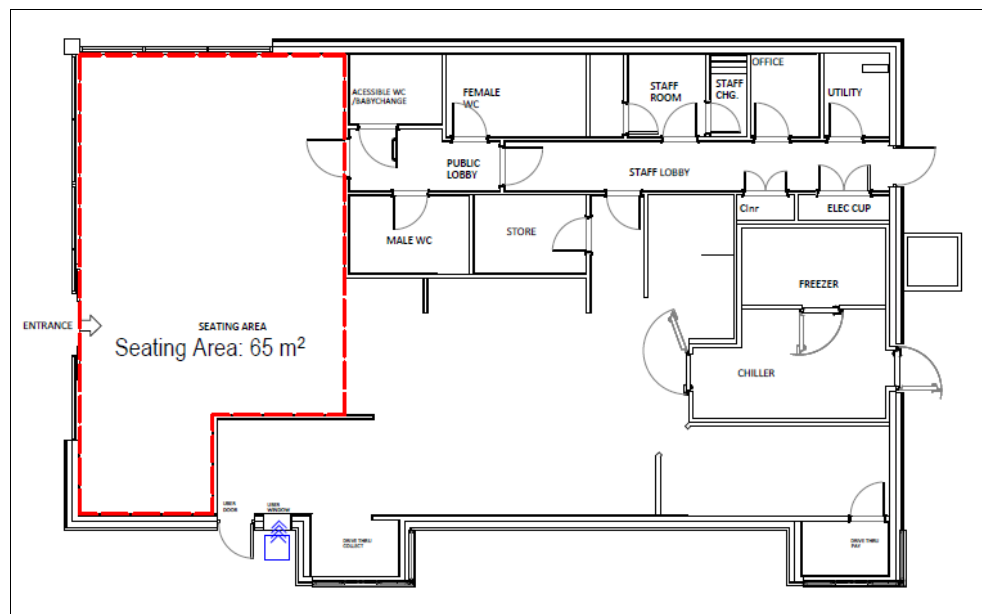
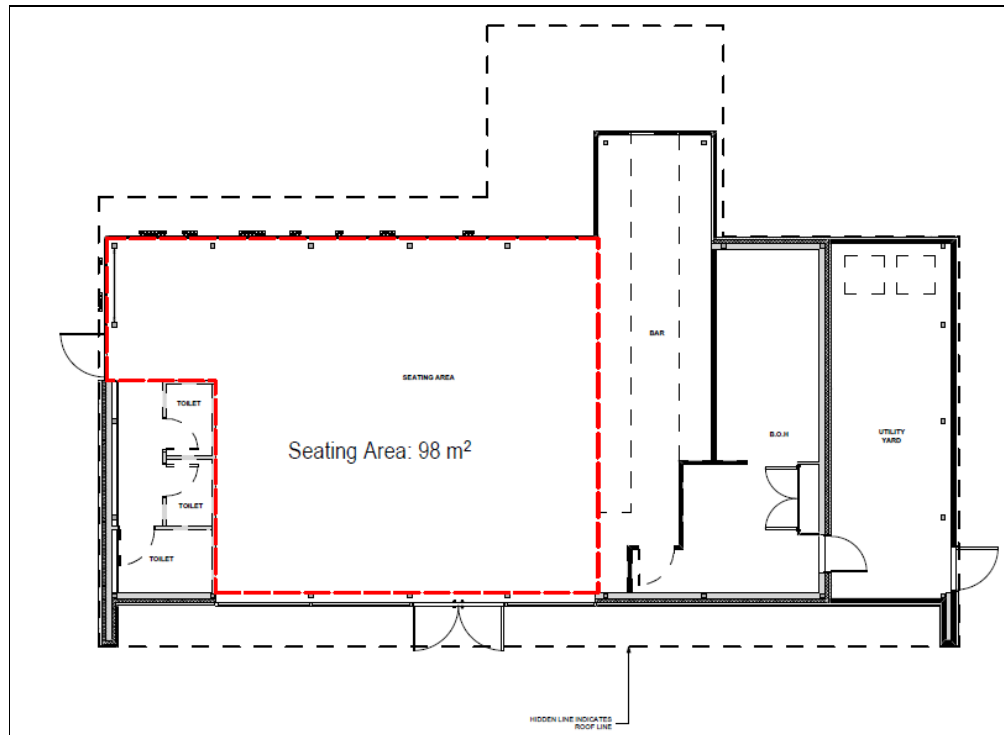
PROPOSAL

Outline application for the construction of two drive-thru restaurants with takeaway facility (total gross internal floor space of 401 sq.m) and associated car parking (51 spaces), with the reserved matters being appearance and landscaping. The details of access, layout and scale submitted for approval now. The proposed site layout plan is shown below:



To create a more level site it is proposed to cut in to ground levels on the western sides and raise ground levels at the northern end of the site. All existing vegetation on site would be removed.

The internal floor layout plans for the units are shown below:



Access would be via the new industrial estate road off the Berristow Lane/Carter Lane East/A38 roundabout.

Scale proposed is a maximum height of 7m and so the buildings proposed are expected to be single storey but could potentially have 2 storey elements, subject to the maximum floorspace proposed.

There are no named operators at this stage but Unit 1 is proposed to be operated by a national multiple coffee chain. The potential operator of Unit 2 is a fast-food chain.

The Applicant claims that the proposal will result in benefits including:-

- the high-quality redevelopment of a vacant and derelict site;
- the provision of additional leisure (food and drink) facilities to serve the users of the existing and forthcoming employment development in the vicinity of the application site;
- the enhancement of local consumer choice through the introduction of new operators not currently represented in South Normanton;
- the promotion of sustainable economic growth through the re-use of a brownfield site that is located close to significant retail and employment destinations, helping to create sustainable patterns of travel;
- creation of new jobs and staff training/development opportunities;
- forming part of proposals on a key site that was first allocated for employment uses over 20 years ago, and where development remains an important Council objective;
- provision of facilities which will add to the overall attractiveness of the wider employment development, and which will assist in the marketing and letting of the B8 units on adjoining land to high-quality occupiers; and
- provision of a facility that will be available to local residents and which will assist in the Council's objectives of providing new facilities for visitors, both for business trips and tourism related visits, and particularly where they are located close to the District's largest settlements.

Supporting Documents

Planning Statement

Design and Access Statement

Transport Statement

Noise Assessment

Flood Risk Assessment

Drainage Strategy

Ecological Appraisal and Biodiversity Net Gain Assessment

Coal Mining Risk Assessment

AMENDMENTS

Additional information submitted during the course of the application on ecology, biodiversity, planting, drainage, noise, ground levels, transport impact, electric vehicle charging added.
Revised site layout plan 21788-302-P-01.

EIA SCREENING OPINION

The proposals that are the subject of this application are not Schedule 1 development but they are an urban development project as described in criteria 10b of Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

However, the proposals are not in a sensitive location as defined by Regulation 2 and by virtue of their size and scale, they do not exceed the threshold for EIA development set out in Schedule 2.

Therefore, the proposals that are the subject of this application are not EIA development.

HISTORY

20/00296/FUL	Withdrawn	Erection of hotel (Class C1) and pub/restaurant on ground floor (Class Sui Generis and Class E) with associated access, parking, landscaping and lighting.
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CONSULTATIONS

Ashfield DC – 09/06/2022, 01/07/2022 and 05/09/2022

Objects on the following grounds.

Mistakes in the Transport Assessment and questions some of the assumptions:-

- that 70% of traffic will be passing on the road rather than make a specific trip;
- at para 5.2 it references a hotel approved on the site and in section 4 uses the hotel to argue that there will be a decrease in net change in comparison to what has already received permission on the site. However the hotel application was withdrawn.
- the TA cannot therefore indicate accurately whether there will be an increase impact on highways due to trip generation.

An air quality assessment has not been provided.

Impact on Town Centres:-

- With the introduction of two new drive-thru restaurants out of town centres it is likely to operate as a destination in its own right competing with adjacent towns such as Sutton in Ashfield, Kirkby in Ashfield and potentially other towns in other districts including towns and shopping centres within Bolsover.
- Lack of a sequential test or retail impact assessment (an appeal case is cited).

Requests that the proposal contribute towards a transport hub in the area.

05/09/2022 - Confirmed that the additional information provided by the applicant does not alleviate the concerns raised by ADC.

BDC Drainage Engineer – 08/06/2022

No objections subject to conditions re: maintenance plan for SuDS; management of surface water during construction.

Coal Authority – 26/05/2022

No objections subject to conditions.

The Coal Authority concurs with the recommendations of the Report on a Coal Mining Risk Assessment that coalmining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site.

DCC Highways Authority – 05/08/2022

No objections subject to a condition requiring the provision and maintenance of the parking and manoeuvring areas as shown on the layout plan.

Permission has recently been granted for alterations to the roundabout which include the realignment of the roundabout and the provision of a new arm serving the application site and land beyond. The individual access to the proposed restaurants will be via the non-publicly maintained road off the new arm of the roundabout.

The application includes a Transport Assessment which has been assessed by the Highway Authority's Transportation Officer and found no objectionable issues relating to the proposed vehicular traffic generated by the proposed restaurants on the highway network.

The proposed on-site parking provision and internal layout is considered acceptable to serve the proposed units.

National Highways (formerly Highways England) – 07/06/2022

No objections.

DCC Flood Risk Team – 03/10/2022

No objections subject to conditions requiring a detailed design of surface water drainage to be approved and implemented and control of surface water during construction.

Derbyshire Wildlife Trust – 05/07/2022

No objections subject to conditions:-

- Protection of breeding birds during construction;
- Badger Survey;
- Restrictions on operations involving invasive non-native species;
- Construction environmental management plans (Biodiversity);
- Landscape and Biodiversity Enhancement and Management Plan (LBEMP);
- Lighting Strategy to safeguard bats and other nocturnal wildlife.

The ecology appraisal is considered to have been undertaken in accordance with best practice and guidance. It includes a Biodiversity Net Gain summary based on use of Defra's Biodiversity Metric 3.0. The appraisal has set out a range of mitigation, enhancement and Biodiversity net gain measures and provided these are implemented in full and are successful the development should be able to demonstrate a small gain overall in terms of both habitats and hedgerows (linear features).

Environmental Health Officer – 26/05/2022 and 05/09/2022

No objections re noise or odours following receipt of additional information.

South Normanton Parish Council – 15/06/2022

Objects. Increase in traffic; congestion; air pollution; health and obesity with more than enough take-away restaurants already.

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

PUBLICITY

Site notice posted, 45 properties consulted. 14 objections received, including an objection from a South Normanton Community Group and from the East Midlands Designer Outlet, on the following grounds:-

- More traffic on busy roads and roundabouts
- Speeding traffic
- Congestion around the village
- Pedestrian safety crossing the roads
- Queuing takeaway traffic causing obstruction of the access to the industrial estate back to the roundabout.
- Traffic noise
- Air pollution
- Noise pollution for residents at the care home, especially if 24 hour operation.
- Light Pollution
- Illuminated signage
- Litter
- Reduced quality of life for residents
- Impact on small businesses in the area
- Will attract teenagers and antisocial behaviour
- Health and obesity
- Contrary to local plan policy allocation -should be B2 and B8 use which excludes takeaways.
- The applicant has not demonstrated whether the subject land has been suitably marketed for B2 or B8 use.
- No retail impact assessment or sequential test has been undertaken
- Negative impact on the vitality of similar businesses within South Normanton
- Negative effect on the East Midlands Designer Outlet which is recognised for its employment role and tourism roles in Bolsover – EMDO should be considered a sequentially preferable location.
- The argument that the drive-thrus will serve a 'very substantial proportion of its trade' from the employees and visitors of the employment development is weak and not backed by any empirical evidence.
- Mistakes in the application documents re planning history – the hotel application was never approved affecting vehicle trip generation figures used in the Transport Assessment.
- No need for more takeaways - South Normanton already has 12 food/takeaway restaurants not including those food outlets at East Midlands Designer Outlet, approximately 13.

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:

WC1: Employment Land Allocations (the site is allocated for B2/B8 uses)
WC5: Retail, Town Centre and Local Centre Development
WC9 Hot Food Takeaways
SS1: Sustainable Development
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)
SC12: Air Quality
SC14: Contaminated and Unstable Land
ITCR10: Supporting Sustainable Transport Patterns
ITCR11: Parking Provision (41 parking spaces required to meet BDC standards)

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:

- Chapter 2: Achieving sustainable development
- Paragraphs 47-48: Determining applications
- Paragraphs 55-58: Planning conditions and obligations
- Paragraphs 81-83: Building a strong, competitive economy
- Paragraphs 86-91: Ensuring the vitality of town centres
- Paragraphs 92, 93, 95 and 97: Promoting healthy and safe communities
- Paragraphs 104-108: Promoting sustainable transport
- Paragraph 119, 120, 122 and 123: Making effective use of land
- Paragraphs 126-132 and 134: Achieving well-designed places
- Paragraph 152, 154 and 157: Meeting the challenge of climate change
- Paragraph 159 167 and 169: Planning and Flood Risk
- Paragraphs 174, 180 and 182: Conserving and enhancing the natural environment
- Paragraphs 183-188: Ground conditions and pollution

ASSESSMENT

Key issues

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

- the principle of the development
- whether the development would be provided with a safe and suitable access;
- the impact of the development on the road network;
- impacts on trees hedges and biodiversity;
- amenity impacts (noise, vibration, odour, traffic disturbance, litter or hours of operation)

- air quality
- visual impacts on the character of the area

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

Principle of Development

The planning uses of the proposed development, as currently defined, fall between use class E (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises; and Sui Generis (r) as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises.

Policy WC1 (Employment Land Allocations – Wincobank Farm, South Normanton).

This application site forms a small part of a much larger local plan allocation. Local plan policy WC1 allocates the site for B1 (light industrial/office use – now re-classified as class E(g)) and B8 (storage and distribution) uses only. The proposed use does not in itself comply with WC1.

An extract of the proposals map is shown below. The current application site is the roughly triangular section at the very southwest tip of the allocation marked by an arrow.



The majority of the allocation is currently being developed for two large B8/B1 units (as formerly classified) which is fully compliant with policy WC1.

Although the proposed use does not itself comply with policy WC1 it is noted that the preamble to policy WC1 indicates that other uses might also be acceptable on parts of the allocation. It states at para' 6.18:

"Wincobank Farm, South Normanton -

A well located site to the strategic highway network, and the remaining part of a site that was allocated in the Bolsover District Local Plan (February 2000) as a reserve site for large firms. It is suitable for a variety of employment uses, or could be suitable for a large single occupier. There is currently a proposal for a retail park on the front part of the site."

Paragraph 6.18 is silent on whether or not retail use would have been acceptable on part of the allocation but it does imply that some other employment uses could be acceptable on part of the site. Given that the current application site is only a small left over section of the allocation, separated from the main allocation site by the care home and site access road, it is considered that permission could be granted for the proposal without conflicting with the overall aims of policy WC1. It is therefore recommended that the Council should take a pragmatic view on the use now proposed in order to allow for the completion of development on the allocation and make efficient use of this mainly brownfield site.

Policy WC5 (Retail, Town Centre and Local Centre Development) states that support will be given to proposals which maintain or enhance the vitality and viability of town and local centres (including South Normanton). It aims to locate retail and leisure development within town centres so that it assists in maintaining the centres retail and service functions. WC5 states that retail development must demonstrate that it is:

- a) 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 (*see later in this report for the assessment of amenity impacts – concluding no unacceptable impacts*);
- b) Accessible by an appropriate level of public transport (*bus stops are close by on Carter Lane East and Berristow Lane*);

Also WC5 requires that a sequential test and retail or leisure impact assessment will be required for applications for sites more than 500m away from a town or local centre which are more than 500 sq.m in area of net retail or leisure floor space (*the application is for 401 sq,m of gross internal floorspace and so is not significant enough to trigger the policy requirement for a sequential test or retail impact test on town centres*).

It is noted in the 'Publicity' section of this report that a representation for East Midlands Designer Outlet is of the view that the EMDO should itself be considered a town or local centre. However it is not defined as such in policy WC5 and instead is considered to be an out of town shopping centre. Hence the application site is more than 500m from a town centre for the purposes of compliance with the criteria of WC5.

It is also noted that both Ashfield DC and the EMDO representation cite what is described as a similar case in Ashfield which was refused and dismissed at appeal. However every planning application must be determined on its own merits and there were differences from the current proposal. That application was for a drive thru restaurant, 3 retail units and a lorry fuelling and EV station. The application site was larger at 0.85 ha (vs 0.5ha currently) and the

net amount of retail floorspace proposed for that application exceeded the 500sqm threshold set out in the local plan and so was contrary to policy where as the current proposal does not exceed the threshold in the local plan.

Therefore it is considered that the circumstances of the appeal case referred to are materially different and do not set a precedent that Bolsover should follow.

Therefore whilst a town centre location would have been preferred, it is considered that the proposal does not conflict with policy WC5.

Policy WC9 (Hot Food Takeaways) states that permission will be granted for takeaways provided that:

- a) They would not harm residential amenity (noise, vibration, odour, traffic disturbance, litter or hours of operation (*see later in this report for the assessment of amenity impacts – concluding no unacceptable impacts*);
- b) They address any concerns relating to crime and anti-social behaviour (*See later in this report –concluding anti-social behaviour is unlikely to be a significant issue at this site*);
- c) Within town centres it can be demonstrated that the proposal will have a positive impact on daytime and evening economies (*not a relevant criteria as the site is not within a town centre*).

In conclusion it is considered that the proposal does not conflict with policy WC9.

Policy SS1 (Sustainable Development) states that development proposals should....Support the local economy by providing employment opportunities; Promote the re-use of previously developed land in sustainable locations; Support the hierarchy of centres as a focus for new services and facilities.

The proposal does not (criterion g) support the hierarchy of centres as a focus for new services and facilities because it is an out of centre location. Therefore the proposal does not fully accord with policy SS1. However it is able meet, or not conflict with, the other criteria of that policy including the provision of employment opportunities and the re-use of brownfield land in a sustainable location and so it is considered to partially comply with SS1.

Policy SC1 (Development within the Development Envelope) states that proposals on sites within the development envelope will be permitted subject to compliance with the policy criteria. This site is within the development envelope. The relevant criteria are provided that the proposal:-

- a) Is appropriate in scale and design and location to the function of the area;
- b) N/A
- c) is compatible with the use of adjacent sites;
- d) accords with the other policies of the plan;
- e) would not have an unacceptable environmental impact

With regard to criterion (a) of SC1 the proposal is for relatively small scale buildings - maximum height proposed for the buildings at 7m is less than nearby industrial buildings and commercial buildings and similar to the McDonald's building opposite and care home to the east. Scale proposed is therefore considered to be appropriate. Design is a reserved matter

and so not to be considered with this outline application. The function of the area is mixed including the existing McDonald's drive thru restaurant opposite on Berristow Lane, and given the relatively small size of the proposal with correspondingly low impacts on the town centre it could be accepted in this out of town location – see above.

With regard to criterion (c), the main issue to consider is whether the proposed use is compatible with the use of the adjacent care home. Amenity impacts are considered later in this report concluding that there are no unacceptable impacts.

Criteria (d) and (e) are dealt with elsewhere in this report but it is concluded that there are no unacceptable environmental impacts.

In conclusion it is considered that the proposal does not conflict with policy SC1.

Policy ITCR10 (Supporting Sustainable Transport Patterns) will allow development where located so as to support sustainable transport patterns and the use of the District's sustainable transport modes. In this case the western side of the carriageway (abutting the site) will provide a shared footway/cycleway adjacent to the roundabout and then into the site. This would lead to zebra crossings within the car park providing access into the main part of the site and to the cycle storage areas. In addition the site is well served by bus stops on Berristow Lane and Carter Lane East. The proposal is therefore considered to be compliant with policy ITCR10.

Conclusions on the Principle of Development

Whilst the proposed use of the application site for two drive thru's is not one of the employment uses specifically sought in the local plan allocation it is considered that the proposal does not conflict with the overall aims of policy WC1 because the vast majority of the allocation is being developed for its intended purpose and the policy does not rule out other employment uses on this remaining part of the allocation.

Whilst a town centre site is preferred for retail and leisure uses to help support the vitality and viability of South Normanton the proposal is modest in size and falls below the threshold that would trigger the need for tests to be undertaken to find sequentially preferable locations within or closer to the town centre or the need for an impact study on the town centre trade. It follows that the level of impact from this scale of development would not be significant and the proposal does not conflict with policy WC5 or WC9.

The proposal would allow for the completion of development on this remaining part of an allocated site which is partially separated from the main development site and so could not easily have formed part of the adjacent large scale warehouse development. Hence some flexibility in the consideration of alternative employment uses on this left over land parcel is considered reasonable.

The proposal would result in the re-use of what is mostly brownfield land and what was a derelict site subject to fly tipping in a prominent location. It will provide the opportunity to redevelop the site with forward facing development that can help to deliver a more vibrant street scene at a nodal location in this part of South Normanton. It would also help support the local economy by providing for employment opportunities.

Overall it is considered that the proposal complies with local plan policy and is acceptable in principle.

Whether the development would be provided with a safe and suitable access

The Highway Authority has not raised any objections to the proposed means of access subject to a condition requiring the provision of the parking and manoeuvring areas. There are no objections to the use of the realigned roundabout and access road which has already gained planning permission with the adjacent warehouse development. There is also a signed legal agreement in place with the Highway Authority for the S278 works required to realign the roundabout.

It is noted that representations have been received raising concerns that queuing cars could back up to the access road and block access for HGVs leaving the roundabout but this is not a concern shared with the Highway Authority.

Parking provision and servicing arrangements are shown to be in excess of local policy requirements, with a total of 51 car parking spaces proposed and 41 required to meet standards.

Therefore it is considered that there are no highway safety issues relating to the proposed access or parking provision that could justify a refusal of planning permission.

The impact of the development on the road network

A transport statement (TS) has been undertaken to assess the impacts of the proposal on the road network. In addition an addendum response has been provided to address identified issues with it.

The TS notes that large-scale development on the wider Park 38 site, involving major infrastructure upgrade works to the roundabout and the creation of a seventh arm to serve the application site, has already been assessed and accepted by both Derbyshire County Council and National Highways. Hence, substantial work has already been undertaken to assess and mitigate the impacts of a number of development options at the site and wider area.

The TS concludes that the proposed development is forecast to generate 49 and 61 movements in the morning and evening peak hours respectively, the vast majority of which would comprise secondary 'diverted' trips. Hence, there would be no significant impacts on the surrounding highway network.

The Applicant states that the TS has demonstrated how the proposed development would not lead to any significant traffic impacts.

In the addendum a response to points raised by Ashfield DC is given. Ashfield DC queried whether it is accurate to assume that 70% of traffic to the fast food restaurants would already be on the network passing by the site. ADC consider that a higher proportion of visitors will travel to the proposed drive thru restaurants directly and hence the traffic impacts could have been underestimated.

In response the Applicant's transport consultant has said that,

"the 70% weighting to secondary trips is standard for drive thru facilities across the country"

and is often higher where there are a greater number of vehicles travelling past a site, rather than being influenced by urban/rural locations. The A38/Berristow Lane/Carter Lane/Cartwright Lane roundabout, located adjacent to the site, accommodates circa 2,000 movements during each peak hour period and on this basis the 70% weighting is considered accurate.”

DCC Highways have not raised any objections in their response to Bolsover DC Planning and so it is assumed that the 70% passing traffic assumption is reasonable.

The second point raised by Ashfield DC is that the TS offsets development traffic from a hotel that was assumed to have been approved previously at the site. However, application reference 20/00295/OUT, quoted in the TS does not include a hotel and hence this may also be underestimating the traffic impacts further. This point was also raised in a representation for McArthurGlen which has been specifically sent on to the Highway Authority for comment.

In response the Applicant's transport consultant has said that:

“In terms of the hotel, we acknowledge that the 20/00295/OUT application does not reference this use. However, the supporting Transport Assessment did consider a hotel on the site and the traffic generation from it was included in the design of the approved improvement scheme at the A38/Berristow Lane/Carter Lane/Cartwright Lane roundabout. Therefore, when considering the net impacts on the approved roundabout layout, it should be acceptable to off-set the hotel traffic. Therefore, we are of the opinion that the Transport Statement accurately assesses the traffic impacts of the proposed development.”

DCC Highways have not raised any objections in their response to Bolsover DC Planning. It is therefore assumed that the assumptions used in the TS area reasonable.

DCC Highways have said that the TS has been assessed by the Highway Authority's Transportation Officer and found no objectionable issues relating to the proposed vehicular traffic generated by the proposed restaurants on the highway network, either via the existing or realigned roundabout.

National Highways also have no objections to the traffic impacts of the proposal on the A38 or M1.

Para' 111 of the Framework states 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 would be severe.”

The provision of facilities where drivers can take a break may also be of some benefit to highway safety.

So whilst comments in representations about highway safety and congestion on the local roads are noted, given that no unacceptable impacts on highway safety, or severe residual cumulative impacts on the road network have been identified by expert consultees, it is considered that there is no justification to refuse planning permission on these ground. The proposal meets the requirements of the Framework paragraphs 110 and 111 and complies with relevant development plan policy, including Policies SC3, and ITCR10 and the Council

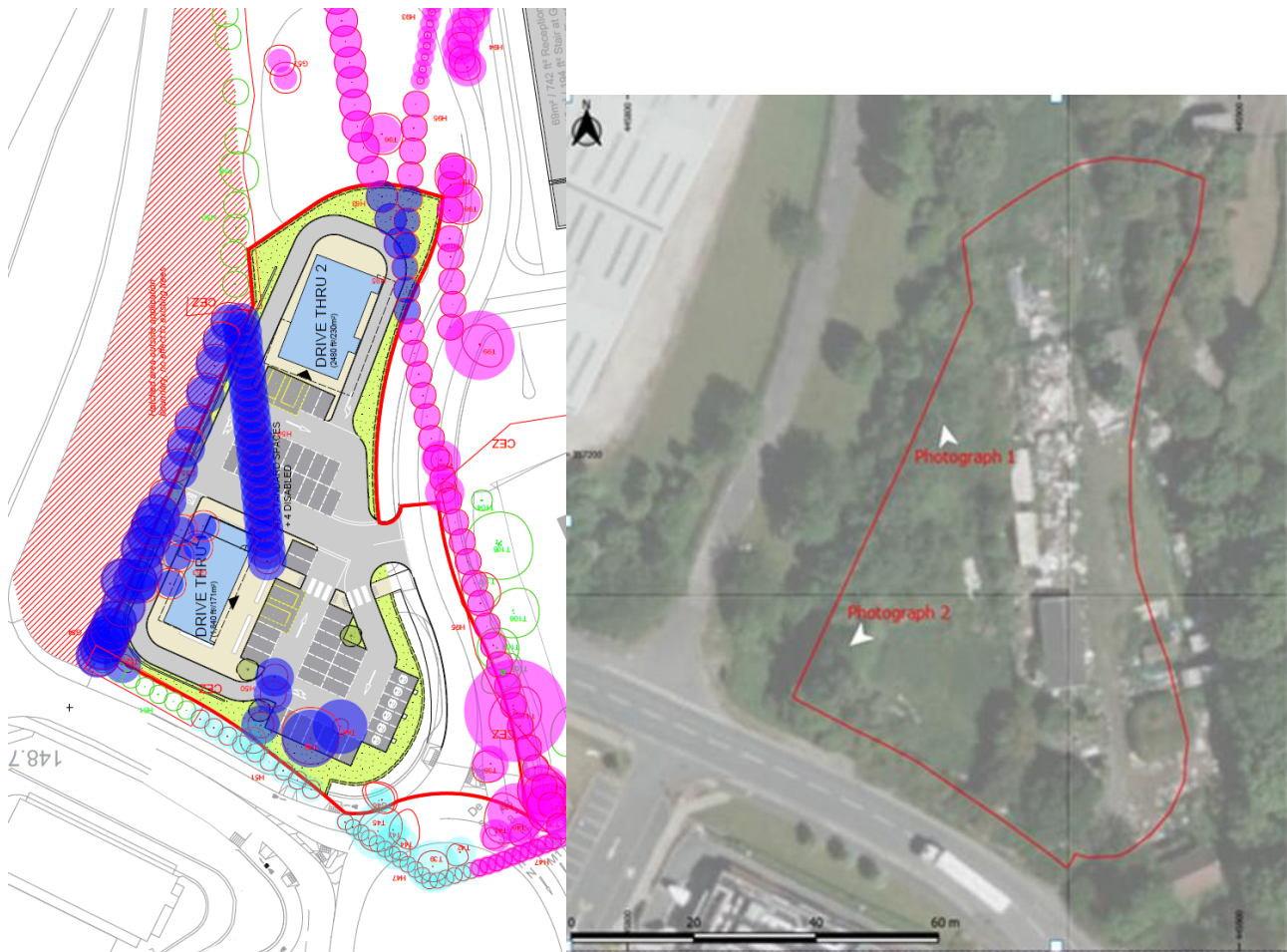
Parking Standards).

The suggestion from Ashfield DC that the proposal contribute towards a transport hub in the area is noted however there is no local plan policy to support such a requirement and so it is considered that a condition to this effect would be unreasonable.

Impacts on Trees Hedges and Biodiversity

The proposed development would result in the removal of all remaining trees and hedgerows on site.

The plan below shows existing trees and hedges to be removed as a result of the current application in dark blue. Those shown light blue are to be removed anyway as part of the S278 highway works already approved; those shown in pink are to be removed anyway as part of the access and works approved for the adjacent warehouse development; and those shown in green are outside the application site and unaffected.





Policy SC10 states that *“trees woodland and hedgerows will be protected from damage and retained, unless it can be demonstrated that approval is necessary and appropriate mitigation can be achieved”*.

Policy SC9 states that *“Development proposals will be supported where significant harm to biodiversity and/or geodiversity resulting from a development can be avoided or, if that is not possible, adequately mitigated....”*

The Planning Officer has requested that the scheme be amended to allow for the retention of more of the existing trees, including the medium sized oak tree at the southern end of the site and where possible the line of trees on the north-west boundary. However the Applicant has not agreed to this because they wish to maximise and provide the amount of development proposed and alter ground levels achieve a level development platform for functional reasons and traffic circulation within the site. Due to existing levels this means cutting in at the southern side of the site next to Berristow Lane and filling in to the northern end of the site.

The application is accompanied by an Ecological Appraisal by BSG Ecology, which notes that the development will result in the permanent loss of hedgerow, scrub, modified grassland, scattered trees and ephemeral vegetation, although it notes the poor condition of these features at the application site. The Appraisal recommends a number of mitigation and compensation measures within the site, such as the creation of new hedgerows and the retention of trees wherever possible.

The Ecological Appraisal also recommends a Construction Environmental Management Plan and identifies a number of measures to minimise or avert any potential impact on badgers, bats, nesting birds, or non-native invasive species. However, none of these species have been recorded or sighted at the application site itself.

BSB Ecology has used the Defra Biodiversity Metric to quantify the biodiversity value of the application proposal. With the incorporation of its recommended habitat creation and enhancement measures, BSB calculates that the proposal will result in a post-development

outcome of 0.79 habitat units and 1.07 hedgerow units over the existing site baseline. This is equivalent to a biodiversity net gain of 1.66% and 40.75% respectively.

Derbyshire Wildlife Trust have been consulted and have no objections subject to conditions. Derbyshire Wildlife Trust advise that: the BSG ecology appraisal is considered to have been undertaken in accordance with best practice and guidance; It includes a Biodiversity Net Gain (BNG) summary based on use of Defra's Biodiversity Metric 3.0. Impacts on protected species are unlikely; there are no statutory or non-statutory designations at the site or on any adjacent land; the hedgerows present around the site meet the definition for Habitat of Principal Importance; other habitats present are considered to be of localised value only; the appraisal has set out a range of mitigation, enhancement and Biodiversity net gain measures and provided these are implemented in full and are successful the development should be able to demonstrate a small gain overall in terms of both habitats and hedgerows (linear features). DWT advise that there is an interim impact and it may be some time before newly planted hedgerows establish and mature, but this has been factored into the metric evaluation.

The Planning Officer has checked with DWT that the Biodiversity Net Gain calculations have been undertaken correctly given that a line of mature trees is given the same value as hedgerow and DWT has confirmed that this is the correct methodology in the BNG calculations. Planning Officer has also checked with DWT over concerns about how successful the proposed mitigation hedgerow planting will be because much of it is proposed on engineered 1:3 embankments at the edges of the proposed plateaux area. However in response, special planting measures have been specified by the Applicant's Landscape Architect including provision of a minimum soil depth of 300mm and the use of geotextile membrane for soil stability on 1:3 slopes.

Whilst it is a little disappointing that more of the existing mature vegetation on site cannot be retained, subject to conditions, including the implementation of the BNG proposals and planting methods it is considered that adequate mitigation can be provided and that the proposals comply with policies SC9 and 10 of the local plan.

Amenity Impacts

The closest residential property to the application site and the only one that could be materially affected by the proposal is Normanton Lodge Care Home which is about 50m away from the proposed drive thru buildings and 40m from the proposed car parks.

The main impacts to consider are: noise, traffic disturbance (hours of operation), odour and litter.

It should be noted that the site is adjacent to a number of busy and noisy roads including the A38 dual carriageway, Berristow Lane, Carter Lane East and the roundabout junction. Other noisy commercial buildings are close by including industrial and warehouse buildings, the access to the warehouse buildings, a car garage and tyre fitting business and the 24 hour McDonalds drive thru restaurant opposite. Therefore the area is already within a high noise environment. Since noise assessments are normally undertaken using background noise as a reference point, starting with a noisy background means that it is less likely that noise generated on new operation would reach unacceptable levels, effectively because it is less likely to be heard above the background noise. Of course the roads will be quieter at night and so 24 hour operation needs to be considered.

The Applicant has provided a Noise Assessment which concludes that the proposal is unlikely to give rise to an adverse noise impact on the Normanton Lodge Care Home for both daytime and night time scenarios. It is predicted that there will be no materially adverse noise impacts resulting from HGV trip movements, deliveries, drive-through and car park usage, fixed plant, any intercom system to be used by the restaurant operators, or any other factor arising from the development.

The Environmental Health Officer (EHO) has been consulted on the proposals and noise assessment and following the receipt of additional information requested on the proposed intercom system the EHO has confirmed that he has no objections to the proposals. No conditions are requested.

Therefore it is considered that neither operational or traffic noise is a constraint to the proposal and that no condition is needed to limit operating hours.

The EHO has not raised any concerns about odours. Odours and noise are, in any event, covered by other legislation outside the planning system.

With regard to litter, it is considered that it would be appropriate to require the provision of litter bins within the grounds of both proposed drive thru's.

Visual Impacts on the Character of the Area

The appearance and design of the buildings is a reserved matter and so will be considered as part of a reserved matters application. However, Committee Members do need to be satisfied in principle that two drive thru restaurants could have an acceptable appearance in this location having regard to their general character, format appearance and need for illuminated signage etc. Given that the site is directly opposite a McDonald's drive thru and that the use of the area is mixed commercial and residential and the site is close to a major road network and out of town shopping facility it is considered that the proposed use and buildings would not be out of character with the area.

The scale of the buildings proposed (single storey with maximum height of 7m) is considered to be acceptable in this location.

Landscaping details for the site are also a reserved matter. However if the proposed layout is approved landscaping opportunities will be limited because most of the site will be hard surfaced and much of the surrounding verge areas proposed will be quite steep embankments. Indicative drawings submitted now show only three trees planted within the car park and some boundary hedgerow planting. A less intense form of development would have allowed for better landscaping proposals to be submitted. However a decision must be made on the proposed layout and on balance it is considered to be acceptable.

Air Quality

Policy SC12 of the local plan requires consideration of the impacts that new development will have on air quality. There is a small air quality management area in South Normanton next to the east side of the M1. However an air quality impact assessment has not been requested for this development. The reasons for this are that impacts on air quality are not expected to be significant. No assessment has been requested by the EHO; an assessment was

undertaken for the main development site adjacent and this site is only a minor planning application in size; this site is allocated in the local plan and so some traffic impact on air quality must be expected; the transport assessment provided shows that the additional traffic generated would not be significant; the proposal includes at least 6 electric vehicle charging points which would be likely to have been deemed to be a proportionate mitigation proposal had an air quality assessment been undertaken.

Other Planning Considerations

Drainage

Foul sewage is to be disposed of to the mains sewers. Surface water will be disposed of to a sustainable drainage system in accordance with national and local planning policies. The DCC Flood Risk Team and BDC Drainage Engineer have no objections to this subject to conditions. Drainage issues are not considered to be a constraint to development.

Coal Mining Risks

The Coal Authority has no objections to the proposals but recommends that conditions are imposed to require investigation into the risks of past mining activities and mitigation works in the event that risks are found to be present. The suggested conditions are deemed to be necessary and reasonable.

Crime and antisocial behaviour

Concerns have been expressed in representations that the proposal could lead to incidents of antisocial behaviour. However the location of the site, adjacent to a busy roundabout and highway system seems unlikely to be a place where youths might want to congregate and it is considered that there are no particular characteristics about this proposal that would give rise to concerns about a material increase in anti-social behaviour.

Heritage

It is considered that there would not be any adverse heritage impacts on the setting of the Pinxton Castle scheduled monument site which lies across the A38.

Health and Obesity

It is noted that concerns have been raised in representations about the impacts of the proposal on health and obesity. The local plan does contain a specific policy which deals with hot food takeaways (WC9), however it does not require consideration of impacts on health and obesity. Moreover the pre-amble to the policy discusses the issue but concludes that no action is justified at present because Bolsover District does not have a higher density of hot food outlets per head than the average in England. Therefore in the absence of a relevant local plan policy it is considered that a refusal of permission could not be justified on this basis.

Proliferation of Takeaways

Competition between takeaway businesses is not a material consideration. Neither is the lack of need for more takeaways in South Normanton a material planning consideration.

Proliferation of takeaways can be a material consideration if it can be demonstrated that there are so many takeaways in a town centre that it is having an adverse effect on the town centre daytime or evening economy, adversely affecting its function and character. However

that is not the case here, the site being outside the town centre and so the proposal cannot be contrary to policy WC9 in this regard. Therefore it is considered that a refusal on this basis could not be justified.

CONCLUSION

Whilst there are aspects of local plan policy which the proposal does not align with it is considered that the proposal does comply with local plan policy as a whole. The aims of policy WC1 are being met because the vast majority of the allocation is being developed for the warehouse and office development specified in the allocation policy. However the policy accepts that the site would be suitable for a variety of employment uses and this part of the allocation site is only a small part of the wider site which is partially separated from it and so could not have easily been incorporated as part of the proposals for the large operator units currently under construction. It is therefore considered that the Council should take a pragmatic view on the use now proposed in order to allow for the completion of development on the employment allocation and make efficient use of this mainly brownfield site which had become derelict and was subject to fly tipping.

It will provide the opportunity to redevelop the site with development that can help to provide a more vibrant street scene at a nodal location in this part of South Normanton. It would also help support the local economy by providing for employment opportunities.

Whilst a town centre site is preferred for retail and leisure uses to help support the vitality and viability of town centres, the proposal is modest in size and falls below the threshold size set out in the local plan that would trigger the need for tests to be undertaken to find sequentially preferable locations within or closer to the town centre or the need for an impact study on the town centre trade. It follows that the level of impact from this scale of development would not be significant and the proposal does not conflict with policy WC5 or WC9 of the local plan.

Overall it is considered that the proposal complies with local plan policy and is acceptable in principle.

Loss of existing vegetation and biodiversity on site is a high impact but mitigation proposals have been proposed to compensate for the loss and subject to conditions the Wildlife Trust does not object.

Amenity impacts are not expected to be significant and there are no highway safety, traffic, air quality or other technical reasons that would justify the refusal of planning permission.

RECOMMENDATION

The application be APPROVED subject to conditions stated below (and any minor revisions to the condition wording be delegated to the Planning Manager (Development Control)):

1. Reserved Matters

Details of the appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

Reason. To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Time Period for Submission of Reserved Matters

Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

Reason. To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

3. Time Periods for Commencement

The development hereby permitted shall commence within 3 years from the date of this permission or not later than 2 years from the date of approval of the last of the reserved matters, whichever is the later.

Reason. To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

4. Approved Plans

Except where specifically stated otherwise in the conditions below, the development hereby permitted shall be carried out in accordance with the following approved drawings and documents received on:-

[list of approved plans]

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

5. Protection of breeding birds during construction

No removal of hedgerows, trees, shrubs or brambles shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period, and details of measures to protect the nesting bird interest on the site, have first been submitted to and approved in writing by the local planning authority and then implemented as approved.

Reason. To ensure that breeding birds are protected from harm and to accord with policy SC9 of the Local Plan for Bolsover District.

6. Badger

A survey for any recently excavated badger setts on the site or within 30 metres of the site boundary shall be undertaken by a competent ecologist prior to the commencement of any groundworks on the site and submitted to the Local Planning Authority for approval together with a mitigation scheme if any activity is detected. Any approved mitigation shall be implemented in accordance with the approved scheme.

Reason. To ensure that badgers are protected from harm and to accord with policy SC9 of the Local Plan for Bolsover District.

7. Restrictions on operations involving invasive non-native species

Prior to the commencement of development, an invasive species protocol shall be submitted to and approved by the local planning authority, detailing the containment, control and removal of all non-native invasive species on the site as determined by a pre-commencement site survey. The measures shall be carried out strictly in accordance with the approved scheme.

Reason. To prevent the spread of any invasive species on site and to accord with policy SC9 of the Local Plan for Bolsover District.

8. Construction environmental management plans (Biodiversity)

No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall 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 (may be provided as a set of species method statements as needed).
- 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 a variation to it is agreed in writing by the local planning authority.

Reason. To mitigate harms to biodiversity and to accord with policy SC9 of the Local Plan for Bolsover District.

9. Landscape and Biodiversity Enhancement and Management Plan (LBEMP)

A Landscape and Biodiversity Enhancement and Management Plan (LBEMP) shall be submitted to, and be approved in writing by, the Local Planning Authority (LPA) prior to the commencement of the development. The aim of the LBEMP is to deliver a net gain for biodiversity value of onsite habitats and it should combine both the ecology and landscape disciplines. The plan should be in accordance with the details set out in the Ecological Appraisal (BSG Ecology April 2022) and provide a net gain for biodiversity. It shall be suitable to provide to the management body responsible for the site and shall include the following:-

- a) Description and location of features to be retained, created, enhanced and managed.
- b) Details for the creation of species rich neutral grassland.
- c) Details of the location and species of at least three native broadleaf trees to be planted in accordance with the submitted Tree Planting Detail Drwg No's 990-01 and 990-02 dated 07.09.2022.
- d) Details for the creation of 154m of native hedgerow habitat and the use of fruit and berry bearing species which shall be planted in accordance with Drwg No 990-03 07.09.2022 to

include 300mm minimum soil depth and geotextile membrane for soil stability on 1:3 slopes or steeper.

e) Aims and objectives of management.

f) Appropriate management methods and practices to achieve aims and objectives.

g) Prescriptions for management actions.

h) Preparation of a work schedule (including a five-year work plan capable of being rolled forward in perpetuity).

i) Details of the body or organization responsible for implementation of the plan.

j) A monitoring schedule to assess the success of the enhancement measures

k) A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.

l) 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 shall be implemented in accordance with the approved details.

Reason. To mitigate and compensate harms to biodiversity and to accord with policy SC9 of the Local Plan for Bolsover District.

10. Lighting Strategy

Prior to building works commencing above foundation level, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires and any mitigating features such as dimmers, PIR sensors and timers. A lux contour plan shall be provided to demonstrate acceptable levels of lightspill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/18 - Bats and Artificial Lighting in the UK (BCT and ILP, 2018). Such approved measures shall be implemented in full.

Reason. To mitigate the impacts of any external lighting on Bats and nocturnal wildlife and to accord with policy SC9 of the Local Plan for Bolsover District.

11. Coal Mining Risks

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 safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

Reason. The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and

mitigatory measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with paragraphs 183 and 184 of the National Planning Policy Framework and policy SC14 of the local plan for Bolsover District.

12. Coal Mining Risks -Verification

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.

Reason. The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with paragraphs 183 and 184 of the National Planning Policy Framework and policy SC14 of the local plan for Bolsover District.

13. Surface Water Drainage

“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. BWB. 06/04/2022. Flood Risk Assessment. REF. P38DT-BWB-ZZ-XX-RP-YE-0001_FRA.
- b. BWB. 06/04/2022.Sustainable Drainage Statement. REF. P38DT-BWB-ZZ-XX-RP-CD-0001_SDS. Including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team”
- c. 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.”

Reason: To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Local Planning Authority, in advance of full planning consent being granted and to accord with policy SC7 of the Local Plan for Bolsover District.

14. Surface Water Drainage during Construction

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.

Reason: To ensure surface water is managed appropriately during the construction phase of

the development, so as not to increase the flood risk to adjacent land/properties or sensitive wildlife sites and to accord with policies SC7 and SC9 of the local plan for Bolsover District.

15. Surface Water Drainage - Verification

Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).

Reason: To ensure that the drainage system is constructed to the national Non-statutory technical standards for sustainable drainage and CIRIA standards C753 and to accord with policy SC7 of the local plan for Bolsover District.

16. Parking and EV-Charging

The premises, the subject of the application, shall not be taken into use until space has been provided within the application site in accordance with the revised layout plan 21788-302-P-01 for the parking and manoeuvring of staff, customers' and service and delivery vehicles, and until the charging facilities for electric vehicles has been provided, and until it has all been laid out, surfaced and equipped. Thereafter the parking, charging and manoeuvring facilities shall be maintained throughout the life of the development free from any impediment to its designated use.

Reason. In the interests of highway safety and to encourage the use of electric vehicles as a lower carbon and emissions form of transport and to accord with policies ITCR11, SS1, SC3 and SC12 of the local plan for Bolsover District.

17. Litter Bins

Prior to each drive thru restaurant being brought into use at least one external litter bin shall be provided to serve each restaurant.

Reason. To reduce the incidence of littering to and to reduce the impacts of the proposal on the character and amenity of the area and to accord with policy WC9 and SC11 of the local plan for Bolsover District.

18. Commercial Waste Bins

Prior to each drive thru restaurant being brought into use details of the location and screening of any commercial waste bins shall have been submitted to and approved in writing by the Local Planning Authority. No other external storage shall be undertaken on site without the written approval of the Local Planning Authority.

Reason. To ensure that large commercial waste bins do not adversely affect the street scene, to preserve the amenity and appearance of the area and to accord with policies WC9 and SC11 of the local plan for Bolsover District.

19. Details of External Flues and Plant

Application for approval of reserved matters of appearance shall be accompanied by details of the appearance and position of any external flues and plant.

Reason. In the interests of the amenity and appearance of the area and to accord with policies SC2, SC3 and SC11 of the local plan for Bolsover District.

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.

Informative Notes

The Applicants attention is drawn to the need to consider the full contents of the following consultation responses which include important advisory and statutory information concerning the proposed development. Copies of all responses are available on the Councils’ website:

- The Coal Authority response dated 9th June 2022.
- Derbyshire County Council Flood Risk Management Team response 3rd October 2022.
- BDC Drainage Engineer 8th June 2022.