

**PARISH** Shirebrook Parish

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**APPLICATION** Erection of 2 marquee's and toilets re-surfacing of existing access lane in association with mixed use of the site and an extension of the family farm for the keeping of animals

**LOCATION** Willow Tree Family Farm Langwith Road Shirebrook Mansfield

**APPLICANT** Mr Adam Hind Willow Tree Family Farm Langwith Road Shirebrook Mansfield NG20 8TF

**APPLICATION NO.** 22/00333/FUL

**CASE OFFICER** Mrs Karen Wake (Mon, Tues, Wed)

**DATE RECEIVED** 30th June 2022

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## SUMMARY

The application has been referred to Planning Committee by The Planning Manager as there is a recommendation to refuse the application from the Environmental Health Officer.

The proposal is not straight forward and a temporary, two year planning permission is being recommended for approval to allow the impacts of the proposal to be fully assessed and potentially a more suitable permanent solution found for the proposed use on site whilst allowing the charity to raise funds for its future development.



## SITE & SURROUNDINGS

Existing family farm which contains a number of single storey buildings and animal enclosures. The site sits behind the former education centre buildings which are listed buildings and access to the site is via a one way system through the education centre on to Langwith Road.

The site also contains two marquees which are joined together and are used in connection with the farm but are also used for shows, music events, weddings etc.

The southern part of the site is used for grazing some of the farms animals and are the former playing pitches.

To the north of the site is the football ground, sports pavilion and social club, to the west are dwellings, to the south are dwellings and an industrial estate and to the east is the railway line and embankment.

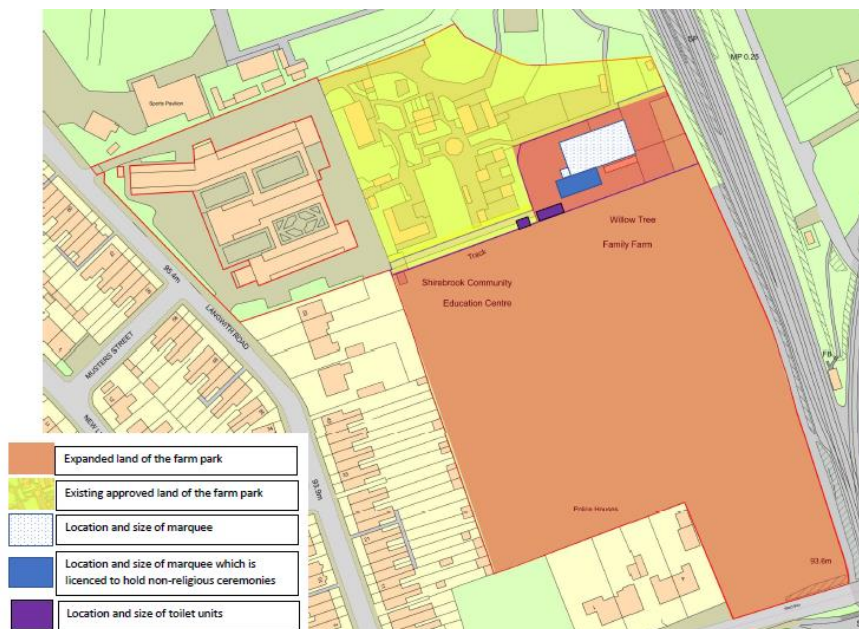
## BACKGROUND

The site was approved for use as a town farm in 2001 and various buildings in connection with the use of the site were approved in 2002.

More recently the two marquees have been erected on site and used for various events and the keeping of animals has extended onto the playing pitches which were outside the site approved for the original town farm.

## PROPOSAL

The application is for the retention of the marquees and their use for holding events, the use of the playing pitches in connection with the town farm, the construction of a toilet block and extension to the existing driveway.



### Supporting Documents

A noise report and details of events which have already been held in 2021 and 2022 have been submitted to support the application.

### **AMENDMENTS**

None.

### **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**

99/00116/DCCCON	No Objections	Widening of vehicular access (CD5/299/135)
01/00310/FUL	Granted Conditionally	Use of part of site for town farm and engineering works, environmental and access improvements to rest of site
02/00327/FUL	Granted Conditionally	Erection of a reception block (incorporating shop, cafe, toilets), office, stables, pig sties, barn, aviaries, workshop and ancillary buildings, creation of pond, play area and display/exhibition area, to form a town farm (revised scheme)
03/00735/DCCCON	No Objections	Erection of security fencing 2.4m high to various boundary lines (CD5/1003/121)
03/00847/FUL	Granted Conditionally	Erection of a timber play house building, extensions to existing buildings to provide classroom, aviary, store and animal sanctuary
05/00757/FUL	Granted Conditionally	Installation of wind turbine

### **CONSULTATIONS**

#### Bolsover District Council Conservation Manager

No objections. Given the distance from the Listed Building and the intervening built development, the proposal is not considered to have an impact on the setting of the Listed Building.

Bolsover District Council Environmental Health

Recommends refusal. Even if the acoustic linings were installed this would only allow for music with noise limits being so low to make the use viable. The complexities and restrictiveness of the required mitigation is such that I do not feel that amenity can be safeguarded by means of suitable worded planning conditions. I therefore object to the application in its current form.

Bolsover District Council Head of Leisure

No comments received.

Bolsover District Council Planning Policy

The proposal complies with Policy SS9 (Countryside) and ITCR7 (Playing Pitches) provided no permanent structures are installed on the protected playing pitch land.

Derbyshire County Council Archaeology

No comments received.

Derbyshire County Council Highway Authority

There is no real control of the means of travel used by attendees but it is generally considered likely that 54 spaces stated would be appropriate should attendees be local to the site and utilise bus and taxi services and/or walk to the site as suggested in the application. As the site has accommodated the marquees and has held functions for the previous two years with no knowledge of complaints regarding highway safety or parking issues associated with the site, it is considered that a temporary permission for 2 years would be suitable to allow the operations to continue in their current use whilst allowing any highway safety issues which may arise to be assessed. Based on this, there are no highway objections to a consent being granted for a temporary period of 2 years only.

These comments do not prejudice the highway authority's view on the suitability of any further expansion of existing, or any proposal for new operations, carried out within the site as a whole or to any applications submitted in the future to the Local Planning Authority.

Sport England

Objects to the proposal. It does not accord with any of the exceptions set out in Sports England's playing fields policy, paragraph 99 of the NPPF or Policy ITCR7 of the Local Plan. The proposal would result in the loss of a playing field and prejudices the potential for Shirebrook Town Football Club to use the field. If the Local Planning Authority are minded to approve the application contrary to Sport England's objection, the application should be referred to the Secretary of State via the National Planning Casework Unit

Shirebrook Town Council

Object to the proposal due to noise levels impacting on local residents, increased traffic on an already problematic road, animal welfare issues and extended opening hours.

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

**PUBLICITY**

Site notice, press notice and 61 neighbours notified. Comments received from 6 local residents.

Three letters of support received which raise the following issues:

1. The site is a great local facility which offers free events to give back to the community.
2. No noise is heard from the venue and there is no disturbance from people leaving.
3. The site offers the ability to hold a disabled inclusive event within the area when other venues do not have the facilities and the current proposals will improve access and facilities for people with disabilities even further.
4. Educational events are held regularly.
5. The management of the site are very respectful to local residents.
6. The charity provides a brilliant atmosphere for the local community, providing shows and events which is very beneficial in a small community.
7. The events help raise money for the animals and the farm is a great attraction to bring people to the area.

Three letters of objection received which raise the following objections:

1. Details of the right of access including width and alignment are disputed.
2. There is no right to park in the adjacent former education centre and therefore there are not 30 parking spaces on site as it says in the application form.
3. The extending opening hours pose a security risk to the adjacent former education centre. The sign on the gates states closes at 4pm.
4. The venue has previously been reported for breach of licence and extended the times the entertainment/music finishes up until 1.30am and 2pm.
5. The bleating of sheep, goats and other small animals from the site is acceptable the loud music isn't when it goes over 11pm.
6. Will there be conditions if this goes through and if breached will there be any way of getting the venue closed down for the breaches?
7. This is a peaceful area and even the Fun Fair on the adjacent Social Club has to close at 9pm due to the noise and it's only on site twice a year.
8. The noise is not in an enclosed building with soundproofing so it will cause a nuisance.
9. The noise from the site and from people leaving the venue is unacceptable for local residents.
10. The venue has resulted in rodents in the gardens of adjacent dwellings.
11. Noise mitigation measures have been suggested but not implemented.
12. Noise levels quoted are inaccurate and are worse on site in reality.
13. The impact of noise for the animals has not been considered and this is an animal welfare issue.

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

## **POLICY**

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

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

- SS1 Sustainable Development
- SS9 Development in the Countryside
- SC1 Development within the Development Envelope
- SC2 Sustainable Design and Construction
- SC3 High Quality Development
- SC5 Change of Use and Conversions within the Countryside
- SC9 Biodiversity and Geodiversity
- SC11 Environmental Quality (Amenity)
- SC17 Development affecting Listed Buildings and their Settings
- ITCR7 Playing Pitches
- ITCR11 Parking Provision

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

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

- Chapter 2: Achieving sustainable development
- Paragraphs 47-48: Determining applications
- Paragraphs 55-58: Planning conditions and obligations
- Paragraph 119, 120, 122 and 123: Making effective use of land
- Paragraphs 174, 180 and 182: Conserving and enhancing the natural environment
- Paragraphs 183-188: Ground conditions and pollution
- Paragraphs 194, 195 and 199-208: Conserving and enhancing the historic environment

## **ASSESSMENT**

### **Key issues**

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

- the principle of the development;
- the impact on the character and appearance of the area and the setting of the Listed Buildings;
- the impact on residential amenity;
- whether the development would be provided with a safe and suitable access; and
- the impact of the development on the local road network.

### Principle

The existing town farm has been operating on site for approx. 20 years. The marquees were erected during the coronavirus pandemic to allow for the facility to continue to operate during social distancing restrictions. The use of the marquees in connection with the town farm has

then expanded into the provision of live music events, christenings, weddings etc and has been operating on this basis for approx. 2yrs.

The original town farm and the marquees are within the development envelope and the marquees are considered to be an extension of the existing business on site. The use is considered to support the local economy by providing employment opportunities suitable for local people in a sustainable location, close to the train station, bus stops and the town centre. On this basis this element of the proposal is considered to meet the requirements of policy SS1 of the Local Plan for Bolsover District.

The expansion of the town farm onto the former Derbyshire County Council owned playing pitches is outside the development envelope in an area allocated as countryside on a protected playing pitch.

Policy SS9 (Development in the Countryside) is the adopted Local Plan's strategic policy that seeks to restrict urban forms of development in the countryside where these would not be appropriate or sustainable and not in accordance with the Local Plan's Spatial Strategy.

As such, policy SS9 states that development proposals in the countryside outside development envelopes will only be granted planning permission where it can be demonstrated that they fall within a number of stated categories, such as the re-use of previously developed land or the re-use of redundant buildings that make a positive contribution to the local area.

The stated categories include proposals that are necessary for the efficient or viable operation of agriculture, horticulture, forestry or other appropriate land based businesses, including the diversification of activities on an existing farm unit (category b), or that are small scale employment uses related to local farming, forestry, recreation or tourism (category c).

On this basis the expansion of the town farm to keep animals and for occasional parking on the land in the countryside is considered to meet one or more of the categories listed in policy SS9.

Policy ITCR7 (Playing Pitches) provides both protection for existing playing pitches from inappropriate development proposals and the policy framework to require new playing pitches and financial contributions for quality improvements to existing playing pitches from new developments.

In relation to Policy ITCR7 and its protection element, the supporting text outlines that the evidence base underpinning the operation of this policy, namely the Playing Pitch Strategy and Action Plan and the Playing Pitch Assessment (both August 2017), identifies that the Local Plan should protect all playing pitches and that disused pitches should be protected as a strategic reserve. As a result, the disused sports pitch at Station Road, which was disused in August 2017 and for a period prior to that and remains disused, was protected as one of these strategic reserve sites.

From discussions with the landowner about the prospect of bringing the disused sports pitch back into use, it is known that that they are not pursuing that and instead are seeking to find a more financially beneficial use for the site.

The current proposal is to keep animals on the land under licence from the land owner and is a temporary arrangement based on a rolling three month licence. As such, this is considered to be an acceptable use that does not prejudice the former pitch coming back into use as a playing pitch in the future should they be found to be required/necessary to meet an identified need, provided that no permanent structures are erected on the protected playing pitch land.

A permanent planning permission for the proposed use would prevent the future control of the use of the site returning to a playing pitch which would, at this stage, be contrary to Policy ITCR7, however a temporary planning permission would allow for the allocation/protection of the pitch to be re-considered in the future when the need has been assessed/updated as part of the ongoing review of such policies.

On this basis the proposal is considered to comply with the requirements of policies SS9: Development in the Countryside and ITCR7: Playing Pitches, provided that the permission is temporary and no permanent structures are erected on the protected playing pitch land and this can be controlled by condition. Subject to such conditions the proposal is considered to be acceptable in principle subject to compliance with other relevant local plan policies.

Sport England have objected to the proposal as it results in the loss of this playing pitch contrary to Sport England's playing field policy, paragraph 99 of the NPPF and Policy ITCR7. Sport England comments object to the permanent loss of the playing pitch to the proposed use and it is accepted that planning permission for the permanent use of the land would result in the loss of the playing pitch and would be contrary to Policy ITCR7. However, a temporary consent for the use of the field for grazing and occasional parking for a temporary period of 2 years with no permanent structures being erected on the site would provide a temporary use for the site (which has otherwise been unused since before 2017) and would not prevent the use of the land returning to playing pitches at the end of two years, or at an earlier time if the 3 month rolling lease was not renewed by Derbyshire County Council. The proposal is therefore not considered to result in the permanent loss of playing pitches and as such is not considered to be contrary to Sport England's playing field policy, paragraph 99 of the NPPF or Policy ITCR7. If the council are minded to approve the application contrary to the objection from Sport England the council will not be able to determine the application themselves. Under The Town and Country Planning (Consultation) (England) Direction 2021 the Council will have to forward their recommendation to the Secretary of State via the National Planning Casework Unit, to allow them the opportunity to call in the application.

#### The impact on the character and appearance of the area and the setting of the listed buildings

The marquees and toilet block are proposed within the development envelope and within the existing built form of the site. They are seen against the existing buildings on site and are screened from the adjacent listed buildings by the existing buildings.

The use of the playing pitch for the keeping of animals is an appropriate use of the field in visual terms and the use of the field for overspill parking is a temporary measure during busy events such that the impact on the character and appearance of the area is minimal at this edge of settlement site. On this basis the proposal is not considered to harm the setting of the adjacent listed buildings and is considered to meet the requirements of Policy SC16 of the Local Plan for Bolsover District.



### Impact on residential amenity

The site is adjacent to a number of residential properties. The marquees and toilet block are set away from adjacent dwellings such they are not considered harmful to the daylight to or outlook from adjacent dwellings. The extension of the town farm onto the former playing pitch is immediately adjacent to dwellings but is not considered to be harmful to the outlook from adjacent dwellings.

The proposed use of the marquees for music events, weddings etc is considered to result in additional noise over and above what would be expected from the town farm and that noise would occur late at night.

A noise report has been submitted with the application which has confirmed the noise levels produced on site are capable of causing disturbance to adjacent dwellings and suggests mitigation measures which could be installed/implemented to reduce the impact on neighbouring properties.

One of these mitigation measures is to install an automatic sound limiting device and preventing DJ's and acts using their own equipment, ensuring the sound system installed on site is used. However, the noise report states that the music levels which would need to be set to make such a measure effective would be mean that the music level would not be high enough to retain a feeling of loudness even with a distributed sound system and that live music is unlikely to be possible.

The alternative mitigation would be upgrading the sound insulation in the marquee with a heavyweight acoustic lining and the installation of a zone array distributed sound system which would reduce the noise levels coming from the marquee but maintain the feeling of loudness within the marquee allowing for live music to take place. The report suggests that if these measures are installed the noise levels from the marquee measured at the nearest dwellings would not exceed existing background noise levels.

In addition to one of the measures set out above, the report also suggests a noise management plan for the site including the outside seating area with restricted hours and restrictions to the number of people using the outside area after certain hours.

The Environmental Health Officer has reviewed the report and advises that the application be refused as the noise report does not offer sufficient comfort that, even if the mitigation measures are implemented, the proposal will not cause noise and disturbance for adjacent residents.

However, the marquees have been operating without planning permission for 2 years and the Environmental Health Department have granted a licence for the use of the site for the sale of alcohol, performances of dance, films and plays, recorded music and live music, both indoors and outdoors. The hours of operation for the licence are 10am -11pm Monday –Sunday for performances and 10am -11.30pm for the sale of alcohol and 10am- midnight for the opening hours of the venue.

The applicant has provided details of events held in the marquee during 2021 and 2022 and

there have been events run on approx. 150 dates between August 2021 and the end of October 2022, approx. 50 of which have been held in an evening. During this time there have been only two noise complaints to the Environmental Health Department, both in November 2021.

The events are held as fund raising events to help the town farm which is a registered charity. The charity has potential improvements and ideas for development in the future and the marquees provide a funding source to enable the charities' development. Given that the site has been licenced by Environmental Health, the operation of the marquees has given rise to so few complaints, and the granting of planning permission would not exempt the use for Environmental Health legislation to prevent noise nuisance, it is considered reasonable to allow a two year temporary consent for the retention of the marquees and their use to allow the charity to continue raising money whilst establishing proposals for a more permanent development which would potentially allow the use proposed to continue on the site (subject to separate planning permission.)

Such a temporary consent would allow the council to monitor any complaints or concerns raised by local residents should they occur in the future and would not prevent action under Environmental Health Legislation if the use of the site is causing nuisance. Furthermore the temporary consent could include the requirement for a noise management plan and opening hours restrictions in accordance with the advice set out in the noise assessment submitted during the course of the application.

Subject to such conditions the proposal is not considered to result in a significant loss of privacy or amenity for residents of adjacent dwellings and is considered to meet the requirements of Policies SC2, SC3 and SC11 of the Local Plan for Bolsover District.

#### Access / Highway issues

The proposal utilises the existing access on site where there is a one-way system through the former education centre to the west of the site. There is some parking available on site and some of the former education centre parking is utilised. The proposal also includes the provision of a driveway and parking area within the site to provide additional parking.

The details of the access through the former education centre is disputed by the site owner. Deeds and lease arrangements have been provided by the site owner and the applicant and it appears that there is some disparity between the two. However, this is a private matter between the parties concerned and the lease for the site clearly identifies rights to use the one-way access system currently in place. These access and parking arrangements have been used since 2001 when the town farm was granted planning permission and do not appear to have resulted in highway safety issues relating to the use of the site.

The charity utilises part of the playing pitch they lease for temporary parking if required for larger events and has an arrangement with the adjacent sports social club to rent their parking if required. In addition, any events held in the marquee which are not directly linked to the town farm use do not commence until after 4pm when the farm closes to prevent visitor overlap. These arrangements are temporary in nature and may not be considered reasonable or acceptable for the permanent use of the site without the provision of more substantive evidence. However, these could be sufficient for a temporary period while a more permanent

arrangement is secured. In addition the site is within walking distance of numerous town centre car parks with bus stops and the train station adjacent to the site such that access arrangements by means of transport other than by the car are available. The Highway Authority has no objections to such an approach

### Issues raised by local residents

Most of the issues raised by local residents are covered in the above assessment.

The issue of security of the adjacent building has not been considered as this is a private matter between the parties concerned.

The issue of animal welfare has also not been addressed as this is not something which falls within the remit of the planning legislation and is covered by other Laws.

### **CONCLUSION / PLANNING BALANCE**

The proposal is acceptable in principle in the proposed location but some of the issues raised relating to the potential for noise, parking arrangements and the re-use of the playing pitches cannot be fully addressed at this time and would need to be addressed in detail before a permanent use of the site could be considered.

However, the town farm has been operating for 20 years and the marquees have been in use for the last 2 years with only two complaints to the council, both of which the cases were closed and there do not appear to have been any complaints relating to parking issues on or around the site.

The events are held as fund raising events to help the town farm which is a registered charity. The charity has potential improvements and ideas for development in the future and the marquees provide a funding source to enable the charities' development. Given that the site has been licenced by Environmental Health, the operation of the marquees has given rise to so few complaints, and the granting of planning permission would not exempt the use for Environmental Health legislation to prevent noise nuisance, it is considered reasonable to allow a two year temporary consent for the retention of the marquees and their use to allow the charity to continue raising money whilst establishing proposals for a more permanent development which would potentially allow the use proposed to continue on the site (subject to separate planning permission.)

Such a temporary consent would allow the council to monitor any complaints or concerns raised by local residents should they occur in the future and would not prevent action under Environmental Health Legislation if the use of the site is causing nuisance.

### **RECOMMENDATION**

**The current application be referred to the Secretary of State via the National Planning Casework Unit with a recommendation that the application be APPROVED subject to the following conditions:**

1. The use of the former playing pitch as an extension to the town farm and the use of the

marquees for functions which do not directly form part of the use of the site as a town farm must be discontinued and the land restored to its former condition on or before 21<sup>st</sup> December 2024 in accordance with a scheme of work submitted at least two months before the expiry of the permission and approved in writing by the Local Planning Authority.

2. The use of the former playing pitch must be for the keeping of animals and occasional parking of vehicles in connection with the use of the site and there must be no permanent structures, buildings or fences erected on the site without the prior grant of planning permission.
3. Within 28 days of the date of this decision the noise management plan set out on page 19 of the Noise Impact Assessment (Nova Acoustics 20.10.2022) submitted to the Local Planning Authority on 20<sup>th</sup> October 2022 must be implemented on site in full and must remain in place for the length of this permission unless otherwise agreed in writing by the Local Planning Authority.

### **Reasons**

1. To allow for the impact of the proposal on residential amenity and highway safety to be fully assessed and a possible more permanent solution found and to prevent the permanent loss of a playing pitch in accordance with Policies ITCR7, SC3 and SC11 of the Local Plan for Bolsover District.
2. To protect the character and appearance of the countryside and to prevent the permanent loss of a playing pitch in accordance with Policies SS9 and ITCR7 of the Local Plan for Bolsover District.
3. In the interest of residential amenity in accordance with Policies SC3 and ITCR7 of the Local plan for Bolsover District

### **Note**

The applicant is advised that the granting of planning permission does not provide exemption from the requirements of The Environmental Protection Act in terms of nuisance and if complaints are received the council will be required to investigate.

### **Statement of Decision Process**

Officers have worked positively and pro-actively with the applicant to address issues raised during the consideration of the application. The proposal has been considered against the policies and guidelines adopted by the Council and the decision has been taken in accordance with the guidelines of the Framework.

### **Equalities Statement**

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected

characteristic and persons who do not share it (i.e. “the Public Sector Equality Duty”).

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

### **Human Rights Statement**

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

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