

**PARISH** Barlborough Parish

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**APPLICATION** Variation of Condition 2 (Approved Plans), Condition 15 (Access Junction replacing roundabout), Condition 16 (Provision of footway to revised junction) of Planning Permission 17/00539/FUL

**LOCATION** Land Adjacent Brick Yard Farm Slayley Lane Barlborough

**APPLICANT** ARBA Ground Trading Company

**APPLICATION NO.** 19/00257/VAR **FILE NO.** PP-07843216

**CASE OFFICER** Mr T Ball / Mr C Fridlington

**DATE RECEIVED** 13th May 2019

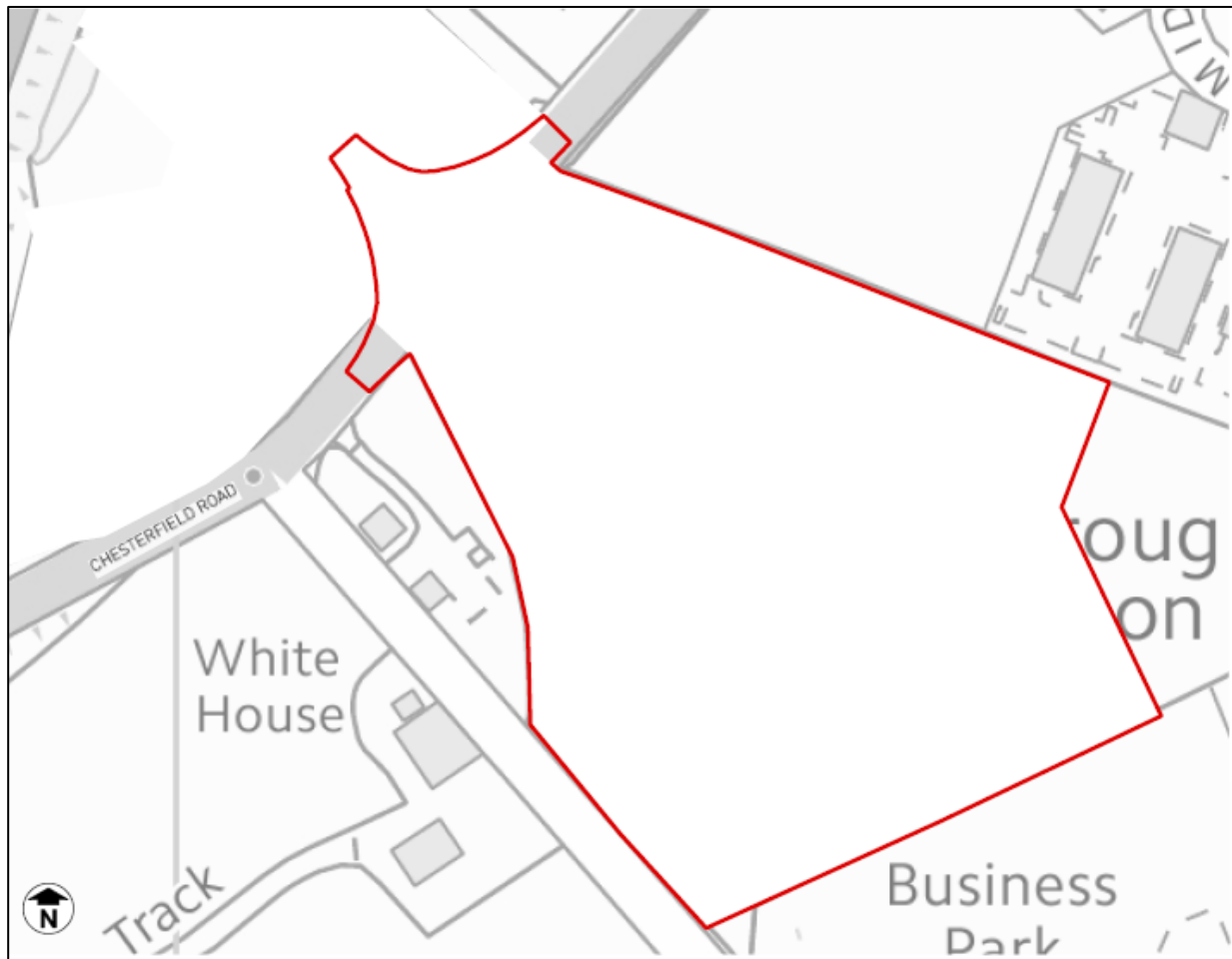
DELEGATED APPLICATION REFERRED TO COMMITTEE BY: Cllr David Dixon

REASON: Highway safety concerns

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## SITE

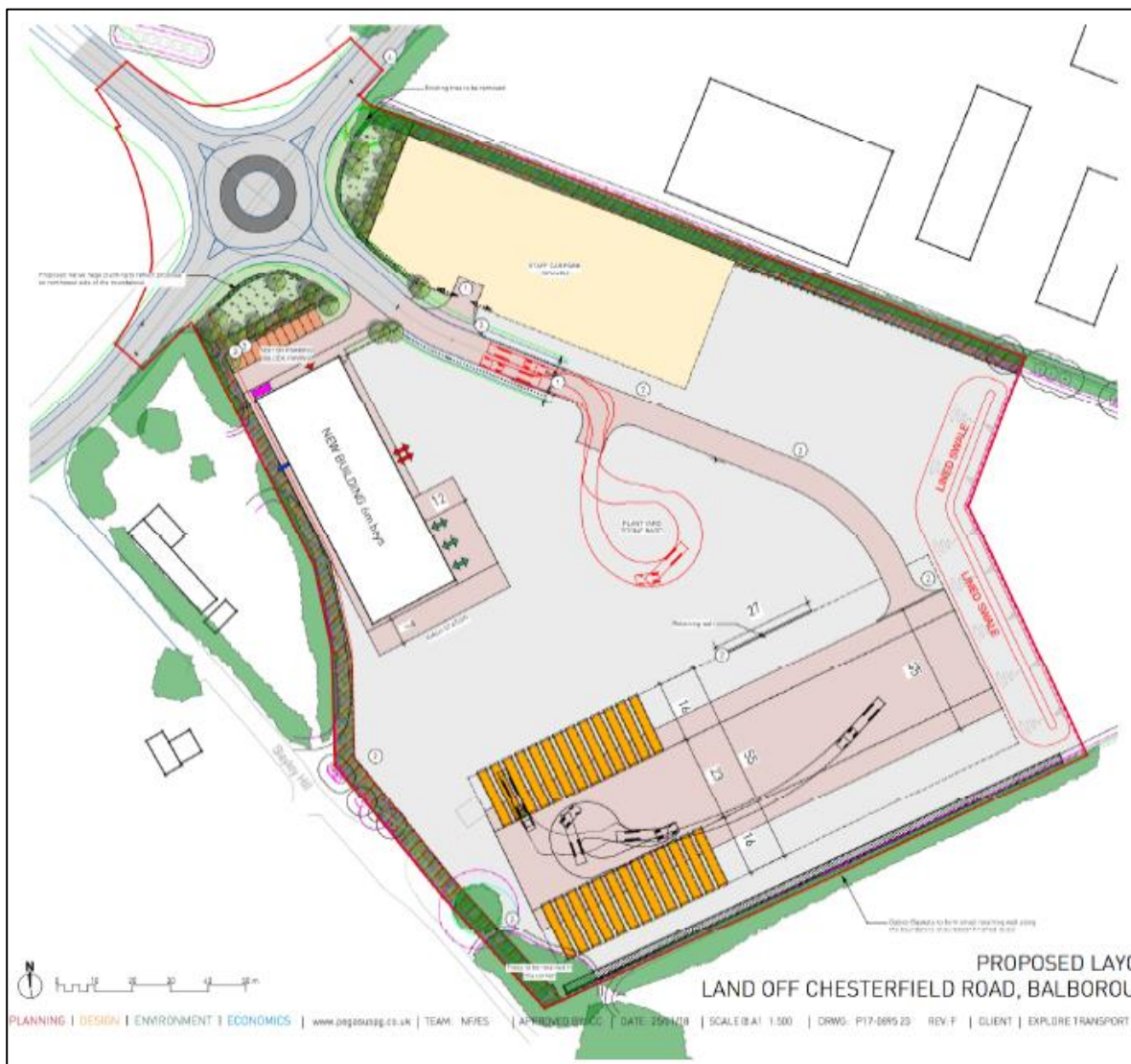
The application site is a former landfill site that is located off Chesterfield Road immediately to the south west of the Barlborough Links Business Park.



The application site has since been used for car boot sales but is now overgrown and unused. Barlborough Links Business Park adjoins to the north-eastern and eastern sides of the site with a variety of business uses and buildings with a County Council approved development of inert materials processing and recycling immediately adjoining to the south-eastern side. Adjoining to the western corner of the site is Brick Yard Farm comprising house with a related haulage business with another house and agricultural buildings across Slayley Lane.

Across Chesterfield Road, an existing outline planning permission and reserved matters approval for a housing scheme has been commenced. The application site also has the benefit of this outline consent and an existing reserved matters approval for commercial development on this site.

However on this site, these consents have been superseded by a separate planning permission for an office building, workshop and manufacturing facility with HGV trailer park for Explore Transport (application no. 17/00536/FUL), which are shown on the approved plans, below:

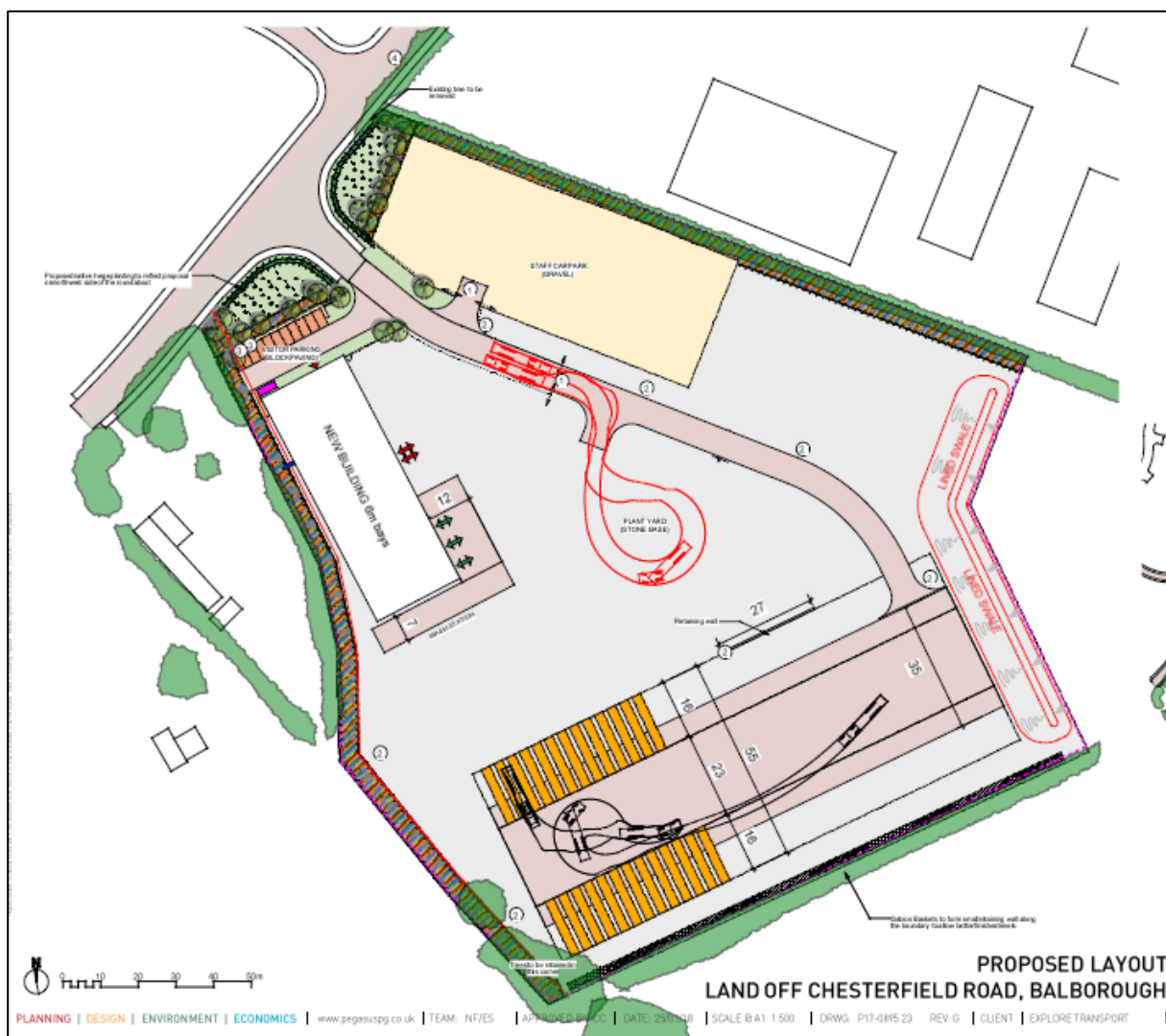


## PROPOSAL

The current application seeks to vary conditions on planning permission 17/00536/FUL as follows:

- variation of condition 2 to substitute in the list of approved plans and drawings an amended layout plan showing access into the site from a 'T-junction' with right turn harbourage instead of a roundabout to serve both this site and the residential development site
- variation of condition 15 to refer to the revised access drawings and continues the requirement for the new access to be formed before the site is taken into use; and
- variation of condition 16 to refer to provision of a footway from the bus shelter on Chesterfield Road to the site access rather than to the site access roundabout.

The revised layout of the application site is shown on the following plan:



In addition, there is a parallel application pending consideration for a similar variation to the outline permission for the consented housing development (19/00256/VAR). This parallel application also seeks approval of a right turn harbourage 'T-junction' at the access to the housing site to replace the previously approved site access roundabout.

## **AMENDMENTS**

To address concerns raised by officers and in representations on this application, the applicant has also made an offer of a financial contribution of £111,450.34 towards highway improvements in the local area and a planning obligation securing the availability of land for the construction of a roundabout in this location in the future.

However, this is the same offer made in respect of the parallel application (19/00256/VAR) and a single legal agreement containing these planning obligations is intended to cover the planning issues raised by both this application and the parallel application.

## PLANNING HISTORY

The details of the most relevant planning applications are shown below but of particular note is that this application seeks to vary application no. 17/00539/FUL, which is a separate permission from the outline and reserved matters approval for development on this site. There is also a parallel application to vary the site access to the housing site on the opposite side of Chesterfield Road (application no. 19/00256/VAR).

09/00370/OUTMAJ	GC	Residential and commercial development (business, industrial and warehousing, Class B1, B2 and B8) including new roundabout and associated roads
15/00406/DISCON	DISCH	Discharge of condition 11 of 12/00002/VARMAJ - Gas risk assessment
16/00187/REM	GC	Approval of reserved matters for erection of 157 dwellings and 5 B1 office units and 4 B2/B8 industrial units with provision of open space and access to the site via A619
17/00298/VAR	GC	Removal of condition 17 and variation of conditions 18 & 20 (all highways issues) of 13/00002/VAR (which varied outline permission 09/00370/OUTMAJ)
17/00539/FUL	GC	Commercial development comprising an office building, workshop and manufacturing facility and a HGV trailer park and associated works
19/00256/VAR	PCO	Variation of Condition 8 (Flood Attenuation Pond), 9 (Surface water drainage details), 20 (new access junction replacing roundabout) of Planning Permission 17/00298/VAR

## **CONSULTATIONS**

### HS2:

No objections to the proposals. 22.08.19

### Local Highway Authority (DCC):

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

### Barlborough Parish Council:

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

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

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

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

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

## **PUBLICITY**

Advertised in press. 2 Site notices posted. 16 neighbours notified.

No responses received although comments made by three people in relation to the loss of the roundabout and its replacement with right turn harbourage junctions would be relevant to this application as well as 19/00256/VAR. The original outline permission (which 19/00256/VAR seeks to further amend) for the site included both the residential development area and the commercial development area the latter of which now has separate planning permission which this applicant is seeking to vary. The objectors considered that the revised access will not be safe, particularly right turn manoeuvres from the sites, given experience of the Tallys End Junction

## **POLICY**

### National Planning Policy Framework ('The Framework')

Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration with a presumption in favour of sustainable development, decisions should secure development which will improve the economic, social and environmental conditions of the area. As the Bolsover District Local Plan was adopted prior to 2004 due weight should be given to its policies according to their degree of consistency with the Framework.

Development should make effective use of land while safeguarding and improving the environment and ensuring safe and healthy living conditions. Good design is a key aspect of sustainable development. Development should add to the overall quality of the area; be visually attractive; sympathetic to local character and history; establish or maintain a strong sense of place; optimise the potential of the site; and, create places that are safe, inclusive, and accessible, with a high standard of amenity for existing and future users.

### Bolsover District Local Plan (BDLP)

Outside the settlement framework and part is within the Green Belt as defined on the Proposals Map where general open countryside control policies apply, in particular policies GEN1 (Minimum Requirements for Development), GEN2 (Impact of Development on the Environment), are the main applicable policies for this variation of conditions application.

### Emerging Local Plan:

Publication Version of the Local Plan for Bolsover District (May 2018) currently undergoing examination although with public sessions now closed and minor modifications submitted following consultation the plan is therefore at an advanced stage. The Plan allocates the site for employment development and shows it within the development envelope for Barlborough. In terms of access, the main applicable policy is SC3: High Quality Development.

### Planning Practice Guidance

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

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

- b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

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

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



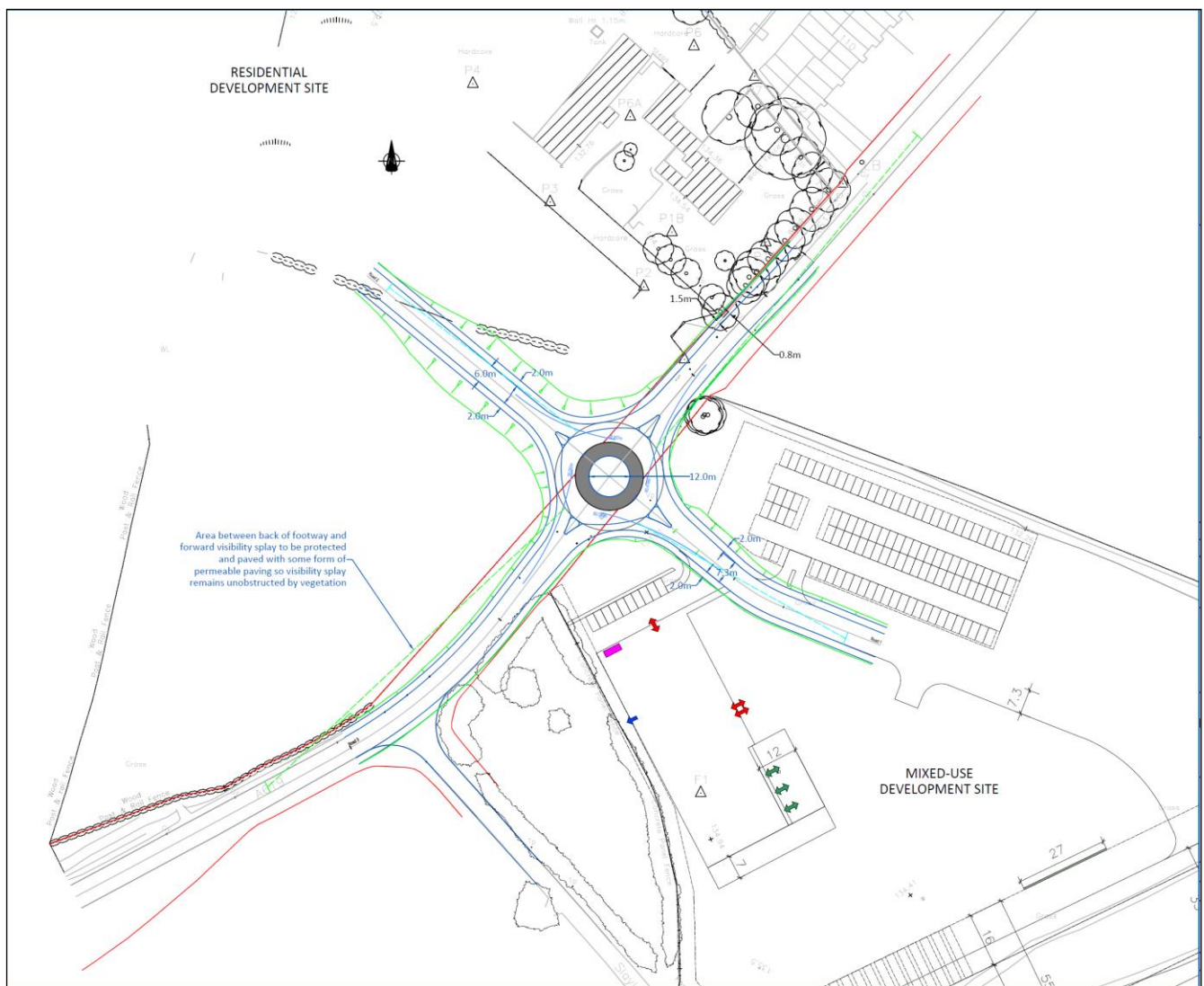
## ASSESSMENT

The principle for commercial development on the application site has already been established by the grant of full planning permission for an office building, workshop and manufacturing facility with HGV trailer park for Explore Transport (application no. 17/00536/FUL) In addition, the site is allocated for employment land in the emerging Local Plan.

Therefore, the only matter for consideration in this application is whether the revised access arrangements would be safe and suitable for the proposed development.

### Site Access

The following plan shows the approved site access roundabout.



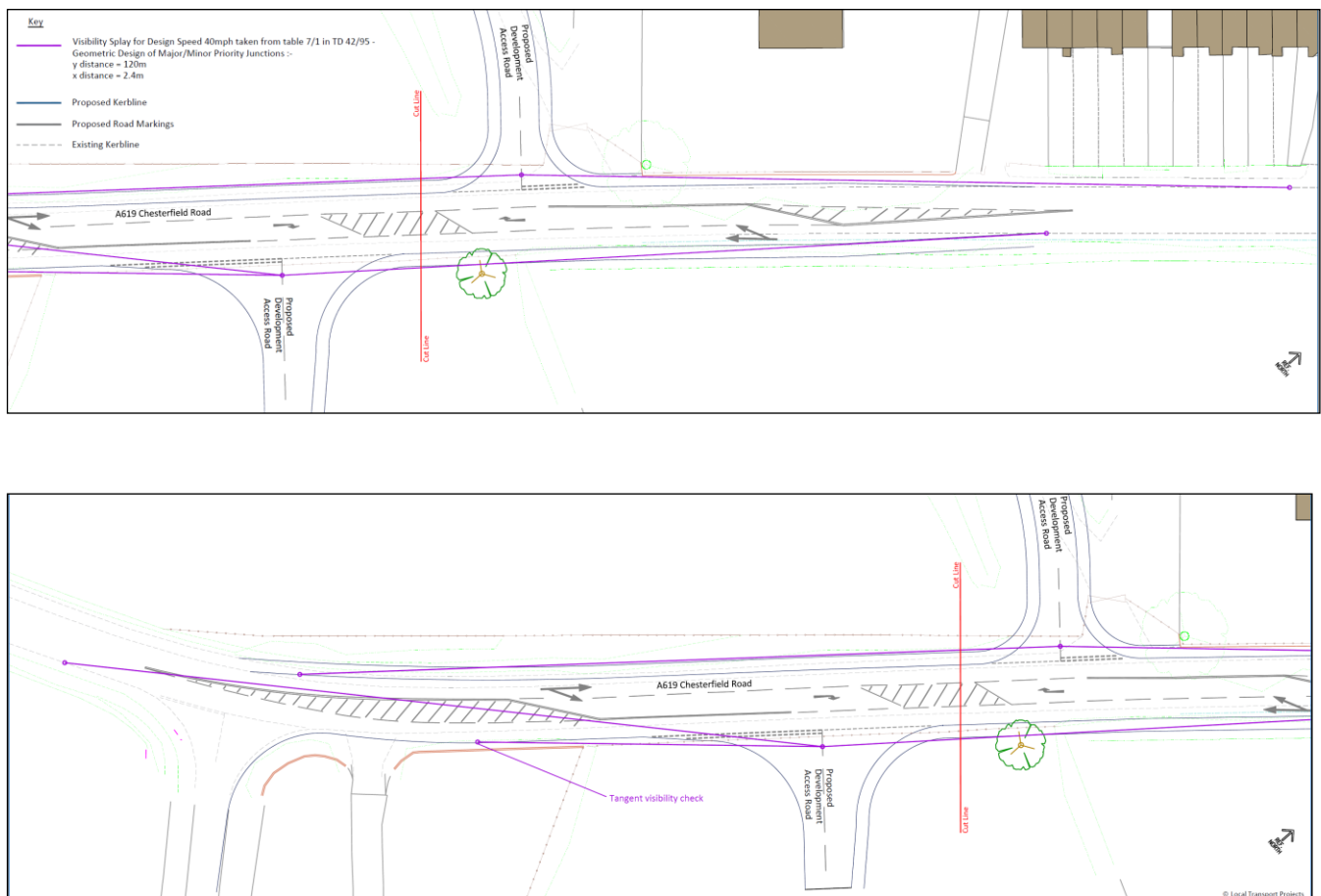
The roundabout would provide a safe and suitable access to the application site but at this stage, it cannot be built because of difficulties with obtaining technical approval (and

subsequent adoption by the local highway authority) for a structure that 'bridges' over the previous railway embankment.

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

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

### Proposed Site Junctions (with right turn harbourages)



However, concerns have been raised by the County Council because the site access

roundabout (albeit with some variations) would have provided an opportunity to restrict right turns out of the nearby Tally's End junction on to Chesterfield Road.

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



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

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

This offer of securing the necessary land for a roundabout is accompanied by the offer of a

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

Notably, this offer is the same offer as reported in the parallel application for the removal of the site roundabout and provision of new junctions on both sides of Chesterfield Road rather than forming one of two separate offers.

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

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

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

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

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

Consequently, the road junction proposed in this application is considered to be acceptable on its individual planning merits because the new access with associated right turn harbourage would provide a safe and suitable access to the application site.

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

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

Therefore, officers would recommend approval of the proposed variations to Conditions 2, 15 and 16 attached to planning permission 17/00539/FUL to allow:

- variation of condition 2 to substitute in the list of approved plans and drawings an amended layout plan showing access into the site from a 'T-junction' with right turn harbourage instead of a roundabout to serve both this site and the residential development site
- variation of condition 15 to refer to the revised access drawings and continues the requirement for the new access to be formed before the site is taken into use; and
- variation of condition 16 to refer to provision of a footway from the bus shelter on Chesterfield Road to the site access rather than to the site access roundabout.

## **CONCLUSIONS**

In conclusion, as this application has been made under s.73 of the 1990 Act, as amended, it is not possible to reconsider matters other than the conditions subject of this application. Therefore, it is not necessary to revisit the principle of the development or any other planning matters beyond those raised by the proposals to vary Conditions 2, 15 and 16 attached to planning permission 17/00539/FUL.

It is considered the proposed variations should be allowed because the revised site junction would be safe and suitable for the proposed development. There are no other issues in amending the conditions to reflect the changes from the previously approved scheme to give clarity on the list of approved plans and the nature of the footway that should be provided from the site access to the nearby bus shelter.

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

Therefore, this application is recommended for approval subject to conditions relating to the provision of the new road junction, the revised suite of approved plans and the revised footway as well as the relevant conditions from the original permission that need to be repeated on a permission for this application.

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

## RECOMMENDATION

The current application be approved subject to

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

**AND**

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

Expiry Date

1. The development shall be begun on or before 1<sup>st</sup> August 2021.

Prior Approval of Materials and Landscaping

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

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

3. Prior to the erection of the proposed retaining walls / introduction of gabions on site, precise details of site levels as existing and as proposed and sectional details of the gabions and retaining walls shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be carried out as approved.
4. Prior to the erection of any fences, railings or other similar items, the details of these shall be submitted to and approved in writing by the local planning authority. Thereafter, these items shall be constructed as approved prior to the development hereby permitted being taken into use.
5. Prior to the development hereby permitted being brought into use, full details of soft landscape works. including a programme for implementation, measures to encourage biodiversity, tree and hedgerow planting, and suitable mitigation for birds and reptiles, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the works shall be carried out as approved.
6. Prior to the installation of any external lighting except street lighting a detailed scheme shall have first been submitted to and approved in writing with the Local Planning Authority. The scheme shall be implemented as approved and shall be designed to minimise light spillage outside of the site, it is designed to serve and into the sky.

#### Safeguarding Amenity

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

(Ref 12359.01.v2 April 2018).

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

#### Drainage

13. Drainage systems on the site including

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

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

#### Highways

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



through consultation with the Local Highway Authority and Highways England.

### Site Remediation

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

### Statement of Decision Process

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

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

# Site Location Plan

