

Bolsover District Council**Planning Committee****23rd October 2019**

PARISH	Barlborough Parish	
APPLICATION	Variation of Condition 8 (Flood Attenuation Pond), 9 (Surface water drainage details), 20 (new access junction replacing roundabout) of Planning Permission 17/00298/VAR	
LOCATION	Rear of 16 to 124 and South West of 124 and Between Brickyard Farm and Barlborough Links Chesterfield Road Barlborough	
APPLICANT	ARBA Ground Trading Company	
APPLICATION NO.	19/00256/VAR	FILE NO. PP-07842866
CASE OFFICER	Mr T Ball / Mr C Fridlington	
DATE RECEIVED	13th May 2019	

Report of the Planning Manager

This report is public

Purpose of the Report

- To enable the Planning Committee to make a determination on application no. 19/00256/VAR following deferral of a decision at the meeting of the Planning Committee on 25 September 2019.

1 Report Details**Introduction**

- 1.1 The original officer report on this application is attached to this report as Appendix 1 and in this report: the proposed replacement of a site access roundabout with staggered T-Junctions was recommended for approval by officers.
- 1.2 This officer recommendation of approval followed the local highway authority's advice that the staggered junctions would provide safe and suitable access points to both the residential development of 157 houses on one side of Chesterfield Road and to the commercial development on the opposite side of this road (the A619).
- 1.3 However, a decision on application no. 19/00256/VAR was deferred at the last meeting of the Planning Committee to allow for an independent highway consultant to be commissioned to verify whether the staggered junctions proposed in this application are safe and to compare the relative highway safety merits of the proposed staggered junctions compared to the previously approved roundabout.

- 1.4 In part, this deferral related to strongly expressed local concerns about the speed of traffic on the A619 at the location of the proposed staggered junction and the reported prevalence of road traffic accidents at the nearby junction of Tallys End and the A619, which is also said to be related to the proximity of this junction to the Treble Bob Roundabout.
- 1.5 The distance between the staggered junctions and the Tallys End junction would be around 350m and the Tallys Road junction is within 100m of the Treble Bob roundabout.

Background

- 1.6 The proposed change from a site access roundabout to staggered junctions has come about because the local highways authority have advised that they cannot adopt the approved roundabout mainly because it would bridge over the former railway embankment, which has subsequently been infilled with unknown material.
- 1.7 In the most straightforward of terms, if the roundabout cannot be adopted by the local highway authority; it cannot be built in the highway. Therefore, there is currently no prospect of the previously approved roundabout being built even if this application were to be refused.
- 1.8 In the alternative, the approved and ongoing housing development on the north side of Chesterfield Road would be completely stymied if the staggered junctions were to be refused planning permission and an alternative solution could not be found.
- 1.9 Notably, the proposed T-Junction for the commercial development proposed on the south side of Chesterfield road was granted planning permission at the last meeting of the Planning Committee (application no. 19/00257/VAR).
- 1.10 This approval does not necessarily mean that this application should be approved; it simply means that the T-Junction was considered by the Planning Committee to be a safe and suitable access for the commercial development on the south side of Chesterfield Road.
- 1.11 By virtue of the resolution to defer this application, the Planning Committee, as a whole, was not convinced that a staggered T-junction would be a safe and suitable access for the housing development.
- 1.12 By way of the deferral, the Planning Committee has also retained the opportunity to re-consider the safety merits of the previously approved roundabout compared to the staggered T-Junctions.
- 1.13 The independent highway consultant's report should inform the Planning Committee's final decision on both these issues.

Key Issues

- 1.14 In summary, the approval for application no 19/00257/VAR means that the staggered junctions proposed in this application have already been partly approved and this decision may only be challenged in the event that the independent highway consultant (commissioned by the Council) were to find the staggered junctions proposed in this application are actually unsafe.

- 1.15 Equally, if the consultant were to find the staggered junctions proposed in this application are unsafe then this finding would be a substantive reason to refuse the current application.
- 1.16 If the independent highway consultant were to otherwise find that the staggered junction were safe and suitable then the previous approval of the new site access for the commercial development would be demonstrably sound.
- 1.17 Equally, if the consultant were to find the staggered junctions proposed in this application are safe; the grounds on which to consider refusing this application would be limited to whether the previously approved roundabout could or would demonstrably improve highway safety on the local road network.

Independent Highway Consultant

- 1.18 Curtins are a suitably qualified and wholly independent highway consultant that has been commissioned by the Council and have been instructed by the Council to provide (a) an assessment of the stagger priority junction arrangement proposed in the current application and its appropriateness for this development; and (b) assess the comparative benefits of the approved roundabout or the proposed stagger priority arrangement in slowing traffic down on the A619 at the location of the access points.
- 1.19 To carry out this assessment, Curtins arranged for two further Road Safety Audits ('RSA's) to be carried out on the staggered junction proposals and the previously approved roundabout and then review the two separate RSAs and provide independent advice and commentary on a) safety and b) whether the stagger priority arrangement would be better/neutral/worse than the roundabout in terms of slowing traffic down on the highway.
- 1.20 This work has now been completed and has been published in full on the Council's website.

Key Findings

- 1.21 In the review of the Risk Safety Audits, Curtins found that the reports identified several potential safety issues for each of the options, some of which were common to both:
- 1.22 Firstly, Curtins note that for both options poor visibility for vehicles travelling along Chesterfield Road in a north -easterly direction. This issue is a result of the curvature of the existing highway and likely vehicle speeds. Neither of the junction options exacerbate this issue and the RSA recommendations are that forward visibility is improved.
- 1.23 Curtins also note that this issue (which applies to both junction options) will be addressed during the detailed design phase to eliminate or mitigate the identified safety concerns. These considerations at the detailed design stage would typically include:
 - A check that the proposed visibility splays conform to the Design Manual for Roads and Bridges guidance (section TD 9/93) published by the Highways Agency.

- Consideration to be given to reduce the speed limit together with other speed reduction measures
- Ensure no obstructions (e.g. hedgerows, signage, etc.) encroach within the highway boundary on the inside of the curve.
- Consideration of providing a higher standard of street lighting than at present on the approach to the proposed junction.

1.24 Secondly, Curtins note that for both options, the gradient of the approach road from the development to the Roundabout or Tee Junction is relatively steep. The RSA recommends that the a flat “dwell” area is provided in advance of the give way line. Note that this issue will be addressed during the detailed design stage to ensure there is a flat area for vehicles to wait.

1.25 In addition to the above common issues, Curtins identified a further three issues for the T Junction option (as proposed in this application) and four for the Roundabout option (as previously approved).

Issues with the T-Junctions

1.26 The RSA report notes that pedestrians may be at risk whilst crossing the road and recommends a pedestrian crossing with central refuge at a location that will serve the existing bus stops.

1.27 Further, the report identifies that road drainage gullies should be located away from the dropped kerbs at the pedestrian crossing to minimise trip injuries.

1.28 The final issue identified for the T-Junction option refers to the widening of the road to accommodate the right-turn harbourage on Chesterfield Road which may affect existing obstructions within the verge and recommends these are relocated a safe distance away from the proposed carriageway edge.

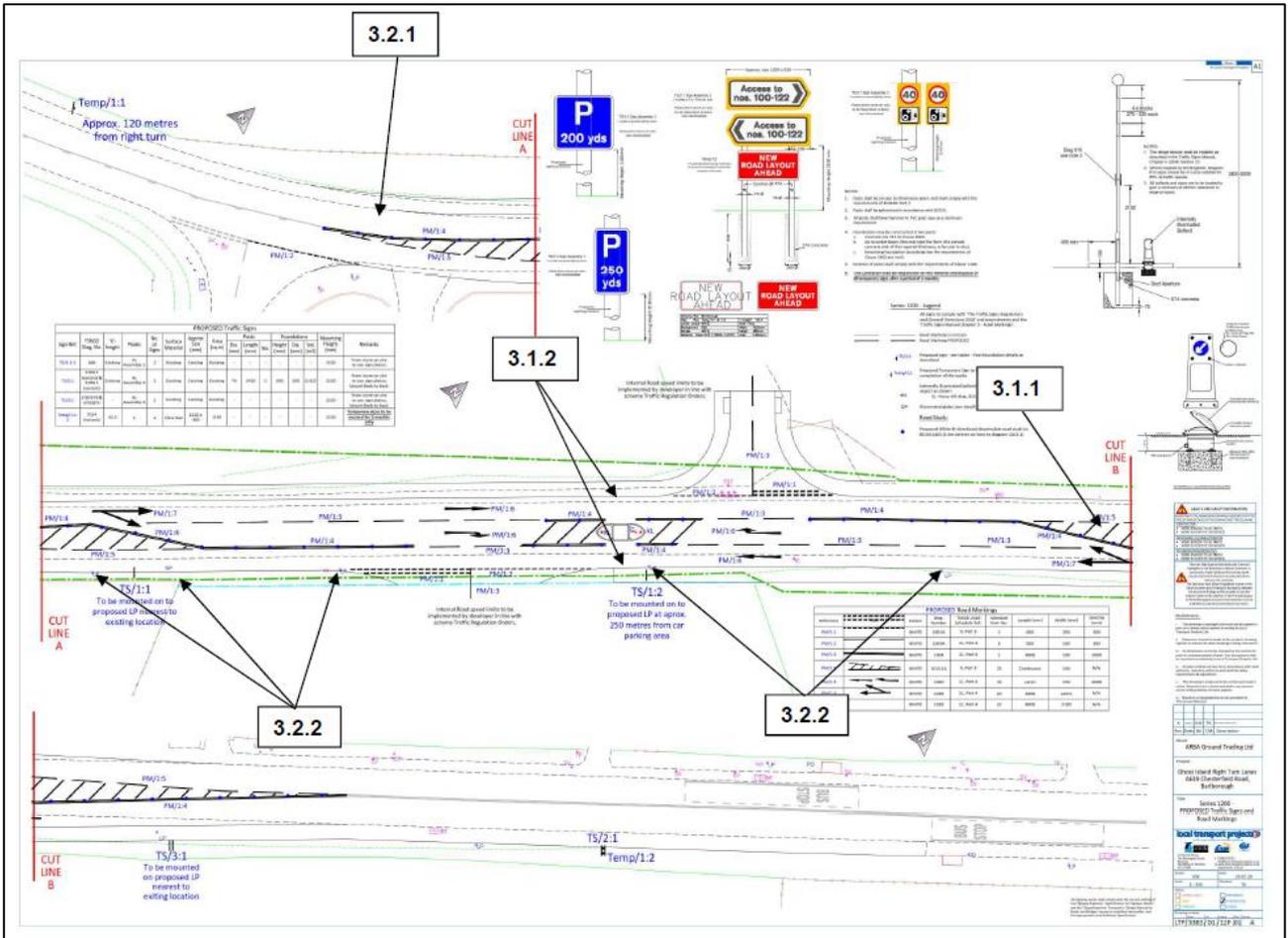
Issues with the Roundabout

1.29 The RSA report notes that the proposed “splitter” islands on the approaches on the A619 to the Roundabout appear to be too narrow to accommodate wheelchairs, pushchairs, etc. and recommends that these are made wider.

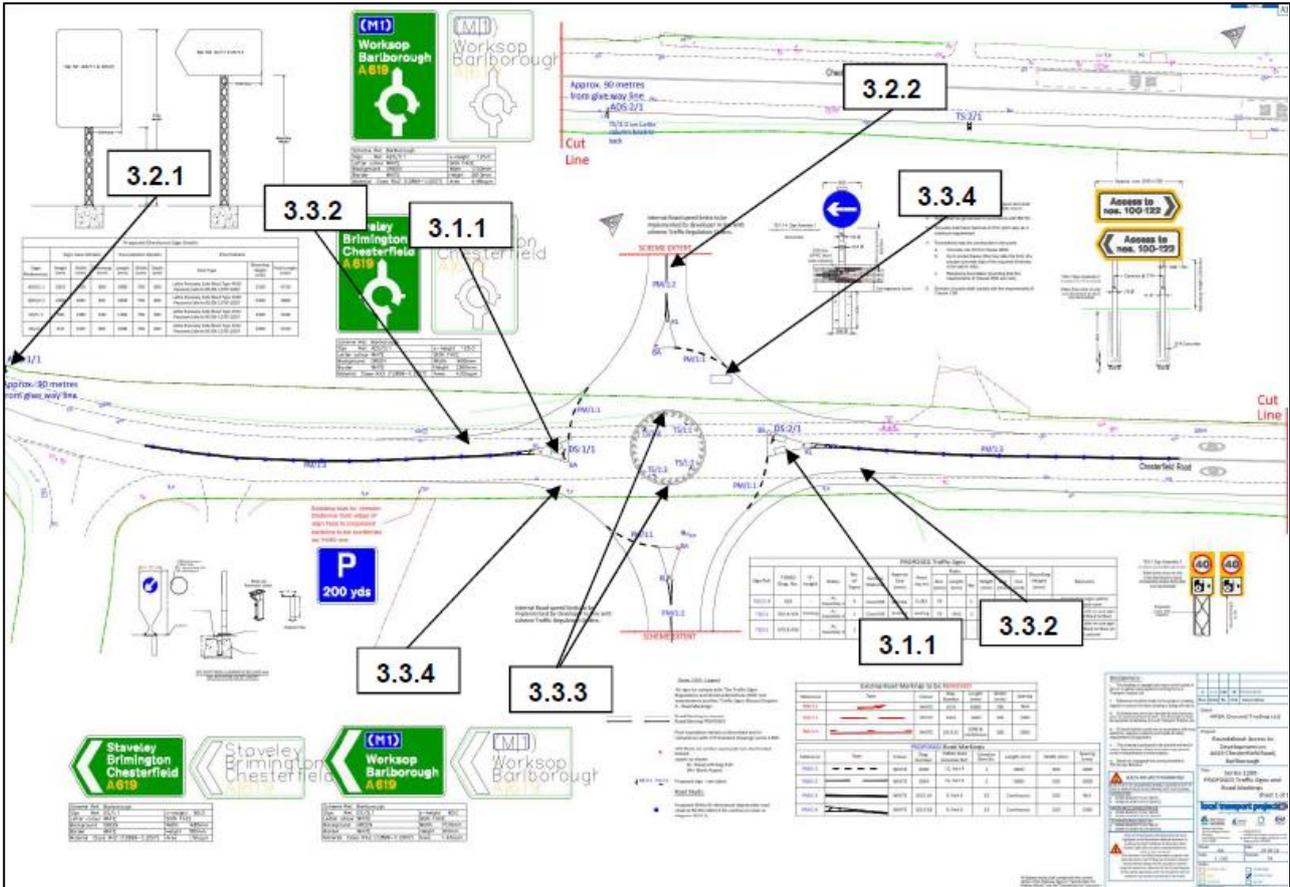
1.30 The report further identifies that the proposed design of the Roundabout would result in the central over-run area (which is flush with the surrounding road surface) not being noticed by vehicles travelling at speed along Chesterfield Road resulting in possible failure to give way or late braking collisions and recommends that the central area is made more visible.

1.31 Two additional issues noted in the report are the location of road drainage gullies and service covers in the vicinity of the Roundabout which would pose a skidding risk especially for bicycle riders and motorbikes and recommends that these are relocated away from the junction.

Extract from the Road Safety Audit (RSA) of the staggered T-Junctions



Extract from the Road Safety Audit (RSA) of the approved Roundabout



2 Conclusions and Reasons for Recommendation

2.1 The comparison of the road safety issues for the two options, as carried out by Curtins, indicates that the Roundabout option appears to present greater safety risks when compared to the T-Junction option for the following reasons:

- Due to the compact nature of the Roundabout with a flush central over-run area, there could be an increase the risk of collisions due to vehicle drivers not noticing the Roundabout when approaching at speed, either by not giving way to turning traffic or from late breaking.
- Two wheeled users of the Roundabout are at increased skidding risk due to gullies/ service covers if these cannot be relocated.
- The “splitter” islands on the approaches to the Roundabout are considered too narrow in their present design to safely accommodate pedestrians crossing Chesterfield Road.

2.2 Therefore, Curtins consider that the proposed T-Junction layout will provide the least risk to road safety when compared to the Roundabout option.

- 2.3 Curtins also noted that some of the planning consultees consider that the provision of a Roundabout will allow a “left turn out” restriction be placed on traffic leaving Tallys End to the north-east of the proposed development.
- 2.4 However, due to the compact nature of the proposed Roundabout, Curtins consider that long or articulated lorries wishing to travel to the existing A616 roundabout would not be able to safely perform a “U” turn at the proposed Roundabout and would need to travel to the Netherthorpe roundabout which is approximately 8 km further west.
- 2.5 In addition, Curtins looked at the benefits of a Roundabout to reduce speeds along Chesterfield Road. However, Curtins say this can be more easily attained by the introduction of a new 30 mph speed limit on the approach to the outskirts of Barlborough, especially if this measure is used in combination with a “gateway” type road layout (e.g. short narrowing of the main road, use of coloured tarmac surfacing, etc.) prior to the new junction.

Further Considerations

- 2.6 Curtins also say neither the roundabout nor the staggered junctions should be designed to reduce speeds, but the different junction types are designed largely on the basis of providing for the most efficiently and safe way to move traffic through the junction.
- 2.7 However, it should be noted that the risk of collision could be increased by the provision of a Roundabout as noted in 2.1 above due to inattentive drivers not noticing the junction on their approach leading to late braking which may result in “rear-end” type collisions with following vehicles.
- 2.8 In comparison, the T-Junction option (together with other means of reduction of speed noted above) would allow for the flow of traffic on Chesterfield Road to pass through the junction without the need to change direction to negotiate the Roundabout.

Conclusions

- 2.9 Therefore, on the basis of Curtin’s independent advice, it can be seen that the T-Junctions proposed in this application would provide a safe and suitable access to both the housing site and the commercial site subject to the detailed design considerations that would be addressed at the s.278 stage of the development.
- 2.10 However, it is considered determinative that the proposed T-junctions is considered by Curtins to be safer than the approved roundabout and on this basis, it is recommended that the current application is approved.
- 2.11 Finally, it also weighs heavily in favour of this application that the applicant is offering to safeguard land for the provision of a suitable roundabout to provide for a left-turn solution out of Tallys End.
- 2.12 This offer of safeguarded land is supplemented by the offer of a commuted sum of £111,450.34 which may be used towards a suitable roundabout at this location to facilitate left turning only out of the Tallys End junction or this money may be used towards other highway improvements within the local area.

- 2.13 For example, this money could be used to promote and achieve the optimal road safety solution identified by Curtins, which would be the introduction of a new 30 mph speed limit on the approach to the outskirts of Barlborough, especially if this measure is used in combination with a “gateway” type road layout.
- 2.14 Alternatively, this money could be used to create a new exit off the Tallys End ‘business park’ on to High Hazels Road, or towards the signalisation of the Tallys End junction.
- 2.15 In addition, the County Council are satisfied that the commuted sum offered by the applicant would make a useful contribution to the overall package of measures that are being proposed at the Treble Bob roundabout if the approved roundabout were to be replaced by the proposed T-Junctions.
- 2.16 In these respects, officers consider the offer of safeguarded land combined with the offer of commuted sum is directly related to the proposed development and is reasonably necessary to improve the overall amenities of the local area and safeguard the safe and efficient operation of the local road network over the longer term.

3 Consultation and Equality Impact

- 3.1 The original officer report (attached as Appendix 1) sets out the consultation and publicity undertaken in respect of this application and addresses the responses from all third parties including statutory consultees.
- 3.2 The findings of the independent highway consultant that the staggered junction is safer than the roundabout option reduces any likelihood that the development would directly or indirectly affect a person with a protected characteristic or group of people with a shared protected characteristic.
- 3.3 The requirement to provide a pedestrian crossing and footpath from the site access points to the nearest bus stop would improve the connectivity and accessibility of the housing site and the commercial development on the opposite side of Chesterfield Road.

4 Alternative Options and Reasons for Rejection

- 4.1 The alternative option to a recommendation of approval would be a recommendation of refusal but this would be undesirable because the findings of the independent highway consultant demonstrate it would not be possible for officers or members to substantiate a recommendation of refusal based on highway safety grounds without further input from an external consultant.
- 4.2 If the Council wished to try and rebut Curtins findings, which coincide with the local highway authority and the applicant’s own consultant’s findings, the cost of commissioning this work would be in the region of £5,000 albeit it seems unlikely a third consultant would deviate from the ‘standard’ methodology used by Curtins and therefore, would be unlikely to reach a different conclusion.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 There are no particular financial risks to the Council arising from the recommendation of approval made in this report but any approval of this application would secure a financial contribution of £111,450.34 towards highway improvements within the local area.
- 5.1.2 However, there is a high risks of a costs award against the Council if the application is refused and the reasons for refusal cannot be substantiated particularly if the Council is found to have 'ignored' independent expert advice commissioned by the Council itself.
- 5.1.3 In addition, the Council is at a high risk of a costs award against it if it is found at appeal to have behaved unreasonably by not granting permission for development that accords with local and national planning policies in the absence of any material considerations that fairly and reasonably indicate that it should have done otherwise.
- 5.1.4 If the Council were unable to substantiate reasons for refusal of an application and/or was found to be acting unreasonably there is also risk of reputational damage and loss of public confidence in the Council's decision making that would result from any appeal and substantial costs award being allowed by the Planning Inspectorate.

5.2 Legal Implications including Data Protection

- 5.2.1 Planning law requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. A decision that is taken without proper regard to this statutory duty is open to legal challenge.
- 5.2.2 There are no obvious Data Protection issues arising from a determination on this application.

5.3 Human Resources Implications

- 5.3.1 There are no human resource implications arising from any decision on this application because dealing with planning applications and S106 legal agreements is respectively part of the Council's Planning and Legal Service's normal workloads.
- 5.3.2 In the event of a refusal of planning permission, as noted above, both departments may require additional resource to deal with any forthcoming legal challenge or planning appeal if those challenges were to be made in respect of technical highways grounds.

6 Recommendations

6.1 The current application be approved subject to

A. 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;

B. the following varied conditions:

- i. The underground tank for the proposed sustainable drainage system for the housing development shall be located in accordance with the details shown on drawing No. E17/7044/004V (Revision V) produced by Haigh Huddleston and Associates.
- ii. Prior to the occupation of any dwelling hereby permitted, a fully operational surface water drainage system shall have been completed on site in accordance with detailed plans and specifications first submitted to and agreed in writing by the local planning authority.
- iii. Before any dwelling or other commercial building is first occupied, the new access junctions shall be formed onto the A619, Chesterfield Road generally in accordance with application drawing number LTP/3383/S1/01.01 Rev 0 produced by Local Transport Projects.

AND

C. the following conditions repeated from the original permission (application no. 17/00298/VAR)

Safeguarded Trees and Hedgerows

1. The existing hedgerows and trees identified as to be safeguarded on the Design Concept and Illustrative masterplan drawings as contained within the Design and Access Statement and its addendum by FPCR LLP submitted with the application documents, shall be retained, and protected during construction works.

Ground Conditions

2. The proposed development shall be carried out in complete accordance with the implementation and mitigation measures contained within the gas risk assessment approved under discharge of conditions application no. 15/00406/DISCON.
3. A detailed remediation scheme to bring the whole site to a condition suitable for the intended uses by removing unacceptable risks to human health, buildings and other property, and the natural environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

4. The remediation scheme approved in accordance with condition 3 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.
5. Following completion of measures identified in the remediation scheme approved in accordance with condition 3 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.
6. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.
7. 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.
8. 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.

Highways

9. 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
10. The development hereby approved shall take place in accordance with the agreed Framework Travel Plan for the site dated December 2008 and with reference D118649.
11. No development within either phase of the development shall be occupied or otherwise brought into use unless and until footways have been provided between the bus stop shelters on Chesterfield Road (north east of the vehicular access into

the development) and the residential and commercial areas of the development.

Conditions relevant to the Housing Development

12. Prior to the occupation of a dwelling (or in accordance with a scheme of implementation submitted to and approved in writing by the local planning authority) a controlled pedestrian crossing of the A616 dual carriageway to the northern side of the residential site shall be provided to link the footpath from the north east of the residential site with the footway to the northern side of the A616/A619 roundabout in accordance with details previously submitted to and approved in writing by the local planning authority.
13. Prior to the occupation of a dwelling (or in accordance with a scheme of implementation submitted to and approved in writing by the local planning authority) the footpath from the north east of the residential site shall connect with the footway to the western side of the A616/A619 roundabout in accordance with details previously submitted to and approved in writing by the local planning authority.
14. Prior to the occupation of a dwelling the new streets within the development shall have been laid out and constructed to at least base course, lit and drained to provide a link from the dwelling to the existing public highway.
15. Construction work shall not begin on the residential element of the proposal until a scheme for protecting the proposed residential development from road traffic background noise (principally from the M1 motorway) has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the approved scheme shall be completed before any part of the residential development is occupied.
16. No dwellings shall be erected within 20 metres of the application site boundary with the M1 motorway.
17. There shall be no occupation of dwellings adjacent to 124 Chesterfield Road whilst ever those premises are used for a scaffold business.

Conditions relevant to the Commercial Development

18. Prior to discharges to the public sewer from the commercial phase of the development all surface water drainage from parking areas and hardstandings shall be passed through a petrol/oil interceptor with an overall capacity compatible with the site being drained.
19. Before any related premises are occupied on the commercial phase of the development the whole of the vehicle parking and manoeuvring area and all service areas (including secure/covered cycle parking) shall be formed, laid out, constructed and surfaced in concrete, tarmacadam or block pavers. All parking spaces shall be clearly and permanently delineated and shall be retained for their intended use at all times.
20. The access road serving the commercial phase of the development shall include a turning area suitable for large HGV's.

Legal Agreement

21. Prior to the first occupation of any dwelling or commercial unit hereby permitted, a completed deed of variation that links this permission to the varied obligations attached to 09/00370/OUTMAJ, or a completed s.106 legal agreement containing the same obligations, shall be submitted to the Local Planning Authority.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: BDC: Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> Please indicate which threshold applies</p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the relevant Portfolio Holder been informed</p>	Yes
<p>District Wards Affected</p>	All
<p>Links to Corporate Plan priorities or Policy Framework</p>	All

8 Document Information

Appendix No	Title
1	Original Officer Report on application no. 19/00256/VAR
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
nil	
Report Author	Contact Number
Chris Fridlington	EXT 2265

APPENDIX 1: ORIGINAL OFFICER REPORT

PARISH Barlborough Parish

APPLICATION Variation of Condition 8 (Flood Attenuation Pond), 9 (Surface water drainage details), 20 (new access junction replacing roundabout) of Planning Permission 17/00298/VAR

LOCATION Rear of 16 to 124 and South West of 124 and Between Brickyard Farm and Barlborough Links Chesterfield Road Barlborough

APPLICANT ARBA Ground Trading Company

APPLICATION NO. 19/00256/VAR **FILE NO.** PP-07842866

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

SITE

As illustrated on the plan shown overleaf, the application site is located to the south west of Barlborough within two land parcels located either side of Chesterfield Road.

The land to the north west of Chesterfield Road is now a housing development site and this part of the application site adjoins the M1 motorway along its north western boundary with open views of the countryside beyond. The A616 dual carriageway link road between the Chesterfield Road roundabout and the M1 junction 30 adjoins to the north east boundary of the housing site with the main part of the village of Barlborough beyond.

This part of the application site also lies behind the existing Chesterfield Road residential properties and was previously overgrown and underused agricultural land with parts having been used as a site base for the recent 'smart motorway' widening project along the adjacent M1.

In addition, land beyond the western limits of the proposed housing development was formerly part of railway cutting, filled with waste and subsequently made available for agricultural uses; this area is within the green belt and more recently has been included in a safeguarding zone for future use by HS2.

As also illustrated on the plan shown overleaf, a mixed use commercial development has been proposed on the land to the south east of Chesterfield Road.

This part of the application site was previously a railway cutting and brick yard subsequently filled with waste and grassed over and then more recently used for car boot sales. This area adjoins Barlborough Links Business Park with office/warehouse/workshop units to the north eastern side and larger industrial/warehouse units to the south eastern side. There are two houses and agricultural land to the south western side of the site.

Previously Approved Masterplan (from application no.16/00187/REM)



PROPOSAL

The current application seeks variations to Conditions 8, 9 and 20 attached to planning permission 17/00298/VAR, which grants outline planning permission for the residential

development of land to the northern side of Chesterfield Road (between the M1 motorway and existing houses fronting Chesterfield Road) and for the commercial development of land on the southern side of Chesterfield Road adjoining Brickyard Farm and Barlborough Links (the former Slayley Tip).

The proposed variations would:

- Replace the flood attenuation pond required by Condition 8 of 17/00298/VAR with an underground tank;
- Revise Condition 9 to require the submission of surface water drainage details within two months of this permission instead of being in accordance with the previously approved details (13/00001/DISCON); and
- Revises condition 20 to allow a revised access into the development sites. This comprises two right turn harbourages replacing the previously approved roundabout and related changes to the position of the access road into the residential development site, the position of the access into the commercial element remains in a similar position as the previously approved roundabout access.

AMENDMENTS

The applicant has submitted additional information to address concerns raised by Derbyshire County Council in their capacity as the lead local flood authority. 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 (19/00257/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

In summary, this is an application to vary conditions on planning permission 17/00298/VAR which itself was an application to vary highway requirement conditions on 13/00002/VAR which in turn varied the position of the flood alleviation pond referred to on outline planning permission 09/00370/OUTMAJ.

Therefore, if this this application were to be granted permission, it would be the third variation of the outline planning permission granted under 09/00370/OUTMAJ for the residential development of land to the northern side of Chesterfield Road (between the M1 motorway and existing houses fronting Chesterfield Road) and for the commercial development of land on the southern side of Chesterfield Road adjoining Brickyard Farm and Barlborough Links (the former Slayley Tip).

However, reserved matters approval has been granted for development on both sides of Chesterfield Road and as noted above, development has commenced on the part of the site allocated for housing.

There is also a separate planning permission for commercial development on the land to the south of Chesterfield Road and there is a parallel application seeking a variation to the conditions attached to this permission currently pending consideration.

The details of the relevant planning applications are shown below with the full planning history of the application site:

09/00370/OUTMAJ	GC	Residential and commercial development (business, industrial and warehousing, Class B1, B2 and B8) including new roundabout and associated roads
13/00001/DISCON	DISCH	Discharge of conditions 9 (surface water disposal system), 11 (gas risk assessment), 20 (access) and 22 (archaeology) of planning permission 09/00370/OUTMAJ
13/00002/VARMAJ	GC	Variation of condition 8 of 09/00370/OUTMAJ to allow for repositioning of flood alleviation pond
14/00622/OTHER	GU	Variation of Section 106 agreement relating to 09/00370/OUTMAJ to reduce affordable housing to 10%
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
17/00642/MINAM	GU	Minor amendment to previously approved 16/00187/REM - revised layout for the housing development
18/00445/DISCON	NOTDIS	Discharge of Condition 12 (Detailed Remediation Scheme), Condition 22 & 23 (Pedestrian Crossing/Footpath), Condition 25 (Noise) of Planning Permission 17/00298/VAR, and Discharge of Condition 3 & 5 (Landscaping), Condition 7 (Materials) of Planning Permission 16/00187/REM
19/00257/VAR	PCO	This application relates to a separate (standalone) planning permission for the development of the commercial area and is for the 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
19/00258/VAR	PCO	Variation of Condition 3 (Treatment of Hard Surfaces), Condition 4 (Hard and Soft Landscaping) of Planning Permission 16/00187/REM

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

Local Lead Flood Authority (DCC):

The LLFA have no objections to condition 8 and 9 being varied as requested. 13.08.19

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. 94 neighbours notified.

Four letters of objection were received raising the following issues:

A roundabout and speed control will be needed on Chesterfield Road to safely provide access to these proposed residential and commercial developments. This proposal will result in someone getting killed. Lots of accidents at Tallys End Junction which has a filter lane. Van Dyk village has a roundabout but for less traffic.

Replacing the roundabout with a give way for the new junction would cause more incidents, as people will struggle to get out of the junction and will make rash decisions due to visibility and speed of other vehicles. If allowed 30mph speed limit should be requested. Pedestrian refuge for bus stops should also be provided.

The proposed removal of the roundabout will introduce a serious road safety risk. Vehicles turning right into and out of the new developments will be at risk of collision from oncoming traffic - the right turn out of Tallys End is already an accident blackspot and this will create a greater hazard due to the increased speeds on this section of road. The only alternative to a roundabout would be to reduce the speed limit to 30 mph with speed enforcement cameras

Installation of tank instead of the approved drainage pond is of concern. How has the capacity been calculated and is it adequate? Houses backing onto Chesterfield Road have water logging problems since the motorway depot was dismantled. The water table is very high as there is heavy clay level with little top soil. Photographic evidence of problems submitted. Once the current porous surface of the development site is made into hard surface for roads and properties this would worryingly increase the surface water. Has the proposed drainage been properly assessed?

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)

The application site lies outside the settlement framework and partly within the Green Belt as defined on the Proposals Map where general open countryside control policies apply. However, as outline permission has already been granted for the development, 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 sites for residential and employment development respectively and shows them as within

the development envelope for Barlborough.

In terms of drainage and access the main applicable policies are: SC7: Flood Risk, and 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.

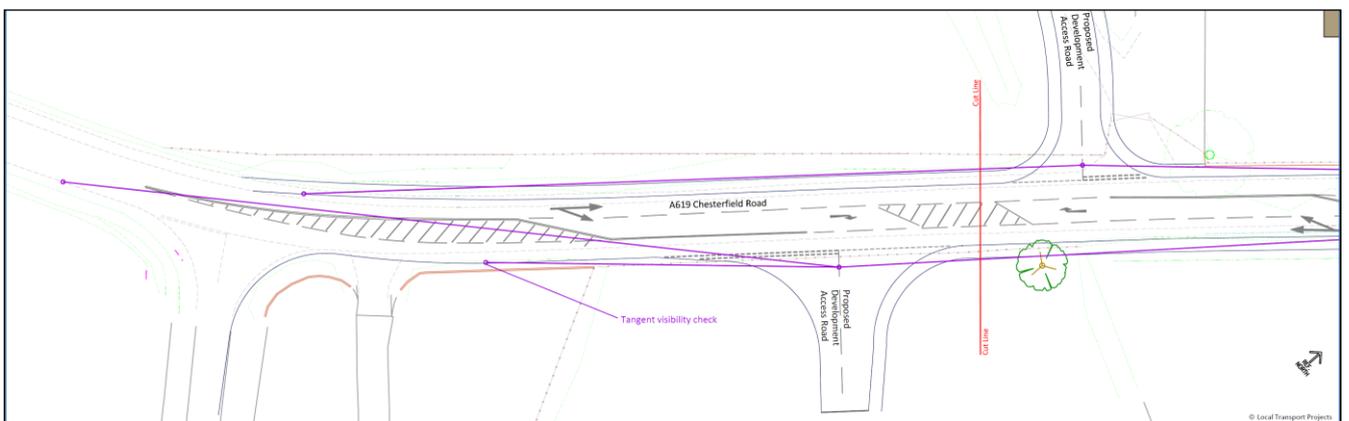
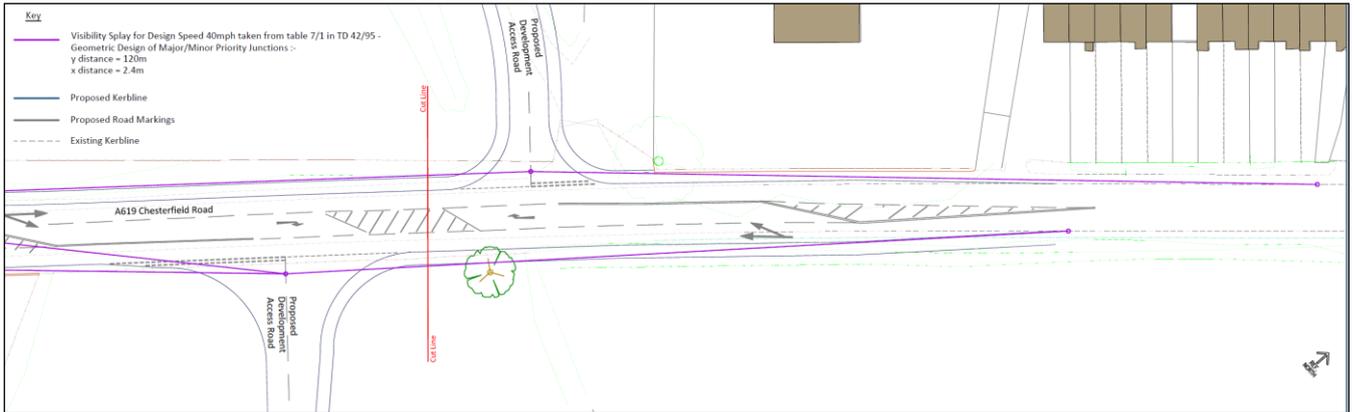
In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.

ASSESSMENT

The principle for the development is established with the outline planning permission (09/00370/OUTMAJ) as varied by 13/00002/VARMAJ and 17/00298/VAR and remaining in place with the approved reserved matters 16/00187/REM. These are supported by the allocation in the emerging Local Plan of this development site for residential and employment development.

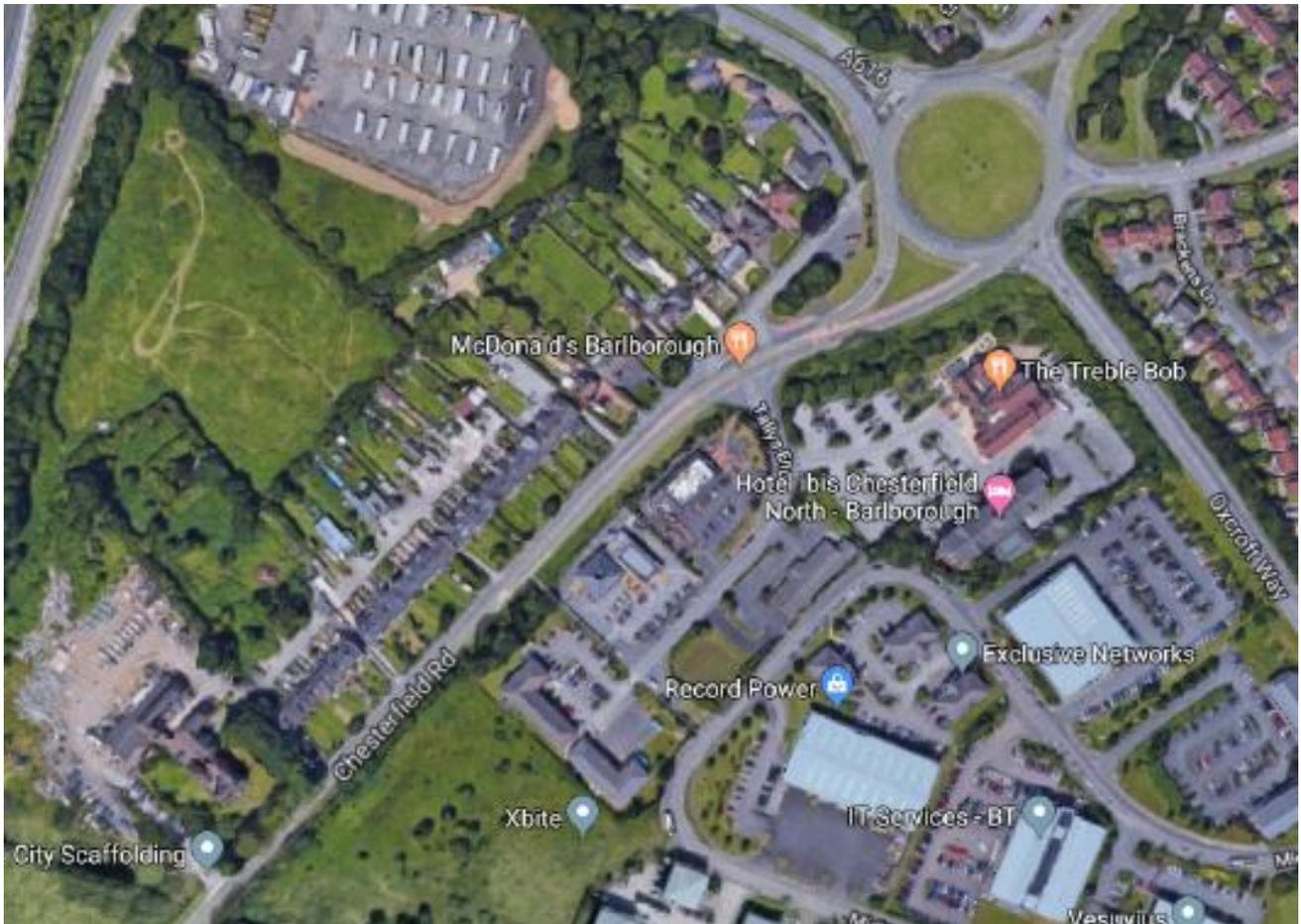
The only matters for consideration in this application are whether the revised drainage system with underground tank is acceptable and technically feasible taking account of sustainable drainage principles, and whether the revised access is safe and suitable for the proposed development.

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' – i.e. a legal agreement that would 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.

The County Council have agreed this offer 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 proposed road junctions are considered to be acceptable on their individual planning merits because they would provide a safe and suitable access to both development sites.

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 conditional approval of the proposed variation to Condition 20 attached to planning permission to allow the approved site access roundabout to be replaced with the new junctions and associated right turn harbourages.

Sustainable Drainage System (SuDs)

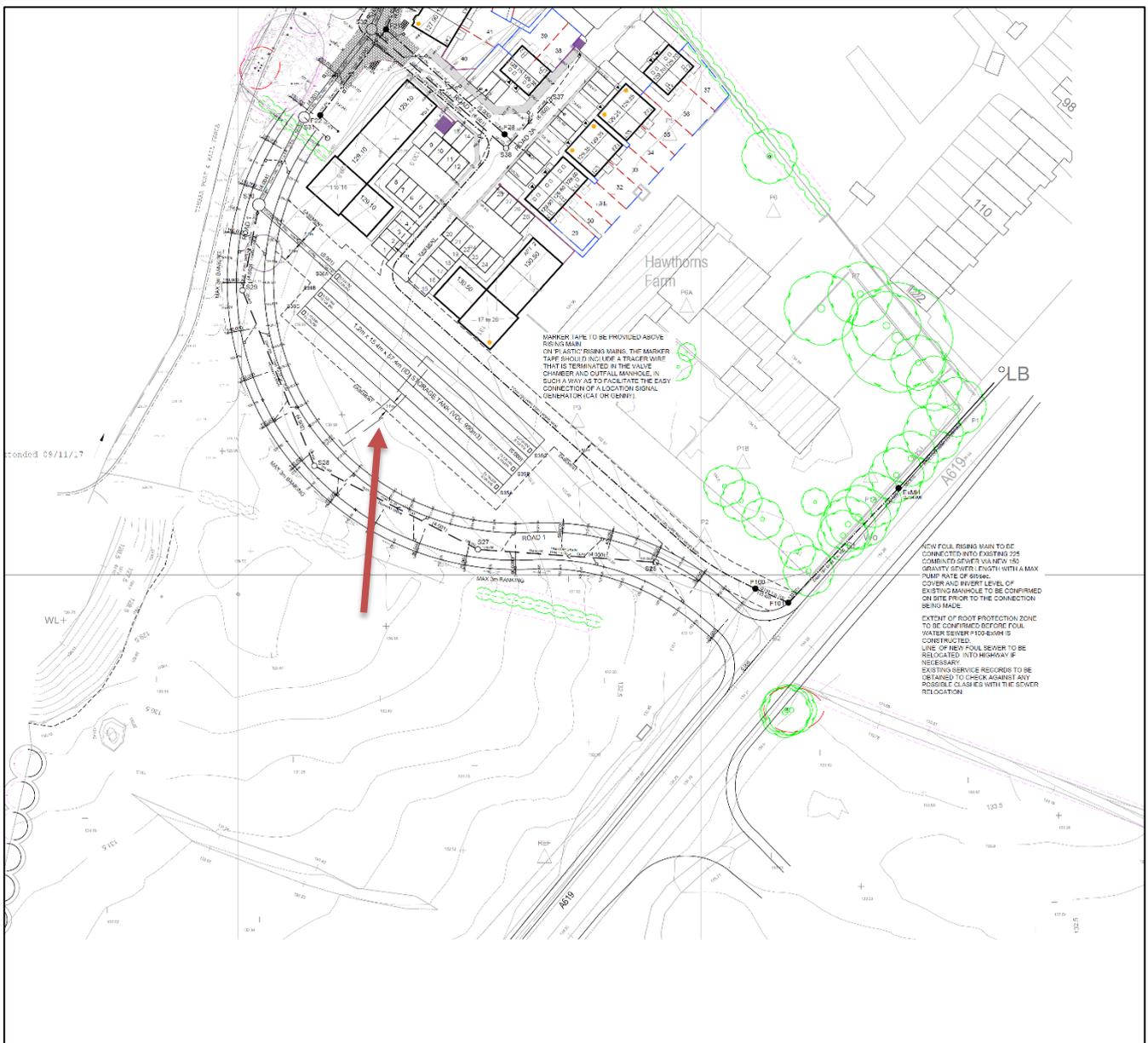
As the proposed housing development is a major development, national planning policies and emerging policy in the new Local Plan require the development to be provided with a sustainable drainage system. Amongst other things, SuDs are required to prevent surface water run-off causing issues off-site and to prevent surface water run-off compromising the capacity of the mains sewer.

Originally, an attenuation pond was proposed as part of a SuDs system for the site and would have been located to the west of the proposed housing development as identified by the arrow on the plan below:



In consultation with Yorkshire Water, the proposed attenuation pond was found to have insufficient capacity to deal with surface water drainage with reference to the most up to date methodology for calculating run off rates. In addition, the ground conditions on-site are such that attenuation ponds could not be provided in this location.

Consequently, the applicant has prepared a revised scheme that relies on an underground storage tank rather than an attenuation pond. The underground tank would be located to the east of the main road into the site and is identified by the arrow on the plan below.



The County Council have since been consulted in their capacity as the lead local flood authority. Following the submission of additional information from the applicant; the County Council now have no objections to condition 8 and 9 being varied to allow the attenuation pond to be substituted with the underground tank and vary the precise details of the SuDS system from that previously approved (for a system relying on attenuation pond).

Consequently, subject to the prior approval of the precise details of the revised SuDS system, Yorkshire Water and Derbyshire County Council as statutory consultees on drainage matters are satisfied that the storage tank and the associated revised strategy for surface water drainage is appropriate and as such; the proposed SuDs system complies with the relevant local and national planning policies.

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 within this part of the site that require further consideration

Therefore, officers would recommend approval of the proposed variations to Conditions 8, 9 and 20 attached to planning permission 17/00298/VAR to allow:

- the replacement of the flood attenuation pond required by Condition 8 of 17/00298/VAR with an underground tank; and
- variation of Condition 9 to require the submission of surface water drainage details within two months of this permission instead of being in accordance with the previously approved scheme.

CONCLUSIONS

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 8, 9 and 20 attached to planning permission 17/00298/VAR.

It is considered the proposed variations should be allowed because the revised site junctions would be safe and suitable for the proposed development and the revised SuDs system would be appropriate for the reasons set out in the above report.

However, to assist with clarity, 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.

Therefore, this application is recommended for approval subject to conditions relating to the provision of the new road junctions and the revised SuDs system and underground tank and the relevant conditions from the original permission that need to be repeated on a permission for this application.

Finally, any permission should also be subject to 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. 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;**

B. the following varied conditions:

- a) The underground tank for the proposed sustainable drainage system for the housing development shall be located in accordance with the details shown on drawing No. E17/7044/004V (Revision V) produced by Haigh Huddleston and Associates.
- b) Prior to the occupation of any dwelling hereby permitted, a fully operational surface water drainage system shall have been completed on site in accordance with detailed plans and specifications first submitted to and agreed in writing by the local planning authority.
- c) Before any dwelling or other commercial building is first occupied, the new access junctions shall be formed onto the A619, Chesterfield Road generally in accordance with application drawing number LTP/3383/S1/01.01 Rev 0 produced by Local Transport Projects.

AND

C. the following conditions repeated from the original permission (application no. 17/00298/VAR)

Safeguarded Trees and Hedgerows

1. The existing hedgerows and trees identified as to be safeguarded on the Design Concept and Illustrative masterplan drawings as contained within the Design and Access Statement and its addendum by FPCR LLP submitted with the application documents, shall be retained, and protected during construction works.

Ground Conditions

2. The proposed development shall be carried out in complete accordance with the implementation and mitigation measures contained within the gas risk assessment approved under discharge of conditions application no. 15/00406/DISCON.
3. A detailed remediation scheme to bring the whole site to a condition suitable for the intended uses by removing unacceptable risks to human health, buildings and other property, and the natural environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
4. The remediation scheme approved in accordance with condition 3 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.
5. Following completion of measures identified in the remediation scheme approved in accordance with condition 3 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.

6. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.
7. 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.
8. 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.

Highways

9. 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
10. The development hereby approved shall take place in accordance with the agreed Framework Travel Plan for the site dated December 2008 and with reference D118649.
11. No development within either phase of the development shall be occupied or otherwise brought into use unless and until footways have been provided between the bus stop shelters on Chesterfield Road (north east of the vehicular access into the development) and the residential and commercial areas of the development.

Conditions relevant to the Housing Development

12. Prior to the occupation of a dwelling (or in accordance with a scheme of implementation submitted to and approved in writing by the local planning authority) a controlled pedestrian crossing of the A616 dual carriageway to the northern side of the residential site shall be provided to link the footpath from the north east of the

residential site with the footway to the northern side of the A616/A619 roundabout in accordance with details previously submitted to and approved in writing by the local planning authority.

13. Prior to the occupation of a dwelling (or in accordance with a scheme of implementation submitted to and approved in writing by the local planning authority) the footpath from the north east of the residential site shall connect with the footway to the western side of the A616/A619 roundabout in accordance with details previously submitted to and approved in writing by the local planning authority.
14. Prior to the occupation of a dwelling the new streets within the development shall have been laid out and constructed to at least base course, lit and drained to provide a link from the dwelling to the existing public highway.
15. Construction work shall not begin on the residential element of the proposal until a scheme for protecting the proposed residential development from road traffic background noise (principally from the M1 motorway) has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the approved scheme shall be completed before any part of the residential development is occupied.
16. No dwellings shall be erected within 20 metres of the application site boundary with the M1 motorway.
17. There shall be no occupation of dwellings adjacent to 124 Chesterfield Road whilst ever those premises are used for a scaffold business.

Conditions relevant to the Commercial Development

18. Prior to discharges to the public sewer from the commercial phase of the development all surface water drainage from parking areas and hardstandings shall be passed through a petrol/oil interceptor with an overall capacity compatible with the site being drained.
19. Before any related premises are occupied on the commercial phase of the development the whole of the vehicle parking and manoeuvring area and all service areas (including secure/covered cycle parking) shall be formed, laid out, constructed and surfaced in concrete, tarmacadam or block pavers. All parking spaces shall be clearly and permanently delineated and shall be retained for their intended use at all times.
20. The access road serving the commercial phase of the development shall include a turning area suitable for large HGV's.

Legal Agreement

21. Prior to the first occupation of any dwelling or commercial unit hereby permitted, a completed deed of variation that links this permission to the varied obligations attached to 09/00370/OUTMAJ, or a completed s.106 legal agreement containing the same obligations, shall be submitted to the Local Planning Authority

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

