

Bolsover District Council

Meeting of the Planning Committee on 14th May 2025

**Update report following resolution to approve application code ref.
17/00640/OUT – Land North of Clowne Including Section Of Town Centre,
Hickinwood Lane, Clowne**

Classification	This report is Public
Report By	Chris Whitmore Development Management and Land Charges Manager
Contact Details	01246 242294 chris.whitmore@bolsover.gov.uk

PURPOSE / SUMMARY OF REPORT

- To update planning committee members on events that have taken place since the resolution to approve planning application code ref. 17/00640/OUT at the meeting of the 17th September 2024 planning committee and any changes that could be viewed as being material to the decision that was taken, and;
- To enable the planning committee members to review the statement of decision on the environmental effects and the publicity arrangements for notifying the public, the developer and consultees on the final decision.

REPORT DETAILS

1. Background

- 1.1 This report follows the resolution at Planning Committee on the 17th September 2024 to grant planning permission for outline planning application with all matters reserved for mixed use development including up to 24ha of employment land (B1, B2, B8), up to 1800 residential dwellings, green infrastructure, educational and recreational uses, a retirement village, neighbourhood centre, hotel, restaurant, health and care, and leisure uses, demolition of existing Station Road Industrial Estate where applicable, demolition of dwelling/outbuilding as applicable, and construction of new link road with in-principal points of access at Land North of Clowne Including Section of Town Centre Hickinwood Lane, Clowne subject to prior entry into a s.106 legal agreement containing the following planning obligations:

Infrastructure Type	Contribution
Highways	<ul style="list-style-type: none">• The delivery of Treble Bob Roundabout Scheme

	<ul style="list-style-type: none"> • The delivery of the M1 Jct 30 Interim and Full Schemes • Active Travel & Passenger Transport Strategy • Travel Plan
Affordable Housing	<ul style="list-style-type: none"> • 10% Provision and Tenure Type
Education	<ul style="list-style-type: none"> • The transfer of serviced and accessible land to Derbyshire Country Council Education • The delivery of a new primary school by the applicant <u>or</u> a full contribution of £9,500,000 to Derbyshire Council Education for the delivery a new Primary School • Secondary School Contribution of £8,258,879
Health Care	<ul style="list-style-type: none"> • £1,800,000 contribution towards to the Integrated Care Board to improve health care facilities.
Open Space	<ul style="list-style-type: none"> • Open Space Management Provisions
Ecology	<ul style="list-style-type: none"> • Provision for delivery of Skylark mitigation
Viability	<ul style="list-style-type: none"> • Viability Reappraisal to establish the amount (if any) which is available for calculation of the Deferred Contributions.
Deferred Contributions	<ul style="list-style-type: none"> • SEND Contribution: Payment of £1,463,597 towards the provision of Special Educational Needs and Disability • Library Contribution: Payment of £126,840.00 towards local library stocks and measures to increase capacity.

and conditions as set out in the officer's report.

- 1.2 Since the resolution to approve the application, significant progress has been made on drafting the obligations within a s106 agreement in favour of both the District and County Council to secure the above contributions. This report appends the latest draft of the agreement at Appendix 1 for members information.
- 1.3 This report seeks to update members on the progress that has been made to date and residual matters relating to the s106 agreement and to update members on the materiality of the changes to the National Planning Policy Framework in December 2024 on the decision that was taken, the validity of the viability appraisal work that was undertaken in August 2024 and the duty under Regulation 30 of The Town And Country Planning (Environmental Impact

Assessment) Regulations 2017 to inform the public and the secretary of state of final decision.

2. Progress and Residual Matters relating to the S106

- 2.1 The District and County Council have both engaged solicitor's to act on their behalf in respect of the obligations in their favour / for which they are responsible. The number and complexity of obligations has necessitated several meetings between the parties to the agreement to ensure that it is suitably robust and secures the necessary contributions to make the development acceptable in planning terms and which accords with the planning committee resolution.
- 2.2 The financial contributions are clearly set out in the latest version of the draft agreement (Appendix 1) and correspond with the infrastructure asks of the various consultees. It remains that only the library and SEND contributions are deferred following a review of project viability.
- 2.3 The triggers within the agreement have been drafted to reflect the assumptions that fed into the viability review modelling work undertaken on behalf of the District Council, namely:
- Treble Bob Improvement: £5,293,907 - trigger point is prior to occupation of any phase of development.
 - M1 Jct. 30: £535,764 - trigger point is prior to occupation of any phase of development.
 - Healthcare Contribution: £1,800,000 - the trigger point proposed is the occupation of the 600th unit for the entire contribution.
 - Travel Plan: £50,000 – divided into the ten instalments triggered on year 6 of the development.
 - Primary School: £9,500,000 – divided into 3 instalments on occupation of the 375th, 600th and 800th dwelling.
 - Secondary School: £8,258,679 divided into 3 instalments on occupation of the 375th, 600th and 800th dwelling instead of 10 equal payments from the occupation of 1,030 dwellings.

or preferences of beneficiaries in terms of infrastructure delivery, their monitoring requirements or to assist project viability.

- 2.4 There remains some drafting corrections to resolve and review, including the expression of some of the financial contribution definitions as equations, based on the total amount of development to be delivered in recognition that the application seeks outline planning permission.
- 2.5 As there is a possibility that external funding could be secured to deliver the Treble Bob and M1 junction improvement works, it is important that this is appropriately captured in the eighth schedule (Basis of Viability Review). Paragraph 11 of the PPG on Viability explicitly provides that "grant and other external sources of funding should be considered" when defining gross development value for viability assessments. This could mean that the development becomes more viable and that the deferred contributions can be

paid (in full or part). To assist with this a wider definition of surplus has been agreed in the draft s106 to cover any form of grant funding.

- 2.6 The County Council have requested that the primary school and the payment of the Secondary Education Contribution should be completely excluded from the viability process following viability review – which aligns with the committee resolution. This will require some minor tweaks to some of the provisions in the education section and revisions to the “Critical Infrastructure Obligations” definitions.
- 2.7 In the latest draft the County Council have tightened up the provisions relating to the delivery of the school. These provisions need to be agreed with the developer and relevant landowners.
- 2.8 In respect of compensatory habitat for farmland birds (expressed as provision for delivery of Skylark Mitigation in the Officer’s Report to planning committee on the 17th September 2024) it is not yet known how much offsite land will be required and how this will be managed (across the different landowner’s estates). The applicant has advised that the development will come forward in phases and may include some on site provision in the earlier phases. Derbyshire Wildlife Trust (DWT) in consultation comments have expressed that such provision will need to be controlled by condition/legal agreement. Advice has been sought on the most appropriate mechanism for securing a strategy and sufficient compensatory habitat. Subject to advice from DWT it may be appropriate to supplement recommended condition 5 to include the agreement of a mitigation strategy linked to the approved phases (with an expectation that the applicant would need to enter into a separate agreement to include any additional land outside of the application site), with any habitat delivery and management provisions included in the s106.
- 2.9 It is envisaged that agreement will have been reached between the parties on a final draft towards the end of May 2025. Following agreement to the content there will be a short delay distributing the final agreement to all signatories for engrossment. Following resolution of the above matters and engrossment of the agreement, it is recommended that the Local Planning Authority proceeds to issue the decision.

3. Publication of a new National Planning Policy Framework in December 2024. (NPPF).

- 3.1 The Ministry for Housing, Communities and Local Government (MHCLG) published its revised NPPF on 12th December 2024.
- 3.2 Changes impacting development management decisions are effective from the date of publication of the NPPF.
- 3.3 In respect of housing the new NPPF puts a strong emphasis on the need to deliver housing in sustainable locations. The government has introduced mandatory minimum housing targets across the country. The formula to calculate Local Housing Need (LHN), the Standard Method, has been updated. The Standard Method now uses an LPA’s housing stock as the

basis for the calculation of an LHN, which is then subject to an affordability uplift.

- 3.4 The requirement for all councils to annually report a five-year housing land supply (5YHLS) was reinstated and buffers to the 5YHLS were reintroduced.
- 3.5 The District Council currently has a deliverable housing land supply of 6.12 years for the period 2024/25 to 2028/29 based on the housing monitoring figures on 1st April 2024 and the revised local housing need introduced on 12th December 2024 with a requirement, including a 5% buffer, of 371 dwellings per annum.
- 3.6 If the Council was unable to demonstrate a 5YHLS paragraph 11(d) of the NPPF now requires a "strong" reason, rather than a "clear" reason, for refusing planning permission for development that aligns with sustainable development principles. This "tilted balance" favours granting permission unless the framework indicates a strong reason for refusal. Furthermore, policies directing development to sustainable locations, making effective use of land, securing well-designed places, and providing affordable housing are given special regard.
- 3.7 In the case of application 17/00640/OUT, the development plan is not considered to be out of date. The site and proposed development are allocated in the Local Plan for Bolsover District (2020) and it remains that the development is considered to be acceptable when considered against the policies contained within this document and all other material considerations.
- 3.8 The changes place a stronger emphasis on delivering socially rented homes. The mandatory requirement for First Homes has been revoked, although it remains an option for delivery where locally judged appropriate. In the case of application 17/00640/OUT the tenure of the units is to be agreed as part of the submission of an affordable housing scheme (given the length of the build programme), with affordable housing units defined as per the definition in the updated NPPF.
- 3.9 The updated NPPF includes new provisions in relation to the Green Belt. As the site and development is allocated in the Development Plan and does not involve built development in the Green Belt, the new provisions are not considered to materially impact on the resolution made.
- 3.10 Other changes to NPPF policy include the replacement of the 'predict and provide' approach to transport planning to a 'vision-led' approach. The development has been planned based on anticipated vehicle flows with sustainable travel initiatives to be included in the Travel Plan and Active Travel and Sustainable Passenger Strategy. Furthermore, to support the implementation of this updated policy, the government advised that they would publish updated Department for Transport guidance alongside the policy coming into effect. This requires new guidance on how transport assessments should be prepared, consulted on, and made available. This has not yet been issued. The changes do not therefore materially change the approach towards transport planning and assessment.

- 3.11 Finally, the requirements for Sustainable Drainage Systems (SuDS) has been widened. As the application proposes major development it includes SuDS proposals and this has been conditioned accordingly.
- 3.12 In summary and for reasons set out above, the changes to the NPPF in December 2024 that concern decision making / development management are not considered to materially impact on the decision of the planning committee on the 17th September 2024 to resolve to approve planning permission, subject to the prior completion of a legal agreement to secure the planning obligations set out in the officer's report.

4. Validity of the Viability Appraisal Work

- 4.1 The assessment of project viability concluded in August 2024. The District Council's viability expert's latest report was dated 2nd August 2024. The findings / conclusions within viability reports usually remain valid for 6 months. It is therefore considered appropriate to consider whether economic conditions have changed since February 2025 in a manner that would be favourable to the District Council to justify a further review of project viability. Worsening viability has not been raised by the applicant since the planning committee resolution.
- 4.2 The Council has sought advice from its viability expert and they have advised that there is some flexibility on the 6 month 'shelf-life' referred to in their report of the 2nd August 2024.
- 4.3 In terms of market conditions, they have advised that there have been some early signs of improvement, aided by recent (November and February) cuts in the Bank of England base rate. They also advise that build cost inflation remains low so it could be argued that there has been a marginal improvement in the market. However, as the global economic picture is currently uncertain this undermines any positive gains that could favour the District Council, such that the maintenance of the status quo is appropriate.
- 4.4 Taking the above into consideration if an agreed position is reached on the s106 obligations by the end of May 2025 or soon after, ahead of circulation to the landowners for engrossment, the Council's viability expert has advised that the findings in the 2nd August 2024 assessment can be relied upon.
- 4.5 Notwithstanding the above, it will be some time before development commences on site and the s106 agreement contains provisions for viability to be reviewed at five years post commencement of development or prior to the occupation of the 800th dwelling, which will enable the District Council to establish whether the project has been profitable enough at that stage for the deferred contributions to be made.

5. Duty under Regulation 30 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 to inform the public and the secretary of state of final decision

- 5.1 Under regulation 30 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 there is a duty to inform the public and the Secretary of State of final decisions.
- 5.2 Where an Environmental Impact Assessment application is determined by a local planning authority, the authority must promptly—
- (a) inform the Secretary of State of the decision in writing;
 - (b) inform the consultation bodies of the decision in writing;
 - (c) inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
 - (d) make available for public inspection at the place where the appropriate register (or relevant part of that register) is kept a statement containing—
 - (i) details of the matters referred to in regulation 29(2) (*namely to provide the developer with the following information if the decision is to grant planning permission or subsequent consent:*
 - (aa) *the reasoned conclusion of the relevant planning authority or the Secretary of State, as the case may be, on the significant effects of the development on the environment, taking into account the results of the examination referred to in regulation 26(1)(a) and (b);*
 - (bb) *any conditions to which the decision is subject which relate to the likely significant environmental effects of the development on the environment;*
 - (cc) *a description of any features of the development and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset, likely significant adverse effects on the environment; and*
 - (dd) *any monitoring measures considered appropriate by the relevant planning authority or the Secretary of State, as the case may be)*
 - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
 - (iii) a summary of the results of the consultations undertaken, and information gathered, in respect of the application and how those results (in particular, in circumstances where regulation 58 applies, the comments received from an EEA State pursuant to consultation under that regulation) have been incorporated or otherwise addressed.

- 5.3 The Secretary of State is aware of the decision to be taken by the Local Planning Authority as a result of the call in process. After the planning committee resolution, the Secretary of State decided not to call the application in under Article 31 in a decision dated 11th February 2025 (provided at Appendix 2). She was content that the application should be determined by the local planning authority.
- 5.4 Following completion of the legal agreement it will, however, be prudent to notify them and the consultation bodies of the final decision. In order to satisfy the requirements of regulation 30 (c) an advertisement has been provided at Appendix 3. A separate statement of decision on the environmental effects to satisfy the requirements of regulation 30 (d) is provided at Appendix 4. This will be placed on the public record following completion of any agreement. It is recommended that such publicity and notification required by regulation 30 is undertaken promptly following determination of the application by the District Council in its capacity as the Local Planning Authority.

6 Reasons for Recommendation

- 6.1 Given the time that has passed since the planning committee resolution to approve application 17/00640/OUT in September 2024, the recommendation is presented to planning committee members to enable them to review the latest draft of the s106 agreement, note the progress that has been made and residual concerns to be addressed, to be satisfied that any final decision taken would remain within the scope of the original committee resolution and to consider and comment on the changes to the National Planning Policy Framework in December 2024 and the validity of the viability appraisal work in terms of whether this has a bearing on their decision.
- 6.2 The recommendation also enables planning committee members to consider / review the statement of decision on the environmental effects and the publicity arrangements for notifying the Secretary of State, public, the developer and consultation bodies on the final decision prior to being issued by the District Council.

7 Alternative Options and Reasons for Rejection

- 7.1 The District Council could choose not to provide details of the draft s106 agreement or set out the progress made to date, the changes to the National Planning Policy Framework in December 2024 and the validity of the viability appraisal work. This would deny the public and planning committee members the opportunity to comment on matters which could be deemed material to the consideration of the application and the resolution to approve planning permission on 17th September 2024.
- 7.2 It is also considered good practice to set out the statement of decision on the environmental effects and the publicity arrangements to be followed to enable scrutiny of the legislative requirements and any comments to be made that may inform the content.
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RECOMMENDATION(S)

1. That approval is given to the general provisions contained within the draft s106 agreement provided at Appendix 1, with delegated authority being given to the Assistant Director of Planning or the Development Management and Land Charges Manager to make any minor amendments to address the residual matters set out in this report and agree any management provisions in relation to farmland birds and proceed to complete the agreement.
2. That members note the changes to the National Planning Policy Framework and validity of the viability appraisal work that was undertaken and endorse that this does not materially impact on the resolution to grant planning permission at planning committee on the 17th September 2024.
3. That members approve the statement of decision at Appendix 3 on the environmental effects and the publicity arrangements to be followed as set out at Section 5 of this report.

IMPLICATIONS:

Finance and Risk: Yes ☐ No ☒

Details: There are no specific finance or risk issues arising from this report other than the potential risks and costs arising from any application for judicial review of any planning decision taken.

On behalf of the Section 151 Officer

Legal (including Data Protection): Yes ☐ No ☒

Details: There is a risk that by not following correct procedure with regard to publicity and consultation on the statement of decision on the environmental effects or considering all material planning considerations, following the original committee resolution that a claim for judicial review could be made.

On behalf of the Solicitor to the Council

Environment: Yes ☐ No ☒

Please identify (if applicable) how this proposal / report will help the Authority meet its carbon neutral target or enhance the environment.

Details: There are no environmental implications.

Staffing: Yes ☐ No ☒

Details: There are no staffing implications.

On behalf of the Head of Paid Service

DECISION INFORMATION

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: No significant impact on two or more district wards or expenditure above the thresholds. Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? <i>(Only Key Decisions are subject to Call-In)</i>	No

District Wards Significantly Affected	Clowne
Consultation: Leader / Deputy Leader <input type="checkbox"/> Executive <input type="checkbox"/> SLT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/>	No

Links to Council Ambition: Customers, Economy, Environment and Housing.
<ul style="list-style-type: none"> Economy, Environment and Housing – Meeting the Council’s ambitions for growth and change in the district.

DOCUMENT INFORMATION	
Appendix No	Title
1	Latest Draft S106 Agreement
2	SoS Call in Decision – 11 th February 2025
3	Local Advertisement to Notify the Public of the Decision
4	Statement of Decision on the Environmental Effects
Background Papers	
<i>(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 Executive you must provide copies of the background papers).</i>	