

**PARISH** South Normanton Parish

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**APPLICATION** Rear part of a mixed use retail, leisure and employment development comprising the erection of Class B8 employment units with provision for trade counter and/or Class D2 gymnasium uses with all matters except for means of access reserved for subsequent approval (on land also known as Wincobank Farm, North of Cartwright Lane)

**LOCATION** Land To The North And West Of Berristow Farm Mansfield Road South Normanton

**APPLICANT** Mr Marcus Jolly, Limes Developments Ltd., Lincoln

**APPLICATION NO.** 18/00471/OUT **FILE NO.** PP-07262689

**CASE OFFICER** Mr T Ball

**DATE RECEIVED** 13th September 2018

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## **SUMMARY**

This application is one of two submitted together for a total of 15.37ha of land on the eastern side of South Normanton and known as 'Park 38'. This report relates to the application for the northern part of the site which seeks outline planning permission for the erection of Class B8 employment units with provision for trade counter and/or Class D2 Gymnasium Uses, with all matters reserved for future approval other than the means of access.

A separate but related application for full planning permission for retail and hotel uses (application no. 18/00470/FUL) on the southern part of the site utilising the same access off the enlarged Berristow Lane/Carter Lane East/A38 roundabout, has been considered by the Planning Committee which resolved to approve the application subject to referral to the Secretary of State (who decision on referral is delayed as a result of the purdah period due to the General Election).

This proposal is contrary to the policies of the adopted Bolsover District Local Plan being contrary to policy ENV3: Development in the Countryside. However, the emerging policies of the new Local Plan, in particular policy WC1 Employment Land Allocations, has considerable weight in the planning balance as the plan is at a very advanced stage having been through public examination with no changes proposed for this policy. Policy WC1 proposes B2 and B8 employment uses on this site.

The B8 and predominant element of this outline planning application is in accordance with the new Local Plan allocation and policy for this site. The D2 Gymnasium and trade counters uses are not in accordance with that policy. It is therefore recommended that the application be approved subject to an appropriate condition that would restrict the use of any buildings on the site to B8 uses.

# OFFICER REPORT ON APPLICATION NO. 18/00471/OUT

## SITE & SURROUNDINGS

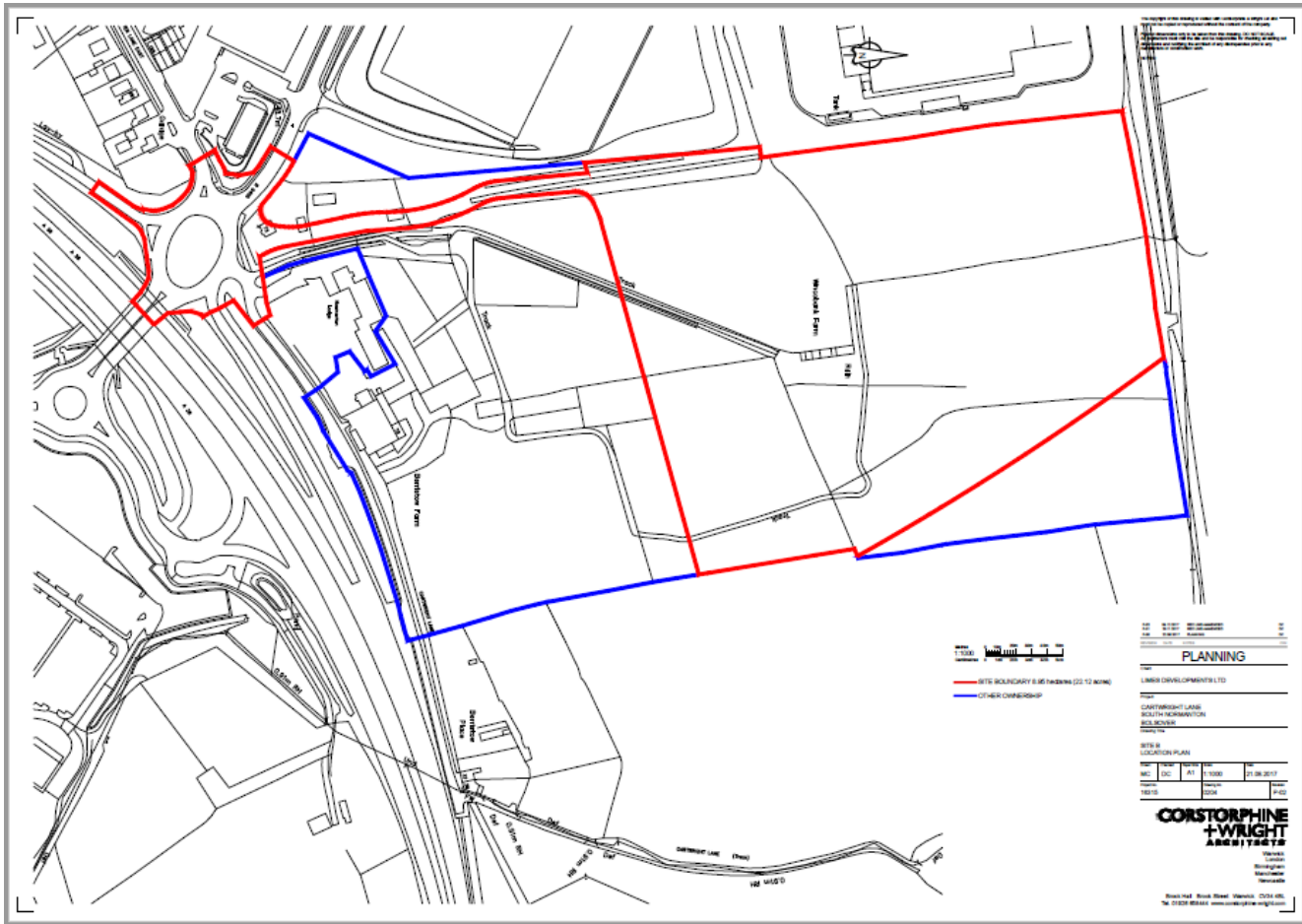
The current application is one of two parallel applications submitted together proposing a mixed-use development on 15.37ha of land on the eastern side of South Normanton. As illustrated on the masterplan below, this application seeks outline planning permission for employment uses comprising B8 (storage or distribution uses) with 'trade counter' and/or D2 (Assembly and Leisure uses, although the application form specifically states gymnasium) on the northern part of the site.

### Masterplan



The parallel application is seeking full planning permission for retail and hotel uses on the southern part of the site. The Planning Committee resolved at their October meeting to grant permission for that full application subject to referral to the Secretary of State.

## Application Site



The red-edged application site for the outline application comprises farm land, areas of which are also used for horse grazing, to the east of warehouse/industrial units along Berristow Lane.

Also included in the site and to be used for the access to the proposal, is the site of a house with related outbuildings and outside storage at the junction of Berristow Lane and Cartwright Lane (73 Mansfield Road), which is to the west of Normanton Ledge Care Village.

Field boundaries within the site generally comprise well maintained hawthorn based hedgerows with occasional mature hedgerow trees. A track with hedging and trees to its sides extends from Cartwright Lane (between Normanton Lodge and 73 Mansfield Road) and crosses part of the site diagonally (continuing from the full planning application site). There are trees and overgrown hedgerow to the western side alongside existing industrial units off Berristow Lane.

The proposed retail site rises gently away from Cartwright Lane before dropping away more steeply northwards through the outline planning application site. The outline planning application site is therefore north facing and visible from Hilcote adjoining existing warehouse units to the west, off Berristow Lane. Adjoining to the north side is an access track from Berristow Lane serving an area of regenerating tipped land used for informal recreation with Report 18/00471/OUT

agricultural land beyond.

To the east of the site is agricultural land which is identified as an Important Open Area in the adopted Local Plan and more recently is now identified as the route of HS2. The north-east corner of the applicants land is excluded from the application being an area within the HS2 safeguarding zone. Beyond further to the east, is the Fulwood Industrial Estate in Nottinghamshire.

## **PROPOSAL**

This is an outline planning permission for employment development comprising units for warehousing and distribution activities (Class B8) with ancillary office floorspace; and a small group of trade counter type outlets, or alternatively, a gym or similar use. All matters except access are reserved for future approval.

An illustrative layout is given on a masterplan for the whole of the 'Park 38' Development. This shows two warehouse units providing 19,500 sq m floorspace and a 1860 sq m unit for the additional trade counter/gymnasium uses. 231 car parking spaces shown; no specific lorry trailer parking other than at loading bays.

An ecological mitigation area, including a buffer zone along the western boundary, of 3.1ha is shown to provide mitigation for losses to biodiversity by the combined development.

### Access

To facilitate access to the site, the existing Carter Lane East/Berristow Lane/A38 junction roundabout will be enlarged to provide an additional arm to serve the proposed development using the site of 73 Mansfield Road. The access is adjacent to Normanton Lodge Care Village.

### Supporting Documents

The application is accompanied by the following submitted documents:

- Planning and Retail Statement
- Design and Access Statement
- Transport Assessment
- Framework Travel Plan
- Flood Risk Assessment and Surface Water Drainage Strategy
- Ecological Appraisal
- Phase I Environmental Desktop Study
- Statement of Community Involvement
- Archaeological Desk-Based Assessment and Geophysical Survey
- Noise Impact Assessment
- Air Quality Assessment
- Tree Survey
- Coal Mining Risk Assessment
- Masterplan

- Masterplan Biodiversity Areas

## AMENDMENTS

During the consideration of the application various amendments, revisions and additional information has been submitted which are described below.

Following concerns expressed by Derbyshire Wildlife Trust further work has been undertaken to address their concerns. A revised Masterplan has been produced showing greater areas retained for biodiversity mitigation, retaining some of the important hedgerows to the western side in a buffer zone, covering a total area of 3.73ha. Areas affected by the line of HS2 are also identified as additional biodiversity mitigation areas (1.28ha). The revised master plan also shows the retention of an existing tree within the car park area.

The Ecological Mitigation Compensation and Enhancement Plan included within the revised Ecological Appraisal sets out the principles of mitigation and retention. A biodiversity metric has been undertaken to give a base line value of 26.74 with the value of loss being 17.7. Overall the Biodiversity Impact Assessment Calculator predicts a Habitat Biodiversity Impact Score of +6.29 taking into account the proposed mitigation measures; there is a net loss to hedgerows.

The revised scheme is expected to generate Full Time Equivalent jobs of 315 plus 24 for the trade/gym total 339.

### Summary of Relevant Submissions

Additional ecological information (extra climbed tree survey 16.08.19

Revised Proposed Masterplan (Rev P-08). 08.08.19

Revised Masterplan showing biodiversity areas. 05.08.19

Revised Ecological Appraisal taking account of comments made by DWT. 05.08.19

Air Quality Assessment Update (Response to request for additional analysis to address the Ministerial Direction). 13.12.18

Response to Mineral Planning Authority comments. 05.12.18

## HISTORY

17/00232/SCREEN	Environmental Assessment not required	Mixed use retail, leisure and employment development
17/00498/FUL	Withdrawn	Frontage part of a mixed use retail, leisure and employment development comprising the demolition of existing dwellings and farm buildings and the erection of Class A1 Retail Class A3/A4 food and drink units, and Class C1 hotel with associated car parking, landscaping and service areas (on land also known as Wincobank Farm,

17/00499/OUT	Withdrawn	North of Cartwright Lane) Rear part of a mixed use retail, leisure and employment development comprising the erection of Class B8 employment units with provision for trade counter and/or Class D2 gymnasium uses with all matters except for means of access reserved for subsequent approval (on land also known as Wincobank Farm, North of Cartwright Lane)
18/00470/FUL	Referred to SOS following resolution to approve.	Frontage part of a mixed use retail, leisure and employment development comprising the demolition of existing dwellings and farm buildings and the erection of Class A1 Retail Class A3/A4 food and drink units, and Class C1 hotel with associated car parking, landscaping and service areas (on land also known as Wincobank Farm, North of Cartwright Lane)

## CONSULTATIONS

### Environmental Protection Officer (Environmental Health):

- *Contaminated Land:* Agree with recommendations of phase1 desk based study that the site has had a range of previous industrial uses and that a further intrusive investigation is required to ensure suitability of the site for the intended use including a gas risk assessment. Therefore recommends condition requiring such an assessment and submission/implementation of any necessary remediation scheme.
- *Noise:* Appreciate that the noise levels within the area are already fairly elevated due to the road network and existing industrial park and retail activities. However, do not wish to increase overall noise levels with this development. Concerns on a number of aspects in particular impacts on the adjacent nursing home; noise limits may need to be imposed on the industrial units. Proposed acoustic fence provides limited protection from HGV's approaching the site. No assessment of cumulative impact of noise emissions from plant and equipment. Would be seeking to achieve noise levels lower than current background levels to minimise overall noise levels being increased. Agree that a construction environmental management plan be submitted.

Conclusion that more can be done to improve the acoustic impact of the development. It is likely that suitable solutions can be found although this may place additional restrictions on the flexibility of the development. Therefore recommend conditions requiring further acoustic assessment with updated provisions to control sound, submission of site specific construction environmental management plan (CEMP).

- *Air Quality:* Significant concerns regarding the air quality assessment in view of the Ministerial Direction that was served on Bolsover District Council under the

Environment Act 1995 as part of the Ambient Air Directive with respect to the A38 directly leading up to and away from the proposed development. The submitted updated air quality assessment identified that there would be negligible impact as a result of the development although the modelling results differed in conclusion from our own modelled data carried out as part of the work required by Defra. Independent peer review concluded that the differences in model output related to technical differences in terms of the heights of the roads and the heights of the receptors. This was unlikely to significantly affect the conclusions of the assessment although the peer review identified that the report is robust and in line with current guidance, but it may not represent a clear worst case scenario; we remain cautious of the impact within this area as this is a significant development. It is calculated that by the time that this development is completed, the area should be in compliance with air quality standards for NOx as a result of several factors, including improvements to the designs of vehicles. However, the potential impact of HS2 is not included within either of these reviews. In view of the concerns regarding air quality within this area, we would like the applicant to consider proactive measures to provide further reassurance that the development will not jeopardise the work that is currently being undertaken to improve levels within this area. This could include measures such as alternative low emission energy sources for the site, requirements for low emission vehicle fleets for the commercial units, charging points for electric vehicles throughout the site, improved public transport arrangements etc. Therefore recommend conditions to cover these aspects.

04/08/19

#### Derbyshire Wildlife Trust (DWT):

Comments on Revised Ecological Appraisal with Biodiversity Metric and Revised Masterplan showing biodiversity areas, which have been prepared to address the concerns previously raised by DWT:

Satisfied that the ecological appraisal provides a thorough assessment that has addressed the issues identified in our previous responses.

Welcome the details of the change in biodiversity value as set out in the ecological report. Mitigation proposals for Mitigation Area are broadly acceptable, but we have concerns that transforming the species poor grassland to species rich grassland solely through sympathetic management is unlikely to be successful. Recommend that suitable enhancement measures are explicitly set out within the body of the EMMP.

Proposals in relation to protected species are considered to be acceptable.

It remains unclear how the long term management of the mitigation areas will be funded and secured and how long a period of management there will be. In order to ensure that the biodiversity gains outlined in the ecological report are realised we advise that the LPA should be satisfied that it can secure a period of management of ideally 25 years and/or in perpetuity for the land management.

Recommend conditions:



- Detailed bat mitigation strategy;
- The mitigation and habitat enhancement measures for great crested newt outlined in the ecological report should be implemented in full;
- No removal of hedgerows, trees, shrubs or brambles shall take place between 1st March and 31st August inclusive;
- No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority.
- The Ecological Mitigation and Management Plan (EMMP) described in the Ecological Report shall be submitted to, and approved in writing by, the LPA prior to the commencement of the development. 28.08.19

DCC County Archaeologist:

The applicant has provided the results of a revised archaeological desk-based assessment and geophysical survey which address the requirement for heritage information at NPPF paras 189/190.

The desk-based assessment, walkover and geophysical survey have identified several strands of archaeological interest within the site:

- Remains of two colliery tramways survive;
- The site of a former colliery, this was a small operation originating in the mid 19th century and closed in 1889;
- an area of activity associated with the former colliery, plus medieval ridge and furrow across the site; underlying this is an early field system on a different alignment, possibly of prehistoric or Romano-British date.;
- The site of Berristow Farm may be of early date, with buildings shown in this approximate location on a map of 1699.

The archaeological interest outlined above is of local/regional significance and is most appropriately addressed through a conditioned scheme of work in line with NPPF para 199 to comprise:

- 1) pre-demolition recording of the historic Berristow Farm complex;
- 2) archaeological trial trenching to assess below-ground remains across the site as identified above;
- 3) mitigation excavation/recording of significant archaeological remains within the footprint of the development.

Parts 1) and 2) should take place at an early stage to enable delivery of part 3) before commencement of development work on site.

Recommends detail condition to cover these aspects. 22.10.18



### Mineral Planning Authority (DCC):

Site is underlain by coal reserves. Coal Mining Risk Assessment submitted with the application states that they are of good quality and potentially of economic value, concluding that further investigation is necessary before development takes place.

Saved Policy MP17 of the Derby and Derbyshire Minerals Local Plan should, therefore, be taken into account in the assessment of this proposal. This states that the mineral planning authority will resist proposals for development which would sterilise economically workable mineral deposits, except where it is shown that there is an overriding need for the development and where prior extraction of the mineral cannot reasonably be undertaken or is unlikely to be practicable or environmentally acceptable.

More recent policy in the NPPF at paragraph 204 continues to encourage the prior extraction of minerals where practical and environmentally feasible, if it is considered necessary for non-mineral development to take place on the site. Policies in the emerging Derbyshire and Derby Minerals Local Plan Review will seek to safeguard the full extent of the surface coal resource in Derbyshire and this will ensure that the presence of workable minerals are taken into account in the consideration of proposals for non-mineral development.

The developer to provide a report which determines the practicality and viability of extracting the coal resource as part of the development. 08.11.18

### Coal Authority:

The site has been subject to both recorded and historic unrecorded underground coal mining at shallow depth. There are two recorded mine entries (shafts) and their associated zones of influence located within the planning boundary.

In terms of the risks posed by the recorded mine entries, the submitted report confirms that both of the treated shafts within the planning boundary will require investigation to assess their condition to determine whether the treatment applied could be considered to be respective of the development proposed.

The Coal Authority concurs with the recommendations of the Report on a Coal Mining Risk Assessment (December 2017, prepared by Rogers Geotechnical Services Ltd); that coal mining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site. Accordingly, no objection to the development subject to a pre-commencement condition requiring such works. 09.11.18

## HS2:

No objections. Given interfaces between respective works programmes in that location it will come as no surprise that discussions are ongoing between HS2 and the applicant regarding the construction, logistics and proposed environmental mitigation. In that regard HS2 Ltd stresses the importance of such dialogue and collaboration continuing to ensure that the proposed scheme and HS2 can operate without conflict and work to mitigate any potential conflicts that may arise. 02.01.19

## Highways England:

In April 2018 Highways England reviewed the original applications (17/00498/FUL and 17/00499/OUT), recommending that these not be approved until further information to determine the impacts of the proposed development on M1 J28 had been provided. We provided the applicant with our VISSIM model of the junction (validated to a 2017 base year) to support their impact assessment work, for which the modelling results were subsequently submitted for review.

In the AM peak period we expect an increase of approximately 40 vehicle trips at M1 J28. We have no concerns regarding junction operation in this peak as a result of the development, and a review of the VISSIM model confirms no change to queue lengths.

We expect a net increase of approximately 200 vehicle trips through the junction in the PM peak as a result of the development, which we note could result in the queue length on the M1 northbound off-slip increasing by 120m. This takes the maximum queue length on this approach to approximately 300m, although this can be accommodated within the stacking capacity of the existing off-slip link.

Although the operation of the M1 southbound off-slip is currently a significant safety concern due to queues reaching back to the M1 mainline, the addition of development traffic does not affect queues on this approach.

Considering these impacts, we do not consider there to be mitigation that can be provided which is fair and proportionate to the scale of impact on the operation of the junction. We therefore issued a no objections response in May 2018. Daily fluctuations for example, in traffic levels could mirror the impact of the additional development traffic.

As applications 17/00498/FUL and 17/00499/OUT were withdrawn, proposals were resubmitted in October 2018 under respective application references 18/00470/FUL and 18/00471/OUT. With the only change being that the overall quantum of development had been reduced by 5,574sqm we would expect a reduction in trips compared to previous proposals and therefore our previous no objections response remains unchanged. 11.01.19

## Local Highway Authority (DCC):

Detail comments on the submitted Travel Plan. 15.11.19

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Access proposals acceptable in principle. Some concerns about the level of parking provision. However a parking accumulation analysis indicates that overall within the site capacity will be available. As any shortfall in parking would be likely to cause congestion and on-street parking within the site rather than on the public highway an objection cannot be sustained.

No objections subject to conditions:

- Construction management plan;
- Detailed scheme for offsite highway works;
- Detailed phasing programme for the off-site highway works;
- Access gradient;
- Design of temporary access off Cartwright Lane;
- Access, parking, servicing etc areas before first occupation;
- Travel Plan to be revised. 14.11.18

#### Local Lead Flood Authority (DCC):

Majority of site drains to the north-west, to Normanton Brook. Part of the site drains to the south east.

To avoid any catchment transfer into the north west catchment, the applicant is proposing to drain the whole of the proposed sites impermeable area to the greenfield run-off rates for the north west catchment of the site alone, which the Lead Local Flood Authority (LLFA) strongly welcomes.

The applicant as per the submitted Flood Risk Assessment has considered and shall incorporate a range of SuDS features within the proposed development, this is in line with the National Planning Policy Framework.

The LLFA will require the production and submission of details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development.

Therefore recommends conditions requiring detailed design and management plan for the surface water drainage of the site; assessment to demonstrate that the proposed destination accords with the drainage hierarchy; and details of surface water management during construction. Also provides detailed advisory notes. 09.11.18

#### Severn Trent Water:

Requests condition requiring drainage plans for the disposal of surface water and foul sewage prior to commencement. 14.12.18

#### Senior Engineer (BDC):

Subject to acceptance of SuDS by the LLFA must ensure that an Operation and Maintenance Plan is in place. Any temporary drainage during construction must give due consideration to the prevention of surface water run-off onto the highway and neighbouring properties.

12.11.18

#### Economic Development (BDC):

If Planning is minded to approve the planning applications that the local jobs planning condition should be applied and also for support to be given for the Regeneration Framework's plans for South Normanton town centre.

The number of jobs proposed under the two alternatives are noted. The jobs figures are employment density derived figures using information from the publically available `HCA Employment Density Guide 3<sup>rd</sup> Edition`. The applicant has reflected construction jobs in the response. It is noted the GVA data is based on the UK National Accounts Blue Book. No information is provided about the skills levels of jobs provided under either scheme.

The Council has strategies and plans to promote economic growth and skills across Bolsover District. The strategies support business growth and recognise the role of the market towns. From an Economic Development perspective, Retail and Business/Professional/Financial Services and Manufacturing/Advanced Manufacturing and Transport/Storage/Logistics are identified as priority sectors in the District (amongst other sectors). It is noted the two alternative schemes make different contributions to meeting these priorities. It is recognised that different development types will result in different jobs and skills levels depending on the end occupier for a scheme. No skills information has been made available about the schemes. We have no evidence currently available to prioritise one sector over another. Economic Development would request the inclusion of a planning condition to secure local opportunities for skills, training and employment in the District. 16.09.19

#### Planning Policy (BDC):

Detailed assessment against policies of the adopted development plan, the emerging Local plan and the Framework.

Concludes the proposal is contrary to policy ENV 3 - Development in the Countryside of the adopted Bolsover District Local Plan as it is within the countryside and is none of the types of development permitted by the policy.

In terms of material considerations that could indicate that the proposal should be approved, the emerging Local Plan allocates the two application sites as one allocation for 14 hectares of B2 / B8 uses only under policy WC1: Employment Land Allocations. This employment allocation has been tested at the Local Plan Examination and the Inspector has judged that it does not need to be modified to make the Local Plan sound or legally compliant. As such, the outline proposals for employment use on the northernmost part of the allocation are largely in conformity with the emerging Local Plan and this is considered to represent a material

### South Normanton Parish Council:

The Council is very concerned with the following issues should the development go ahead: -

1. The increased level of traffic and extra congestion around the M1 Junction 28, and the roundabouts off the A38 to McArthur Glen.
2. The increased levels of air pollution due to extra traffic and extra congestion around the M1 Junction 28, and the roundabouts off the A38 to McArthur Glen.
3. The increased noise levels due to the increased level of traffic and extra congestion around the M1 Junction 28, and the roundabouts off the A38 to McArthur Glen.
4. The increased level of commercial vehicles that will travel through the centre of South Normanton to access the proposed development.

The increased danger to pedestrians on the roads around the proposed development from additional traffic and additional air pollution. 27.09.19

### Mansfield District Council:

Detailed 28 page letter submitted explaining their strong objection which relates primarily to the parallel retail proposal, however mention is made of the proposed D2 uses:

“The applicant appears to contradict themselves with regard to the proposed D2 use acknowledging that this would be a gym or health and fitness facility that *“would serve both employees as well as surrounding residents...”* (our MDC emphasis). The applicant states *“None of the centres assessed have such a facility as their anchor, or one of the main reasons to visit the centre.”* Again many of the smaller centres do have gyms that ensure commercial buildings aren’t otherwise vacant or under-occupied and they do generate some footfall for other businesses in the centre. Being located in designated shopping centres also means they are accessible by a choice of means of transport and as well as close to a large walk-in population.”

### Amber Valley Borough Council:

Given the nature of the proposals, Amber Valley Borough Council has no comments to make in connection with the above application. Officers are of the opinion that the proposed development is not of a sufficient scale to be likely to have any significant adverse impact on Amber Valley. 02.01.19

### Ashfield District Council:

Object to the trade counter and D2 gymnasium uses. These type of uses can be found within town centres, with gyms in particular ensuring commercial buildings remain occupied. It is considered that provision of these uses would have additional impacts on the town centres of Ashfield District and a further negative impact on the strategic road network with the A38. Suggest as per national government advice and guidance that applications for gym and retail

uses are directed towards town centres. These are town centre uses which should have been included in the sequential test for the parallel retail proposal. 19.11.18

## **PUBLICITY**

Advertised in press as a departure to the Local Plan. 3 site notices posted. 15 Neighbours notified.

### Representation:

From Normanton Lodge Care Village situated adjacent to the application site. Concern about noise from the supply of goods to the development, from vehicles entering the roundabout, from the development adjacent to where 80 residents will live. Restricted hours for deliveries should help contain this problem. Wishes to shape the proposal so that it works for all that have to live as neighbours.

### Objections:

Pro-forma letters of objection received principally relating to the parallel retail planning application but including opposition to the proposed leisure use (i.e. the proposed D2 Gymnasium) within this outline application which would threaten existing businesses in Sutton, Mansfield and Alfreton town centres.

78 copies of the letter representing 78 businesses in Sutton-in Ashfield have been received.

103 copies of the letter representing approximately 89 businesses in Mansfield have been received.

In addition a further 13 copies of the letter have been received from other interested parties (no business details or remote to the area)

Nine letters of objection relating to the additional traffic from the development which will contribute to existing highway problems to the detriment of the residents of South Normanton, and add to noise and pollution.

Objections have also been received from Agents acting for owners of retail estates as follows:

### Williams Gallagher on behalf of Eisinger Limited, owners of the Idlewells Shopping Centre, Sutton-in-Ashfield.

Main objection is to the retail development in the parallel application, however considers that the D2 gymnasium use should have been included in the sequential test and that such a use could be developed separately from the retail park development within existing town centres. As a town centre use it should also have been included within the retail impact assessment.

### NTR Planning on behalf of the owner of the East Midlands Designer Outlet (EMDO) Aviva Life and Pensions UK Limited and McArthur Glen who are the property managers.

Main objection in relation to this application is the impact of service vehicles without impinging on each other and car parking facilities.

Aldergate Property Group (owner of site included in sequential test):

Primary objection to the retail proposal but also references objection to the leisure element of the outline proposal which is a town centre use.

## **POLICY**

Bolsover District Local Plan (“the adopted Local Plan”)

Planning law requires that applications for planning permission be determined in accordance with saved policies in the adopted Local Plan, unless material considerations indicate otherwise.

In this case, the proposals map for the BDLP shows the majority of the site as a site for large firms along with the area to the west, now occupied by various large warehouse units along Berristow Lane and subject of policy EMP9. However, EMP9 is not a saved policy of the adopted Local Plan because the site was originally allocated as a reserve site in case the Castlewood Business Park across the A38 was delayed or not developed. Large firms developed plots along Berristow Lane pending the Castlewood development. Subsequently the Castlewood development has now progressed and the allocation on the remaining land, now the subject of the current applications, was not saved (saving direction September 2007). Therefore, the allocation has been deleted and the policy is no longer relevant.

As a consequence, the site is now considered to lie outside the settlement framework for the purposes of the adopted Local Plan and in the countryside where the main applicable saved policy is ENV3: Development in the Countryside.

Other relevant and applicable saved policies include:

GEN 1: Minimum Requirements for Development

GEN 2: Impact of Development on the Environment

ENV 5: Nature Conservation Interests throughout the District

ENV 8: Development affecting Trees and Hedgerows

National Planning Policy Framework (‘The Framework’)

The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and contains a presumption in favour of sustainable development and says decisions on planning applications should secure development which will improve the economic, social and environmental conditions of the area.

Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework have some relevance to comments made by objectors to this application.



Paragraph 86 says local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

Paragraph 87 goes on to say when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

Paragraph 89 says when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> of gross floorspace). This should include assessment of:

- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

Paragraph 90 goes on to say where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused.

Publication Version of the Local Plan for Bolsover District (May 2018) (“the emerging Local Plan”):

Paragraph 48 of the National Planning Policy Framework says local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)

The Publication Version of the Local Plan for Bolsover District (May 2018) is currently undergoing examination. Following the hearings the Inspector has provided her judgement on the necessary Main Modifications required to make the new Local Plan legally compliant and sound. Consultation has taken place on these modifications and the result sent to the

Inspector. The final Inspectors report is expected soon. As such the plan is therefore at a very advanced stage.

Within the Submitted Local Plan for Bolsover District, the application site is allocated under policy WC1: Employment Land Allocations on which the Council will support the development of the site for 14 hectares of B2 / B8 uses only. This restriction to B2 / B8 uses only formed a matter of discussion at the Examination and the applicant, who was objecting to the restriction to B2 / B8 uses only, and other objectors, who were objecting to any inclusion of retail uses on the Wincobank Farm site, were in attendance at the relevant Hearing session. The Inspector considered the arguments put forward by the Council and the objectors and the Inspector has essentially ruled within her judgement on the necessary Main Modifications that the restriction to B2 / B8 uses only does not need to be modified to make the Local Plan sound or legally compliant.

Accordingly, significant weight should be afforded to the most relevant applicable policies, which are:

WC1: Employment Land Allocations;

WC5: Retail, Town Centre and Local Centre Development.

#### Other

Adjoining the application site to the east is the safeguarded corridor for HS2.

## **ASSESSMENT**

This application is one of two submitted together for a total of 15.37ha of land on the eastern side of South Normanton. This report relates to the application for the northern part of the site which seeks outline planning permission for the erection of Class B8 employment units with provision for trade counter and/or Class D2 Gymnasium Uses, with all matters reserved for future approval other than the means of access.

Class B8 is use for storage or as a distribution centre.

Class D2 (Assembly and Leisure) includes use as a cinema, concert hall, bingo hall, dance hall, swimming bath, skating rink, gymnasium, or use for other indoor or outdoor sports or recreations not involving motorised vehicles or firearms.

The applicant has specifically specified that the D2 use would only relate to gymnasium use (which would need to be subject to a specific restricting condition if such use is to be approved). Such uses are generally considered to be 'main town centre uses'. Trade counter use is *sui generis*, i.e. is not a specific use covered by the defined use classes in the Town & Country planning (Use Classes) Order 1987 (as amended).

A separate but related application for full planning permission for retail and hotel uses (application no. 18/00470/FUL) on the southern part of the site utilising the same access off the enlarged Berristow Lane/Carter Lane East/A38 roundabout, has been considered by the Planning Committee which resolved to approve the application subject to referral to the Secretary of State (who decision on referral is delayed as a result of the purdah period due to the General Election).

### **Principle of Development**

#### ***Compliance with saved policies of the adopted Local Plan***

The principal policy in the adopted Local Plan relevant to the general location of the proposal is policy ENV 3 - Development in the Countryside.

Policy ENV3 states that outside settlement frameworks planning permission will only be granted for development which:

- 1) Is necessary in such a location; or
- 2) Is required for the exploitation of sources of renewable energy; or
- 3) Would result in a significant improvement to the rural environment; or
- 4) Would benefit the local community through the reclamation or re-use of land.

It is considered that the proposed development fails to meet any of these four criteria and is therefore contrary to the adopted Local Plan. The proposal includes main town centre uses (as defined in The Framework) which are not normally 'necessary' in a countryside location; the proposal does not involve the exploitation of sources of renewable energy; would not improve the rural environment as it would introduce buildings of an urban character; and, does not involve the reclamation or re-use of land which is currently in productive agricultural

(and related discipline of the keeping of horses) use.

Therefore, it is considered the proposals are contrary to the saved policies of the adopted Local Plan, in particular policy ENV3: Development in the Countryside. However, the site is allocated for employment land in emerging Local Plan policies, which diminishes the extent to which the Council can object to the application based on the identified conflict with saved policy ENV3.

### ***Compliance with emerging Policies in the new Local Plan***

The emerging Local Plan allocates the site (along with the retail/hotel application area) solely for B2 (General Industrial) and B8 (Storage or distribution) uses (Policy WC1: Employment Land Allocations).

This employment allocation has been tested at the Local Plan Examination and the Inspector has judged that it does not need to be modified to make the emerging Local Plan sound or legally compliant.

Accordingly the emerging policies of the new Local Plan, which accord with the policies of the Framework, can be given significant weight in determining the application. The application is generally in accordance with these policies apart from the trade counter and gymnasium uses.

### **Gymnasium and Trade Counter uses**

These are considered to be main town centre uses (as defined the Framework), and should therefore be located within such areas.

Many of the objections received to the application are related to these town centre uses reference being specifically made to the leisure uses. The leisure uses could be located in their own right in the surrounding town centres and such uses should have been included within the retail impact assessment and sequential test undertaken in conjunction with the parallel retail application.

However the applicant has stated:

*“For the D2 use, this is included in the outline element of the scheme. It is expected that this would be a gym or health and fitness facility, and this would serve both employees as well as surrounding residents. Whilst the indicative masterplan expects that this could extend to some 1,858 sq m gross, it is possible that it would be smaller than this depending on the format. However, the critical point is that this is a supporting use to the main employment and retail function. None of the centres assessed have such a facility as their anchor, or one of the main reasons to visit the centre. Therefore, we are confident that its inclusion would not represent a significant adverse impact on existing centres. (para 7.36 of the Planning and Retail Statement)”.*

Also:

*“We have also considered the impact from the proposed A3 and D2 leisure uses. Due*

*to the modest scale of these uses in the context of the overall scheme and the function of the uses to serve the visitors to the retail development, as well as hotel guests and the workers at the proposed employment floorspace, their inclusion is entirely sensible and would not cause any significant adverse impact on existing centres". (Para 7.97 of the PRS)*

However while the D2 gymnasium use may provide an added facility for the retail and hotel development, and indeed the employment uses proposed in this application, it remains contrary to the saved policies of the adopted local plan and those of the emerging Local Plan.

Also, with respect to the issues raised by the objectors, the point is that location of such a leisure use in the existing town centres would help improve their vitality and viability by adding to footfall and trade which could to a certain extent help counter the adverse impacts from the retail development on Park 38, if that development is approved and proceeds. Such a use in this location, as proposed by this outline application, could further discourage investment of similar facilities in these nearby centres (Sutton-in-Ashfield, Mansfield and Alfreton).

The D2 use would therefore be contrary to the saved policies of the adopted Local Plan and to the emerging policies of the new Local Plan which allocates the site solely for B2 and B8 uses. In addition the provision of such an 'ancillary' use may be more appropriately considered when the associated development has taken place

Trade counter uses which are generally related to smaller scale buildings and consist of storage uses but with a predominant retail use selling to calling members of the public and tradesman, similarly would be contrary to the saved policies of the adopted local plan and emerging local plan being more akin to retail uses rather than B2/B8 employment uses. A proposal for trade counter uses implies that the retail element is the significant aspect of the use rather than storage in a large building with an ancillary small scale retail element for visitors to the premises.

It is therefore reasonable and necessary to impose a condition on the land and any buildings that come forward on this site to shall be solely for B8 storage and/or distribution uses as defined by the Town & Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose at any time during the lifetime of the development.

This type of condition would ensure the proposals are in accordance with the site allocation in the emerging Local Plan and address objectors concerns about addition out of town centre uses on this part of the site to the rear of the Park 38 proposals. For the following reasons, there are no other considerations that weigh strongly for or against approval of this application:

## **Other Relevant Considerations**

### **Traffic Impacts**

Many objectors and several consultees raise traffic issues, particularly the extra traffic which will be drawn to the area and the consequent additional congestion, noise and air pollution. A

development of this nature will inevitably increase traffic in the area, including on the M1 and the operation of junction 28. There are local concerns about extra 'rat running' traffic through the village and issues of 'grid-lock' on the current Berristow Lane/A38 roundabouts at peak EMDO shopping times causing problems and delays for residents which will be made worse as a result of the traffic impacts from the development.

Highways England (the Highways Agency) do not consider there to be mitigation that can be provided which is fair and proportionate to the scale of impact on the operation of the motorway junction. Daily fluctuations, for example, in traffic levels could mirror the impact of the additional development traffic. They therefore offered no objections.

Derbyshire County Council (Local Highway Authority) consider that the access proposals into the site are acceptable in principle. They have some concerns about the level of parking provision, however as any shortfall in parking would be likely to cause congestion and on-street parking within the site rather than on the public highway do not consider that an objection could be sustained. They raise no concerns in relation to the operation of the local highway network. Various conditions are recommended (see consultation response above).

### Air Quality

Many objectors and several consultees similarly, as a result of the additional traffic, raise issues of pollution and impact on air quality, particularly given the Ministerial direction in relation to air quality along the A38. The Council's Environmental Protection Officer has given detailed consideration to this issue (see Consultation response above) and does not object to the development while retaining concerns. In view of their concerns they recommend a condition requiring a scheme of Air Quality Improvement Measures. Proactive measures from the applicant would provide reassurance that the development would not jeopardise the work that is currently being undertaken to improve air quality within this area

### Ecology

Derbyshire Wildlife trust have indicated that a thorough assessment has taken place and that the mitigation proposals are broadly acceptable. The assessment and comments are based on the development of both phases of the site and a requirement for conditions relating to matters of detail and future maintenance (see DWT consultation response above).

The current application involves the loss of areas of important hedgerows including trees. The main mitigation proposals (for the whole development) take place on land within the outline planning application site apart from an area (0.4ha) of enhanced grassland with new hedgerow to the east of the retail application site.

Appropriate conditions should ensure the mitigation proposals shown take place. .

### Mineral Safeguarding

The Mineral Planning Authority (DCC) raised objection to the proposal as the site is underlain by coal reserves. A report which determines the practicality and viability of extracting the coal resource as part of the development is requested.

In response the applicant states:

- a) It is considered that the proposed development, will create significant employment, thus benefiting the local area. It is argued that this creates an overriding need for the development.
- b) It is considered that prior extraction of the mineral cannot reasonably be undertaken for the following reasons:
  - The site was formerly a part of a colliery, with two shafts being present within the development area. Therefore, it is likely the coal seams have been worked beneath the site. Re-opening old workings would not be feasible due to the health and safety risk to operatives. Moreover, as the area has been previously worked, there would be limited reserves and there would be a risk of collapse if further extraction by mining was permitted.
  - Open cast mining of the shallower seam could not be reasonably undertaken due to the potential dangers of excavating down to potentially worked seams. In addition, there would be adverse environmental impacts on the surrounding commercial properties.
  - The extraction of coal would result in a significant increase in traffic movements, hence pollution, on the A38 and at its junction with the M1.
- c) Insistence on extracting the limited reserves of coal beneath the site would prejudice the timing, hence viability of the proposed development.

The Minerals Planning Authority has provide no further comment. It is likely that the intrusive site investigation required by the Coal Authority will establish the situation regarding the coal mining legacy and presence of workable minerals. Such an investigation can be required by condition.

#### Other considerations:

Issues relating to the potential for contaminated land, protection/recording of archaeological interest, drainage of the site, noise (particularly in relation to impacts on Normanton Lodge Care Home) can all be controlled by appropriate conditions so that their impacts are addressed.

#### **Conclusion**

The proposal is contrary to the policies of the adopted Bolsover District Local Plan being contrary to policy ENV3: Development in the Countryside. However, the emerging policies of the new Local Plan, in particular policy WC1 Employment Land Allocations, has considerable weight in the planning balance as the plan is at a very advanced stage having been through public examination with no changes proposed for this policy.

The B8 and predominant element of this outline planning application is in accordance with the new Local Plan allocation and policy for this site. The D2 Gymnasium and trade counters uses are not in accordance with that policy. It is recommended that the B8 Use only be approved by the use of an appropriate condition.





## RECOMMENDATION

The current application be **APPROVED** subject to the following conditions:

### Reserved Matters

1. Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved. (*Reason: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.*)
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission. (*Reason: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.*)
3. The development hereby permitted shall commence within 3 years from the date of this permission or not later than 2 years from the date of approval of the last of the reserved matters, whichever is the later. (*Reason: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.*)

### Approved Plans and Specifications

4. The development hereby permitted shall be carried out in accordance with the following approved plans and drawings:

Corstorphine + Wright Plans and drawings:

0201 P-00	Existing Site Plan
0202 P-00	Existing Topographical Section
0204 P-02	Site B Location Plan – Outline Application
0301 P-08	Proposed Masterplan
0313 P-01	Masterplan Biodiversity Areas

Figure 8 Ecological Mitigation Compensation and Enhancement Plan as contained within the Ecological Appraisal (July 2019) by BSG ecology.

*(Reason: For clarity and to ensure the development is developed in accordance with submitted plans and drawings to accord with the policies of the Bolsover District Local Plan in particular policies GEN1 (Minimum Requirements for Development), GEN2 (Impact of Development on the Environment) and ENV5 (Nature Conservation Interests throughout the District)*

5. Notwithstanding the submitted plans drawings and supporting information and other than the associated access and ecological mitigation works, the land and any buildings hereby permitted shall be used solely for B8 storage or distribution uses as defined by the Town & Country Planning (Use Classes) Order 1987 (as amended) and for no

other purpose at any time during the lifetime of the development hereby permitted.

*(Reason: To accord with the policies of the emerging Local Plan for Bolsover District in particular policy WC1: Employment Land Allocations, D2 gymnasium and trade counters are contrary to this policy and the saved policies of the adopted Bolsover District Local Plan being main town centres uses as defined by the National Planning Policy Framework.)*

Archaeology:

6. a) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the Local Planning Authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
- i. The programme and methodology of site investigation and recording
  - ii. The programme for post investigation assessment
  - iii. Provision to be made for analysis of the site investigation and recording
  - iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - v. Provision to be made for archive deposition of the analysis and records of the site investigation
  - vi. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation
- b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (a).
- c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.
- (In the interests of affording protection for any archaeological interest on the site and in compliance with policies GEN2 (Impact of Development on the Environment) and CON13 (Archaeological Sites and Ancient Monuments) of the Bolsover District Local Plan).*

Coal mining legacy and reserves

7. Prior to the commencement of development an appropriate scheme of intrusive site investigations for shallow coal mine workings and any economically viable workable coal reserves shall be undertaken and a report of the findings together with a scheme for any necessary remedial works shall be submitted to and approved in writing by the local planning authority. The remedial works shall be implemented as so approved.

*(To ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigation measures to be*

*identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with paragraphs 178 and 179 of the National Planning Policy Framework and policy GEN1 (Minimum Requirements for Development) of the Bolsover District Local Plan)*

## Drainage

8. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
  - a. the submitted Flood Risk Assessment Including Surface Water Strategy, Cartwright Lane, South Normanton, Bolsover, for Limes Development Ltd (June 2017 Rev D, Report Ref: 2327-FRA01) and any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team, and
  - b. DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015),

have been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design, prior to the use of any building commencing.

*(To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Local Planning Authority, in compliance with policies GEN2 (Impact of Development on the Environment) and GEN5 (Land Drainage) of the Bolsover District Local Plan).*

9. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 of the national planning practice guidance.

*(To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options, in compliance with policies GEN2 (Impact of Development on the Environment) and GEN5 (Land Drainage) of the Bolsover District Local Plan).*

10. Prior to commencement of the development, details indicating how additional surface water run-off from the site will be avoided during the construction phase shall be submitted to and approved by the Local Planning Authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the Local Planning Authority, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.

*(To ensure surface water is managed appropriately during the construction phase of*

*the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development, and in compliance with policies GEN1 (Minimum Requirements for Development), GEN2 (Impact of Development on the Environment) and GEN5 (Land Drainage) of the Bolsover District Local Plan).*

11. The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

*(To ensure that the development is provided with a satisfactory means of drainage as well as reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution, and in compliance with policies GEN2 (Impact of Development on the Environment) and GEN6 (Sewerage and Sewage Disposal) of the Bolsover District Local Plan).*

### Employment Scheme

12. Before the development hereby approved commences, an Employment Scheme to enhance and maximise employment and training opportunities during the construction phase of the project shall be submitted to and approved in writing by the Local Planning Authority. The approved Scheme shall then be implemented in full unless in accordance with any such subsequent variations as shall have been formally submitted to and approved in writing by the Local Planning Authority.  
*(To maximise potential local skills, training and employment opportunities).*

13. Within 6 weeks prior to the approved development being first brought into operation, an Employment Scheme to enhance and maximise employment and training opportunities during first occupation, including a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved Scheme shall then be implemented in full in accordance with the approved timetable unless in accordance with any such subsequent variations as shall have been formally submitted to and approved in writing by the Local Planning Authority.  
*(To maximise potential local skills, training and employment opportunities).*

### Travel Plan

14. 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.

*(In the interests of highway safety and to encourage the use of sustainable modes of travel and in compliance with policies GEN1 (Minimum Requirements for Development) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan)*

## Highways

15. No development shall take place until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods' vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic restrictions.

*(In the interests of highway safety and in compliance with policies GEN1 (Minimum Requirements for Development) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan)*

16. The gradient of the access into the site shall not exceed 1 in 30 for the first 10m into the site from the highway boundary.

*(In the interests of highway safety and in compliance with policies GEN1 (Minimum Requirements for Development) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan)*

17. Prior to any other works commencing on site, any temporary access for construction purposes shall be constructed to Cartwright Lane, such access shall have a minimum width of 7.3m, visibility splays of 2.4m x 43m in each direction and a 10m radius on the western side with appropriate surfacing to inhibit the deposit of mud and debris on the public highway.

*(In the interests of highway safety and in compliance with policies GEN1 (Minimum Requirements for Development) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan)*

18. Prior to the first occupation of any premises hereby permitted, the enlarged Berristow Lane roundabout and access road, together with servicing, car parking and manoeuvring space shall be laid out in accordance with the application drawings, constructed to base level, drained and lit and maintained throughout the life of the development free of any impediment to its designated use.

*(In the interests of highway safety and in compliance with policies GEN1 (Minimum Requirements for Development) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan)*

## Contaminated Land

### 19. a. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed prior to the commencement of development in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health,
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land,
  - groundwaters and surface waters,
  - ecological systems,
  - archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

### b. Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical 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.

### c. Implementation of Approved Remediation Scheme

The approved remediation scheme 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.

Following completion of measures identified in the approved remediation scheme, a verification 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.



d. Reporting of Unexpected Contamination

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 in accordance with the requirements of paragraph a, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of paragraph b, 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 in accordance with paragraph c.

e Importation of soil

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 LPA for consideration. Only the soil approved in writing by the Local Planning Authority shall be used on site.

*(The site has the potential to be contaminated because of past uses on or near the site and to ensure all contaminated land is dealt with without risk to human health and wildlife in compliance with policies GEN1 (Minimum Requirements for Development) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan).*

Noise

20. Notwithstanding the information already provided, the development hereby approved shall not be brought into use unless and until:

- a Further information has been submitted regarding the acoustic assessment dated September 2019 (Peter Brett Associates Project Ref: 41960/3001 rev 4) along with an updated scheme specifying the provisions to be made for the control of sound emanating from the site has been submitted to and approved in writing by the Local Planning Authority. The assessment shall identify and quantify all sound sources from the development and shall assess the significance of the sound impact, taking into account the uncertainty of the assessment at the boundary of any neighbouring dwellings in accordance with the methodology described in the British Standard BS4142:2014 Methods for rating and assessing industrial and commercial sound. The scheme shall also include details of a delivery management scheme.
- b Upon completion of all works within the approved scheme a validation report shall be completed by a competent person and shall be submitted to and approved in writing by the Local Planning Authority.

c The approved scheme shall be implemented in full and retained thereafter.

*(To protect the noise environment and amenity of nearby residential properties, to avoid an increase in overall noise levels in the area and incompliance with policies GEN1 (Minimum Requirements for Development) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan)*

### Environmental Impacts

21. Prior to the start of any phase of development, a site specific construction environmental management plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. This shall include details such as (but not limited to) working hours, noise and dust mitigation measures including demolition and construction methods and locations of any stockpiles/site compounds, use of temporary acoustic barriers, wheel washes etc. where required. This CEMP shall then be implemented throughout the course of the development.

*(To protect the environment and amenity of nearby residential properties and incompliance with policies GEN1 (Minimum Requirements for Development) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan)*

### Air Quality

22. Prior to the first occupation of any unit developed on the site, a scheme of air quality improvement measures shall be submitted to and approved in writing by the Local Planning Authority. This shall include any mitigation measures such as (but not limited to) requirements for green infrastructure, electrical vehicle charging points and requirements for low emission vehicle fleets as appropriate. The approved scheme shall be implemented for the life of the development.

*(To minimise and mitigate any potential impacts on air quality in the area as there is an on-going issue with respect to air quality along the A38 in the vicinity of the development, and in compliance with policies GEN1 (Minimum Requirements for Development) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan).*

### Biodiversity

23. Prior to the commencement of development (which includes removal of trees and the demolition of buildings) a detailed bat mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority and a copy of the EPS license once obtained shall be submitted to the Local Planning Authority.

24. The mitigation and habitat enhancement measures for great crested newt outlined in the submitted ecological appraisal (sections 5.50 and 5.51) shall be implemented in full, a copy of the EPS licence, once obtained, shall be submitted to the Local Planning Authority.

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

#### Construction Environmental Management Plan (Biodiversity)

26. No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following.
- i. Risk assessment of potentially damaging construction activities.
  - ii. Identification of “biodiversity protection zones”.
  - iii. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements e.g. for reptiles).
  - iv. The location and timing of sensitive works to avoid harm to biodiversity features.
  - v. The times during construction when specialist ecologists need to be present on site to oversee works.
  - vi. Responsible persons and lines of communication.
  - vii. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
  - viii. Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

#### 27. Ecological Mitigation and Management Plan (EMMP)

The Ecological Mitigation and Management Plan (EMMP) described in the submitted Ecological Appraisal shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of the development. The EMMP should include the following:

- i. Details of the Ecological Mitigation Areas and the habitats to be created and managed.
- ii. Aims and objectives of management.
- iii. Timescales for habitat creation and management
- iv. Appropriate management options for achieving aims and objectives.
- v. Prescriptions for management actions.
- vi. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- vii. Details of the body or organization responsible for implementation of the plan.

- viii. Ongoing monitoring visits, targets and remedial measures when conservation aims and objectives of the EMMP are not being met.
- ix. Locations of bat boxes, bird boxes, hedgehog holes and habitat piles and/or other (include specifications/installation guidance/numbers)
- x. Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The approved EMMP shall be implemented in accordance with the approved details. *(Reason conditions 23 – 27 To mitigate for the loss of established biodiversity as a result of the development and to provide a net gain in compliance with policies ENV5 (Nature Conservation Interests throughout the District) and GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan and the policies of the National Planning Policy Framework).*

### **Statement of Decision Process**

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

The decision contains several pre-commencement conditions which are so fundamental to the development permitted that:

- it would have been otherwise necessary to refuse the whole permission or
- are necessary to address issues that require information to show that the development will or can be made safe,
- or address other impacts which need to be assessed to make the development acceptable to minimise and mitigate adverse impacts from the development.

### **Equalities Statement**

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e. “the Public Sector Equality Duty”).

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

### **Human Rights Statement**

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

protection of property).

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

### **Advisory Notes:**

1. Local Lead Flood Authority (Derbyshire County Council):

Extensive advisory notes are provided with the LLFA consultation response dated 9<sup>th</sup> November 2018 which can be viewed on the Council's web site under the planning application reference number documents.

2. Severn Trent Water

Severn Trent Water advise that although their statutory sewer records do not show any public sewers within the area of the development, there may be sewers that have been recently adopted under The Transfer of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building.

3. Economic Development Team, Bolsover District Council:

For further information on the Employment Scheme referred to in conditions above, please contact Lisa Fox on 01246 242324 or Laura Khella on 01246 24230.

4. Local Highway Authority (Derbyshire County Council):

a. Revisions and additions to the submitted Travel Plan are suggested by the Local Highway Authority in comments dated 15 November 2018 which can be viewed on the Council's web site under the planning application reference number documents.

b. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website  
[http://www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/development\\_control/vehicular\\_access/default.asp](http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp) email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.

- c. Pursuant to Sections 278/72 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 38/278 Agreements may be obtained from the Economy Transport and Environment Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 38/278 Agreement.
  
- d. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.