

**(6) Application No: PAP/2014/0008**

**Derwent House, Church Lane, Corley, Coventry, CV7 8BA**

**Residential development of 17 no. houses and bungalows with associated highways and landscaping plus new detached garage to serve the existing dwelling, for**

**Mrs S Cassidy**

**The Site**

This is the site of the former Corley Nursery on the north side of Church Lane just over 200 metres west of its junction with the main Tamworth Road on the edge of Corley. It is a rectangular flat site of 0.74 hectares. A detached house – Derwent House – in the same ownership, fronts Church Lane to the immediate south east. The application site includes about half of that property's present rear garden and extends around the remainder to the rear. To the east is a detached house and former farm buildings known as Hill Top Farm with a large open paddock at the rear adjoining the rear of the application site. Further to the east is a detached dwelling, the village hall and its associated car park and a bowling green. There is open agricultural land to the west and north of the site. On the opposite side of the road is a covered reservoir some detached dwellings and the premises of the Corley School set back from the road. This is a residential special school. Beyond the houses to the east are Church Farm and the village church.

The site itself was a former nursery and aquatic centre and the associated structures and buildings both fronting the site and extending back into it along its eastern side. Other buildings to the west and rear are commercial in appearance and used to accommodate car repair uses. The site has a significant two metre tall hedge fronting the road and there are similar strongly demarcated boundaries along its other sides. There is an existing access from Church Lane into the site at its western end and a separate access now serves the adjoining Derwent House.

**The Proposals**

The proposals involve the demolition of all of the existing structures and buildings and the complete redevelopment of the site with seventeen dwellings. This includes the loss of about half of the garden of Derwent House so as to accommodate the housing and a new garage for that property is included in the proposals.

Derwent House would retain its existing own access but a new residential access for the site would be provided centrally within the Church Lane frontage. This would lead to a cul-de-sac extending northwards throughout the centre of the whole site thus providing access. A short cul-de-sac is proposed off this to the east so as to access some of the proposed dwellings.

Two larger five bedroom properties would front Church Lane with their own separate access arrangements to that lane. These would be two and a half storeys high. The layout shows eight four and five bedroom detached houses set around the central cul-de-sac with seven two bedroom properties off the shorter east cul-de-sac. These would include two bungalows. All of the proposed properties would have two car parking spaces, except the two larger frontage units which would have four spaces each. The proposal would have a site density of 21 units per hectare.

The seven two bed properties referred to above would be “affordable” houses – 40%. The bungalows would be a rented property and the five others would be for low cost ownership. The remaining ten units would be open market houses.

The application is accompanied by supporting documentation which includes the following.

A Bat Assessment Report recommends that there is no objection to the proposals provided that full bat surveys are undertaken on two of the existing buildings during May to August and that mitigation measures are provided on site proportionate to the findings of that survey.

A Desk Top Ground Conditions survey suggests that conventional foundations would be suitable; that soak-aways are likely to be suitable for drainage, and that there is some potential for soil contamination because of the former uses – pesticides at the nursery and oils and diesel for the car repairs. Further work would thus be necessary to identify the scale of this likely contamination and lead to a proportionate remediation strategy.

A Utilities Statement includes responses to the applicant as a consequence of pre-application enquiries with different agencies. Severn Trent Water Ltd’s reply suggests that there is adequate capacity in both foul and storm water drainage to service the development. The Highway Authority had no objection in principle subject to more detail being needed to assess the detailed geometry of junctions and turning areas etc. Western Power Distribution offer connections to existing supplies.

A Sustainability Statement concludes that the site is previously developed land and that it lies in a sustainable residential location. The proposed houses would meet Code Level 3 for Sustainable Homes; provide sustainable drainage systems, and meet local housing need.

A Design and Access Statement describes the site and its setting outlining how the design of the proposed layout and houses was conceived.

A Public Consultation Report describes the outcome of a public exhibition held in Corley in early December 2013 which set out the proposals described above. There were seventeen written replies to a questionnaire at the event – 82% of these preferred brown field over green field development; 100% preferred a residential redevelopment of the application site rather than an industrial re-use, 59% wanted to see more affordable housing on the site and 35% wanted more “executive” housing, 71% wanted to see traditional designs, and 60% said that they or their family might be interested in a home on the site.

The Corley Housing Needs Survey of 2013 is also attached to the application. This was undertaken by the Council. 360 forms were sent out and there was a 27% response rate. The conclusions show a requirement for fourteen units of affordable housing – all one or two bedroom accommodation with three expressing an interest for bungalows and nine looking for low cost home ownership options.

A Planning Statement provides the applicant's case in support of the proposals. This sets out the history of the site describing its current lawful commercial use and concluding that it is previously developed land. Development Plan policies and those in the National Planning Policy Framework ("the NPPF") are outlined. The statement concludes that the proposal is inappropriate development in the Green Belt but that there are very special circumstances here of sufficient weight to override a presumption of refusal. In essence these are the removal of previously developed land; the on-site provision of affordable housing and the lack of a five year housing supply.

A Supplementary Statement from the applicant provides his evidence to support the number of houses being proposed; the reasons for the 40% provision as opposed to 100% provision, and the proportion of market houses included so as to "enable" the site's redevelopment. The evidence includes a financial appraisal and reference to the housing needs survey and to the consultations undertaken with the Parish Council. In essence the evidence is said to confirm that the site has an existing current value as a lawful commercial site which cannot be ignored; that because of the type of affordable housing being promoted here – low cost home ownership – there is no grant aid available from the Homes and Communities Agency, that because of the need to reduce impact on openness the number of houses needs to be kept to a minimum, and that the local Parish Council supports the type of tenure and mix being proposed.

The applicant has been requested to provide a response to the requests for financial contributions as outlined in the consultation section below. He argues that the terms of any Section 106 Agreement will be to give priority to local people for occupation of the five affordable homes and thus there is unlikely to be "new" households here, just existing households relocating, and that the two bungalows will be for older people not for young families. He therefore argues that the full education contribution request is unreasonable and should only be calculated on the basis of the ten open market houses – around £50k. However he argues that even this would adversely impact on the viability of the whole scheme. The library contribution and that towards footpath improvements are not considered to be reasonable requirements.

## **Background**

Without recounting the complete planning history of the site, it is confirmed that past lawful uses have included the former nursery and aquatic business; compost mixing, and car repairs. When the nursery closed a planning permission was granted in 2010 for the commercial redevelopment of the site through light industrial and office uses. Whilst this was not taken up, the lawful use reverts to the previous permissions as set out here. It is therefore confirmed that the site can be treated as previously developed land in that it has a lawful use for commercial purposes.

## **Development Plan**

Saved Policies of the North Warwickshire Local Plan 2006 – Core Policy 2 (Development Distribution); Core Policy 8 (Affordable Housing), Core Policy 11 (Quality of Development), ENV2 (Green Belt), ENV6 (Land Resources), ENV8 (Water Resources), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), HSG2 (Affordable Housing), HSG3 (Housing outside Development Boundaries) and TPT6 (Vehicle Parking).

## **Other Material Planning Considerations**

The National Planning Policy Framework 2012

The Submitted Version of the Core Strategy – policies NW1 (Settlement Hierarchy), NW2 (Green Belt), NW3 (Housing Development), NW5 (Affordable Housing), NW8 (Sustainable Development), NW9 (Renewable Energy and Energy Efficiency) and NW10 (Quality of Development)

## **Consultations**

Warwickshire County Council as Highway Authority – Originally submitted an objection based on the proposed design of the access and service road. This has now been overcome through the submission of amended plans and the County Council has withdrawn its objection subject to standard conditions.

Warwickshire Rights of Way – No objection but makes a request for £1200 to improve existing public footpaths around the site.

Severn Trent Water Ltd – No objection subject to a standard condition requiring full details of final drainage measures.

Environmental Health Officer – Agrees that further investigative work is needed but this can be conditioned.

Warwickshire Police – No objections but offers advice on reducing the potential for crime

Warwickshire Museum – No comments received

Environment Agency – No comments received

Warwickshire Library Services – They request a contribution of £2386.

Warwickshire County Council Education – They request a contribution of £87,285 towards

Assistant Director (Housing) NWBC – Confirms that the evidence provided by the applicant in his Supplementary Statement can be supported.

## **Representations**

170 letters were circulated throughout Corley to local households. No objections have been received, but one letter of support has been submitted.

Corley Parish Council – The Council makes three comments: there should be some chimneys included in the design of the new houses; why is a garage now being proposed for Derwent House and there is concern about the capacity of the existing infrastructure.

## **Observations**

### **a) Green Belt**

The site is in the Green Belt. The Development Plan says that the control of development here should be in accordance with Government advice in its PPG2. This has been superseded by the National Planning Policy Framework and thus it now forms the proper guidance to follow. The construction of new buildings in the Green Belt is inappropriate development by definition according to the NPPF. As such the application carries a presumption of refusal because being inappropriate development it is, de facto, harmful development. However Members will be aware that there are exceptions defined in the NPPF in respect of the construction of new buildings and it will be necessary to see if the current proposal accords fully or in part with any of the exceptions.

There are two potential exceptions. The first is where the proposal is for, “limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan”. As can be seen there are in fact two “arms” to this exception – is the proposal “limited infilling”, and is it “limited affordable housing provision”? Whilst the site here has a frontage to Church Lane and there is a property on its eastern side it has open agricultural land to its rear and to the west. It is not therefore an infill site, not being surrounded by existing development, and in any event it is not considered by degree to be limited because of its size. The proposal does not accord with this exception. In the case of the second then the proposal would not deliver wholly affordable housing, this being 40% of the total provision. The exception requires the affordable provision to be in line with Local Plan policies. Here, saved policy HSG2 of the Local Plan would require 100% affordable housing provision on site. Policy NW5 of the emerging replacement Local Plan requires 40% throughout the Borough with a degree of flexibility depending on the viability of the scheme. The provision of affordable housing here is a matter for further discussion later in this report, but at the present time, it is possible to conclude that the current proposal only partially accords with this “arm” of the exception being considered. Taking the exception as a whole therefore, it is considered that the proposal when treated overall only partially accords with it, and thus the proposal remains as being inappropriate development.

The second exception is where a proposal comprises the “limited infilling or the partial or complete redevelopment of previously developed sites (brown field land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development”. The proposal is clearly the complete redevelopment of previously developed land and thus it accords with the first half of the exception. There are however two conditions. The first is that the proposed

development should not lead to loss of openness beyond that already experienced by the existing development. Here the foot print of the buildings presently on site amounts to some 1185 square metres. The proposal would provide 1638 square metres - a 37 % increase. Moreover the built form and layout of the proposal brings new development right up to the Church Lane frontage and would evenly spread it throughout the whole site. At present the buildings are confined to the western and northern boundaries. Overall it is considered that there would be a loss of openness here. The second condition relates to the impact of the proposal on the reasons for including land within the Green Belt. The proposal would not impact on the reason for the Green Belt in restricting the sprawl of large built-up areas as it does adjoin such areas. It would not affect the reason of preventing the merger of towns. It would not lead to the loss of countryside. The preservation of the special character of historic towns is not relevant here and the development would not prejudice urban regeneration. Hence it is considered that there is no impact on the reasons for including land within the Green Belt. This is hardly surprising as the proposal involves the redevelopment of existing brown field land. As a consequence therefore this second condition of the exception is met. But, as overall there is not complete accord with the terms of this exception, the proposal remains as inappropriate development.

In overall terms therefore when considering the two exceptions together it is concluded that the proposal remains as inappropriate development carrying the presumption of refusal.

In these circumstances the NPPF requires the Local Planning Authority to assess whether the applicant has forwarded any material planning considerations of such weight that they can be considered as being the “very special circumstances” of such weight to override that presumption. In looking at this matter the Board will have to assign a weight to the “inappropriateness” and a weight to the “material planning considerations” such that an assessment can be made as to where the balance lies.

#### **b) The Weight to be given to the Inappropriateness**

In attributing a weight to the inappropriateness here, it is acknowledged that there is “de facto” harm to the Green Belt by virtue of that inappropriateness. It is however also necessary to define the “actual” harm. The increase in footprint over the existing; the built form extending throughout the site and the loss of the frontage will have an impact on one’s perception of openness here and that will be one of new development and/or an extension of built development along the road. The resultant harm is therefore considered to be more than just limited. However as the proposal does not cause harm to the reasons for including land in the Green Belt, it is concluded overall that the actual harm here is moderate rather than significant.

#### **c) The Weight to be given to the Applicant’s Case**

There are several planning considerations put forward by the applicant. The first is that he points out that the Council does not have a five year supply of housing and that its shortfall is significant. In these circumstances he argues that the NPPF should take preference as it says that new housing should be allowed in these circumstances unless the harm or impacts caused are significant and demonstrable. It is acknowledged that the Council does not have a five year housing supply. Whether the shortfall is significant or not, it is clear from appeal decisions throughout the country that the Secretary of State considers that anything less than a full five year supply severely prejudices the possibility of a refusal unless there would be real harm or adverse impact. In these

circumstances, with the adoption of the replacement Plan and the Site Allocations Document a little way off, it is considered that the applicant's position here does carry significant weight.

The second consideration is that the development will deliver 40% affordable housing of a type and tenure evidenced in a very recent Housing Needs Survey and which is fully supported by the Parish Council. The proposal does accord with and match that Survey and the Parish Council has expressly indicated in the pre-application consultation work that it did not wish to see all of the affordable provision identified by the Survey all being on the same site. The applicant has been asked to evidence why 100% provision can not be delivered here thus meeting the requirements of the Survey. That evidence states that the submitted proposal has been reached balancing a number of factors; a financial appraisal based on the fact that the existing site has an existing commercial value, that the local housing need is different – low cost market housing, rather than socially rented – and that this does not attract Government funding, the need to retain openness thus reducing density, and the views of the Parish Council wanting to see a mix of tenure on the site. This evidence has the support of the Council's housing officers. As a consequence it is accepted that the proposal represents the best mix of housing in order to provide a significant amount of local affordable housing. Hence the provision of affordable housing with local support and matching local needs is a significant benefit of this proposal.

The third consideration is that the proposal involves the redevelopment of brown field land. This not only accords with Government policy but also with the Development Plan and its emerging replacement as well as with the local community's preference. This consideration therefore carries significant weight.

In conclusion therefore it can be seen that the applicant's material considerations cumulatively carry significant weight.

#### **d) The Balance**

From the above it can be deduced that an initial assessment of the balance between the harm caused by the inappropriateness and the applicant's material considerations lies in favour of greater weight being attached to the latter.

Before reaching a final conclusion though, it is necessary to explore any other policy issues which could affect this initial assessment. The matters to be looked at here are the weight to be given to the requests for financial contributions and secondly whether recent decisions in Corley have any impact.

Taking the latter of these two matters first then there have been two recent decisions in Corley that are pertinent here. A single house was approved at Tamworth Road. Whilst that site was also in the Green Belt it was considered that it did amount to "limited infilling" under the exception definition set out above and was thus appropriate development. The other was a refusal for five houses on the paddock at the rear of the neighbouring property to the current application site. That was deemed to be inappropriate development because it was not limited infilling thus carrying the presumption of refusal. In that case there were no very special circumstances sufficient to outweigh that presumption. As can be seen this is very much a question of each site being treated on its own merits. The key consideration is always to first establish whether the development is appropriate or not appropriate. In this case therefore the

conclusions reached above on the current application are not “at odds” with these other decisions, as they are site-specific.

The other issue is the weight that should be attributed to the requests for financial contributions. That from the Library and Footpaths services seeks them as revenue contributions to maintain existing facilities. This is not a reason compatible with the statutory requirements for Section 106 Agreements as these should be dealt with through the Community Infrastructure Levy and the Council is not yet a Charging Authority. Moreover they are not considerations of such weight as to amount to reasons for refusal if not paid. The Education service indicates that there is no spare capacity in the local catchment area for early years; secondary and post-16 children potentially arising from the proposed development. It seeks a contribution towards such provision. However as above, this would be a revenue contribution and not be for the physical extension of any school. Moreover the basis of the calculation is questionable and the applicant’s argument is acknowledged on this issue. The delivery of the affordable housing here is the overriding justification and thus priority for this proposal and its deliverability should not be prejudiced through other financial contributions which could affect the overall viability of the scheme. As such a refusal based on non-payment of this contribution would not be of any weight.

#### **e) Other Matters**

There are no technical objections to the proposal arising from consultation with the appropriate agencies, other than matters which can be dealt with through standard conditions. None of the utility agencies has objected despite the Parish Council concerns. The design of the houses has been altered to include chimneys on the two frontage properties at the request of the Parish Council. The new garage at Derwent House is to provide on-site garaging given the proposed layout.

#### **Recommendation**

That subject to the completion of a Section 106 Agreement on the terms as set out in this report relating to the provision of on-site affordable housing, planning permission be **GRANTED** subject to the following conditions:

1. Standard Three year condition
2. Standard Plan numbers condition – the location plan received on 24 January 2014; plan numbers 6693/14M Rev M, 25E and 27C received on 31 March 2014 and plan numbers 6693/15B, 16B, 17B, 18B, 18B, 20B, 21B, 22B, 23B, 24A Rev B, and 28A all received on 24 January 2014.

#### **Pre-commencement Conditions**

2. No development whatsoever, including the demolition of any building, shall commence on the site until such time as a bat survey is undertaken during the period May to September. That survey together with its findings shall be submitted to the Local Planning Authority.

#### **REASON**

In the interests of nature conservation.

3. No work shall commence on the demolition of any building on the site until such time as details of the mitigation measures to be installed within the development proportionate to the findings of the survey referred to in condition (3) above, have first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of nature conservation.

4. No work shall commence on site other than the demolition of existing buildings and structures together with site clearance, until full details of all of the facing, roofing and surface materials to be used on the development together with details of all boundary treatments, have first been submitted to and approved in writing by the Local Planning Authority. Only the approved materials and treatments shall then be implemented on site.

REASON

In the interests of the visual amenities of the area

5. No development shall commence on site other than the demolition of existing buildings and structures together with site clearance, until full details of the means to dispose of foul and surface water have first been submitted to and approved in writing by the Local Planning Authority. Only the approved measures shall then be implemented on site.

REASON

In order to reduce the risks of flooding and pollution.

6. No development shall commence on site other than the demolition of existing buildings and structures together with site clearance until such time as an intrusive Phase 2 ground conditions survey has first been undertaken in accordance with a brief that shall first have been agreed in writing by the Local Planning Authority.

REASON

In order to reduce the risk of pollution.

7. No development shall commence on the construction of any house or road hereby approved until such time as the results of the survey referred to in condition (7) have first been submitted in writing to the Local Planning Authority. This submission shall include remedial measures to remove any ground contamination found as a consequence of the survey.

REASON

In order to reduce the risk of pollution.

8. No development shall commence on the construction of any house or road hereby approved until such time as remedial measures for the removal of ground contamination have first been agreed in writing by the Local Planning Authority. Only the approved measures shall then be undertaken

REASON

In order to reduce the risk of pollution.

9. Following the completion of the measures agreed under condition (9) a Verification Report shall be submitted to the Local Planning Authority providing evidence of full completion of the remedial measures. Work may only start on the construction of the houses and roads hereby approved once this Report has been agreed in writing by the Local Planning Authority.

REASON

In order to reduce the risk of pollution.

10. No development shall commence on site other than the demolition of existing buildings and structures and site clearance operations, until full details of the construction of the road serving the development, including footways, street lighting, private drives and means of accessing individual plots, drainage including the outfalls, and levels of the car parking and manoeuvring areas all as shown on the approved plans, together with the same details for plots 16 and 17, have first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of highway safety and reducing the risk of flooding.

11. No development shall commence on site other than the demolition of existing buildings and structures and site clearance operations, until full details of the measures to be implemented to minimise the spread of extraneous material onto the public highway by wheels of vehicles accessing the site during construction and to clean the highway of such material, have first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of highway safety

12. No development shall commence on site other than the demolition of existing buildings and structures and site clearance operations until details of a parking and turning area for site construction traffic have first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of highway safety.

13. No development shall commence on the construction of any house or road hereby approved until such time as details of the landscaping scheme to be provided has first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of the visual amenities of the area.

### **Pre-Occupation Conditions**

14. There shall be no occupation of any house hereby approved until such time as the whole of the measures approved under condition (6) above have been implemented in full to the written satisfaction of the Local Planning Authority.

REASON

In the interests of reducing the risks of flooding and pollution

15. There shall be no occupation of any house hereby approved until such time as all of the details approved under condition (xi) above have first been fully implemented to the written satisfaction of the Local Planning Authority.

REASON

In the interests of highway safety and to reduce the risk of flooding.

16. There shall be no occupation of any house hereby approved until such time as visibility splays have been provided to all of the vehicular accesses onto Church Lane measuring 2.4 by 25 metres to the near edge of the public highway carriageway.

REASON

In the interests of highway safety

17. There shall be no occupation of any house hereby approved until such time as all the landscaping details approved under condition (14) above have first been fully implemented to the written satisfaction of the Local Planning Authority.

REASON

In the interests of the visual amenities of the area

## **Other Conditions**

18. There shall be no structure erected or tree or shrub planted or retained within 2.4 metres of the near edge of the public highway carriageway fronting Church Lane exceeding or likely to exceed at maturity, a height of 0.3 metres above the public highway carriageway.

### **REASON**

In the interests of highway safety.

19. The existing vehicular accesses to the site and Derwent House shall be closed off and the public highway footway and verge reinstated to the written satisfaction of the Local Planning Authority within one month of the new approved accesses being completed.

### **REASON**

In the interests of highway safety

## **NOTES**

1. Your attention is drawn to Sections 38, 163 and 184 of the 1980 Highways Act; The New Roads and Street Works Act 1991 and the Traffic Management Act 2004.

2. Standard Coal Authority advice

3. The Local Planning Authority has worked positively in this case with the applicant in order to overcome planning issues arising from the case by engaging in pre-application discussions and resolving consultation responses through seeking amended plans, thus meeting the requirements of the National Planning Policy Framework 2012.

## BACKGROUND PAPERS

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2014/0008

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	4/2/14
2	Head of Development Control	Letter	10/2/14
3	WCC Highways	Consultation	17/2/14
4	Severn Trent Water Ltd	Consultation	19/2/14
5	J Macdonald	Support	19/2/14
6	Warwickshire Police	Consultation	20/2/14
7	WCC Rights of Way	Consultation	24/2/14
8	Environmental Health Officer	Consultation	26/2/14
9	Applicant	E-mail	26/2/14
10	Applicant	E-mail	26/2/14
11	Housing Officer	E-mail	26/2/14
12	County Library Service	Consultation	10/3/14
13	County Education Service	Consultation	11/3/14
14	Environmental Health Officer	Consultation	11/3/14
15	Corley Parish Council	Representation	12/3/14
16	Applicant	E-mail	13/3/14
17	Warwickshire County Council	Consultation	31/3/14

*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

*A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.*



**(7) Application No: PAP/2014/0014**

**Land South West of M42 Roundabout, Watling Street, Dordon,**

**Outline application for development of land within Use class B1(c) - Light Industry, Use Class B2 - General Industry and Use Class B8 - Storage & Distribution. Approval is sought now for Access, from Centurion Way. All other matters are reserved.**

**St Modwen Developments Ltd**

**Introduction**

The application is departure from the Development Plan and is accompanied by a legal agreement under S106 of the Town and Country Planning Act 1990. It is referred for determination by the Board in accordance with the Council's adopted scheme of delegation for the determination of applications.

A report outlining the receipt of the application was brought to the February meeting and a copy is attached for convenience at Appendix E. It should be treated as part of this determination report.

**The Site**

This is an 8.5 hectare agricultural field to the south west of Junction 10 of the M42 motorway, which adjoins Centurion Park to the west, a commercial estate within in Tamworth, the M42 Motorway to the east and agricultural land to the south which adjoins the Kettle Brook Local Nature Reserve to the south west of Centurion Park. The site is generally level, but in the northern part the land falls towards the M42/A5 motorway junction. Watercourses run along the western and southern boundary, these converge at the south west corner. A public bridleway crosses the southern part of the site, which will remain undeveloped. 33kV electricity transmission lines cross the site, these will need to be diverted.

The site location is shown in Appendix A.

**Planning History**

**The Proposal**

Outline planning permission is sought for the change of use of the land for a development for employment uses within Use Classes B1(c) Light industrial; B2 General Industrial and B8 Storage and Distribution. The application requests that details of the access to the site be considered now, with the matters of appearance, landscaping, layout and scale relating to the employment development, reserved for a subsequent approval of reserved matters application.

Vehicular access to the site will be from the existing access road within the Centurion Park development. This has direct access to A5 to the west of junction 10 of the M42. The new access road will need to cross the existing brook that runs along the eastern boundary of the Centurion Park Estate. A bridge over the brook will be required to carry the new access road into the site.

As the new vehicle access will connect to Centurion Way, which is within Tamworth's administrative area, a separate application for works required for the proposed access arrangement has also been submitted to the Tamworth Borough Council for its determination.

An illustrative development layout submitted shows that around 60% of the site area will be developed. The new development is confined to the northern part of the site adjacent to Centurion Park and the remainder of the site will provide a buffer zone between the new development and further open land to the south west which adjoins residential areas at Hockley within Tamworth.. The illustrative layout shows two new buildings with service yards either side of the access road which extends into the site from the existing access road to Centurion Park. The southern-most building is the larger of the two, and would be 12 metres tall. The smaller northern building would be 10 metres tall. Together these buildings would have 19,500 square metres gross floor space. The applicants estimate such a development could create up to 420 new jobs. A landscaped boundary is shown to enclose the development, with new planting to south west and north east boundaries. The existing vegetation, established along the route of the watercourse which borders the Centurion Park estate, would be retained to separate the new development from Centurion Park.

The illustrative layout submitted is shown at Appendix B and an illustrative cross section, east - west through the site, which shows new buildings and existing buildings within Centurion Park is at Appendix C.

### **Section 106 Legal Agreement**

The applicant has proposed a financial contribution for the provision training, mentoring, promotion and other measures targeted on local people designed to improve access to employment created within the development. The details submitted concerning the contribution are set out in Appendix D. No figure is stated in the application documentation; however the applicant considers the amount should be proportionate to contributions offered for employment developments recently permitted at Birch Coppice. Officers have suggested the contribution should also make provision to improve access to the development by modes of transport other than by private vehicle. The applicant is currently reviewing the contribution to be offered and will provide a response prior to the Board meeting. This will then be reported to the Board. The contribution will be secured through a legal agreement under Section 106 of the Town and Country Planning Act 1990.

### **Development Plan**

Saved policies of the North Warwickshire Local Plan 2006 – Core Policies 1(Social and Economic Regeneration); 2 (Development Distribution), 11 (Quality of Development), 12 (Implementation) and policies ENV1 (Protection and Enhancement of Natural Landscape), ENV3 (Nature Conservation), ENV4 (Trees and Hedgerows), ENV8 (Water Resources), ENV10 (Energy Generation and Energy Conservation), ENV11 (Neighbour Amenity), ENV12 (Urban Design), ENV13 ( Building Design), ENV14 (Access Design), ECON1 (Industrial Sites), TPT1 (Transport Considerations), TPT2 (Traffic Management), TPT3 (Sustainable Travel) and TPT6 (Vehicle Parking).

## **Other Material Planning Considerations**

Tamworth Borough Council Local Plan – 2006

Tamworth Borough Council Employment Land Review – January 2012.

Tamworth Borough Council Draft Local Plan 2006-2031 For public Consultation - March 2014

National Planning Policy Framework 2012

North Warwickshire Borough Council-Core Strategy Submission Version - February 2013

North Warwickshire Borough Council- Employment Land Review Update – September 2013

North Warwickshire Borough Council - Preferred Options for Site Allocations – February 2013

## **Consultations**

Highways Agency – No objection.

Warwickshire County Council as Highway Authority– No objection.

Warwickshire Museum–No objection subject to conditions to secure prior archaeological investigation.

Warwickshire County Council - Rights of Way – No objection; advise public bridleway should not be obstructed at any time. If closure is required, a traffic order will be required.

Environment Agency – No objection subject to condition to ensure flood risk mitigation measures are implemented.

Severn Trent Water – No objection subject to condition requiring submission of drainage details

The Coal Authority – It refers to its own Standing advice.

British Pipeline Agency – No comment.

High Speed Rail 2 – No comment.

Environmental Health Officer – No comment.

## **Representations**

Two local Tamworth residents raise concern over potential impact on amenity enjoyed by users of footpaths across the open areas to south and the potential for closure of footpaths. In response Members should note that the public bridleway that crosses the southern part of the site is not affected by the proposed development which is contained within the area to the north of this and should be accessible at all times. The new development will inevitably alter the existing view across the open land to the north. New landscaping and plating to screen the development will mitigate the impact. This will however take time to mature. Land to the south will continue to provide an open aspect to the bridleway.

## **Observations**

The proposal is considered to be a departure from the approved Development Plan as it is outside of a development boundary defined in the North Warwickshire Local Plan 2006 and is not otherwise allocated for employment provision in the approved Development Plan.

Members will be aware that the weight to be given to policies in the Development Plan reduces where these have become inconsistent with national planning guidance, set out in the National Planning Policy Framework 2012, and where revised policies in the replacement Development Core Strategy progress towards adoption. The updated evidence on employment needs submitted by the Council to the recent examination into the Core Strategy Submission Version is significant to the latter. This report considers the policies, guidance and evidence from these various sources in arriving at the recommendation below. The Board ultimately will decide the appropriate weight to be attached to each of these in determining this application.

Tamworth Borough Council has recently published the submission draft of the replacement local plan for consultation purposes. This indicates additional land outside Tamworth's area will be required to meet the employment needs identified for Tamworth over the plan period. It is however unclear at this time how this issue will be progressed. The Council has no memorandum of understanding with Tamworth in regard to the allocation of land to meet employment needs. Although this site may be considered to be well located to meet employment need within Tamworth; given the lack of clarity, this matter is considered to be of little significance in determining this application at the current time.

## **Planning Policy**

The site is not identified for employment use within the adopted North Warwickshire Local Plan 2006. It is outside of a development boundary defined in the North Warwickshire Local Plan 2006. The proposal is therefore considered to be a departure from the approved Development Plan.

It is not currently identified as a preferred employment site within the emerging replacement Local Plan - Site Allocations Preferred Options document February 2013. However the North Warwickshire Borough Council Employment Land Review Update undertaken in September 2013 to inform the replacement local plan indicates that additional land will be required to meet the identified employment need over the period of the local plan. The preferred site allocations are therefore currently being reviewed. This issue was explored at the Examination in Public and is thus considered to be a significant material consideration in the determination of this application. This previously unallocated site, which would provide up to 8.5 hectares of land for employment use, would contribute towards the requirement to identify further land to meet employment needs.

The National Planning Policy Framework 2012 (NPPF 2012) makes clear that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. It however also identifies a presumption in favour of granting permission for sustainable development and is clear that local plans should reflect this presumption. The proposed development for employment use here is considered to be sustainable given the location of the site, which adjoins the existing Centurion Park Estate, has an existing vehicle access arrangement leading to the A5 and to junction 10 of the M42 and which is served by existing public transport bus services.

## **Application Details**

### **Access**

Details of the proposed access to the development are submitted for consideration now. The new access will require the construction of a short length of new road to link to the existing Centurion Way and a small new bridge to carry the new access road over the small brook which runs along the western boundary of the site. This will involve piling adjacent to the brook.

The Tree Survey submitted concludes the new access into the site coincides with the location of existing trees of poor quality. The new access can be designed and constructed to minimise the impact on existing tree roots and canopies along this western boundary. The site is currently being used by the Highways Agency as a compound in connection with works to the adjoining M42. A vehicle access has been provided into the site by culverting the brook, this has resulted in the removal of some existing trees. This temporary access will be removed and the land re-instated on completion of the highway works.

The new access road to the bridge and most of the bridge works will be constructed on land within Tamworth. The planning application submitted to Tamworth Borough Council for determination will authorise these works. Discussion with Tamworth officers indicates the recommendation will be to grant permission for this. However a small part of the eastern bridge approach works will require work within North Warwickshire. Details of these works are submitted with this application. The recommendation set below therefore identifies these works as a separate phase to the remainder of the proposed development to allow for the early implementation.

The Highways Agency, Warwickshire County Council Highways and Staffordshire County Council Highways have been consulted on both applications and all have no objection to the proposed access arrangement. WCC has requested a minimum carriageway width of 7.3 metres for the new access road within the development site. This width is confirmed on the revised plan submitted. The proposed access is considered to be in accord with saved policies ENV14, and TPT1 of the North Warwickshire Local Plan 2006.

## **Illustrative Development Proposal**

The details of the layout and buildings submitted are for illustrative purposes only. These show development of part of the site only with buildings of a height similarly to buildings within the adjacent Centurion Park estate. These limitations are considered to be significant in limiting the impact of the development proposed which is seen to be a “sensitive” response to the site conditions, its landscape and visual context.

The illustrated development would accord with the principles set out in saved policies ENV1, ENV4, ENV8, ENV11, ENV12 and ENV13 of the North Warwickshire Local Plan 2006 with regard to the layout and scale of the development. Noise arising from vehicles travelling along the M42 prevails in this locality. This is a higher than usual ambient noise level, and would significantly mitigate the usual noise that might arise from commercial activities within a new employment development here. The nearest residential properties within Tamworth are some 400 metres away from proposed buildings. The illustrated development would therefore be unlikely to give rise to any significant additional disturbance or adverse impact on the amenity enjoyed by residents.

Limiting development of the site to the areas identified in the illustrative proposals for the built envelope and for servicing and access is considered appropriate to ensure that adverse impact is avoided. This can be achieved through a condition.

## **Landscape & Visual Impact**

The visual impact of a proposed development and the effect on the landscape character is considered to be low to medium. This derives from the development approach adopted which limits the built footprint and building heights in line with adjoining development; retains existing vegetation; provides significant new landscape buffers around the development and the area of informal open space to the south which offers opportunities to mitigate the visual impact.

The landscape character here being open arable land but heavily influenced by nearby urban settlement is typical of the area and is defined in the North Warwickshire Landscape Character Assessment as having a low strength of character and a close affinity with the adjacent settlement edges. Development of part of the site offers opportunities to strengthen landscape divisions by creating a notable wooded edge to the settlement and improving the biodiversity of the open space to the south through the development of more varied habitats through appropriate landscaping and planting.

Wider views of the site already largely incorporate existing urban elements, particularly the developments at Centurion Park and Relay Park and the Tamworth urban area; development of the site will have little additional impact on these. The development will have a greater effect on views from locations closer to the site, particularly from the south on the public bridleway. This effect however could be mitigate through the opportunities to improve the landscape character of the open area to the south of the development.

## Technical Matters

The Archaeology Desk Based Assessment submitted concludes the site is of archaeological interest and suggests archaeological investigation is undertaken in agreement with the appropriate authorities. WCC Museum Services Archaeology requested further trial trench investigation be undertaken to properly establish the archaeological significance of the site before the grant of any planning permission. This further work has now been undertaken and the Museum is satisfied the appropriate archaeological investigation of the site can be secured through a condition.

The Desk Study (Phase 1 Preliminary Investigation) identifies there is likely to be no significant ground contamination. It concludes that further suitable ground investigation would confirm there are no contaminants of concern and the depth and direction of flow of ground water; also a geo-technical analysis would clarify the distribution, depth and condition and properties of underlying deposits to inform the development of potential foundation strategies for buildings, structures and roads. The Environmental Health Officer accepts the conclusions of the report.

A Utility Statement identifies that there are existing utility networks in place in the area, particularly within Centurion Way. No gas pipe or water main crosses the site, however Severn Trent advise there is an existing sewer within the site and that the applicant should contact them to discuss this. Overhead 33kV electricity lines cross the site and will require diversion. These could be routed underground through the site. This will require the agreement of the agency responsible for the electricity transmission network.

The Extended Habitat Survey concludes that the site is of limited value in terms of wildlife habitat with the exception of the hedgerows; the woodland strip and the streams along the north western and south western boundaries. There is no evidence of great crested newts; badger setts or reptiles arising from the survey work undertaken. The main impact of the proposed development will be on the habitats referred to above and potential disturbance to wildlife within them. This can be mitigated through planning conditions to ensure impacts from lighting and surface water run-off are minimised and existing trees and hedgerows are retained and protected. Further appropriate landscaping and additional planting would also enhance bio-diversity.

A Flood Risk Assessment (FRA) shows that the site is in Flood Risk Zone 1 and that the risk of fluvial flooding is low. A further Flood Risk Assessment Technical Note was submitted on the 6/3/2014. The Environment Agency has no objection subject to the inclusion the mitigation measures identified. These will be required by condition.

A Sustainable Drainage strategy for the site has been evolved using swales, filter drains, filter strips and holding basins. The outfall would be to the stream to the west of the site and the rate of discharge would be controlled to the levels identified in the FRA. Foul water would discharge to the public sewer that runs parallel to the western boundary. This may require connection through third party land. Severn Trent Water has no objection, but requests the submission and approval of details of the drainage systems proposed.

A Transport Assessment shows that the site is well served by public transport with four services operating on two routes within walking distance. There are also public footpaths within the adjoining commercial estate, which can be extended into the site and which also connects to the nearby residential areas in Tamworth. There are similar cycle connections. The traffic impact is low with a predicted 0.3% increase at junction 10 at peak times. The A5/Centurion Way and the A5/Pennine Way roundabouts have spare capacity. The Highways Agency and Warwickshire Highways have no objection. A Framework Travel Plan is submitted to form the basis for the preparation of Sustainable Travel plans relevant to occupiers of buildings. This will be required by a condition.

The Tree Survey assesses the existing trees and hedgerows, identifies those to be retained and recommends measures to protect these. These measures will be secured by condition.

## **Conclusion**

The proposal is considered to be sustainable development given the location of the site, which adjoins the existing Centurion Park Estate, has an existing vehicle access arrangement leading to the A5 and to junction 10 of the M42 and which is served by existing public transport bus services. Substantial weight thus must be given in this case to the presumption in favour of sustainable development set out in the NPPF 2012.

Although the site is not identified within the Preferred Site Allocations Submission Version it is considered that substantial weight should be attached to the more recent evidence on employment needs submitted by the Council to the examination in public which indicates additional land will be required to meet the employment needs of the Borough over the plan period.

These considerations serve to reduce the weight that should be given to saved Core Policy 2 within the approved Development Plan in this instance and are considered to provide sufficient justification to grant of permission as an exception in this instance.

Development of the site in accordance with the illustrative details submitted would accord with saved policies relevant to access, to the scale and form of the development and would not result in unacceptable adverse impacts on amenity. The conditions recommended below limit development of the site accordingly.

## Recommendation

That, subject to the satisfactory resolution of outstanding matters of detail pertaining to the proposed agreement under Section 106 and the approval of these by the Chair and Opposition Planning Spokesperson, outline planning permission be **Granted** subject to the following conditions:

## Conditions

1. This outline planning permission is granted under the provisions of Article 4(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010. The further approval of the Local Planning Authority shall be required with respect to the undermentioned matters hereby reserved before any development is commenced:-

- i). Appearance
- ii) Landscaping
- iii) Layout
- iv) Scale

## REASON

To comply with Section 92 of the Town and Country Planning Act 1990.

2. For the avoidance of doubt the details submitted for approval within the reserved matters should include the following :-

- a) Details of the circulation, service, car parking and cycle storage areas.
- b) Details of all gatehouses, service buildings or fixed structures, plant and machinery.
- c) The type, texture and colour of building and surfacing materials
- d) Details of site boundary treatments - including all walls, fences, retaining structures or other means of enclosure.
- e) Details of landscaping to be provided to site boundaries and within the parking and other areas associated with of buildings.
- f) The overall development site levels and building finished ground floor levels.
- g) Details of all external illumination, cameras, security structures and equipment.
- h) Details of the energy conservation and efficiency measures and the of energy generation from renewable sources to be incorporated within the development.
- i) Details of the measures to be installed for fire fighting throughout the site

## REASON

For the avoidance of doubt and to ensure a high quality of development in the interest of amenity and sustainable development.

3. In the case of the reserved matters specified above, application for approval, accompanied by all detailed drawings and particulars, must be made to the Local Planning Authority not later than the expiration of three years beginning with the date of this permission.

## REASON

To comply with Section 92 of the Town and Country Planning Act 1990.

4. The development to which this permission relates must be begun not later than the expiration of two years from the date of the final approval of reserved matters.

## REASON

To comply with Section 92 of the Town and Country Planning Act 1990.

5. The development shall not be carried out otherwise than in accordance with the site location plan numbered DE128\_014, application boundary plan numbered DE128\_012, Site Access General Arrangement Option 2 Bridge plan numbered 15294/C/SA/90/003/A03 and the Tree Protection Plan numbered 14074/TPP/01 received by the Local Planning Authority on 10/01/2014 and the Proposed Access plan numbered 1148-01/C received by the Local Planning Authority on 24/03/2014. For the avoidance of doubt the access road within the site beyond the extent of the bridge approach shall be provided with a minimum carriageway width of 7.3 metres as shown on plan numbered 1148-01/C.

## REASON

To ensure that the development is carried out strictly in accordance with the approved plans.

6. The outline permission is hereby granted for the phased development of the site in accordance with the phase details set out below :-

Phase 1 - Development required to complete the access bridge. For the avoidance of doubt these are the works relevant to the construction of the bridge only, as shown on approved drawings numbers 15294/C/SA/90/0003/A03 and 1148-01/C.

Phase 2 - All other development.

## REASON

To enable the phased development of the site.

7. The use of the site shall be limited to uses falling within Use Classes B1(C), B2 or B8 of the Town and Country Planning (Use Classes) Order 1987, as amended. The total gross floor space of all buildings erected on the site shall not exceed 19,500 square metres

REASON

To avoid adverse impact on the capacity of the existing road network in the interest of highway safety.

8. The use hereby permitted shall be developed only within the area identified as the built form envelope and the area shown for access & servicing on the Development Framework Plan included at Figure 7 within the Design & Access Statement dated January 2014, reference DE128\_DAS, submitted with the application.

REASON

In the interests of sustainable development and amenity.

9. No building erected on the site shall exceed a maximum height of 12 metres.

REASON

In the interest of amenity.

10. The development shall be carried out only in accordance with the Flood Risk Assessment (FRA) reference CIV15924 ES 001 Rev A01, dated December 2013 and the Flood Risk Addendum Technical Note, reference CIV15294 ES 002 A01, dated 6 March 2014 prepared by Waterman TD Ltd. The flood mitigation measures shall be implemented in full prior to occupation of the development and maintained at all times. For the avoidance of doubt finished ground floor levels for buildings shall be no lower than 91.5m above ordnance datum (AOD).

REASON

To reduce the risk of flooding

11. No development shall commence until a scheme for the archaeological investigation of the site has been submitted to and approved in writing by the Local Planning Authority. The written scheme shall include full details of the investigation to be undertaken and the arrangement for the deposit of the archaeological record.

REASON

To secure archaeological investigation of the site.

12. No development within Phase 2 shall commence until details of the proposed drainage systems for foul and surface water, have been first been submitted to and approved in writing in writing by the Local Planning Authority. For the avoidance of doubt these should incorporate principles of sustainable urban drainage (SUDs) and include details of the surface water runoff attenuation measure and their management.

REASON

To reduce the risks of flooding and pollution of the water environment.

13. No development shall commence until such time as a Construction Method and Management Statement appropriate to the phase of the development to be implemented has been submitted to and approved in writing by the Local Planning Authority. This Plan shall include details of how the site will be laid out during the construction period; the likely number of vehicular movements, the parking provision, the arrangements for deliveries, for the minimisation and removal of site waste, for the working and phasing of the ground works; the hours of working, the measures to minimise extraneous deposits from vehicles accessing the site on the surrounding highway network, the location of site compounds, storage facilities and of any site lighting to be provided during the construction phase. The recommendations within the Extended Habitat Survey report and the Great Crested Newt Survey report concerning working practices shall also be incorporated. It shall identify the period during which plan shall have effect, the means by which the terms are to be monitored and reviewed and a procedure for the handling of complaints. The approved Plan shall implemented at all times.

REASON

In the interest of amenity and to minimise the impact on ecology and the environment.

14. No development, including site clearance, shall commence until the further surveys recommended in the submitted Extended Phase 1 Habitat Survey prepared by Cotswold Wildlife Surveys have been undertaken and any further mitigation measures found to be necessary have been implemented. The recommendations within the Extended Habitat Survey report and the Great Crested Newt Survey report concerning working practices shall be incorporated within the Construction Method and Management Statement.

REASON

To ensure that protected species are not harmed by the development.

15. No development, including site clearance, shall commence until the tree protection measures recommended in the submitted Trees & Construction Assessment & Method statement prepared by Cotswold Wildlife Surveys and shown on drawing 14074/TPP/01 have been imlemented in full. The measures shall be maintained through out the construction of the development.

REASON

To ensure the trees to be retained are not harmed during contruction in the interest of amenity.

16. No building shall be occupied until a Sustainable Travel Plan relevant to the occupier has been submitted to and approved in writing by the Local Planning Authority. This shall be based on the Framework Travel Plan - December 2013 submitted with the application.

REASON

In the interest of ensuring sustainable development.

17. All buildings erected pursuant to this permission shall achieve the required standard in terms of energy conservation and energy efficiency prevailing at the time the building is constructed.

REASON

In the interest of sustainable development.

18. A strategy for the management of watercourses and open areas within the site shall be submitted to and approved in writing by the Local Planning Authority. This should include details of measures to be implemented for ecological mitigation and enhancement and for habitat management and shall include measures for the monitoring of outcomes and the means of reviewing the strategy. The approved strategy shall be implemented at all times.

REASON

In the interest of protecting wildlife habitats and ecology.

**Notes**

In determining this application, the Local Planning Authority has worked proactively with the applicant through pre-application discussions and meetings to resolve issues and secure amendments to revise and improve the quality of the proposal to achieve a positive outcome.

## BACKGROUND PAPERS

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2014/0014

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	10/01/14 20/2/14 10/3/14 24/3/14 25/3/14
2	Highways Agency	Consultation response	19/2/14
3	The Coal Authority	Consultation response	7/2/14
4	WCC Rights of Way	Consultation response	18/2/14
5	WCC Museum	Consultation response	20/2/14
6	Environment Agency	Consultation response	21/2/14 25/3/14
7	HS2	Consultation response	25/2/14
8	ST Water	Consultation response	3/3/14
9	British Pipeline Agency	Consultation response	7/2/14
10	B Moss	Representation	10/2/14
11	L Sippetts	Representation	6/2/14

*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

*A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.*

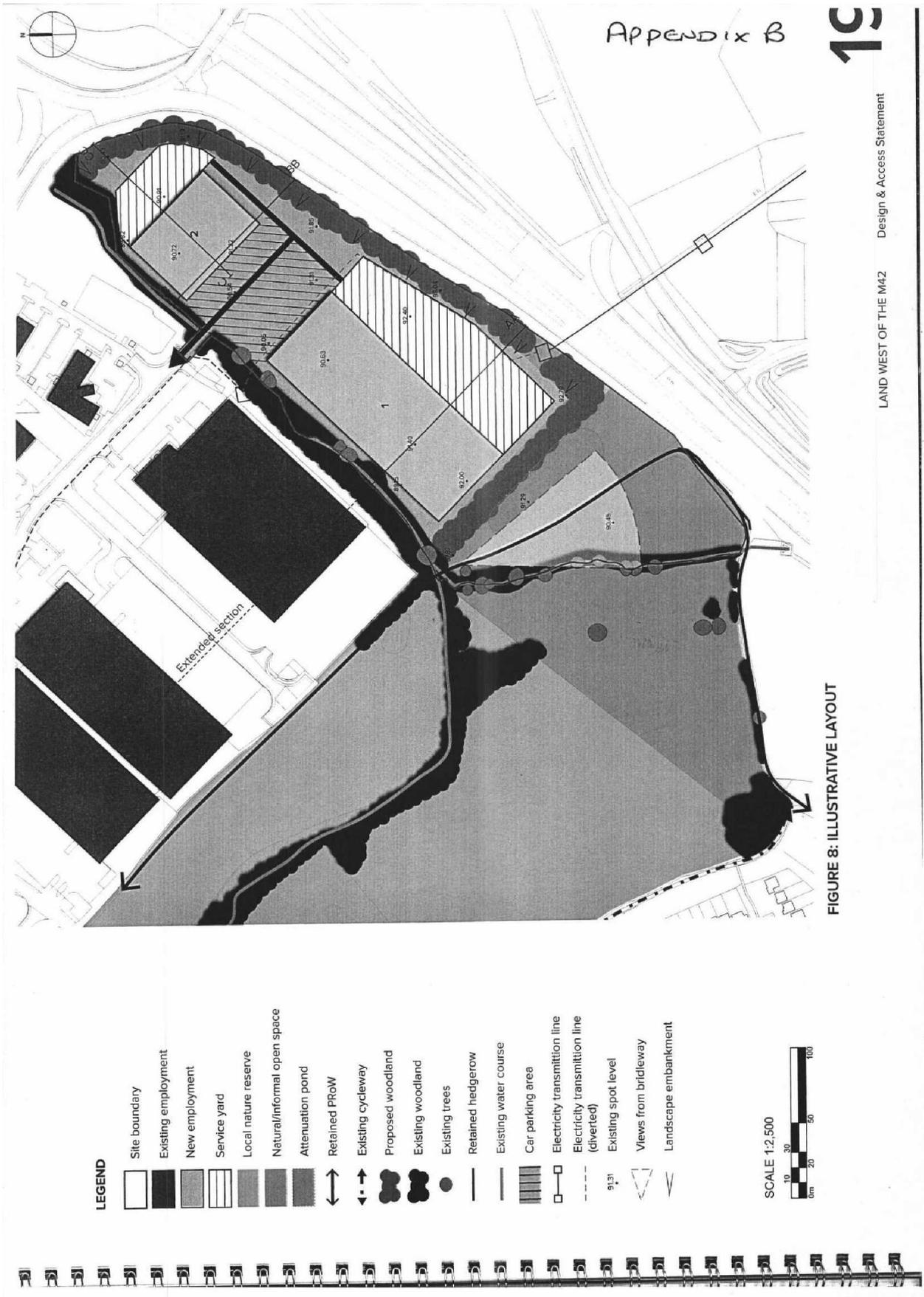


**LEGEND**  
Site boundary

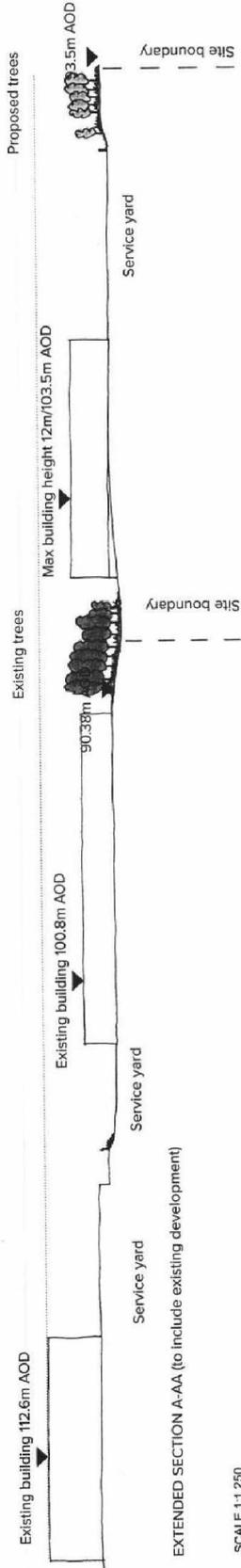


FIGURE 1: SITE LOCATION PLAN

## APPENDIX B



Proposed tree and shrub planting shown after 15 year growth c.11m height



EXTENDED SECTION A-AA (to include existing development)



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## 7 S.106 HEADS OF TERMS

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### **Circular 5/2005 and CIL**

- 7.1 Paragraph B5 establishes national policy on planning obligations, making it clear they are only to be sought where they meet the appropriate tests and in particular they must be fairly related in scale and kind.
- 7.2 Whilst it is acknowledged no Community Infrastructure Levy (CIL) is in place at the present time for NWBC, following the introduction of the CIL Regulations on 6th April 2010, it is unlawful for a planning obligation to constitute a reason to grant planning permission unless it is: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

### **North Warwickshire Local Plan**

- 7.3 Paragraph B5 establishes national policy on planning obligations, making it clear they are only to be sought where they meet the appropriate tests and in particular they must be fairly related in scale and kind. North Warwickshire Local Plan (July 2006) Core Policy 12: Implementation indicates that planning obligations will be used to secure establishment and maintenance of sustainable communities and patterns of development.
- 7.4 Whilst it is envisaged the S106 Planning Obligation requirements will be refined following submission of the application and further consideration by consultees and the applicant, the heads of terms provided below indicate the applicant's current proposals.

### **S106 Heads of Terms**

- 7.5 The applicant proposes to enter into a Section 106 Agreement to provide a contribution for training and promotion targeted for local people to enhance access to the employment opportunities created. Similar contributions have been secured from the three phases of the Birch Coppice development and the contribution would be proportionate to the floor area proposed.
- 7.6 Further discussion will be held with NWBC and WCC with regard to training opportunities which will be secured under a S106 Agreement.

(6) Application No: PAP/2014/0014

Land South West Of M42 Roundabout, Watling Street, Dordon,

Outline application for employment use within class B1(c) light industry, use class B2 general industry and use class B8 storage or distribution. Approval is sought for access from Centurion Way, all matters reserved, for

St Modwen Developments Ltd

### Introduction

This receipt of this application is reported to the Board at this time for information purposes and a full determination report will be brought to the Board in due course. The application is accompanied by a draft Section 106 Agreement. Members received a presentation on the proposal during December.

### The Site

This is an 8.49 hectare agricultural field located immediately to the west of the M42 Motorway south west of Junction 10 and to the east of Centurion Park, a commercial estate in Tamworth. There is further agricultural land to the south, used informally for recreational purposes connecting to the Kettle Brook Local Nature Reserve to the south west of Centurion Park. There is a brook water course along the western boundary and a bridleway crosses the site at its southern end. Within the site itself the land generally falls from the motorway towards Centurion Park (from east to west) at its northern end, but it is more level with the motorway at its southern end.

The site's location is shown at Appendix A.

### The Proposals

Planning permission is being sought for employment purposes within the B1(c) Light Industrial; B2 General Industrial and B8 Storage and Distribution Use Classes. It is said that 10% of the floor space could be "reserved" for the B1 and B2 Use classes. All vehicular access would be through Centurion Park and onto the A5 west of junction 10. The net developable area would be 5.2 hectares (around 60% of the site). An illustrative layout has been provided which suggests two buildings towards the western side of the site adjoining the existing buildings in Centurion Park, one either side of the proposed extended access through that site into the application site. The southern-most building is shown as being the larger of the two – some 12 metres tall and the smaller one to the north being 10 metres. Together they would accommodate some 19,500 square metres of floor space. The estimated number of jobs is around 420. A 15 metre landscaped area is proposed to three of the boundaries with enhancement to the fourth – the western brook course.

An illustration of the above description is at Appendix B, and a cross section east/west through the site including Centurion Park is at Appendix C.

Members should be aware that the proposed access arrangements connecting to Centurion Way are in the Tamworth Borough Council's area and thus a detailed application for those arrangements has also been submitted to that Authority for determination.

A significant number of supporting documents have also been submitted with the application, and these are identified below together with a short summary of their conclusions.

An Archaeology Assessment concludes that there is potential archaeological interest in the site particularly relating to Romano-British activity evidenced by the proximity to the Watling Street and other features. It is suggested that further archaeological work is required by agreement with the appropriate authorities. The Assessment also concludes that the proposals are unlikely to adversely affect the setting of listed buildings in Freasley because of separation distances and intervening screening.

An initial "desk top" Ground Conditions Survey suggests that there is likely to be no adverse ground contamination and thus there should be no objection to the proposal in principle, but that further more detailed intrusive work would assist in defining ground water conditions and the scale and nature of any possible contaminants.

A Habitat Survey concludes that the site supports only limited habitat that is considered to be of value to wildlife. The exceptions to this are the hedgerows; the woodland strip and the streams along the western and north western boundaries. There is no evidence of great crested newts; badger setts or reptiles arising from the survey work undertaken. The report continues by saying that the main impact of the proposed development will be on the habitats referred to above and potential disturbance to wildlife within them. Much can be done by planning conditions requiring full details of lighting, extra landscaping, retention of hedgerows and trees and protecting run-off to the stream, together with enhancing bio-diversity through the introduction of appropriate landscaping.

A Utility Statement identifies that there are existing networks in place in the area particularly within Centurion Way. There is no gas or water mains crossing the site. An overhead 33kv electricity line will require diversion but this could be placed underground. Water supply would be likely from South Staffs water.

A Flood Risk Assessment shows that the site is in Flood Risk Zone 1 and that the risk of fluvial flooding is low. A strategy for draining the site using sustainable systems has been prepared involving swales, filter drains, filter strips and basins and discharge would be to the stream to the west of the site. This would be controlled through a detention basin in the proposed landscape area to the south west of the site. Foul water would discharge to the public sewer that runs parallel to the western boundary potentially requiring connection through third party land.

A Transport Assessment shows that the site is well served by public transport with four services operating on two routes within walking distance. There are also public footpaths within the adjoining commercial estate, which can be extended into the site and which also connects to the nearby residential areas in Tamworth. There are similar cycle connections. The traffic impact is low with a predicted 0.3% increase at junction 10 at peak times. The A5/Centurion Way and the A5/Pennine Way roundabouts have spare capacity. A draft Green Travel Plan is also proposed which is said could be incorporated into a planning condition.

A Tree Survey shows that the proposed extended access into the site coincides with poor tree cover, and that the proposals can be designed so as not to impact on existing tree roots and canopies along this western boundary.

A Landscape Appraisal describes the existing landscape character using the North Warwickshire Landscape Character Assessment. The Assessment concludes that the site is visually "contained" and that longer range views of the site are limited. It would be most noticeable from the Motorway and the approach from the south. The Assessment concludes that the overall impact on landscape character would be low or low to medium and that with the layout and landscaping being illustrated the proposal would be seen as a "sensitive" response to the site conditions and its visual context.

A Design and Access Statement describes the setting and characteristics of the site and its context. It then looks at how the illustrative layout and built form has evolved through consideration of this analysis.

An Employment Study has been submitted to provide background information on employment needs and requirements for both North Warwickshire and Tamworth. The Study outlines current Development Plan and NPPF planning policies before evidencing the current employment land situation regionally as well as in Tamworth and North Warwickshire. Market trends are then outlined with an overall conclusion that there are strong circumstances to warrant support of this proposal. The overall summary is copied at Appendix D.

A Planning Statement brings all of the various matters together. In particular it outlines a full planning policy context including reference to the NPPF, and the Development Plans for North Warwickshire and Tamworth. Reference is also made to the emerging replacement Development Plans in both Authorities, including up to date evidence submitted to the recent North Warwickshire Examination. Technical matters are then reviewed before an assessment is made of the planning merits of the proposals. This is attached in full at Appendix E. The Statement then outlines the offer of a Section 106 Agreement to provide a contribution for training and promotion targeted for local people to enhance access to the employment opportunities that would be created. No figure is suggested but it is said that this should be proportionate to those contributions already agreed for Birch Coppice.

#### **Development Plan**

Saved policies of the North Warwickshire Local Plan 2006 – Core Policies 1(Social and Economic Regeneration); 2 (Development Distribution), 11 (Quality of Development), 12 (Implementation) and policies ENV1 (Protection and Enhancement of Natural Landscape), ENV3 (Nature Conservation), ENV4 (Trees and Hedgerows), ENV8 (Water Resources), ENV10 (Energy Generation and Energy Conservation), ENV11 (Neighbour Amenity), ENV12 (Urban Design), ENV13 ( Building Design), ENV14 (Access Design), ECON1 (Industrial Sites), TPT1 (Transport Considerations), TPT2 (Traffic Management), TPT3 (Sustainable Travel) and TPT6 (Vehicle Parking).

#### **Other Material Planning Considerations**

The Tamworth Local Plan – 2006

The Tamworth Borough Council Employment Land Review – January 2012.

The National Planning Policy Framework 2012

The Submitted Version of the North Warwickshire Core Strategy 2013

The NWBC Employment Land Review Update – September 2013

The NWBC Preferred Options for Site Allocations – February 2013

### **Observations**

The site is outside of any development boundary defined by the Development Plan and is also outside of any proposed or allocated sites in the emerging Core Strategy for employment provision. In these circumstances the proposals do not accord with the Development Plan. However as Members are aware, the weight to be given to the Development Plan is quickly reducing as the replacement Core Strategy progresses towards adoption. In this interim period, the NPPF will also carry significant weight. Therefore the Board will have to weigh a number of different sources of planning policy when it comes to determine this application. That will also have to include the up to date evidence on employment needs submitted by the Council to the recent Examination into the submitted Core Strategy. It is also likely that the Inspector who conducted that Examination could provide an interim letter outlining his position, before the determination of this application. That too will become a material consideration to be put into the final policy assessment of this application.

Members will be aware too that the Board will need to explore all of the technical issues arising from the various matters covered by the extensive supporting documentation.

### **Recommendation**

That the receipt of this application be noted at this time

**BACKGROUND PAPERS**

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2014/0014

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	10/01/2014

*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

*A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.*



LEGEND  
 Site boundary



FIGURE 1: SITE LOCATION PLAN

**5**

LAND WEST OF THE M42 Design & Access Statement



APPENDIX B

19

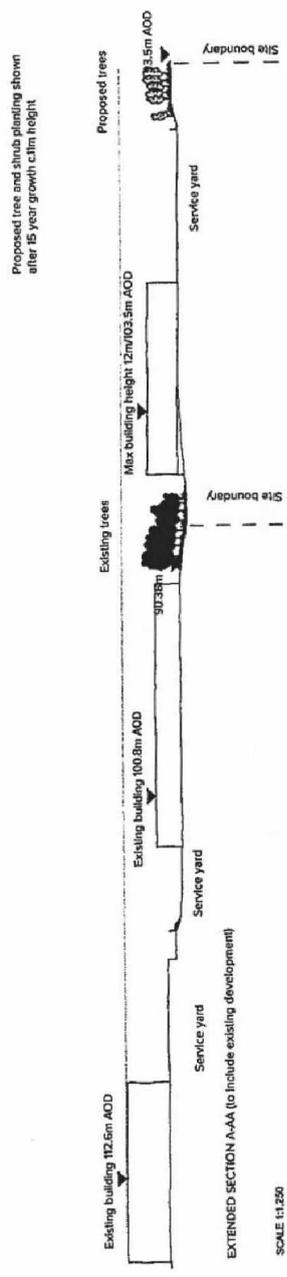
LAND WEST OF THE M42 Design & Access Statement

FIGURE 8: ILLUSTRATIVE LAYOUT

- LEGEND**
- Site boundary
  - Existing employment
  - New employment
  - Service yard
  - Local nature reserve
  - Natural/informal open space
  - Attenuation pond
  - Retained PRow
  - Existing cycleway
  - Proposed woodland
  - Existing woodland
  - Existing trees
  - Retained hedgerow
  - Existing water course
  - Car parking area
  - Electricity transmission line
  - Electricity transmission line (averred)
  - Existing spot level
  - Views from bridleway
  - Landscape embankment

SCALE 1:2,500





Proposed tree and shrub planting shown after 15 year growth calm height

EXTENDED SECTION A-AA (to include existing development)



APPENDIX 21

LAND WEST OF THE MA2 Design & Access Statement

## 7 Conclusions and Recommendations

- 7.1 The site is undesignated and located outside the Green Belt. As the site falls outside the development boundaries of established settlements within North Warwickshire, adopted plan policy recognises that identified circumstances are needed to warrant development.
- 7.2 The evolving development plans for both North Warwickshire and Tamworth are not advanced and have yet to be tested at Examination. Their adoption will depend on their consistency with planning policy at a national level and where, still relevant, regional planning policy and its associated evidence base.
- 7.3 The NPPF places significant weight on the need to support economic growth with the economy considered to be an important dimension to achieving sustainable development. Local planning authorities are urged to proactively meet the development needs of business.
- 7.4 Central Government has encouraged the development of a robust network of strategic rail freight interchanges and associated development of distribution warehouses. This is to increase the volume of rail freight, help reduce road congestion and carbon emissions, and support growth and create employment.
- 7.5 Draft regional planning policy is still relevant and referred to by both NWBC and TBC in plan-making and decision-taking. The draft RSS seeks to ensure local planning authorities make provision for a minimum reservoir of readily available land and a long term requirement. In the case of Tamworth, the Panel to the draft RSS recommended a long term requirement of 56 hectares, but noted that some of this may need to be provided for in neighbouring North Warwickshire or Lichfield due to a constrained supply in Tamworth. It is also recommended a minimum reservoir of 11 ha of "readily available" development land.
- 7.6 Draft regional planning policy constructively sought to address the need for strategic logistics land, particularly that well served by both road and rail. Other criteria required sites to be located away from incompatible neighbours such as housing.
- 7.7 The Regional Logistics Study 2009 Update identified a significant need for new warehousing land (between 307 and 430 ha) and noted the paucity of options for rail connected sites. The Panel to the RSS endorsed the Study's main findings and encouraged realisation of the full potential of Birch Coppice. The Panel also recognised that regional logistics sites could be disaggregated and made up of satellite sites, that are close or well related to intermodal terminals.
- 7.8 The need for significantly more new warehousing land, as identified by the Regional Logistics Study, has been endorsed recently by the Black Country and Southern Staffordshire Regional Logistics Site Study (April 2013). It recognises the mismatch between supply and demand for warehousing land in the West Midlands.
- 7.9 The North Warwickshire ELR identifies a very significant need for additional warehousing land for the Borough (between 190 ha and 340 ha). This requirement is significantly greater than current supply. Given the regional attraction of Birch Coppice, there may also be a need to identify further employment land to serve local demand.
- 7.10 There is real shortage of employment development land serving Tamworth, particularly large sites suitable for warehousing. Much of the identified supply is occupied and/or not being marketed. The supply of land is significantly less than the indicative long term requirement of 56 ha recommended by the Panel to the RSS. The true level of "readily available" land is less than 5 ha and significantly less than the minimum 5 year reservoir of 14 ha of "readily available" land of 14 ha required by Policy PA6 of the draft RSS.
- 7.11 Despite the economic downturn of the last 4/5 years, there has been significant take-up of large warehouses. This has led to a real shortage of supply of new facilities and the return of speculative development.
- 7.12 The West Midlands, along with the East Midlands, remains the dominant geographical area for distribution. The market has reverted particularly in recent years to the core area known as the Golden Triangle.

- 7.13 Access to rail, for the purposes of freight, has become an increasingly important issue for developers and operators in order to future proof their investments. This has, and will, place sites that are well located to rail freight terminals, such as Birch Coppice, at a premium.
- 7.14 Apart from Birch Coppice, there are few development options in the West Midlands where there are deliverable sites to support rail freight. Over four years have elapsed since the Panel report was published but no real substantive progress has been made in bringing forward new intermodal sites. We consider it makes most sense to fully exploit the potential that exists around existing facilities.
- 7.15 Birch Coppice has become a very successful scheme. It has managed to develop out at 240,000 sq.ft per year. The level of remaining consented land (including Phase 3) equates to 8.1 years supply at this rate of development. However, as Birch Coppice is so well established, can accommodate very large floorspace buildings, is accessible to BIFT, and in the hands of a competent developer, we consider the remaining land will be developed out over the next 5 years.
- 7.16 Tamworth has witnessed recently significant letting activity in its built stock, particularly in neighbouring Centurion Park. There is no available competing industrial and distribution stock that is modern and greater than 50,000 sq.ft. In addition, there is no available marketed development land that can provide for this sector of the market.
- 7.17 Enquiry levels for the distribution and automotive sectors for premises greater than 50,000 sq.ft are very good. However, there is a real gap in the market in Tamworth for this type of accommodation. The proposed development, comprising buildings of 57,183 sq.ft and 153,387 sq.ft, will help to close this gap and offer something to the Tamworth employment premises and land portfolio that is badly missing.
- 7.18 The land being promoted by St Modwen holds an almost unique set of characteristics to make it particularly attractive to the logistics and automotive sectors. The principal characteristics that make it so attractive are as follows:-
- Located in a logistics hot spot in the West Midlands.
  - Almost direct access to Junction 10 of the M42 and associated road infrastructure.
  - Good access to BIFT.
  - A national extension to Centurion Park.
  - Satellite site to Birch Coppice.
  - Sufficient size to accommodate large floorplate buildings of up to 150,000 sq.ft.
  - The principal land holding is flat.
  - The land is in the full control of a competent and experienced developer of industrial and distribution property (namely St Modwens).
- 7.19 The proposals should generate around 421 jobs, based on similar development at Birch Coppice, with shift patterns avoiding the normal peak hours.
- 7.20 These characteristics, and the real shortage of development land serving both the sub-regional distribution market and Tamworth, are strong circumstances that warrant new development at this location.

## 6 PLANNING MERITS

- 6.1 This section addresses the principal planning issues of the proposed scheme, in terms of the employment proposals, implications of HS2 Phase 2, implications for landscape and countryside, and the principle of development.

### Employment Proposals

- 6.2 The Report on Employment Land Issues undertaken by Jones Lang LaSalle submitted with the planning applications has reviewed the planning policy context, its evidence base and relevant market signals for Industrial and distribution property in relation to the site and fully justifies the proposals. The following section provides summarised analysis from this report.
- 6.3 Whilst the evolving development plans for both North Warwickshire and Tamworth are not advanced and have yet to be tested at Examination the Report demonstrates there exists a clear and undeniable need for new employment land. Their adoption will depend on their consistency with planning policy at a national level and where, still relevant, regional planning policy and its associated evidence base. The NPPF places significant weight on the need to support economic growth with the economy considered to be an important dimension to achieving sustainable development. Local planning authorities are urged to proactively meet the development needs of business.
- 6.4 Draft regional planning policy is still relevant and referred to by both NWBC and TBC in plan-making and decision-taking. The draft RSS seeks to ensure local planning authorities make provision for a minimum reservoir of readily available land and a long term requirement. In the case of Tamworth, the Panel to the draft RSS recommended a long term requirement of 56ha, but noted that some of this may need to be provided for in neighbouring North Warwickshire or Lichfield due to a constrained supply in Tamworth. It also recommended a minimum reservoir of 11ha of "readily available" development land.
- 6.5 The North Warwickshire ELR identifies a very significant need for additional warehousing land for the Borough (between 190 ha and 340 ha). This requirement is significantly greater than current supply. Given the regional attraction of Birch Coppice, there may also be a need to identify further employment land to serve local demand.
- 6.6 There is a real shortage of employment development land serving Tamworth, particularly large sites suitable for warehousing. Much of the identified supply is occupied and/or not being marketed. The true level of "readily available" land is less than 5ha and significantly less than the minimum 5 year reservoir of 14ha of "readily available" land of 14ha required by Policy PA6 of the draft RSS.
- 6.7 Despite the economic downturn of the last 4/5 years, there has been significant take-up of large warehouses. This has led to a real shortage of supply of new facilities and the return of speculative development.
- 6.8 The West Midlands, along with the East Midlands, remains the dominant geographical area for distribution. The market has reverted particularly in recent years to the core area known as the Golden Triangle. Access to rail, for the purposes of freight, has become an increasingly important issue for developers and operators in order to future proof their investments. This has, and will, place sites that are well located to rail freight terminals, such as Birch Coppice, at a premium.

- 6.9 Apart from Birch Coppice, there are few development options in the West Midlands where there are deliverable sites to support rail freight. Over four years have elapsed since the Phase 2 RSS Panel Report was published but no real substantive progress has been made in bringing forward new intermodal sites.
- 6.10 The proposals therefore fully exploit the potential that exists around existing facilities and provide the potential to act as a satellite site to Birch Coppice (North Warwickshire) and as natural extension to Centurion Park (Tamworth). The accompanying employment land report demonstrates how consideration is given to both the national and regional distribution market and the more local market for Tamworth and that the proposed development will be attractive to both.
- 6.11 Birch Coppice has become a very successful scheme. It has managed to develop out at 240,000 sq.ft per year. The level of remaining consented land (including Phase 3) equates to 8.1 years supply at this rate of development. However, as Birch Coppice is so well established, can accommodate very large floorspace buildings, is accessible to BIFT, and in the hands of a competent developer, Jones Lang LaSalle consider the remaining land will be developed out over the next 5 years.
- 6.12 Tamworth has witnessed recently significant letting activity in its built stock, particularly in neighbouring Centurion Park. There is no available competing industrial and distribution stock that is modern and greater than 50,000 sq.ft. In addition, there is no available marketed development land that can provide for this sector of the market.
- 6.13 Enquiry levels for the distribution and automotive sectors for premises greater than 50,000 sq.ft are very good. However, there is a real gap in the market in Tamworth for this type of accommodation. The proposed development, comprising buildings of 57,183 sq.ft and 153,387 sq.ft, will help to close this gap and offer something to the Tamworth employment premises and land portfolio that is badly missing.
- 6.14 The land being promoted by St Modwen holds an almost unique set of characteristics to make it particularly attractive to the logistics and automotive sectors. The principal characteristics that make it so attractive are as follows:-
- Located in a logistics hot spot in the West Midlands.
  - Almost direct access to Junction 10 of the M42 and associated road infrastructure.
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  - Satellite site to Birch Coppice.
  - Sufficient size to accommodate large floorplate buildings of up to 150,000 sq. ft.
  - The principal land holding is flat.
  - The land is in the full control of a competent and experienced developer of industrial and distribution property (namely St Modwen).

6.15 The proposals should generate around 421 jobs, based on similar development at Birch Coppice, with shift patterns avoiding the normal peak hours.

6.16 These characteristics, and the real shortage of development land serving both the sub-regional distribution market and Tamworth, are strong circumstances that warrant new development at this location.

#### Implications of HS2

6.17 High Speed Two (HS2) is the planned new high speed rail network connecting London with the West Midlands and running lines to Manchester and Leeds. The current consultation on the Phase Two Route started in July 2013 and closes on 31 January 2014.

6.18 The indicative Phase 2 route is currently shown running through the centre of the site on a south-west to north-east axis. An extract of the indicative route map is provided at Appendix 1 of this Statement. The applicant is making representations to the current consultation.

6.19 In determining the applications local planning authorities are required to have regard to the announcement of the Government's initial preference for HS2 Phase 2 and the Government's commitment in January 2012 to delivering Phase 2 as material considerations. Following the closure of the consultation the responses will be analysed and as a result, the proposed route may be subject to some change to take account of the responses received, environmental impacts and economic factors. The Government intends to announce a final decision on the proposed route, station and depot options for Phase 2 by the end of 2014.

6.20 In July 2013 TBC resolved to grant outline planning permission for the erection of 29 dwellings at Land off Freasley Lane, Hockley (ref 0081/2013) despite the application site being located in close proximity to the initial proposed route of HS2. The 7 July 2013 Committee Report addresses the HS2 issue and states:

*"No comments are made in terms of the current application other than to confirm that due to the proximity of the site to the proposed HS2 line the site may in the future be required by High Speed 2 Ltd to construct and/or operate the railway. An Informative advising the applicant of this is recommended. Overall the HS2 proposals should not impact upon the determination of this application, which includes from a land use, noise and compensation perspective."*

6.21 Given the early stage of the HS2 proposals in that consultation on the proposed route is still ongoing and the announcement of the preferred route is not expected until the end of 2014, the proposed route may be subject to some change, and therefore the HS2 proposals should not impact upon the determination of the planning applications for the proposed development of Land to the West of the M42.

#### Implications for Landscape and Countryside

6.22 NPPF paragraph 111 encourage the effective use of land by re-using land that has been previously developed, provided that it is not of high environmental value. The outline application site is located within the countryside, is not allocated for employment purposes, and is greenfield rather than previously developed land.

6.23 A Landscape and Visual Appraisal (LVA) has therefore been undertaken in order to assess the site. The LVA establishes that the overall effect of the proposed development on the landscape character and visual amenity of the study area will be low or low/medium. The illustrative Development Framework Plan has been landscape-led to ensure that the proposed development will be designed to mitigate any potential impact upon the landscape character of the site and its surroundings.

6.24 It is recognised that there would be some degree of harm in terms of landscape impact and the loss of greenfield land to built development. However, given the site is not within the Green Belt and is located between the existing built up area of Tamworth to the north-west and the major infrastructure of the M42 motorway to the south-east then the landscape impact of the development of this well-contained linear site would be of very limited harm. In addition the proposals will incorporate the provision of green space towards the southern end of the site which would effectively extend the existing green spaces corridor located to the west of the site.

#### Delivery of Sustainable Development

6.25 NPPF paragraph 14 sets a presumption in favour of sustainable development, which for decision-taking means approving development proposals that accord with the development plan without delay. It states where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.

6.26 It is considered that the full application proposals submitted to TBC for a new vehicular access from Centurion Way accords with the development plan as the site is shown as unallocated white land on the Tamworth Local Plan 2001-2011 Proposals Map.

6.27 With regard to the outline application proposals submitted to NWBC for employment development comprising uses classes B1(c), B2, and B8 this would be a departure from saved Core Policy 2 of the North Warwickshire Local Plan 2006 as the site is designated as countryside on the Proposals Map and is not allocated for employment use.

6.28 Notwithstanding this, it is considered that the saved employment policies of both the Tamworth Local Plan 2001-2011 and the North Warwickshire Local Plan are not consistent with the policies of the NPPF which requires local planning authorities to plan for economic growth.

6.29 The evidence base and Jones Lang LaSalle employment report demonstrate the existing Local Plan policies of both authorities have not kept pace with the need to identify new land for employment generating uses. The development fully meets the three strands of sustainable development (paragraph 7 of the NPPF) as follows:

- **Economic Role** – The proposals will make a major contribution to the economy of the area ensuring that much needed employment land is provided to support economic growth.
- **Social Role** – The proposals will support a strong, vibrant community, through the provision of approximately 421 jobs and training opportunities created from inward investment or expansion plans of existing business, with the development being accessible to local communities.

- **Environmental Role** – Whilst there will be the loss of some agricultural land, this is of very limited ecological or landscape value, and the proposals will create new woodland planting and provide the opportunity to enhance the public right of way.

6.30 The NPPF presumption in favour of sustainable development applies unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposal.

6.31 In terms of the adverse impacts it is accepted that the proposals would result in some harm in terms of landscape impact and the loss of greenfield land to built development. It has been demonstrated that through good design and the well-contained characteristics of the site any landscape harm would be very limited, with mitigation through the provision of green space towards the southern end of the site. The development site is greenfield, and NPPF paragraph 111 encourages the effective use of land by re-using land that has been previously developed. However the development of this greenfield site would assist in meeting the identified employment land requirements for Tamworth Borough which is very tightly constrained with a limited supply of previously developed land.

6.32 In terms of the benefits of the proposal the development of the site would not result in the loss of Green Belt land. The site is located immediately adjacent to the existing employment area at Centurion Park and would provide a natural extension. The site is considered to be located in a logistics hot spot in the West Midlands, with virtually direct access to the Junction 10 of the M42 and the strategic highway network, good access to BIFT, and would be a complementary use to Birch Coppice. Paragraphs 18-20 of the NPPF set out the Government's priority for promoting sustainable economic growth, and the proposed development would create approximately 421 new jobs and provide training opportunities for local people.

6.33 It is therefore clear that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits of the proposal and therefore the presumption in favour of this development applies.

6.34 Based on the clear evidence in the Framework (paragraph 14) planning permission should be granted for the development.

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## 7 S.106 HEADS OF TERMS

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### Circular 5/2005 and CIL

- 7.1 Paragraph B5 establishes national policy on planning obligations, making it clear they are only to be sought where they meet the appropriate tests and in particular they must be fairly related in scale and kind.
- 7.2 Whilst it is acknowledged no Community Infrastructure Levy (CIL) is in place at the present time for NWBC, following the introduction of the CIL Regulations on 6th April 2010, it is unlawful for a planning obligation to constitute a reason to grant planning permission unless it is: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

### North Warwickshire Local Plan

- 7.3 Paragraph B5 establishes national policy on planning obligations, making it clear they are only to be sought where they meet the appropriate tests and in particular they must be fairly related in scale and kind. North Warwickshire Local Plan (July 2006) Core Policy 12: Implementation indicates that planning obligations will be used to secure establishment and maintenance of sustainable communities and patterns of development.
- 7.4 Whilst it is envisaged the S106 Planning Obligation requirements will be refined following submission of the application and further consideration by consultees and the applicant, the heads of terms provided below indicate the applicant's current proposals.

### S106 Heads of Terms

- 7.5 The applicant proposes to enter into a Section 106 Agreement to provide a contribution for training and promotion targeted for local people to enhance access to the employment opportunities created. Similar contributions have been secured from the three phases of the Birch Coppice development and the contribution would be proportionate to the floor area proposed.
- 7.6 Further discussion will be held with NWBC and WCC with regard to training opportunities which will be secured under a S106 Agreement.

## 8 CONCLUSIONS

- 8.1 This Planning Supporting Statement has been prepared on behalf of St Modwen Developments Limited in support of development proposals for Land to the West of the M42, Tamworth which straddles the administrative boundary of NWBC and TBC.
- 8.2 An outline planning application has been submitted to NWBC which seeks outline planning permission for employment use within use class B1(c) - light industry, use class B2 - general industry, and use class B8 - storage or distribution. Approval is sought for access from Centurion Way, with all other matters to be reserved. In addition a full application has been submitted to TBC which seeks detailed planning permission for a new vehicular access as an extension of the existing Centurion Way, Tamworth in order to serve the outline application site within NWBC.
- 8.3 The planning policy assessment has had regard to the NPPF and relevant Development Plan policies contained in the adopted North Warwickshire Local Plan and adopted Tamworth Local Plan, along with the relevant policies in the emerging plans.
- 8.4 No conflict with development plan policy has been identified apart from the proposed development site being located outside of the development boundaries defined by the North Warwickshire Local Plan Proposals Map and Core Policy 2: Development Distribution which is considered to be not up-to-date as it has failed to adequately provide for the current employment land requirements of the area. A clear need for employment land has been demonstrated both for Tamworth's needs and North Warwickshire's needs in terms of logistics provision.
- 8.5 A full technical assessment of the proposals has been undertaken including drainage, landscape and ecology, which demonstrates there are no overriding constraints to delivery of the proposals. In addition, the Transport Assessment has demonstrated that the impact of the development on the wider road network is negligible. The site is therefore suitable for employment development with existing infrastructure and links to local residential areas and there are no technical or site specific reasons why the proposed development should not be granted planning consent.
- 8.6 A full assessment has been undertaken of the employment land requirements of both Tamworth and North Warwickshire. This has demonstrated there is a significant undersupply in employment land, when considered against current requirements particularly in the logistics sector. The proposals would therefore provide an opportunity of addressing some of this shortfall and act as a satellite to the existing Birch Coppice Regional Logistics site and/or a natural extension of Centurion Park.
- 8.7 The proposals represent sustainable development in fulfilling an economic, environmental and social role and whilst it is recognised the development will result in a loss of greenfield land and have a limited impact upon the local landscape, this limited harm, is significantly outweighed by the assistance the proposals provide towards the economic growth of the area and in particular the generation of 19,562 sqm of new employment floor space and approximately 421 new jobs and training opportunities for the local area.
- 8.8 It is therefore clear that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits of the proposal and therefore the presumption in favour of this development applies. Based on the clear evidence in the Framework (paragraph 14) planning permission should be granted for the development.

**(8) Application No: PAP/2014/0043**

**Hill House, 217 Long Street, Atherstone**

**Retrospective application for a triple garage/store/workshop for**

**Mr Alan Jones**

### **Introduction**

The application is reported to the Board as it relates to a retrospective application where a refusal may result in enforcement action being necessary

### **The Site**

This is within the development boundary for Atherstone in the rear garden of Hill House, a large house fronting the southern side of Long Street at its junction with Church Walk. The older section of the Queen Elizabeth School is on the opposite side of the road. There are other residential properties around the site – see the location plan.

### **The Proposal**

This is a retrospective application to retain a triple open fronted garage with a pitched roof but having one gable end and one hipped end and a smaller lean-to timber structure forming a workshop. The garage is 7.9 metres long and 4.9 metres deep. It is divided into three distinct sections with its tallest being 4.3 metres high and its lowest at 4 metres. It is constructed in horizontal timber boarding on a green oak stud frame with grey Marley roof tiles. The lean-to is 3 by 3.9 metres in dimension with a ridge height of 3.1 metres and is constructed in the same materials as the garage. The whole structure is 1.4 metres of the garden boundary.

Photographs of the garage/workshop are attached at Appendix A.

### **Background**

Permitted development rights were removed from these premises in 2006, otherwise the structure described above would be permitted development not requiring the submission of a planning application.

The structure has been constructed within the past four years.

Hill House is not a Listed Building but the site is within the Atherstone Conservation Area.

### **Development Plan**

Saved policies of the North Warwickshire Local Plan 2006 – ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design) and ENV15 (Heritage, Conservation, Enhancement and Interpretation).

## **Other Material Planning Considerations**

The Atherstone Conservation Area Designation Report 1995

The National Planning Policy Framework 2012 – (the “NPPF”)

The Draft Atherstone Conservation Area Appraisal Consultation Document – 2006

## **Representations**

Atherstone Civic Society – Objection as the building does not respect the character of the Conservation Area. Not only is it visually incompatible with the existing townscape, but the materials and method of construction are inappropriate for an historic area. In addition the period style window in the workshop, though reflecting the design of the existing windows in the area, strikes a bizarre note in this structure.

Atherstone Town Council - No objection

## **Observations**

The site is within the Conservation Area. Development plan policy ENV15 states that, “development inside or outside of a Conservation Area will not be permitted if it would have a harmful effect on the character, appearance or setting of a Conservation Area, or views into or out of the area”. The policy continues by saying that, “new buildings...will be required to harmonise with their settings, reflecting the scale, form, and fenestration of traditional buildings in the area, and using materials characteristic to the area”. This policy reflects both the statutory requirement of a Local Planning Authority in dealing with cases in conservation areas, but also the policy set out in the NPPF. Here at it says that “planning authorities should take into account the desirability of new development making a positive contribution to the local character and distinctiveness” of a Conservation Area such that “great weight should be given to the asset’s conservation”. As such it is considered that the policy carries full weight.

It is thus necessary to establish what the character and appearance of this part of the town’s Conservation Area is, and then whether the development harmonises with this reflecting its traditional character.

The Designation Report clearly identifies the linear character of the Long Street corridor, but it is the Draft Appraisal that provides more detail. Herein the site is within that section the corridor identified as its eastern end. This is described as being residential in character particularly marked here by larger three storey buildings fronting the road with rear ranges. Hill House is late 18<sup>th</sup> and early 19<sup>th</sup> Century with the School being Victorian, as is Holte Villas a little to the east. As a group these buildings make a positive contribution to the street scene here marking the eastern end of the Long Street Corridor. As with other Long Street properties they are marked by having large open gardens. The predominant building materials in the Area are local stock bricks and plain tile roofs with stone dressings and some stucco and slate. Number 217 is identified as a “key” unlisted building.

The building the subject of this application is within one of these gardens and because of its size reduces the openness of that garden. Moreover it is of a design that has no historic or architectural cohesion with, or even reflection of the attributes of Conservation Area being of a different built form, with a timber construction, different ridge heights and not of symmetrical dimensions. It is considered therefore that the building does not accord with the requirements of the relevant policy, as set out above, to the extent that it does have a harmful impact on the Conservation Area hereabouts. It is considered that this harmful impact is moderate and should thus result in a refusal of planning permission. However before doing so, the NPPF requires the Local Planning Authority to identify whether there are any public benefits arising from a grant of a planning permission. These benefits should then be balanced against the harm caused by virtue of a development's impact on a Conservation Area. However it is not considered that there any such benefits here and thus the presumption of refusal remains.

Whilst there are other residential properties around the site there are no adverse impacts arising from the development caused by any adverse impact on the residential amenity of the occupiers of these properties by virtue of over looking, loss of amenity, privacy or light. Additionally there are no adverse access impacts.

Having concluded that a recommendation of refusal is to follow, the Board will need to consider the expediency of taking enforcement action. Here that would involve the demolition of the structure – the garage and workshop. There are financial implications therefore for the applicant here resulting in the additional cost of removal and clearance of the building. In terms of legal and human rights implications then the applicant should have been aware of the removal of permitted development rights from the property in 2006, but he chose not to seek an application prior to construction. Nevertheless he has the right of appeal against both a refusal of planning permission and the issue of an Enforcement Notice. It is considered here that the harm done to the character and appearance of the Conservation Area is moderate and thus of such a degree to warrant a refusal and subsequent action. The implications as set out above carry little weight in mitigating that harm.

## **Recommendation**

- a) That planning permission be **REFUSED** for the following reason:

“ The garage and workshop building is not considered to reflect the character and appearance of this part of the Atherstone Conservation Area by virtue of its size; its built form, the method of construction used, the materials employed and its unsymmetrical dimensions. As such it does not harmonise with its setting in the Conservation Area thus not according with saved policy ENV15 of the North Warwickshire Local Plan 2006 and the National Planning Policy Framework 2012”.

## **Notes**

The Local Planning Authority has worked in a positive and proactive manner through quickly determining this application and discussing the issues with the applicant thus meeting the requirements of the NPPF.

- b)** That the Solicitor to the Council be authorised to issue an Enforcement Notice requiring the demolition of the whole of the garage/workshop building; the removal of all of the resultant materials from the site and the re-instatement of the site with a gravel surface. The compliance period is 3 months.

## BACKGROUND PAPERS

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2014/0043

<b>Background Paper No</b>	<b>Author</b>	<b>Nature of Background Paper</b>	<b>Date</b>
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	23/01/2014
2	Atherstone Civic Society	Representation	23/02/2014
3	Atherstone Town Council	Representation	20/02/2014
4	Case Officer	Email	26/02/2014
5	Agent	Email	28/02/2014
6	Agent	Email	08/03/2014

*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

*A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.*







**(9) Application No: PAP/2014/0072**

**Land South of, Grendon Road, Polesworth,**

**Outline planning application with means of site access from Grendon Road and St Helena Road to be determined (layout, scale, appearance and landscaping reserved for subsequent approval), for the erection of up to 144 dwellings (Class C3); open space; earthworks; balancing pond; site remediation; structural landscaping; car parking; and other ancillary works, for**

**Ms Sarah Milward - Taylor Wimpey UK Ltd**

**Introduction**

Members will recall that they have already received a presentation from the applicant in respect of this proposal. The application has now been submitted and it is reported here for information purposes at this time. A further report will be brought to the Board for determination in due course.

**The Site**

The site is located on the eastern edge of Polesworth. It is a broadly rectangular shaped parcel of land extending to approximately 6.52 hectares and comprising two fields of grassland and scrub with well defined boundaries. The site is bordered by Grendon Road (B5000) to the north, by St Helena Road to the south and west and by agricultural land to the east. The general setting can be seen on the attached location plan.

**The Proposal**

The application is submitted in outline with a Master Plan included showing the areas of proposed development. The proposal is for the erection of up to 144 dwellings within Use Class C3. A developable area is shown comprising of 3.70 hectares of land which is located to the south of the site and this would result in a housing density of some 39 dwellings per hectare. An area of formal and informal open space and landscaping is shown covering some 1.61 hectares and this would include a children's play area. In addition to this, there is an area of land some 0.33 hectares provided for the sustainable urban drainage system (SUDs).

Two vehicular access points are shown on the Master Plan with the primary access being delivered via a new roundabout on to Grendon Road on the northern boundary of the site. This primary access equates to approximately 0.83 hectares and has been designed to be the first part of the planned relief road from Grendon Road to the A5 (Watling Street) to the south. A secondary access is included onto St Helena Road to the south.

There are a large number of supporting documents submitted with the application. These comprise:

- Design and Access Statement
- Ecological Appraisal

- Agricultural Circumstances Report
- Transport Assessment
- Travel Plan
- Flood Risk Assessment
- Historic Environment Desk-based Assessment
- Services Report
- Waste Assessment
- Odour Assessment
- Noise and Air Quality Summary Statement
- Energy Statement
- Preliminary Risk Assessment
- Geo-environmental Site Assessment
- Coal Mining Risk Assessment
- Prior Extraction Feasibility Report
- Affordable Housing Obligations in the Context of Scheme Viability

The supporting documentation proposes the following draft Heads of Terms for a Section 106 Agreement:

- 25% Affordable Housing (i.e.– 36 units);
- Provision of the first part of the proposed Grendon Road to the A5 Relief Road,
- Improvements to public transport provision, and
- Any other planning obligations which are relevant to this proposal.

### **Development Plan**

Saved policies of the North Warwickshire Local Plan 2006: - Core Policy 2 (Development Distribution); Core Policy 8 (Affordable Housing) and Core Policy 12 (Implementation) together with policies HSG2 (Affordable Housing); HSG4 (Densities), HSG5 (Special Needs Accommodation), ENV1 (Protection and Enhancement of Natural Landscape), ENV4 (Trees and Hedgerows), ENV8 (Water Resources), ENV10 (Energy Generation and Energy Conservation), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), TPT1 (Transport Considerations in New Developments), TPT3 (Access and Sustainable Travel and Transport) and TPT6 (Vehicle Parking).

### **Other Material Planning Considerations**

The National Planning Policy Framework 2012

The Submitted Version of the North Warwickshire Core Strategy 2013: - Policies NW1 (Settlement Hierarchy); NW3 (Housing Development); NW4 (Split of Housing between Settlements), NW5 (Affordable Housing), NW8 (Sustainable Development), NW9 (Renewable Energy and Energy Efficiency), NW10 (Quality of Development), NW11 (Natural and Historic Environment), NW12 (Nature Conservation), NW13 (Green Infrastructure) and NW19 (Infrastructure).

The Council's Preferred Options for Site Allocations Consultation 2013

The North Warwickshire Borough Council Green Space Strategy

## Observations

Members are already familiar with this site and the proposals which are now set out in this application.

The main policy issues here are the loss of open countryside and its appropriateness for an alternative use namely residential development. The site lies outside the Development Boundary for Polesworth as defined in the Local Plan. In respect of the submitted version of the Core Strategy, the settlements of Polesworth and Dordon are recorded as being suitable for an additional 440 dwellings. The Preferred Options Consultation Document includes the southern part of this site as an identified preferred site for residential development (POL6). Following representations made to the Council on this document, proposed amendments were agreed by the LDF Sub-Committee and included the expansion of the preferred allocation at POL6 to cover the whole of the application site for approximately 130 dwellings.

The Inspector's Report following the Examination of the Core Strategy which took place in January 2014 is not yet available. The content of this and its recommendations will be a material consideration of some weight when the Board comes to assess the suitability of releasing this site at the start of the plan period.

The second issue relates to the provision of affordable housing. Saved Local Plan Policy HSG2 states that residential development on land outside of any Development Boundary will require the scheme to provide 100% affordable housing so as to meet identified local need. However, as the site is identified as a Preferred Site for future housing development, Saved Policy HSG2 also states that within the Development Boundary for Polesworth and Dordon a target of 40% of affordable housing will be sought in all developments that exceed a site area of 0.5 hectares or comprise of 15 dwellings or more. Emerging Policy NW5 in the Core Strategy states that a target of 40% of dwellings completed in the plan period should be in the form of locally affordable housing achieved through on site provision or off-site financial contributions and/or land. The draft Section 106 Agreement would seek to ensure that affordable housing is disposed of to a Registered Social Landlord and that the mix of tenures would be 80% rented and 20% shared ownership. The affordable rented housing needs in Polesworth at the present time are for:

27 x 1 bed flats, 18 x 2 bed bungalows, 17 x 2 bed houses, 5 x 3 bed houses and 6 x 4 bed houses.

The application proposes 25% on site affordable housing – 36 units. Two development appraisals have been submitted with the application, one of which shows full policy compliant affordable housing (40%) and full financial contributions and the second, which shows the maximum level of affordable housing the developer claims can be sustained in order to achieve a break-even appraisal. The proposed on site affordable housing would comprise of:

4 x 1 bed houses/maisonettes – affordable rented; 4 x 2 bed bungalows – affordable rented, 12 x 2 bed houses – affordable rented, 6 x 3 bed houses – affordable rented, 7 x 2 bed houses – shared ownership and 3 x 3 bed houses – shared ownership

The Council has commissioned the District Valuation Office to look through the viability calculations provided.

Other financial contributions are suggested in the supporting documentation are improvements to public transport provision along with any other planning obligations that are relevant to this proposal.

The third issue relates to the impact of this housing scheme on the highway network. The NPPF promotes sustainable transport and requires all developments that generate significant amounts of movement to be supported by a Transport Statement or Transport Assessment. This planning application is accompanied by a Transport Statement and a Travel Plan. The primary access road design of a roundabout on to the B5000 and a 6.7 metre wide road through the site are intended to form the first phase of the link road from the B5000 to the A5. This will relieve congestion on Long Street, Dordon. However, the subsequent phases of this link road are not yet secured and so the development of this site for housing needs to ensure that traffic congestion will not be further exacerbated along Long Street, Dordon; at the Bridge Street/Grendon Road junction and along the B5000. The Transport Assessment proposes to extend the existing bus service to incorporate the site and subsequently to improve public transport access for residents on the eastern side of Polesworth. The Highways Authority has been consulted on these issues.

The fourth issue relates to surface water drainage in the area. A Flood Risk Assessment has been submitted which shows that the site lies within Flood Zone 1 (where there is less than a 0.1 per cent (1 in 1000) chance of flooding occurring each year). The proposal is to discharge storm and foul water from the development directly to the existing Severn Trent Water network. A number of residents have raised the issue of drainage problems in the area during the pre-application consultations. The proposal is to attenuate the surface water in the form of balancing ponds to be located to the north-west corner of the site. Severn Trent Water Limited and Warwickshire County Council as Lead Drainage Authority have been consulted on this application.

There are a number of other issues which will be material to the determination of this application. These relate to layout of the proposed housing and open space provision, the parking and internal access arrangements and the relationship between the proposal and the existing residential properties. These issues along with others raised will be addressed in a forthcoming determination report once the consultation period has been completed and the responses have been collated.

## **Recommendation**

That the receipt of the application be noted.

## BACKGROUND PAPERS

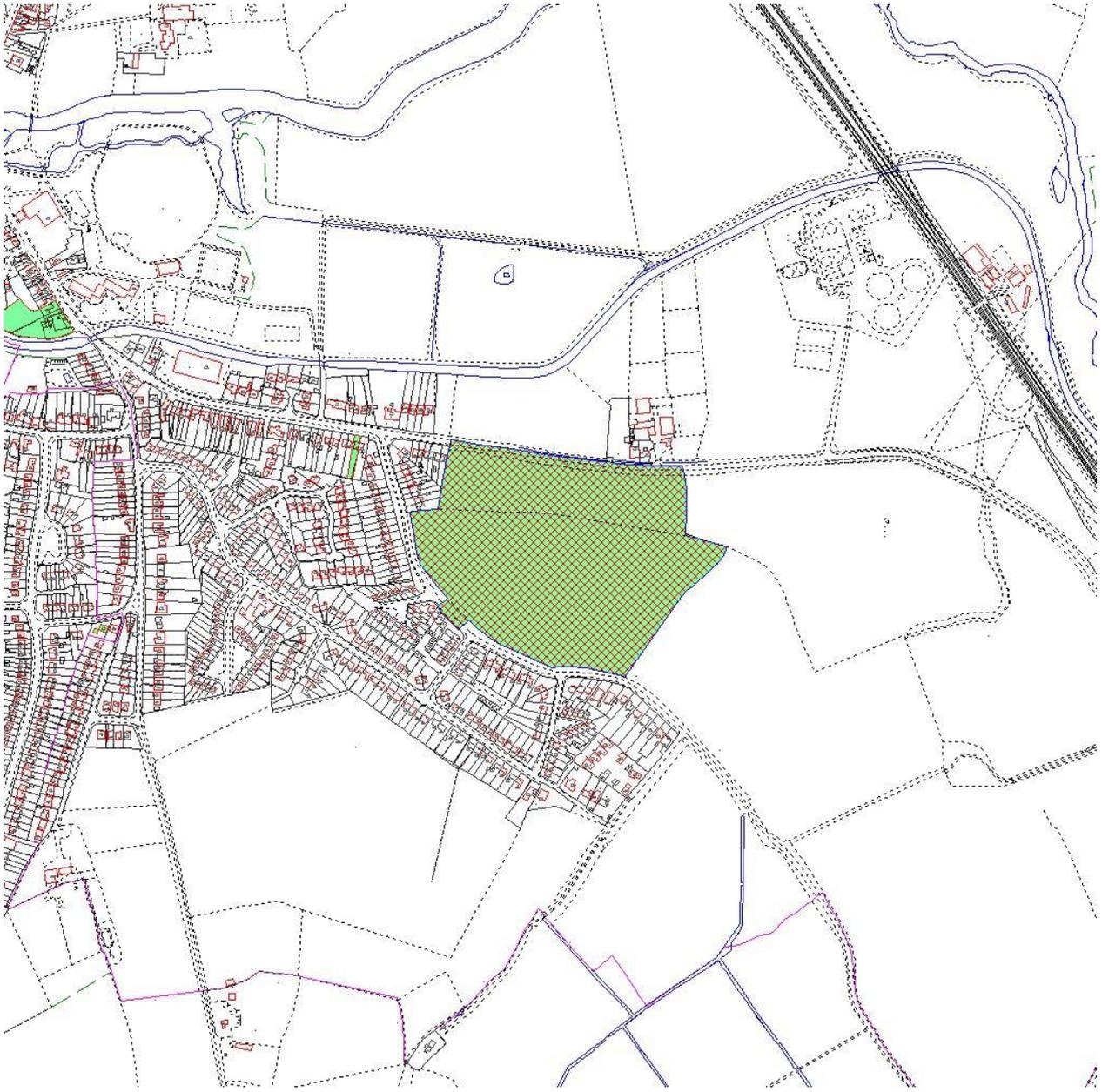
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2014/0072

<b>Background Paper No</b>	<b>Author</b>	<b>Nature of Background Paper</b>	<b>Date</b>
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	18/2/14

*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

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**(10) Application No: PAP/2014/0092**

**Baddesley Ensor Social Club, 50 New Street, Baddesley Ensor, Atherstone, CV9 2DN**

**Removal of condition No.16 of planning permission PAP/2013/0459 related to affordable housing and replace with unilateral undertaking covering affordable housing, for**

**Waterloo Housing Group**

**Introduction**

This application is referred to the Board as it involves a Section 106 Unilateral Undertaking.

**The Site**

This is the Social Club on the south side of New Street within the built up area of Baddesley Ensor. There is a disused bowling green and car park at the rear.

**Background**

Planning permission was granted in December 2014 for the construction of ten dwellings at the rear of the Club. One of the conditions attached to that consent was that the new houses should remain for the benefit of a Registered Social Landlord in perpetuity so as to ensure that all ten units remain as affordable houses.

**The Proposal**

The applicant and developer for the ten units is such a Landlord but its funding partners have indicated that such a condition would have a negative impact on any future borrowing that Waterloo may wish to undertake as it has an impact on the value of the asset. Instead the applicant is proposing a Section 106 Unilateral Undertaking in which the Waterloo covenants not to use the houses other than as affordable dwellings. The draft of the Undertaking is attached at Appendix A.

**Development Plan**

North Warwickshire Local Plan 2006 (Saved Policies):Core Policy 8 (Affordable Housing) and HSG2 (Affordable Housing).

**Other Relevant Material Considerations**

North Warwickshire Core Strategy (Submission Document February 2013):

Government Advice: National Planning Policy Framework (NPPF).

The Council's Supplementary Planning Guidance on Affordable Housing.

**Observations**

There is no objection to this proposed change. It is in essence an alternative way to secure the provision of 100% affordable housing here in perpetuity. Both housing and legal officers are satisfied with the proposal.

**Recommendation**

That subject to the completion of the Unilateral Undertaking as set out in this report planning permission PAP/2013/0459 dated 19 December 2013 may proceed without compliance with condition 16, but in compliance with all of the other conditions.

## BACKGROUND PAPERS

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2014/0092

<b>Background Paper No</b>	<b>Author</b>	<b>Nature of Background Paper</b>	<b>Date</b>
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	26/2/14

*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

*A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.*



2014/0092

DATE: 2014

**Waterloo Housing Association**

NORTH WARWICKSHIRE BOROUGH COUNCIL
RECEIVED 26-Feb-14
PLANNING & DEVELOPMENT DIVISION

**UNILATERAL UNDERTAKING**

**TO**

**North Warwickshire Borough Council**

**SECTION 106  
TOWN AND COUNTRY PLANNING ACT 1990**

**RELATING TO: THE PROPOSED DEVELOPMENT OF 10  
RESIDENTIAL UNITS AT THE REAR OF  
BADDESLEY SOCIAL CLUB, BADDESLEY ENSOR**

Planning Application Ref: [ \* ]

7847773.2

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7847773.2

**THIS UNDERTAKING** is made as a deed the                    day of                    2014

**PARTIES**

**Waterloo Housing Association Limited** of 1700 Solihull Parkway Birmingham  
Business Park Solihull B37 7YD ("**the Owner**")

**TO**

**North Warwickshire Borough Council** of Council Offices South Street, Atherstone,  
Warwickshire CV9 1DE ("**the Council**")

**1. DEFINITIONS**

In this Undertaking (except where the context otherwise requires):

"**the Act**" means the Town and Country Planning Act 1990 (as amended by the  
Planning and Compensation Act 1991).

"**Affordable Housing**" means social rented, affordable rented and intermediate  
housing, provided to eligible households whose needs are not met by the market and  
as defined in Annex 2 of the National Planning Policy Framework (NPPF)

"**Affordable Housing Dwellings**" means 100% of the Dwellings to be constructed  
on the Land

"**the Application**" means planning application number [       \*       ].

"**Chargee**" means any mortgagee or chargee of the Owner or the successors in title  
to such mortgagee or chargee or any receiver or manager (including an  
administrative receiver) appointed pursuant to the Law of Property Act 1925

"**Commencement of the Development**" means the earliest date upon which any  
material operations are begun in accordance with the provisions of Section 56(4) of  
the Act save for the purposes of this Undertaking none of the following operations  
shall constitute a material operation:

site preparation works;

archaeological investigations;

site investigation works (including environmental investigations);

works of demolition;

remedial work in respect of contamination or other adverse ground  
conditions;

diversion and laying of services;

erection of any temporary means of enclosure;

and "**Commence the Development**" shall be construed accordingly.

"**the Development**" means the development authorised by the Planning Permission.

"**Dwellings**" means all houses, maisonettes, flats, bungalows and all other varieties of accommodation which may be built or are intended to be built on the Land to be used as individual units of accommodation for independent occupation by one or more people.

"**the Land**" means the Land shown for the purposes of identification only edged red on the Plan known as land at the rear of Baddesley Social Club, Baddesley Ensor.

"**Plan**" means the plan annexed to this Undertaking.

"**Planning Permission**" means the planning permission to be granted by the Council pursuant to the Application in substantially the form of the draft annexed to this Undertaking

"**Protected Tenant**" shall mean any tenant who:

(a) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Dwelling ;or

(b) has been granted a shared ownership lease by of a particular Dwelling and the tenant has subsequently purchased all the remaining shares so that the tenant owns the entire Dwelling;

(c) any mortgagee charge and or successor in title to anyone falling with categories (a) or (b) above

## 2. INTERPRETATION

- 2.1 References to the masculine, feminine and neuter genders shall include the other genders.
- 2.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.
- 2.3 References to natural persons are to include corporations and vice versa.
- 2.4 Headings in this Undertaking are for reference purposes only and shall not be taken into account in its construction or interpretation.

- 2.5 The expressions the Owner the Chargee and the Council shall include their respective successors in title and assigns.
- 2.6 A reference to a Clause, Paragraph or Schedule is (unless the context otherwise requires) a reference to a Clause, Paragraph or Schedule of this Undertaking.
- 2.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.
- 2.8 Where in this Undertaking a party includes more than one person any obligations of that party shall be joint and several.
- 2.9 Any reference in this Undertaking to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

### **3. INFORMATION**

- 3.1 The Owner owns the freehold interest in the part of the Land edged red on the Plan and is registered as proprietor of it with Title Absolute at H M Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Number [ \*\* ] at the date of this Undertaking.
- 3.2 The Council is the local planning authority for the purposes of the Act for the Land.
- 3.3 The Council is satisfied that the Development is such as may be approved by the Council under the Act and planning permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Undertaking.

### **4. STATUTORY AUTHORITY AND LEGAL EFFECT**

- 4.1 This Undertaking shall constitute a planning obligation for the purposes of and made pursuant to Section 106 of the Act.
- 4.2 The obligations of the Owner in this Undertaking are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority
- 4.3 Save as otherwise provided in this Undertaking the Owner covenants with the Council to the intent that this Undertaking shall be enforceable without limit of time

(other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under it to the Land or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

- 4.4 No person shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking after they shall have parted with all interest in the Land or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.
- 4.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking in respect of any site used only as an electricity substation, gas governor or pumping station.
- 4.6 No owner-occupier of the Dwellings shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of covenant and/or be liable for any breach of a covenant and/or an obligation contained in this Undertaking.
- 4.7 If the Planning Permission is not granted, expires (within the meaning of Sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Undertaking shall forthwith determine and cease to have effect.
- 4.8 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.
- 4.9 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

#### **5. CONDITION PRECEDENT**

- 5.1 The planning obligations contained in this Undertaking shall not be enforceable by the Council until the grant of the Planning Permission by the Council.

## **6. OBLIGATIONS**

- 6.1 The Owner further covenants, agrees and declares in respect of the Land as set out in the Schedules.

## **7. COSTS**

- 7.1 The Owner agrees to pay to the Council on the signing of this Undertaking the Council's reasonable costs and disbursements of and incidental to the approval of this Undertaking of £250 (two hundred and fifty pounds)

## **8. INVALIDITY**

- 8.1 It is agreed and declared that if any clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of this Undertaking shall remain in full force and effect provided severance from this Undertaking is possible.

## **9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 9.1 Nothing contained in this Undertaking shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council and to the specific person executing this Undertaking as the Owner and its successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Undertaking.

## **10. OTHER MATTERS**

- 10.1 The Developer shall indemnify the Council and the Owner for any fair and reasonable expenses or liability arising to them in respect of breach by the Developer of any obligations contained in this Undertaking.
- 10.2 The Developer shall indemnify the Council for any fair and reasonable expenses or liability arising to it in respect of breach by the Owner of any obligations contained in this Undertaking.

- 10.3 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Undertaking and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to this Undertaking and shall cite the number and clause of this Undertaking to which it relates.
- 10.4 Payment of any money under this Undertaking shall be made by the Owner sending the full amount payable in the form of a Banker's Draft or Solicitors' client account cheque within the time specified in this Undertaking together with a letter specifically referring the name, date and parties to this Undertaking and citing the number and clause of this Undertaking to which the relevant sum relates and identifying which portion of the amount relates to any sum calculated to take account of Index Linking.
- 10.5 This Undertaking shall be registered as a Local Land Charge.

**IN WITNESS** of which the Parties have executed this Undertaking as a deed and have delivered it upon dating the day and year first before written.

**SCHEDULE 1**  
**General Obligations**

- 1.1 The Owner covenants with the Council with the intent that these are planning obligations for the purposes of Section 106 of the Act:
1. To give the Council notice in writing no later than 7 days prior to the anticipated Commencement of the Development.
  2. To give the Council notice in writing of the Commencement of the Development within 7 days of Commencement of the Development.
  3. To give the Council notice in writing of any change of ownership of the Land.

**SCHEDULE 2**  
**AFFORDABLE HOUSING**

- 1.1 The Owner covenants with the intent that these are planning obligations for the purposes of Section 106 of the Act:
- i. Not to use the Affordable Housing Dwellings for any purpose other than Affordable Housing
- 1.2 The obligations contained in this Undertaking shall not be binding against:-
- i. A Chargee; or
  - ii. A Protected Tenant

**SCHEDULE 3**

**The Plan**

The Common Seal of  
**WATERLOO HOUSING ASSOCIATION**  
Was hereunto affixed  
In the presence of

Authorised Signatory

Authorised Signatory