

APPENDIX A

General Development Applications

(i) **Application No:PAP 2009/0420**

Almshouses, Church Lane, Middleton

Demolition of six almshouses, and the erection of fourteen almshouses and affordable houses with associated access and parking for

Samuel White Charities

Introduction

The receipt of this application was reported to the Board in June 2010 because of an associated Section 106 Agreement. It was resolved at that time to visit the site before determination and that has now taken place. The delay in reporting the application back to Board for determination has been due to objections received from the Highway Authority, and secondly to secure the detailed content of the Agreement. These matters will be explained more fully below.

The previous report is attached at Appendix A for information.

Amended Proposals

Warwickshire County Council acting as Highway Authority objected to the submitted proposals concerned about the adequacy of the visibility at the junction of the proposed new access onto Church Lane and to concerns about the impact on the public footpath –the T15 - that runs along the eastern boundary of the site. Amended plans have now been submitted. These do not show any substantial change to the layout or to the appearance of the site, but they do contain an almost imperceptible, but significant re-alignment of the proposed hedge in front of the frontage block, in order to improve visibility. Additionally the public footpath has been widened to two metres in width over its complete length adjoining the site. The County Council is satisfied with these plans and has withdrawn its objection.

The amended plans have been circulated to all those who objected to the original scheme. Representations that have been received are recorded below.

The Draft Section 106 Agreement has been reviewed and reworded with the full involvement of the Council's Housing Officers. In essence it now ensures that all of the fourteen properties will remain "affordable" in perpetuity, and that there is a strong "locality" element in the letting arrangements.

Consultations

Warwickshire County Council as Highway Authority – Originally lodged an objection but has now withdrawn this subject to conditions being attached to the grant of any planning permission. These relate to ensuring that the amended plan is that approved and other standard conditions about the construction of the access. The footpath width is now satisfactory and this is included on the amended plan.

Warwickshire Wildlife Trust – The Trust has reviewed the bat survey which was submitted following its earlier concerns. It agrees that conditions can be attached to the grant of any planning permission.

Warwickshire Police – No objections

Warwickshire Museum – The Museum has no objection subject to a standard condition requiring an archaeological investigation prior to the commencement of development.

Severn Trent Water Ltd – It has no objection subject to a standard condition

Environmental Health Officer – He recommends that a Phase One survey to establish the likelihood of ground contamination is undertaken prior to the commencement of work.

Housing Officer – Supports the application

Environment Agency – No objection

Representations

All households in the village of Middleton were notified of this application. The following representations have been received:

- Three letters of support referring to the need for affordable homes in the village
- One letter commenting on the design of the buildings not including bungalows; the building line being forward from the neighbouring properties and the need for energy efficient dwellings if they are constructed
- Five letters of objection. The matters raised concern highway issues about the safety and adequacy at the access; questions about the authenticity of the evidence supporting the case, the lack of consultation, the scale of the development is too large and does not match the extent of the housing need in the village, whether this is the best site, whether the design and appearance are in-keeping with the buildings on either side or in the village, whether the scheme has the full support of the village, the letting arrangements, the potential that this becomes accommodation for "outsiders", no bungalows are included, and the split between the number of Almshouses and the other properties.

As indicated above, all those who submitted representations were invited to comment on the amended plans. No additional representations have been received other than those from the original objectors reiterating the matters referred to above.

Middleton Parish Council supports the development of affordable homes in the village, and is presently looking at the detail of the draft Agreement. In respect of the layout, the Council queries the number of almshouses provided; it wishes to see the taller houses at the rear of the site not the front, the layout may lead to anti-social behaviour, and it wishes to see planting at the front.

Observations

a) Introduction

The earlier report outlined that the main issue here is whether there are material planning considerations of such weight to override the presumption that this application should be refused planning permission being for residential development, and therefore inappropriate development, within the Green Belt. The main material consideration that the applicant is putting to the Board, is that as this proposal is wholly for affordable housing, it is not inappropriate development in the Green Belt. It is argued by the applicant that the proposal accords with Development Plan policy and Government Planning Policy in respect of the provision of affordable housing. It is thus necessary for the Board to be aware of these policies.

Middleton is not identified as a Local Service Centre by the North Warwickshire Local Plan, and it has no development boundary. It is thus not a settlement where new housing would normally be permitted. However, the reasoned justification in saved policy HSG2 of that Plan states that Government advice sees the provision of Rural Exception Sites as an important source of affordable housing within or adjacent to existing villages. When such applications are submitted, developers are expected to provide evidence of local need based on research within the settlement and its hinterland. Saved Core Policy 8 of the Local Plan then defines what the Council means by affordable housing. In addition saved Policy HSG3 states that replacement houses outside of development boundaries will be permitted if the new house is not more than 30% larger than the original dwelling.

Government Planning Policy in respect of the Green Belt is set out in its Planning Policy Guidance Note Number 2. Here it states that new housing need not necessarily be inappropriate development within the Green Belt, if it is for "limited affordable housing for local community needs under Development Plan policies according with PPG3". The Government's Planning Policy Statement Number 3 (which superseded PPG3) states that, "Where practical and viable, Local Planning Authorities should consider releasing sites solely for affordable housing including using a Rural Exceptions Site policy. This enables small sites to be used, specifically for housing because, for example, they are subject to policies of restraint. Rural Exception sites should only be used for affordable housing in perpetuity. A Rural Exception Site policy should seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection, whilst also ensuring that rural areas continue to develop as sustainable, mixed, inclusive communities".

It is clear from this description that this proposal might very well be appropriate development here, given that it involves some replacement of existing dwellings; that it is within the village and adjoining it, that it involves a Housing Charitable Trust, and that it is supported by Housing Needs evidence, and a draft Section 106 Agreement relating to affordability and occupancy arrangements. It is proposed to explore these issues further before coming to a conclusion on this main issue.

b) Background

The applicant in this case is a Charitable Housing Trust. It was established in the 1700's, for those parishioners who were "in need". The current development of six almshouses dates from the early 1960's. Recent building survey work has shown serious maintenance and refurbishment work is required in order to meet the guidelines of the Almshouses Association. New space standards in these guidelines would require conversion of the existing units such that there would be a reduction in the number of units actually becoming available. As a consequence the Charity proposes complete redevelopment as the its only option, but in order to make such a scheme viable, additional units would now be required. The Charity was aware of local housing needs in the area, and thus considered that its own difficulties perhaps provided an opportunity for the parish to meet some of its own "affordable" housing needs at the same time. Hence it put together the combined proposal that is now being considered by the Board. Additionally, the Parish Council had commissioned a Housing Needs Survey in partnership with the Warwickshire Rural Community Council and the Warwickshire Rural Housing Association. The conclusions from that Survey have informed the Trust's combined proposals. The Housing Needs Survey conclusions have also been widely circulated in the village, and an exhibition and consultations undertaken. All of this work looked at the survey results, as well as identifying a potential range of different sites within Middleton, which might be able to accommodate the identified housing need. This background is presented to Board, so as to put the current proposal into perspective.

c) The Evidence Base

The housing needs survey was published in late 2008. This concluded that some 18 new homes were needed in Middleton – 15 to be rented and 3 to be shared ownership, with 17 provided with two bedrooms, and one for three bedrooms. Housing Officers recognise the significance of this type of survey and would give significant weight to the conclusions bearing in mind the nature and scope of the survey, as well as the experience of the surveyors. Waiting list information from the Housing Division in early 2009 shows a much higher figure for people wanting to live in Middleton as their preferred location. This shows a "demand" for both family and bungalow accommodation. However this has to be treated with caution, as there is a difference between a "needs" survey and an expression of a preference to live in a particular area. It is considered that in the absence of equivalent evidence to rebut the conclusions of this survey work, it should be given weight in the consideration of this proposal, as meeting one of the tests of Development Plan policy.

The application is also accompanied by a draft Section 106 Agreement. This obligates the Trust as one of the signatories to provide both socially rented and shared ownership accommodation at affordable levels. The rentals for the rented accommodation would be equivalent to those charged by a Registered Social Landlord (RSL) for an equivalent property, and occupiers of shared ownership premises could only "staircase" up to 80% of the market value of that property. Additionally its sale would have to be back to the Trust, to an RSL or to the Council. In this way the Agreement ensures affordability in perpetuity. The Agreement also has a significant "locality" obligation whereby occupiers need to fulfil a number of criteria before they can occupy one of the units. This draft Agreement therefore should be given significant weight in the consideration of this proposal, as meeting one of the tests of Development Plan policy.

As a consequence of the matters raised by the above two paragraphs it is concluded that this development proposal, being for affordable housing development, remains a strong candidate for being treated as appropriate development.

d) The Site

As indicated above, the Parish Council held an exhibition to look at possible sites for a prospective affordable homes development in the village. A large number of sites were identified at that time, but this is the only site that has actually transferred into a fully "worked up" proposal in the form of a planning application.

There are three immediate and significant matters that give weight to the appropriateness of this site for new development. Firstly, the majority (60 %) of the site is already residential land. Secondly, it is centrally located within the village, and thirdly, there are existing residential properties on either side of the site.

Conversely there are two equally immediate and significant matters that give weight to this being an inappropriate site for this new development. Firstly, the site extends beyond the existing limit of residential garden land into open countryside. Secondly, as a consequence, there is an adverse impact in that there is a loss of openness of the Green Belt hereabouts.

Members will be aware that even although there may be material considerations to support a development proposal in the Green Belt, such a conclusion might be outweighed if there is a significant adverse impact on the openness of the Green Belt by allowing that development to take place. The Board will need to consider this issue in this case given the matters raised above.

It is accepted that there is an adverse impact here on openness, and that that impact is not immaterial. However it is not considered that it is so significant to lead to a recommendation of refusal. There are several reasons for this. Firstly, Development Plan and Government Policy indicate that sites for affordable housing in rural areas should be located within settlements or on land adjoining them. This site does adjoin the village. Secondly, the context of this site should be borne in mind. The built frontage on the south side of Church Lane, is not a regular, or even a fixed line. There are houses set back behind other houses; the rear garden boundaries are

uneven, and development "spills" down the slope from the road. There are also a number of equestrian uses and structures along this slope throughout its length. Thirdly, the development proposal itself has the taller development fronting Church Lane with the lower residential accommodation at the southern end where it would extend onto the existing paddock. As a consequence of all these matters, it is considered that any loss of openness will be neutral rather than negative.

e) Initial Conclusion

The introduction indicated to Members that this development might not be inappropriate development in the Green Belt if it accords with Development Plan and Government Planning Policy. It is concluded from the initial exploration of the relevant criteria that it is an appropriate development within the Green Belt, and can thus be treated as a Rural Exceptions Site.

Before moving on to look at the detailed design and technical issues arising from the proposal, it is necessary to review the objections lodged by some residents. Whilst these also relate to the detailed issues to be considered later, there are representations that relate to the substance of the application. These will be addressed here.

The first criticism relates to the date of the Housing Needs Survey – 2008. It is said that this is now out of date because it relied on residents' circumstances at that time; that some of the respondents no longer live in the village, and that the authors "had a vested interest". On the final point the Rural Community Council has been undertaking such surveys throughout Warwickshire on behalf of local communities for some time now and its experience is valued. The Borough Council has used its evidence before when looking at other developments in other settlements. Additionally, the survey and its results were the subject of local community consultation in the village itself, and if there were fundamental criticisms, they should have been addressed at that time. The survey was not repeated or amended following that consultation period. Housing Officers have been asked again to indicate what weight they would give now to the 2008 conclusions, and they remain of the view that there is a need for affordable housing in the village, if anything they conclude that the situation may have worsened over the intervening period. Additionally, they confirm that they would normally rely on the data from such Housing Surveys for up to five years. In the absence of any evidence to rebut the 2008 survey findings either from the Borough Council's own housing officers or from the Parish Council or any other community group, it is considered that the evidence base can be relied on.

The second criticism, relates to the proposed development all being on one site rather than being dispersed throughout the village. This is linked to the reference in the Local Plan policy HSG2 to affordable sites being for ten units only, and to the views expressed by the community at the exhibition where there was said to be very limited support or preference for the application site. It is accepted that dispersed development throughout the village might be attractive in terms of the impact on the village, however no proposals have come forward from land owners to actually accommodate the affordable housing as a consequence of the public exhibition, nor have there been exploratory talks with planning officers on alternative sites. It

appears that alternatives do not appear to be a reasonable prospect at the present time. The application site is already a residential site and thus replacement housing here would be appropriate and wholly in accord with Development Plan policy. As such, given the Trust's own redevelopment proposals, this site was always likely to be the core site in any affordable housing provision. It is accepted that the Local Plan policy refers to developments of ten units. However, there are already six units on this site and as indicated above, Development Plan policy would fully support their replacement on a like by like basis. The net addition is eight units, thus falling under the number of ten as set out in the policy. Finally, it is noticeable that the alternative sites set out by the objectors that are said to have the community's greater preference are all on the edge of the village and which would also extend built development into open land thus impacting on the openness of the Green Belt in those locations. During the community consultation it is accepted that the public was invited to indicate where was their preferred site for a local housing scheme. The application site attracted support and objection as did a number of other sites. The important consideration for the Board here is to explore the planning merits or otherwise of the current application site, and not to indicate whether this site is "preferred" or whether other sites should be looked at. It is material that the site has been looked at along with alternatives, and that it attracted different representations, but these were inconclusive either way, just as was the case with other options.

These objections do not alter the initial conclusion reached earlier that the current proposal is for appropriate development and that it has support as a Rural Exceptions Site. Members will know that in cases such as this there a number of different policies to consider; a variety of different impacts to assess, and representations and objections that raise questions that test both policy content and the weight to be given to planning considerations. In this case, as in many others, the Board has to balance all of these matters. Here there are disadvantages and adverse impacts as well as the opportunity to realise substantive benefits. Several matters have all come together in this one application and the Board will have to determine the application before it. On balance, officers would support the principle of the development proposals.

f) Design Considerations

This site is centrally located in the village which generally has a variety of different house types but still retains its rural character and appearance. The design of any new housing on the application site has to reflect this, and enhance the area. The existing buildings are of little merit, but they do set a pattern for any redevelopment proposals by suggesting that there should be a deep building line away from Church Lane and that the new development should contain some lower development. Given too that the site slopes down towards the south the opportunity exists to allow the development to "spill" naturally down the site. These factors have been taken on board in the current proposal – it reflects the building line; there is a fall in height of the new buildings down the slope and they reflect and are in keeping with a traditional rural cottage character and appearance. There may well be personal preferences or minor amendments that could be suggested, but there is nothing here to warrant a refusal on design terms.

There has been some representation about the design however. It is suggested that the building line should exactly match that of neighbouring property. The difference as scaled from the plans is that the proposed front elevation stands 1.5 to 2 metres forward to those on either side. This is immaterial and would have no visible advantage.

The issue raised earlier about the proposed development all being on one site has a design consequence in that it is said that the development is thus out of character with the village. This is understood to be a criticism that the site is one that is to be developed "in depth" rather than as frontage infill and that it would lead to a higher than usual density in the village. Whilst these criticisms are understood they are not given substantive weight. The site is to be developed to the rear of the Church Lane frontage, yet there are examples of just this in the village, particularly along the south side of Church Lane as illustrated in the plans attached as Appendices to this report. Additionally there are already pockets of higher density development in the village – for example, Simmons Close. The density is not materially out of place in the village, given that the development is for smaller dwellings.

g) High way Considerations

As indicated in the introduction to this report, one of the main reasons for the delay in reporting this application for determination was to give time to the applicant to overcome an initial objection received from the Highway Authority. This related to the adequacy of the visibility of the proposed access onto Church Lane from the development. The applicant and the County Highway engineers have undertaken extensive research and discussion, which has resulted in the submission of an amended plan and the consequent withdrawal of the highway objection by the County Council. The amendment amounts to a very minor if almost imperceptible re-alignment of the frontage hedgerow. Given the Highway Authority's position it is not considered that this proposal should be refused on highway grounds.

The matters raised in the objections and representations concerning access considerations related to the visibility issue onto Church Lane; traffic speeds along that lane, increased generation from the site itself and the proximity of the Church Lane/Coppice Lane junction. These are all matters which the highway engineers were aware of when they lodged the initial objection. However that has now been withdrawn.

h) A menity Considerations

The development as indicated above sits very well in the existing landscape and with the adjoining properties but there are a couple of concerns that the Board should assess in terms of looking at the impact of the proposed development on the residential amenity of the adjoining occupiers. The first of these is that new residential development would adjoin existing residential property where there is currently open land – attention is drawn to the plans in the Appendices and to the adjoining houses at Fiddlers Green and at Fairfield Cottage. In the case of the former then there is already a footpath adjoining the property which means that the public pass by that property; the new houses here are the lower single storey ones, and gardens would adjoin gardens. In the case of the former then the existing

Almshouses back onto the property; there is the footpath as mentioned, and separation distances match those found elsewhere in the village. As mentioned earlier, the front elevation of the frontage properties is slightly forward to the building line but this has no impact on the 45 degree lines from adjoining property. Overall it is accepted that there will be a material difference in the impacts that these two properties will experience due to the fact that there will be new residential development adjoining them. However this is not considered to be so significant to warrant refusal.

The second issue relates to the provision of a car parking court close to the boundary with the rear garden of Fairfield Cottage. This would introduce a material change to the existing property. However this is a small car parking court, and its boundary treatment can be conditioned such that it is a tall and solid barrier. Moreover there is a strong hedgerow running down the side of the existing property. Given these factors it is not considered that there is a reason for refusal here.

i) Other Considerations

It can be seen from this report that no objections have been received from the Environment Agency, and that the comments from the Warwickshire Wildlife Trust, the Museum and the Environmental Health Officer can all be included as conditions attached to the grant of any planning permission.

There are however a number of other matters which need to be addressed as they have been raised by the representations.

The first of these relates to the split between the number of almshouse and new affordable houses with the proposed development. The proposals are to replace the six existing almshouses with four new almshouses and to add ten new affordable houses. There has been concern that the number of almshouses is proposed to fall from six to four. This is not material as far as the planning merits of this case are concerned. The whole application is one for "affordable" housing to be treated as a rural exceptions site. It is not a planning issue as to how the split between the almshouses and the remainder is arrived at or managed. This is a matter for the applicant alone. The critical factor as far as the Board is concerned is that all fourteen are to be affordable and that this is written in to the draft Section 106 Agreement. If the community is concerned about the "split", then it should take that matter up directly with the Trust.

The second of these concerns follows on from this in that the proposals contain no single storey bungalows. The existing six Almshouses are all single storey bungalows and the proposals contain four smaller units which would all be one and a half storey developments. The objectors are concerned that they would thus not meet the needs of the elderly. The existing bungalows are managed by the Samuel White Trust, as would be these four new smaller units. In response to the concern, the Trust points out that its purpose is to help "the needy" of the Parish and not just the elderly. Secondly, the Trust points out that its Regulations require its tenants to look after themselves. Presently if a tenant is elderly and needs additional care, then the tenant is moved to a care home. The Trust wishes to point out that it does not provide care/ warden or nursing facilities. Its existing arrangements would continue

in the new development. Members will be aware that it is not within the remit of this Council to interfere with or to amend the Trust's Regulations, nor to consider refusal of the application on the basis that it may not be comfortable with those Regulations. In essence there is to be no change here in the Trust's letting arrangements. However the mix of properties "on offer" would be widened, and with the addition of the affordable units, the housing needs of the Parish as reflected by the Needs Survey would be substantially met. Members are thus asked to consider the proposal as a whole.

j) Conclusions

This application site is in the Green Belt, and thus there is a presumption against the grant of planning permission for inappropriate development such as new residential development. However new residential development need not necessarily be inappropriate development provided it is for limited affordable housing provision that meets local community needs as expressed through Development Plan policy. In this case it is considered that it does – there is an evidence base relating to local housing needs; there is a draft Section 106 Agreement protecting affordability in perpetuity and protecting the locality criterion, there has been public and community involvement, it is combined with the immediate needs of a local Charitable Housing Trust, the site is centrally located, the greater proportion of the site is an existing residential site, it extends but adjoins the village in part, it is under the threshold for new housing in the village, there are no other equivalent proposals arising from the survey and the public exhibition, and there has been very little objection to the current application. For all these reasons the application is supported in principle.

There are no planning considerations or impacts that are sufficient to warrant overriding the matter of principle as set out above.

Recommendation

That subject to a Section 106 Agreement containing the obligations as set out in this report, planning permission be granted, subject to the following conditions:

1. Standard Three year condition
2. Standard Plan numbers – Location Plan received on 8/9/09; plan numbers 3028/2, 3, 4, 5, and 6A received on 21/5/10, and plan number 3082/1C received on 8/12/10.
3. This planning permission shall enure solely for the benefit of the Samuel White Charity and for no other organisation; association or group whomsoever.

Reason: In the interests of the particular circumstances of this proposal.

4. No dwelling hereby approved shall be occupied until such time as the alterations to the public highway footway crossing have been laid out and constructed in accordance with the standard specification of the Highway Authority.

Reason: In the interests of highway safety

5. No development shall commence until full details of the surfacing, drainage and levels of the car parking and manoeuvring areas as shown on the approved plan have first been submitted to and approved in writing by the Local Planning Authority. No dwelling hereby approved shall then be occupied until such time as these details as approved have been fully implemented to the satisfaction in writing of the Local Planning Authority.

Reason: In order to reduce the risk of flooding and in the interests of highway safety.

6. No dwelling hereby approved shall be occupied until such time as visibility splays measuring 2.4 by 43 metres on either side of the access to the site, passing through the limits of the site to the near edge of the public highway carriageway have been provided. No structure, tree or shrub shall be erected, planted or retained within these splays exceeding 0.6 metres in height above the level of the public highway carriageway.

Reason: In the interests of highway safety.

7. No dwelling hereby approved shall be occupied until the right hand side visibility splay measuring 2.4 by 25 metres for the parking court for units 1 to 4, has been provided, passing through the limits of the site fronting the highway with the near edge of the public highway carriageway. No structure, tree or shrub shall be erected, planted or retained within this splay exceeding 0.6 metres in height above the level of the public highway carriageway.

Reason: In the interests of highway safety

8. No dwelling hereby approved shall be occupied until the whole of the access, parking and turning areas as shown on the approved plan have been fully completed to the satisfaction in writing of the Local Planning Authority.

Reason: In the interests of highway safety

9. There shall be no reduction in the capacity of any drain or ditch within the limits of the public highway.

Reason: In the interests of highway safety

10. No development shall commence on site until such time as the findings of the bat survey undertaken by Cotswold Wildlife Surveys and referenced 525/CWS/01 have first been reviewed following a pre-demolition survey. This report shall then be forwarded to the Local Planning Authority together with proposals for the mitigation of bats roosts.

Reason: In the interests of protecting the habitat of a protected species.

11. No dwelling hereby approved shall be occupied until such time as the mitigation measures referred to in condition (ix) have first been approved and fully installed on site to the satisfaction in writing by the Local Planning Authority.

Reason: In the interests of retaining the habitat of a protected species.

12. No development shall take place on site until such time as the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of establishing the archaeological interest of the site.

13. No development shall commence on site until such time as a Phase One survey has been undertaken on the site in order to establish the likelihood of ground contamination. The completed survey shall be submitted to the Local Planning Authority together with any measures recommended to remediate any contamination that might be found. No work shall commence on site until such time as the Local Planning Authority has indicated in writing if such measures are necessary.

Reason: In the interests of reducing the risk of pollution.

14. No development shall commence on site until such time as full details of the drainage measures to be installed for the disposal of foul and surface water have first been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall then be implemented.

Reason: In the interests of reducing the risk of pollution and flooding.

15. No development shall commence on site until such time as full details of the facing bricks to be used; the roofing tiles to be used, the details of the boundary treatments and of the ground surfacing materials to be used have all first been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall then be used on site.

Reason: In the interests of the visual amenity of the area so that the development will be in-keeping with its setting.

16. No development shall commence on site until such time as full details of the landscaping proposed for the site have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the visual amenity of the area so that the development will be in-keeping with its setting.

17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended, or as subsequently further amended, no development within Classes A, B and C, of Part 1, and Class A of Part 2 of Schedule 2 to that Order shall be undertaken without the express written consent of the Local Planning Authority in writing.

Reason: In order to retain the local character and distinctiveness of the development.

Policies:

As set out above

Informatives:

- i) The developer's attention is drawn to Section 163 of the Highways Act 1980 in respect of surface water falling or flowing onto the public highway.
- ii) The developer's attention is drawn to Section 38 of the Highways Act 1980 as the separate agreement of the Highway Authority is required to undertake works within the Highway. This Notice does not constitute such agreement. The contact is the Development Group, Warwickshire County Council, Environment and Economy, Shire Hall, Warwick, CV34 4SX.
- iii) Attention is drawn to the Traffic Management Act 2004 and the New Roads and Street Works Act 1991, together with all relevant Codes of Practice. The applicant must give prior notice of works to the Street Works Manager, Budbrooke Depot, Old Budbrooke Road, Warwick, CV35 7DP. For works lasting ten days or less, ten days notice is required: for longer works, three months notice is required.
- iv) The developer's attention is drawn to BS5906:2005 in respect of the collection of refuse.
- v) The advice of Natural England should be sought in respect of the mitigation measures for bats and for how the appropriate Licences are obtained.
- vi) Advice on the scope of the archaeological investigation and the ground contamination survey can be obtained from the Warwickshire Museum and the Borough Council's Environmental Health Officer's, respectively.

Justification:

Whilst this site is in the Green Belt it is considered that this development is appropriate development as it provides limited affordable housing provision that meets community needs as expressed through Development Plan policy. There is an evidence base relating to local housing needs; an accompanying Section 106 Agreement protecting affordability in perpetuity and protecting the locality criterion, there has been public and community involvement, it is combined with the immediate needs of a local Charitable Housing Trust and the site is centrally located, the greater proportion of which is an existing residential site. The proposal does extend the built development of the village into open countryside and this does impact on openness, but there is no regular building line here and there are already adjoining residential and other equestrian developments that spill down this sloping site. The overall impact on openness is thus considered to be neutral. The benefits of the provision of affordable houses are considered to outweigh this neutral impact. There are no technical adverse consultation responses that can not be dealt with by way of condition. The design of the houses and layout is in keeping with the local character and distinctiveness of the setting. The proposal on balance is considered to accord with saved policies ENV2, ENV11, ENV12, ENV13, ENV14, HSG2 and Core Policies 8 and 11 of the North Warwickshire Local Plan 2006 and relevant Government advice in PPG2 and PPS3.

BACKGROUND PAPERS

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

Planning Application No: PAP/2009/0420

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms and Plans	27/5/09
2	Mr Rotherham	Support	28/5/10
3	Mr Bancroft	Representation	31/5/10
4	Mr Waddell	Support	2/6/10
5	Head of Development Control	Letter	2/6/10
6	R Burrage	Objection	2/6/10
7	Warwickshire Wildlife Trust	Consultation	4/6/10
8	Agent	E-mails	11/6/10
9	Environmental Health Officer	Consultation	11/6/10
10	Mr Dudley	Support	14/6/10
11	Mr Lawson	Objection	14/6/10
12	Head of Development Control	Letter	16/6/10
13	Mr Chipman	Objection	12/6/10
14	Severn Trent Water Ltd	Consultation	15/6/10
15	Mr & Mrs Elliot	Objection	18/6/10
16	WCC Highways	Consultation	22/6/10
17	Mr Wilets	Objection	29/6/10
18	Warwickshire Museum	Consultation	7/7/10
19	Warwickshire Police	Consultation	13/7/10
20	Head of Development Control	Letter	9/8/10
21	Agent	Letter	21/10/10
22	Head of Development Control	Letter	27/9/10
23	Agent	Letter	1/11/10
24	Head of Development Control	Letter	3/11/10
25	Warwickshire Wildlife Trust	Consultation	9/11/10
26	WCC Highways	Consultation	17/11/10
27	WCC Highways	Consultation	18/11/10
28	Agent	E-mail	7/12/10
29	Head of Development Control	Letter	26/1/11
30	Mr Bancroft	Representation	4/2/11

31	Mr Lawson	Objection	5/2/11
32	Head of Development Control	Letter	7/2/11
33	Mr Willets	Objection	7/2/11
34	Middleton Parish Council	Representation	16/2/11
35	Agent	Letter	28/2/11

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.

General Development Applications

(1) Application No PAP/2009/0420

Almshouses, Church Lane, Middleton

**Demolition of 6 almshouses and erection of 14 no almshouses and affordable houses with associated access and parking,
For Mrs L Beeching - Samuel White Charities**

Introduction

This application will be reported to the Board for determination in due course, as a Section 108 Agreement accompanies the development proposal. The opportunity however is taken to report the receipt of the proposal to the Board such that any issues can be identified at an early stage. This report will therefore describe the site, the proposals, identify the relevant Development Plan policies and explore the main issues.

The Site

The existing almshouses are a group of bungalows that sit within a residential frontage on the south side of Church Lane, about 60 metres east of the Post Office and the junction with Coppice Lane, within the centre of Middleton. They extend a little way back from the frontage. The application site itself is in fact a larger site as it extends back away from Church Lane and amounts to a site with an area of 0.34 hectares. It slopes down from the road towards the stream within the valley to the south and there is a public footpath along its eastern boundary. It neighbours residential property and agricultural land – see Appendix A.

The Proposal

It is proposed to demolish the almshouses and replace them in a redevelopment scheme comprising fourteen dwellings. All would be managed by the Charity. The proposal includes 1 three bed room and 13 two bedroom homes, six of which would be bungalows. The houses are to be located at the northern end along the road frontage whilst the bungalows would be at the rear, at the southern end. The frontage units would be set slightly forward of the building line of the neighbouring properties, and there is a car parking area in front of these houses. An access road would run down the western side of the site, as now, but be improved and extended to provide access to the houses within the site. These would be arranged in two blocks. These arrangements and the general layout are illustrated at Appendix A.

Appendix B provides a street scene showing the existing arrangement and that proposed.

Appendix C provides a plan showing the typical appearance of the proposed dwellings.

The application is accompanied by a Design and Access Statement which indicates how the design and layout of the proposal has arisen, explaining in its view how the proposal reflects local character and distinctiveness, and how the development is in-keeping with its setting.

A "Middleton Housing Needs Survey" commissioned by the Parish Council, the Warwickshire Rural Community Council and the Warwickshire Rural Housing Association is submitted which it is said provides the evidence base for the scale and type of affordable housing now proposed. It concluded that there was a need for 18 new homes in Middleton for local people with the majority (15) being for rented 2 and 3 bedroom accommodation, and the balance was for shared ownership 2 bedroom accommodation. It recommended that the community undertake a search for a suitable site within the village.

A draft Section 106 Agreement accompanies the application. This obligates the Charity to provide eight dwellings as affordable homes for rent, and six as affordable homes for shared ownership. The draft also includes the measures that are proposed to retain the dwellings as affordable in perpetuity, to retain them for local people and to ensure that there are links to the Borough Council's own waiting list.

The application is also accompanied by a Planning Statement that sets out the applicant's case for the proposed development. In particular it provides the "very special circumstance" that the applicant considers justifies the proposed development in the Green Belt. In short, this is the provision of a limited number of affordable homes for local community needs.

Development Plan

North Warwickshire Local Plan 2006 – Saved Core Policies 2 (Development Distribution), 8 (Affordable Housing), 11 (Quality of Development) and 12 (Implementation) together with saved policies ENV2 (Green Belts), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design) and HSG2 (Affordable Housing)

Other Material Planning Considerations

Government Planning Policy - PPS 1 (Delivering Sustainable Development), PPS 3 (Housing), PPS 7 (Sustainable Development in Rural Areas)

Government Planning Guidance – PPG 2 (Green Belts), PPG13 (Transport)

Observations

a) The Main Issue

The application site is in the Green Belt as this "washes over" the whole of the village of Middleton. The application is for inappropriate development in the Green Belt and as such the presumption is that planning permission be refused. The issue for the Board is whether the applicant has identified material planning considerations of such weight that it can agree to them amounting to the "very special circumstances" that would override this presumption. In this particular case, do these circumstances lead to an outcome of such significance or benefit, to outweigh the harm done to the Green Belt through the grant of permission for what is, by definition, inappropriate development in the Green Belt.

b) Material Considerations

Middleton is not identified as Local Service Centre in the Local Plan, and thus it is not a settlement where new housing would be permitted. Saved Policy HSG2 states that in this circumstance, should any housing be considered for approval, then it should always be for "affordable" housing as defined by saved Core Policy 8 of the Local Plan. Government Policy, states that new housing is inappropriate development within the Green Belt. However it might be appropriate if it can qualify as a "Rural Exceptions Site". In this case it has to be for "limited affordable housing for local community needs under Development Plan policies". Saved Policy HSG2 does state that such Rural Exception Sites could be supported, but the local need has to be shown to have been justified through a systematic analysis involving the local community concerned, landowners and housing providers. Additionally the Policy limits numbers to ten new units. It is clear that the applicant here is making a case for this development proposal to be treated as a Rural Exceptions Site. Evidence has been submitted with the application in the form of a Housing Needs Survey, in order to justify the scale and type of housing proposed for this particular community, and a draft Section 106 Agreement, in order to show how the housing can be managed in perpetuity as affordable housing meeting local needs. This is said by the applicant to provide the robust basis for the development, as required by saved Policy HSG2. The Board will have to assess this evidence in order to see if it does indeed provide the weight needed for it to become a material planning consideration in the support of this application.

Other material considerations that the Board will need to explore are:

- i) Whether there are alternative sites for this proposal that might have less impact on the village
- ii) The impact of the development on the openness of the Green Belt
- iii) The quality of the design and layout in reflecting the local character and distinctiveness of Middleton
- iv) The adequacy of the access and drainage arrangements, and
- v) Any matters raised through the local consultation process.

Once all of these considerations are examined, the Board will be able to assess whether they are of such weight to provide the "very special circumstances" necessary for it to support the application.

c) Other Matters

The Board should be aware that all households in Middleton have been notified of this planning application.

The Board is also invited to consider whether a site visit would be appropriate.

Depending on the responses from the consultation process, it is anticipated that a determination of this application could be made at the July Board meeting.

Recommendation

- a) That the Board be invited to identify any issues that it considers should be explored as a consequence of this application, and
- b) That the Board be invited to consider whether it wishes to visit the site prior to determination.

DATED

2010

Formatted: Font: 10 pt

Formatted: Font: 10 pt

Received
7/4/11

NORTH WARWICKSHIRE BOROUGH COUNCIL (1)

Samuel White Charities (2)

PLANNING OBLIGATION BY AGREEMENT

made pursuant to Section 106 of the Town and
Country Planning Act 1990 relating to the development of land
At Alms Houses, Church Lane, Middleton

Formatted: Font: 10 pt

DRAFT

Contents

- 1 Interpretation
- 2 Legal effect
- 3 Samuel White Charities Covenants
- 4 Borough Councils Covenants
- 5 Arbitration

Formatted: Font: 10 pt

THIS PLANNING OBLIGATION BY AGREEMENT is dated XXXX

and made BETWEEN:

- (1) NORTH WARWICKSHIRE BOROUGH COUNCIL of The Council House, South Street, Atherstone, Warwickshire, CV9 1BD (the 'Borough Council')
- (2) Samuel White Charities whose registered office is at Church Cottage, Coppice Lane, Middleton, Staffordshire B78 2AR (Charity Registration Number 1058795) ('Samuel White Charities')

WHEREAS:

- A. The Samuel White Charities are the registered proprietors of the property which is registered with Title Absolute at H.M Land Registry under Title Number WK396516.
- B. For purposes of the Town and Country Planning Act 1990 the Borough Council is the local planning authority for the area within which the Site is situated.
- C. On the 19th May 2010 The Samuel White Charities submitted a planning application reference no. PAP/2009/0420 to the Borough Council for full planning permission to develop the Site for the purposes and in the manner described in the Application.
- D. At a meeting of the Borough Council's Development Control Committee held on xxx it was resolved that subject to the completion of this Agreement the Permission should be granted subject to the conditions set out in the Second Schedule hereto.

Deleted: outline
Formatted: Font: 10 pt

Deleted: E
Deleted: 14 June 2009
Formatted: Font: 10 pt
Formatted: Font: 10 pt
Deleted: Third

NOW IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

'1990 Act' means the Town and Country Planning Act 1990, as amended;

'1999 Act' means the Contracts (Rights of Third Parties) Act 1999;

'Affordable Homes for Rent' means 10 residential units to be constructed by The Samuel White Charity and identified on the Site Layout Plan as units for social rented accommodation, in accordance with Homes and Communities Agency regulations;

'Agreement' means this planning obligation by agreement and any modification thereof approved by the Borough Council made pursuant to the power of s106 of the 1990 Act;

'Application' means the application for full planning permission dated 19th May 2010 submitted to the Borough Council and bearing reference number PAP/2009/0420;

Deleted: 8
Formatted: Font: 10 pt
Formatted: Font: 10 pt

'Borough' means the administrative area of North Warwickshire Borough Council;

'Borough Council' means North Warwickshire Borough Council;

'Couple' means two persons living or intending to live together who are proposed joint tenants of a property and may mean two persons of any sex;

'Development' means that development permitted by the Permission;

'Family Member' means a member of the family of a Qualifying Person who is entitled by virtue of the terms of this Agreement to occupy an Affordable Home for Rent and for the purposes of this Agreement shall mean the partner, brother, sister, daughter or son of a Qualifying Person;

'Final Locality' means the administrative area of the Borough either at the date of the Agreement or following any later variation to such an area by any alteration of the administrative boundaries of such an area;

'Final Qualifying Person' means a Person In Need who has Strong Local Connections with the Final Locality and includes those persons defined as a Primary Qualifying Person and Secondary Qualifying Person;

'Permission' the planning permission granted pursuant to the Application in the form set out in the ~~Second Schedule~~ together with any modification made thereto with the consent of the parties to this agreement;

'Person in Need' means a person or couple who is the proposed tenant of an Affordable Home for Rent and is registered on the Borough Council's housing register (or any register which may henceforth replace it);

'Primary Locality' means the Parish of Middleton shown edged in red on Plan 1 annexed to this Agreement including any later alteration of the boundaries of such an area;

'Primary Qualifying Person' means a Person In Need who has Strong Local Connections with the Primary Locality;

'Proper Officer' means the Borough Council's Assistant Director (Housing)

'Qualifying Person' means a Person in Need who is eligible to lease an Affordable Home for Rent according to the terms of the Agreement;

Deleted: Third
Formatted: Font: 10 pt

'Registered Provider of Social Housing' means a body registered with the Homes and Communities Agency in accordance with the Housing and Regeneration Act 2008 or any successor organisation;

Formatted: Font: 10 pt, Bold

Formatted: Font: 10 pt

Formatted: Font: 10 pt

'Secondary Locality' means the Parishes of Middleton, Wishaw, Curdworth, Lea Marston and Kingsbury, shown edged in red on Plan 2 annexed to this Agreement including any later alteration of the boundaries of such an area;

Formatted: Font: 10 pt

Deleted: (to be added)

'Secondary Qualifying Person' means a Person In Need who has Strong Local Connections with the Secondary Locality ;

Formatted: Font: 10 pt

'Shared Ownership Home' means (not know how many will be shared ownership or rented at this stage) residential units to be constructed by Samuel White Charities and identified on the Site Layout Plan as units to be sold on a Shared Ownership Lease, in accordance with Homes and Communities Agency regulations;

Deleted: 6

Formatted: Font: 10 pt

'Shared Ownership Lease' means a lease whereby the lessee purchases a proportion of the equity in a Shared Ownership Home constructed pursuant to the Permission (the lease being substantially in a form prepared in accordance with Homes and Communities Agency Guidelines applying from time to time) and pays to Samuel White Charities a rent in respect of the remaining equity. The lessee does have the right to purchase the said remaining equity and ultimately the freehold of the said dwelling;

Formatted: Font: 10 pt

'Site' means the piece of land edged red on the site location plan and described in the First Schedule;

'Site Layout Plan' means the plan annexed to this Agreement at the Third Schedule;

'Strong Local Connections' means a person who at the relevant time has a local connection with either the Primary Locality, the Secondary Locality or the Final Locality as the case may be and for this purpose a person shall be deemed to have Strong Local Connections if they:

Formatted: Font: 10 pt

- a) comply with and have been identified/included on the Council's Housing Needs Register (indicating a need for preference for housing in that location/settlement), or
- b) they or their partners will currently have their only or principal home in the primary location where the subject site is situated, or then in the surrounding ward area or then (if no-one satisfies this initial criteria) in North Warwickshire Borough Area for a continuous period of 5 years,

Formatted: Font: 10 pt

- c) previously had their only or principal home in the parish, surrounding ward area or then in North Warwickshire Borough for a continuous period of 5 years, within the last 10 years,
- d) they or their partners will currently have their principal place of work in the parish, or then (if no-one satisfies this initial criteria) in the surrounding ward area or then (if no-one satisfies this initial criteria) North Warwickshire Borough,
- e) have a member of their immediate family living in the parish, or then (if no-one satisfies this initial criteria) in the surrounding ward area or then (if no-one satisfies this initial criteria) in North Warwickshire District and have had for a continuous period of 5 years.
- f) In the opinion of the Council need to live within the parish or surrounding area in order to perform employment, for which they have been offered a job ~~and they cannot afford~~ a house ~~and those people offered a job in the parish/ward/borough and need to move~~ to the area will need to provide proof of the job offer.

~~'UChoose' means the Southern Staffordshire & Northern Warwickshire Sub-Regional Choice Based Lettings Partnership.~~

1.2 Where the context so requires:

- (a) the singular includes the plural;
- (b) words importing any gender include every gender;
- (c) ~~references to any party shall include the successors in title of that party;~~
- (d) where a party includes more than one person any obligations of that party shall be joint and several;
- (e) ~~references to clauses and schedules are references to clauses in and schedules to~~ this Agreement.

2. **Legal effect**

2.1 This Planning Obligation by agreement is made pursuant to the Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 to the intent that it shall bind the Borough Council and Samuel White Charities ~~and their successors in title to each and~~ every part of the Site and their assigns as provided in those sections.

Formatted: Bullets and Numbering

Deleted: and which provides a benefit to the economy or social well-being of the community

Deleted: ¶
Priority is always given to those who currently live or work in the parish/ward where the development takes place, secondly to those in adjacent wards and then the wider Borough needs. T

Formatted: Font: 10 pt, Bold

Formatted: Font: 10 pt, Underline

Formatted: Font: 10 pt

Formatted: Left, Indent: Left: 1.24 cm, Hanging: 0.66 cm, Line spacing: Double, Tabs: 1.27 cm, Left

Formatted: Font: 10 pt

Formatted: Font: 10 pt

Formatted: Font: 10 pt, Underline

Formatted: Font: 10 pt

Formatted: Indent: Left: 1.24 cm

Deleted: ¶

Formatted: Font: (Default) Arial, 10 pt

Formatted: Font: 10 pt

Formatted: Font: 10 pt

Deleted: .

Formatted: Indent: Left: 1.27 cm, Hanging: 1.23 cm

Formatted: Font: 10 pt

Formatted: Font: 10 pt

Formatted: Font: 10 pt

2.2 This Agreement shall be enforceable by the Borough Council.

Formatted: Font: 10 pt

2.3 A person who is not a party to this Agreement shall have no right under the 1999 Act to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the 1999 Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the Planning Obligations in this Agreement.

Formatted: Font: 10 pt

2.4 No person nor company shall be liable for any breach of this Agreement unless he, she or it holds an interest in the part of the Site in respect of which such breach occurs or held such an interest at the date of the breach.

Formatted: Font: 10 pt

2.5 This Agreement shall not take effect until the following conditions precedent have been fulfilled:

Formatted: Font: 10 pt

- (a) the Permission has been granted; and
- (b) the Permission has been implemented by the carrying out of a material operation as defined in the Section 56(4) of the 1990 Act

2.6 For the purpose of determining whether or not a material operation has been carried out there shall be disregarded such operations as archaeological investigation, demolition, site clearance, site preparation, diversion and laying of services, the erection of fences and hoardings and construction of access or service roads.

2.7 If the Permission expires within the meaning of Sections 91, 92, 93 of the 1990 Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of Samuel White Charities or its successors in title this Agreement shall cease to have effect.

2.8 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission granted by the Borough Council or by the Secretary of State on appeal or reference to him after the date of this Agreement.

3. Covenants

3.1 Samuel White Charities covenants with the Borough Council that it will:

- (a) provide 10 of the dwellings constructed on the Site pursuant to the Permission as Affordable Homes for Rent or as Shared Ownership Homes;

Formatted: Font: 10 pt

Deleted: 8

Formatted: Font: 10 pt

Deleted: and 6

Formatted: Font: 10 pt

- (b) to inform the Borough Council by notices in writing addressed to Legal Services Section when a material operation pursuant to the Permission is carried out on the Site;
- (c) ensure that each Affordable Home for Rent or Shared Ownership Home shall at all times be occupied and managed in accordance with the objective of a Registered Social Housing Provider and in accordance with such published housing register or allocation system as may be adopted by the Borough Council.

Formatted: Font: 10 pt

Formatted: Font: 10 pt

3.2 In the case of the first or subsequent lease of the Affordable Homes for Rent or sale of the Shared Ownership Homes the following shall apply:-

Formatted: Font: 10 pt

- (a) all the Affordable Homes for Rent and Shared Ownership Homes shall be leased or sold (whether on the first or subsequent lease or sale) to a Person In Need who is also a Primary Qualifying Person except as provided for in Sub Clauses 3.2 (c) and 3.2 (d) and 3.2 (e);
- (b) Before an Affordable Home for Rent or Shared Ownership Home is leased or sold Samuel White Charities shall notify the Borough Council in writing (addressing correspondence to the Proper Officer) of the name of the Person In Need who is also a Primary Qualifying Person and of the reasons and evidence of why that person is a Person In Need and a Primary Qualifying Person unless the provisions in Sub Clauses 3.2 (c) or 3.2 (d) or 3.2 (e) apply PROVIDED THAT Samuel White Charities has sent written notice the Borough Council (addressing correspondence to the Proper Officer) confirming what best endeavours have been made and the reason why the person is considered to be a Person In Need and a Final Qualifying Person and obtained written authorisation from the Borough Council permitting such a lease or sale (such authorisation not to be unreasonably withheld) ALSO PROVIDED THAT at the time of any subsequent lease or sale Samuel White Charities will again act in accordance with the provisions of this Agreement.
- (c) Notwithstanding the provisions of Sub Clause 3.2 (a) if for a continuous period of 6 months from the date of marketing an Affordable Home for Rent or Shared Ownership Home which date will be taken to be the first date upon which an advertisement for the lease or sale of the Affordable Home for Rent or Shared

Ownership Home is placed on the UChoose common lettings register or in a newspaper circulating within the Borough Samuel White Charities has been unable to lease or sell the Affordable Home for Rent or Shared Ownership Home to a person satisfying the requirements of a Person In Need who is also a Primary Qualifying Person Samuel White Charities shall lease or sell the Affordable Home for Rent or Shared Ownership Home to a Person In Need who is also a Secondary Qualifying Person PROVIDED THAT Samuel White Charities has made best endeavours to lease or sell the Affordable Home for Rent or Shared Ownership Home to a Person In Need who is also a Secondary Qualifying Person ALSO PROVIDED THAT Samuel White Charities has sent written notice the Borough Council (addressing correspondence to the Proper Officer) confirming what best endeavours have been made and the reason why the person is considered to be a Person In Need and a Secondary Qualifying Person and obtained written authorisation from the Borough Council permitting such a lease or sale (such authorisation not to be unreasonably withheld) ALSO PROVIDED THAT at the time of any subsequent lease or sale Samuel White Charities will again act in accordance with the provisions of this Agreement.

Deleted: may

- (d) Notwithstanding the provisions of Sub Clauses 3.2 (a) and 3.2 (c) if for a continuous period of 12 months from the date of marketing an Affordable Home for Rent or Shared Ownership Home which date will be taken to be the first date upon which an advertisement for the lease or sale of the Affordable Home for Rent or Shared Ownership Home is placed on the UChoose lettings register or in a newspaper circulating within the Borough (as above) Samuel White Charities has been unable to lease or sell the Affordable Home for Rent or Shared Ownership Home to a person satisfying the requirements of a Person In Need who is also a Secondary Qualifying Person Samuel White Charities shall lease or sell the Affordable Home for Rent or Shared Ownership Home to a Person In Need who is also a Final Qualifying Person PROVIDED THAT Samuel White Charities has made best endeavours to lease or sell the Affordable Home for Rent or Shared Ownership Home to a Person In Need who is also a Secondary Qualifying Person ALSO PROVIDED THAT Samuel White Charities has sent written notice to the

Comment [S1]: delete
Formatted: Font: (Default)
Arial, 10 pt
Formatted: Font: 10 pt
Formatted: Font: 10 pt
Deleted: may

Borough Council (addressing correspondence to the Proper Officer) confirming what best endeavours have been made and the reason why the person is considered to be a Person In Need and a Final Qualifying Person and obtained written authorisation from the Borough Council permitting such a lease or sale (such authorisation not to be unreasonably withheld) ALSO PROVIDED THAT at the time of any subsequent lease or sale Samuel White Charities will again act in accordance with the provisions of this Agreement.

- (e) Notwithstanding the provisions of Sub Clauses 3.2 (a) and 3.2 (c) and 3.2 (d) if for a continuous period of 18 months from the said date of marketing the Affordable Home for Rent or Shared Ownership Home Samuel White Charities has been unable to lease or sell the Affordable Home for Rent or Shared Ownership Home to a person satisfying the requirements of a Person in Need who is also a Final Qualifying Person Samuel White Charities may lease or sell the Affordable Home for Rent or Shared Ownership Home to a Person in Need PROVIDED THAT Samuel White Charities has made best endeavours throughout the said period to lease or sell the Affordable Home for Rent or Shared Ownership Home to a Person in Need as required by Sub Clauses 3.2 (a) and 3.2 (c) and 3.2 (d) ALSO PROVIDED THAT the Samuel White Charities has sent written notice to the Borough Council (addressing correspondence to the Proper Officer) confirming what best endeavours have been made and obtained written authorisation from the Borough Council permitting such a lease or sale (such authorisation not to be unreasonably withheld) ALSO PROVIDED THAT at the time of any subsequent lease or sale Samuel White Charities will again act in accordance with the provisions of this Agreement.

- (f) ~~The provisions of this Agreement shall not be enforceable against any person or body for the time being holding a mortgage or charge on the Affordable Home, upon a receiver appointed by such a Mortgagee or upon a person deriving title from such a Mortgagee or receiver, with the intent that (for the avoidance of doubt) any such Mortgagee or receiver appointed by it shall offer the Affordable Housing Unit for sale to a Registered Provider of Social Housing, nominated by the Borough Council (addressing correspondence to the Assistant Director(Housing), at the~~

Formatted: Font: 10 pt

Deleted: Landlord

Deleted: Head of Housing Services or equivalent postholder

Borough Council) for a period of not less than 30 days, after which time the Mortgagee may dispose of the Affordable Housing Unit to a Person in Need who is also a Final Qualifying Person or a Registered Provider of Social Housing, ~~(this isn't enforceable given what's said at the start of this clause that this Agreement isn't enforceable against a mortgagee)~~ PROVIDED THAT at the time of any subsequent sale the Owner will again act in accordance with the obligations in this Agreement relating to the sale or disposal of Affordable Housing Units;

Comment [S2]: ?
Deleted: Landlord
Formatted: Font: (Default) Arial, 10 pt
Formatted: Font: 10 pt
Formatted: Font: 10 pt

- (g) Notwithstanding the provisions of Sub Clause 3.3 (f) if for a further period of 90 days the Mortgagee or receiver has been unable to sell the Affordable Housing Unit to a Registered Social Landlord ~~(we cant enforce these on an Registered Provider if they are subject to the right to acquire provisions)~~ or a person satisfying the requirements of a Person In Need who is also a Final Qualifying Person the Mortgagee or receiver may sell the Affordable Housing Unit free from any restrictions;

Comment [S3]: ?
Formatted: Font: (Default) Arial, 10 pt
Formatted: Font: 10 pt
Formatted: Font: 10 pt

~~I would suggest removing the above as it is unenforceable.~~

Deleted: ¶
Formatted: Font: 10 pt
Formatted: Font: 10 pt

3.3 Provisos

- (a) Nothing in this Agreement shall prevent the occupation of Affordable Home for Rent by a Family Member of a person who is entitled by virtue of the terms of this Agreement to occupy such an Affordable Home for Rent; ~~does this include occupation without the Qualifying Person? Yes.~~

Comment [S4]: yes
Formatted: Font: (Default) Arial, 10 pt
Formatted: Font: 10 pt
Formatted: Font: 10 pt

- (b) Before the lease of an Affordable Home for Rent the written consent of the Borough Council to such lease shall be obtained which consent shall (i) not be unreasonably withheld or delayed; and (ii) not be given if the Borough Council has reasonably determined that the proposed tenant is not a person who is entitled by virtue of the terms of the Agreement to lease an Affordable Home for Rent or that the provisions of this Agreement have not been complied with in respect of the Affordable Home for Rent in question;

- (c) ~~Following the sale of the freehold of any Affordable Home for Rent to~~ a Registered Provider of Social Housing the Affordable Home for Rent shall be allocated in accordance with the terms of this Agreement;

Formatted: Font: 10 pt

- (d) ~~This Agreement shall be binding on any successors of the Samuel White Charities.~~

Formatted: Font: 10 pt
Formatted: Font: 10 pt
Formatted: Font: 10 pt

(e) In the event that a Registered Social Housing Provider has not accepted a reasonable offer in accordance with paragraph 3.1(c) above within 6 months of the date of the offer, then the Owner will be able to dispose of the Shared Ownership Homes the subject of that offer to persons meeting the UChoose occupancy criteria as defined above, at a disposal price of no more than 80% open market value (as assessed by two independent estate agents) and the Owner shall have the power to sell the Shared Ownership Homes on terms that ensure that the transferee cannot dispose of any Shared Ownership Units at more than the discounted price.

Formatted: Bullets and Numbering

Formatted: Font: 10 pt

Deleted: If the Registered Provider isn't a party to the agreement then it won't be enforceable. However if we include the usual provisions about this agreement being binding on SWC successors then this will deal with any case where a unit is sold directly from SWC to a Registered Provider] (d)

Formatted: Font: 10 pt

Deleted: Before the Borough Council shall give its consent for the lease of an Affordable Home for Rent Samuel White Charities shall provide to the Borough Council (addressing correspondence to the Proper Officer) such documents as are necessary to provide evidence and confirmation of the Strong Local Connections (or such other evidence or confirmation as the Borough Council shall deem necessary from time to time). Isn't this already dealt with?

Formatted: Font: 10 pt

4. The Borough Council Covenants

The Borough Council covenants with Samuel White Charities;

4.1 If the provisions of clauses 3.2 (d) or 3.2 (e) apply and Samuel White Charities wishes to obtain the authorisation of the Borough Council to increase the size of the locality from which tenants may be drawn the Borough Council will provide its authorisation to do so within 10 days of the receipt of a written request to provide it EXCEPT WHEN the Borough Council deems that Samuel White Charities has not made reasonable endeavours to lease the Affordable Home for Rent to Persons in Need from the previous locality.

5. Arbitration

Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this Agreement shall, except as otherwise expressly provided be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors as the case may be and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

5. Costs

Formatted: Font: 10 pt, Underline

Formatted: Font: 10 pt

The Owner agrees to pay the Council prior to the completion of this deed the sum of five hundred pounds (£500) towards its legal costs in the preparation of this Deed
Given the length of time dealing with this I would need a provision giving a contribution to our legal costs This is agreed

Formatted: Font: 10 pt

Comment [55]: how much?

Formatted: Font: (Default) Arial, 10 pt

Formatted: Font: 10 pt

Formatted: Font: 10 pt

Formatted: Font: 10 pt

Formatted: Font: 10 pt

FIRST SCHEDULE

Land at Church Lane, Middleton shown edged red on the attached plan [to be added]

SECOND SCHEDULE

Copy of Planning Consent Notice for residential development [to be added]

THIRD SCHEDULE

Site Layout Plan [to be added]

PLAN ONE

Map of Primary Locality [to be added]

Formatted: Font: 10 pt

Formatted: Font: 10 pt

Formatted: Font: 10 pt

PLAN TWO

Map of Secondary Locality [to be added]

Formatted: Font: 10 pt

Formatted: Font: 10 pt

IN WITNESS of which the parties have sealed this planning obligation by agreement as a Deed on the date first written above.

EXECUTED as a DEED by }
NORTH WARWICKSHIRE }
BOROUGH COUNCIL whose }
COMMON SEAL was hereunto }
affixed in the presence of:- }



DONNA SAVAGE
PLANNING LTD
Planning and Architecture

Mr Jeff Brown
Head of Development Control
North Warks Borough Council
The Council House
South Street
Atherstone
Warwickshire
CV9 1DE

10th May 2011

Dear Jeff

Re: Application 2010/0420, Almshouses, Church Lane, Middleton

Following the deferral of the aforementioned planning application at the meeting of the Planning Board on 11th April 2011, my client, as requested has looked into the possibility of relocating the Almshouses to the front of the site, however we must conclude that this is not possible to achieve.

As you will recall the Board were concerned for the residents of the Almshouses, mainly due to the distance and small incline that they would have to walk to the rear of the site. As previously advised the residents have been involved with the siting of the Almshouses and felt that the location at the rear of the site would afford them more privacy and less disturbance. We have now carried out further consultation in the form of a questionnaire to each occupier stating the reasons why the houses were located at the rear and asking them if they agreed.

The following reasons were given, each received 100% agreement.

1. To avoid having to re-house any of the current occupants
2. To avoid almshouses occupants the noise/nuisance of all traffic/pedestrians passing their front doors/windows
3. To give field views from the rear windows and not other buildings
4. To have the low level units to the rear of the site to enable other properties to share some views to the rear

In addition the residents were also asked to state their preferred location and if that were willing to be re-housed. Again 100% said field view and they would not wish to be re-housed.

Keeping the layout as submitted not only reflects what the residents want and will mean less disruption for them both in terms of during construction i.e. not having to be re-housed and longer term from traffic noise but in planning terms is the best solution for

23 Justins Avenue
Stratford-upon-Avon
Warwickshire CV37 0DF
tel/fax: 01789 269334
mobile: 07808 367061
email: savage172@btinternet.com

Registered Number: 06084002
VAT Number: 924870016

the site. The two storey properties are more in keeping with the street scene and by having the single storey to the rear a better transition is provided between built form and the green belt.

I can only conclude that there are no planning reasons to refuse the application and ask that permission be granted. Should you require any further information please do not hesitate to contact me. A full set of the questionnaires have been sent via email.

Yours Sincerely

Donna Savage
BSc Hons, Dip TP, MRTPI

(3) Application PAP 2010/0058

Grimscote Manor, Lichfield Road, Coleshill

Application to retain a Marquee for

Mr Cuddy

Introduction

This application was referred to the April Board but determination was deferred in order to enable Members to visit the site. That has now taken place, and this is the first available Board following that deferral. For the benefit of Members the previous report is attached at Appendix A.

Additional Matters

During the discussion on this item at the April Board meeting two matters were in particular referred to. The first related to the design of the new access. Whilst it was accepted that the engineering geometry and specification of that access would affect the design, there was concern that it would not be further added to with tall brick walls; arches or columns. This was because it was considered that such features would affect the openness of the Green Belt hereabouts and also potentially be visually intrusive. In order to meet these concerns it is suggested that the draft condition set out as number (iii) in Appendix A could be amplified such as to read,

“Within three months of the date of this permission, full details of the design and layout for a new bell-mouth junction to replace the existing arrangement shall be submitted to the Local Planning Authority. These details shall include any new walls, gates and structures. Only the approved details shall then be implanted”.

Reason: In the interests of safety on the public highway and the visual amenities of the area.

The second matter related to the potential for noise emanating from the marquee given that it is not a “solid” structure and that there are residential areas close by. This has been investigated further with the Environmental Health Officers. Whilst as previously reported they have said that there has not been a substantiated noise complaint from the operation of the marquee, it would be prudent to ensure that noise attenuation and mitigation measures are installed. As a consequence, two additional conditions are recommended to read as follows:

(vi) “Any sound amplification equipment within the marquee shall be angled towards the south west (towards the A446) to direct noise away for neighbouring properties.

Reason: To protect the amenities of nearby residential property”.

(vii) “All amplified music shall be controlled with the use of a noise limiter, wired into the mains, and this shall be provided within three months of the date of this Notice, and confirmed in writing by the Local Planning Authority. Noise level limits shall be

agreed in writing with the Local Planning Authority as appropriate, and maintained at that level unless otherwise agreed in writing”

Reason: To protect the amenities of nearby residential property”

Recommendation

That the recommendations set out in Appendix A be agreed subject to the three amendments to the conditions as set out in the above report.

BACKGROUND PAPERS

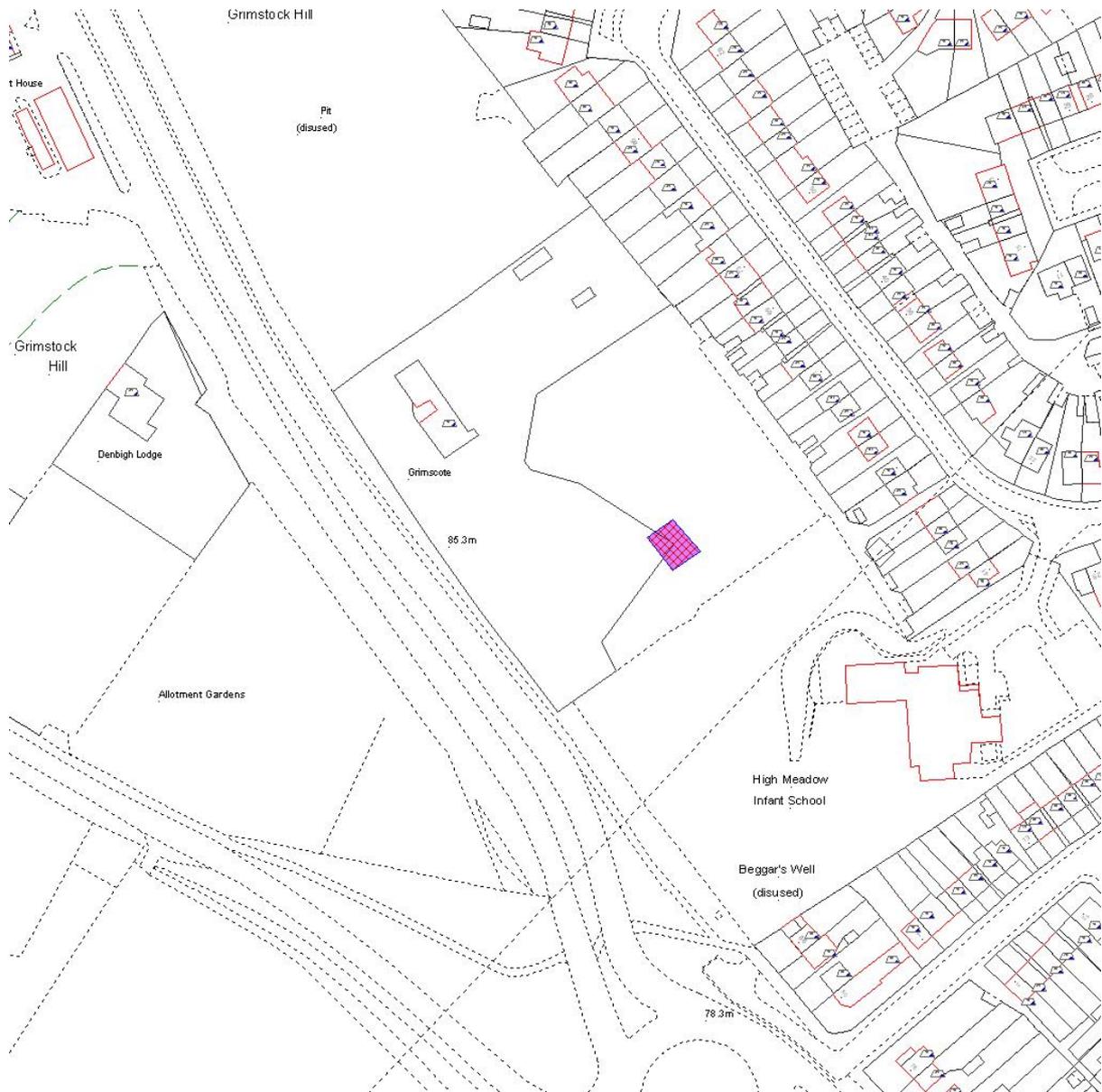
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2010/0058

Background Paper No	Author	Nature of Background Paper	Date
1	Head of Development Control	Letter	12/4/11

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.



General Development Applications

() Application No: PAP/2010/0058

Grimscote Manor, Lichfield Road, Coleshill

Retention of existing marquee, for Mr Steven Cuddy

Introduction

This application is reported to the Board at the discretion of the Head of Development Control due to a number of planning issues raised at the site.

The Site

This site is on the western edge of Coleshill, sandwiched between residential properties and the A446 Lichfield Road, a dual carriageway. The access lies to the southern corner of the site, with a driveway taking vehicles past a small paddock and the marquee up a steep rise to a parking area in front of Grimscote Manor. There is a further dwelling in the northern corner and an additional outbuilding close the marquee. Due the marked changes in levels across the site, the guest house and residential buildings sit much higher than the marquee, which is at the foot of densely vegetated embankments to the south-east and north-east.

Background

An application to change the use of the former dwelling here into a hotel was refused in 2000. Part of this building was converted to bed and breakfast accommodation, but a retrospective application to retain this use failed in 2004. A Certificate of Lawfulness application for this accommodation also failed in 2005. Enforcement action was then taken with the issue of an Enforcement Notice. This Notice was appealed, and one of the grounds of that appeal was that the bed and breakfast accommodation was lawful. The appeal succeeded on that ground. As a consequence the Inspector made it clear that the lawful use at that time was for a mixed use – as a residential dwelling and the provision of bed and breakfast accommodation.

The existing access onto the A446 is lawful by virtue of a 2004 planning permission. The conversion of an existing garage into a further dwelling was approved in 2009.

There has been a long standing difference of view between the Council and the owners about the lawfulness of part of the existing accommodation for “functions” and “events”. The George Lewis Suite within the main building here caters for up to 60 persons for such events as weddings; conferences and social bookings. In the Council’s view, this use is not included in the lawful “mixed” use referred above, as it is an additional use over and above either residential accommodation or the provision of bed and breakfast accommodation. It is thus considered to be unauthorised at present. The owner argues that such a use is “ancillary” to the bed

and breakfast provision and that such a use itself has become lawful through the passage of time. The matter remains unresolved.

The owner added the marquee to his site several months ago, in order to expand his business and to cater for other and larger functions and events. It was considered that the marquee was not a temporary structure and because it was fixed to the ground and had remained on site for some time, that a planning application was necessary to seek its retention. This application was submitted and is now the subject of this report.

That application was submitted some time ago. There are several reasons for the delay in making a determination. Firstly, a key issue here is the adequacy of the access arrangements. The Highway Authority requested speed survey information together with other traffic statistics. The completion of this was delayed because of road works and bad weather. Secondly, there was a major investigation by the Local Government Ombudsman into the Borough Council and County Council's handling of the Licences issued under the Marriage Act for the venue to provide for wedding ceremonies. This was connected to the use of the site for "functions" and thus was wholly connected to the differences between the parties about the lawful use of the site. The investigation concluded that the advice given to the County Council by this Council in respect of the issue of the Civil Ceremony Licences by the County was properly dealt with. Thirdly, given the conclusion of this investigation and the completion of the traffic survey work, the owner was requested to resolve the "functions" issue along with the application to retain the marquee. He was given time to consider that matter, but at the time of writing this report has declined. The matter will thus be dealt with in this report.

The Proposal

It is intended to permanently retain the marquee already erected on site, catering for up to 150 persons, along with two storage containers providing kitchen and toilet facilities, which are incorporated into its structure. The marquee provides a venue for conference facilities, weddings and other events.

Development Plan

Saved Policies of the North Warwickshire Local Plan 2006 – Core Policy 2 (Development Distribution); ECON11 (Hotels and Guest Houses), ENV4 (trees and Hedgerows), ENV5 (Open Space), ENV9 (Air Quality), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), TPT1 (Transport Considerations), TPT3 (Access and Sustainable Travel) and TPT6 (Vehicle Parking)

Other Relevant Material Planning Considerations

Government Guidance – PPG13 (Transport)

The Council's Draft Green Space Supplementary Planning Guidance and associated Open Spaces, Sport and Recreation Study (the PPG17 Audit)

Consultations

Warwickshire County Council as Highway Authority – The Council originally lodged an objection on the grounds of insufficient information relating to vehicle trip generation; that parking numbers appeared to be unachievable on the site, that there would have to be a departure from adopted standards in respect of the available visibility of the existing access, and that the existing footway crossing would not be suitable for the potential traffic generated by the site. There has been extensive discussion with the applicant's traffic consultant together with the submission of survey results and other statistical detail. The Highway Authority is now satisfied that subject to improvement works at the site access, the intensified use through the retention of the marquee can be accommodated, and thus no longer has an objection.

Environmental Health Officers – There have been no substantiated complaints received in respect of noise nuisance from the marquee. It is pointed out that the Premises Licence here allows a flexible use and suggests that the opening hours referred to therein be transferred through to any planning permission.

Warwickshire Police – They express concerns about car parking being fully achievable on site, together with concern about the adequacy of the existing access through intensified use.

Representations

A total of seven neighbour objections have been received mainly focussing on the suitability of the access onto a high speed dual carriageway and its ability to safely accommodate an intensified use of the site with large numbers of visitors and staff. In addition, concerns are expressed in respect of the ability to provide the necessary parking on site. Further objections relate to noise and disturbance from the proposed use, and that the proposed hours are unclear. It is also said that there are discrepancies on the plan as other structures are on the site without the appropriate consent.

Observations

a) The Marquee

The principle of retaining this development in this location is supported as the site is within the development boundary for Coleshill as defined by the Local Plan. The development reinforces existing services and facilities, together with providing local employment opportunities within one of the Council's main settlements. There are however a number of other planning considerations which could be of such weight individually or cumulatively, to outweigh this support. These considerations are the Green Space designation; impacts on neighbouring residential amenity, visual impact and the proposed access and parking arrangements. It will be seen below that given the evidence available, there is not considered to be sufficient reason for refusal of this application.

The site is designated as a “Green Space” within the Local Plan. The site exhibits thick mature and significant planting to the north and south-east, with the land levels increasing its prominence in the surrounding area. Further planting along its other boundaries means that the site is part of an important visual break along the A446 and thus is important to the built form of Coleshill. This is recognised through the Green Space designation. The Policy says that this type of space should not be lost if it meets the open space, sports and recreational needs of the Borough following a needs assessment in line with PPG17. That assessment has now been completed and acted upon through the publication of the Council’s own draft SPD on Open Space provision. The conclusion from this is that the retention of the marquee would not prejudice the overall supply and provision of green and open spaces within the town of Coleshill. This is largely due to the fact that this land is not publicly accessible or available as public open space. The value of this area of open space is however not necessarily its public availability, but its value as an open and naturally landscaped area within the town. It is considered on balance that the retention of the marquee does not materially impact on this value. This is because the marquee itself is set well down within the site on the floor of the natural “bowl” that forms the site, and it is thus not readily visible from outside of the site. Secondly the marquee is located at the foot of the very steep wooded slope that rises up to the houses in Norton Road. It is not readily visible from these houses. Thirdly, the structure, even if a planning permission is granted, is simply “bolted” into the ground and can easily be dismantled and removed. It is thus considered overall, that the openness of the corridor of land along this side of the A446 is not materially prejudiced.

The proposed use and building type could be expected to generate some noise during social functions. However, this consideration centres on whether this would be likely to give rise to unacceptable levels of disturbance to neighbouring residential occupiers. The siting of the marquee at the lowest land level, behind a thick buffer of trees and vegetation, and with high ambient noise levels arising from the adjoining busy main road and nearby motorways are all factors that are relevant. Environmental Health Officers have received no substantiated complaints relating to noise from the marquee over the past eighteen months since it has been on site. They consider that this is due to a combination of the environmental factors identified above and the conditions attached to the Premises Licence in respect of the operating hours. Given this evidence, it is not considered that a refusal based on this issue could be supported.

Turning to the visual impact of the structure, then as intimated above, it is not readily visible from outside of the site. The two containers referred to in the description are incorporated into the rear of the marquee, and thus they are not visible within the context of the site. Recent planting towards the front of the site close to the access has further reduced visibility of the marquee. Given these circumstances, the visual impact is not considered of such weight to justify a refusal.

The access is the main focus of concern. Earlier planning applications, as recorded above, have been refused planning permission based on highway grounds. There have been some limited permissions more recently which involved improvement to the existing access so as to improve visibility. These improvements remain below the adopted standard usually acceptable to the Highway Authority. The addition of the

marquee and the additional traffic that its use generates thus led to the objection from the Highway Authority for its retention. There have been extended discussions between the applicant's traffic consultants and the County highway engineers including the submission of speed survey data. This has resulted in the County Council withdrawing its objection subject to further improvements to the access geometry and visibility being undertaken. In essence this would mean reconstruction of the access so as to provide a full "bell mouth" at right angles into the site. This in turn would improve visibility. Given the extended period of dialogue between the relevant parties here which has resulted in the withdrawal of the County Council's original objection, it is considered that a refusal based on the adequacy or otherwise of the access arrangements would be difficult to substantiate.

The other concern expressed is the adequacy of the site to accommodate sufficient car parking space for the existing lawful use as well as the use of the retained marquee. This concern is not due to the overall size of the site which is large, but due to its topography with steep slopes in many places. The starting point is to assess the number of spaces required by the Development Plan. The marquee has a capacity of 150 persons. The Council's car parking requirement would be 30 spaces. The applicant considers that up to 50 spaces can be provided. As Members are aware the Council can only look at maximum car parking provision and recent changes in Government guidance suggest that local factors should be taken into account as well as the proposed car parking provision put forward by the applicant. In this case it is accepted that visitors to functions at the marquee are very likely to drive although there will be some use of taxis. As a consequence it is considered that the applicant should show provision on site for a maximum of 40 spaces for use in connection with the marquee. This can be accommodated on site. This figure would not compromise the County Council's position in respect of the proposed access arrangements.

Given all of these matters it is not considered that there is the evidence available to support a refusal for the retention of this marquee. However, this position is subject to the provision of the new access and the provision of the full car parking requirement. Conditions can be attached to any planning permission, and the applicant reminded that failure to comply with these conditions could result in the issue of Breach of Conditions Notices.

b) The George Lewis Suite

As indicated earlier in this report, it had been hoped to be able to deal with the lawfulness issue in respect of this accommodation within the marquee application. That has not transpired and thus it is timely to deal with it now, particularly as most of the matters and impacts mentioned above are also relevant.

In short, the existing building has a lawful use as a residential dwelling and for the provision of bed and breakfast accommodation. The main lounge in the building however was also used for the provision of functions before the marquee was erected and this use has continued following the additional use made of the marquee. The Council considers that the addition of this "function" use is a material

change in use from the lawful use and that it is unauthorised. The applicant disagrees, considering that the use is ancillary to the bed and breakfast accommodation and that it is now lawful through the passage of time. This difference of view would normally be argued through submissions to a Planning Inspector following an appeal against the issue of an Enforcement Notice requiring the cessation of the function use of the George Lewis Suite. However the application to retain the marquee and the evidence made available for the assessment of that application has a direct bearing on the consideration of the future of this Suite. In essence, it is timely to consider the expediency of taking such action as indicated above, in view of the most up to date information available.

There are several matters that need to be taken into account. These can be divided into two areas. Firstly, there is a need to explore the applicant's claim that the use has become immune from action through the passage of time. Then secondly, there is a need to explore the likely impacts of the use and how well it accords with the planning policies of the Development Plan.

The Planning Inspector dealing with the appeal referred to earlier in this report looked in some detail at the history and use of these premises. His conclusions do not refer at all to the use of any of the existing building for holding "functions". He describes the room now known as the George Lewis Suite as a lounge and dining room. This appeal was heard in late 2006. It is considered that it should be given substantial weight. The use of the premises for functions can not be considered to be lawful through the passage of time – that is ten years continuous use from early 2001 to the present day. The use of the room for functions is considered to have become material from 2006 onwards. For instance, the first Marriage Licence was issued in 2008. It is not considered therefore that the use should be treated as immune from action through the passage of time.

Notwithstanding this conclusion, it is critical to consider the position should a planning application be submitted for retention of this Suite. The same policies of the North Warwickshire Local Plan as referred to under the section of this report dealing with the marquee are equally relevant here. Firstly, the site is within the Coleshill development boundary and thus the principle of a "functions" use is acceptable in principle. The policy background to this has been accepted in the case of the marquee above and the same should apply to the use of the Suite. Secondly, the Suite is part of the original building and thus there would be less visual impact than that arising from the marquee. Thirdly, the Environmental Health Officers have confirmed that their conclusion in respect of the use of the marquee can equally be used in connection with the use of the Suite. They add that because this is a brick built structure then the noise issue is likely to be less in any event. Fourthly, and this is the critical factor, there has been a change in the conclusions of the relevant Highway Authority. Earlier refusals here have been based on highway grounds and indeed, that was the main concern in dealing with the retention of the marquee. With the recent withdrawal of the objection from the current Highway Authority, subject to access alterations and the provision of sufficient on-site parking provision, then the situation has materially changed in respect of the use of the Suite. It is thus necessary to look at this in more detail.

The Highway Authority's conclusion on the marquee was taken in the knowledge that the traffic generation from the site involved the use of that marquee and the lawful use of the site for two residential dwellings and for the provision of up to ten bedrooms for bed and breakfast accommodation. Its conclusion was that provided access improvements as specified take place and that sufficient parking space is provided, then there would not be a highway objection. The Highway Authority was subsequently asked to say whether it would have a different conclusion if the use of the Suite with a capacity of 60 persons was factored in to the situation. It says not. It concludes that the access improvements would be sufficient to accommodate for the Suite, and that if additional on-site car parking could be made available, then there would be no objection. This is a material change in circumstance which carries substantial weight in whether it is expedient to commence enforcement action. Overall therefore, given the present knowledge available, it is highly likely that a planning application to retain the use of the Suite would now be recommended for approval subject to access and parking conditions. The use accords in principle with planning policy and there is no technical objection from the consultation responses. This conclusion thus outweighs the lack of evidence to support the ten year use of the premises.

This conclusion however does rest on the improvements to the access being carried out and the provision of sufficient car parking provision. The former – that is the access alterations - can be conditioned in any planning permission granted for the marquee as it is also directly related to that application. In respect of the second – that is the parking provision - it is proposed to increase the number of spaces over and above that set out above for the marquee, in light of consideration of the use of the Suite. A total of 60 spaces would meet Development Plan guidance to meet all of the uses on this site, and could be accommodated on site in a variety of different locations. The applicant's own assessment suggests that space can be provided on site for this figure. Given this, it is not considered that such a condition would be unreasonable given that it is in the interest of all parties to provide sufficient space.

Recommendations

A) PA 2010/0058 – The Marquee

That planning permission be Granted subject to the following conditions:

- i) The marquee shall not be used for any purpose whatsoever other than between 1000 and 0000 hours on Mondays to Thursdays; between 1000 and 0100 hours on Fridays and Saturdays, and between 1100 and 2330 hours on Sundays, Public Holidays and Bank Holidays.

Reason: In the interests of preventing disturbance to occupiers of nearby properties.

- ii) The marquee hereby approved shall have a maximum capacity, as defined by the Fire Services Authority, of 150 persons.

Reason: In the interests of safety on the public highway and ensuring adequate parking provision.

- iii) Within three months of the date of this permission, full details of the design and layout for a new bell-mouth junction to replace the existing arrangement shall be submitted to the Local Planning Authority.

Reason: In the interests of safety on the public highway.

- iv) Within three months of the written approval of the detail as submitted under condition (iii) above, or other period as shall first have been agreed by the Local Planning Authority, the new bell-mouth junction shall be provided in full to the written satisfaction of the Local Planning Authority.

Reason: In the interests of safety on the public highway.

- v) Within one month of the date of this permission, details shall be submitted to the Local Planning Authority to show the provision of 60 car parking spaces on the site so as to accommodate visitors and residents using the residential accommodation on the site; the bed and breakfast accommodation and the use of the site for functions as provided for through the marquee and the use of the room within the existing building known as the George Lewis Suite.

Reason: In the interests of safety on the public highway.

- vi) Within three months of the date of the written approval of the details as submitted under condition (v) above, the car parking provision shall be provided on site to the written satisfaction of the Local Planning Authority. This car parking shall remain available for such purpose at all times.

Reason: In the interests of safety on the public highway.

B) The George Lewis Suite

That, provided the access improvements and on-site car parking provision required under conditions (iii) and v) above, are implemented on site and that conditions (iv) and (vi) are subsequently discharged, then it is not considered expedient to institute enforcement proceedings against the use of the George Lewis Suite for functions. The reasons for this are as set out in this report.

Notes

1. Although permission has been granted, the illustrative parking layout submitted with the scheme is considered to be unacceptable, and would require marshalling on site to make it work. This is reflected in the requirements of Condition 5. The applicant is advised to discuss this before submitting any application to discharge this condition.
1. Condition number 3 requires works to be carried out within the limits of the public highway. The applicant must enter into a Minor Highway Works Agreement made under the provisions of Section 278 of the Highways Act 1980 for the purposes of completing the works. The applicant should note that feasibility drawings of works to be carried out within the limits of the public highway which may be approved by the grant of this planning permission should not be construed as drawings approved by the Highway Authority, but they should be considered as drawings indicating the principles of the works on which more detailed drawings shall be based for the purposes of completing an agreement under Section 278. An application to enter into a Section 278 Highway Works Agreement should be made to the Development Group, Warwickshire County Council, Environment and Economy Directorate, Shire Hall, Warwick, CV34 4SX. In accordance with Traffic Management Act 2004 it is necessary for all works in the Highway to be noticed and carried out in accordance with the requirements of the New Roads and Streetworks Act 1991 and all relevant Codes of Practice. Before commencing any Highway works the applicant must familiarise themselves with the notice requirements, failure to do so could lead to prosecution. Application should be made to the Street Works Manager, Budbrooke Depot, Old Budbrooke Road, Warwick, CV35 7DP. For works lasting ten days or less than ten days, notice will be required. For works lasting longer than 10 days, three months notice will be required.

2. The Development Plan policies which are relevant to this Decision are as follows: North Warwickshire Local Plan 2006 (Saved Policies): CORE POLICY 2 (Development Distribution), ECON11 (Hotels and Guest Houses), ENV4 (Trees and Hedgerows), ENV5 (Open Space), ENV9 (Air Quality), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), TPT1 (Transport Considerations in New Development), TPT3 (Access and Sustainable Travel and Transport) and TPT6 (Vehicle Parking).

Justification

The proposal is considered to be acceptable in principle, with it providing employment within a sustainable location. The appearance of the marquee is acceptable, and whilst the land is designated open space, the accessibility and purpose of this open space is not considered to be harmed. Due to the topography of the site, hours of use restrictions, and no substantiated noise complaints resulting from the marquee's use to date, there is not considered to be unacceptable harm to neighbouring amenity. In addition, highway concerns relating to access geometry and visibility, as well as parking provision, are overcome through appropriate conditions and acceptable to the Highways Authority. The proposal is therefore in accordance with saved policies CORE POLICY 2, ECON11, ENV4, ENV5, ENV9, ENV11, ENV12, ENV13, ENV14, TPT1, TPT3 and TPT6 of the North Warwickshire Local Plan 2006. There are no material considerations that indicate against the proposal.

BACKGROUND PAPERS

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

Planning Application No: PAP/2010/0058

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicant's Agent	Planning Application Forms and Plans	15/2/2010, 4/3/2010
2	Environmental Heath	Consultation reply	26/3/2010
3	Rod Furnell	Objection	29/3/2010
4	Jacqueline Garner	Objection	29/3/2010
5	Michael Ibbs	Objection	30/3/2010
6	Case Officer	Email to interested party	30/3/2010
7	Rod Furnell	Objection update	30/3/2010
8	Case Officer	Email to Objector	30/3/2010
9	Rod Furnell	Email to Case Officer	30/3/2010
10	Carlo Bragagnolo	Objection	30/3/2010
11	Rod Furnell	Objection update	31/3/2010
12	Mrs H Prince	Objection	1/4/2010
13	Ruth & Gareth Edwards	Objection	6/4/2010
14	Warwickshire Police	Objection	7/4/2010
15	Challinors Solicitors o/b/o Mr Morteza Vakil	Objection	7/4/2010
16	Applicant	Copy of 2009 Transport Assessment	8/4/2010
17	Case Officer	Email to WCC Highways	22/4/2010
18	Environmental Heath	Email to clarify representation	28/4/2010
19	WCC Highways	Objection	29/4/2010
20	NWBC Forward Planning	Consultation reply	30/4/2010
21	WCC Highways	Revised objection	30/4/2010
22	Case Officer	Email to applicant	4/5/2010
23	Case Officer and Rod Furnell	Correspondence between parties	14/5/2010, 18/5/2010
24	Applicant's Agent	Email to Case Officer	18/5/2010
25	Case Officer	Email to Applicant's Agent	19/5/2010
26	Applicant's Agent	Email to Case Officer	19/5/2010
27	Case Officer	Email to Applicant's Agent	13/12/2010
28	Applicant's Agent	Email to Case Officer with attachments	22/12/2010
29	Case Officer	Email to Applicant's Agent	20/1/2011
30	WCC Highways	Email to Transport Agent	11/2/2011
31	WCC Highways	Lifting of objection and request for conditions	9/3/2011
32	WCC Highways	Email to clarify representation	10/3/2011

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.

