

Planning Committee

Wednesday 3 February 2021

A meeting of the above Committee will be held remotely on Wednesday 3 February 2021, at 6.00pm and available for the public to watch via the Warwick District Council [YouTube channel](#).

Councillor Boad (Chairman)
Councillor Morris (Vice Chairman)

Councillor M Ashford
Councillor R Dickson
Councillor T Heath
Councillor O Jacques
Councillor J Kennedy

Councillor V Leigh-Hunt
Councillor N Murphy
Councillor N Tangri
Councillor J Weber

Agenda

Part A – General

1. Apologies & Substitutes

- (a) to receive apologies for absence from any Councillor who is unable to attend; and
- (b) to receive the name of any Councillor who is to act as a substitute, notice of which has been given to the Chief Executive, together with the name of the Councillor for whom they are acting.

2. Declarations of Interest

Members to declare the existence and nature of interests in items on the agenda in accordance with the adopted Code of Conduct.

Declarations should be disclosed during this item. However, the existence and nature of any interest that subsequently becomes apparent during the course of the meeting must be disclosed immediately. If the interest is not registered, Members must notify the Monitoring Officer of the interest within 28 days.

Members are also reminded of the need to declare predetermination on any matter.

If Members are unsure about whether or not they have an interest, or about its nature, they are strongly advised to seek advice from officers prior to the meeting.

3. Site Visits

The Chairman to report the location of the planning application sites visited and the names of the Committee Members who attended.

Part B – Planning Applications

To consider the following reports from the Head of Development Services:

4. **W/17/0440 – Land off Bremridge Close, Barford** (Pages 1 to 2)
Major Application
5. **W/20/1331 – Land adjacent, Daly Avenue, Hampton Magna, Budbrooke**
(Pages 1 to 4)
6. **W/20/1364 – Homebase Ltd, 46-48 Emscote Road, Warwick**
Major Application (Pages 1 to 21)
7. **W/20/1642 – Asps Farm, Banbury Road, Bishop's Tachbrook**
Major Application (Pages 1 to 18)
8. **W/20/1842 – Stags Head Farm, Bubbenhall Road, Baginton** (Pages 1 to 6)

Part C – Other matters

9. **Appeals Report** (Pages 1 to 13)

Please note:

- (a) the background papers relating to reports on planning applications are open to public inspection under Section 100D of the Local Government Act 1972 and consist of all written responses to consultations made by the Local Planning Authority in connection with the planning applications referred to in the reports, the County Structure Plan Local Plans and Warwick District Council approved policy documents.
- (b) all items have a designated Case Officer and any queries concerning those items should be directed to that Officer.
- (c) in accordance with the **Council's Public Speaking Procedure**, members of the public can address the Planning Committee meeting remotely by joining the remote meeting through their personal device on any of the planning applications or Tree Preservation Order reports being put before the Committee. If you wish to do so, please register online at [Speaking at Planning Committee](#) any time after the publication of this agenda, but **before 10.00am** on the working day before the day of the meeting and you will be advised of the procedure.
- (d) please note that the running order for the meeting may be different to that published above, in order to accommodate items where members of the public have registered to address the Committee.
- (e) occasionally, items are withdrawn from the agenda after it has been published. In this instance, it is not always possible to notify all parties interested in the application. However, if this does occur, a note will be placed on the agenda via **the Council's website**, and where possible, the applicant and all registered speakers (where applicable) will be notified.

General Enquiries: Please contact Warwick District Council, Riverside House,
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Telephone: 01926 456114
E-Mail: committee@warwickdc.gov.uk

For enquiries about specific reports, please contact the officers named in the reports.
You can e-mail the members of the Committee at
planningcommittee@warwickdc.gov.uk

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456114

Planning Committee: 3 February 2021

Item Number: 4

Application No: W/17/0440

Town/Parish Council: Barford

Case Officer: Dan Charles

01926 456527 dan.charles@warwickdc.gov.uk

Land off Bremridge Close, Barford

Erection of 63 dwellings together with all ancillary works including, infrastructure, surface water attenuation measures and on-site open space provision.

FOR Taylor Wimpey West Midlands Ltd

Proposed Deed of Variation to the signed Section 106 Agreement

INTRODUCTION

This report relates to planning permission W/17/0440 which was previously presented to Members of the Planning Committee on 20 June 2017. The recommendation to committee was to grant planning permission, subject to the various conditions listed in the report as well as a Section 106 Agreement to secure a range of obligations from the Owner. The Section 106 was thereafter signed and the decision issued on 7 September 2017.

The application site is now substantially complete and occupied.

The Housing Team have been approached by an occupier of one of the affordable properties who wishes to exercise their Right to Buy their property.

The current wording within the Section 106 prohibits the disposal of the affordable housing units to any party other than a Registered Provider. This prevents individual tenants from exercising their statutory Right to Buy the affordable housing units.

RELEVANT POLICIES

- National Planning Policy Framework
- H2 – Affordable Housing

ASSESSMENT

In order to overcome the conflict between the tenants statutory Right to Buy and the terms of the agreement, the Housing Services Team of the District Council has recommended that the wording be amended.

The change required is to Paragraph 1.9 of the Third Schedule of the Section 106 Agreement and **needs to be amended to include the words "SAVE THAT this clause shall not apply to or prohibit any statutory right to purchase" at the end of the paragraph.**

This would allow the occupier to exercise their Right to Buy.

CONCLUSION

The agreement of a standard clause is not affected by the CIL regulations and is purely the mechanism to provide conformity with the legislation relating to Right to Buy.

RECOMMENDATION

That Committee approve the revisions to the wording through a Deed of Variation to the Section 106 Agreement.

Planning Committee: 03 February 2021

Item Number: 5

Application No: [W 20 / 1331](#)

Town/Parish Council: Budbrooke

Case Officer: Lucy Hammond

01926 456534 lucy.hammond@warwickdc.gov.uk

Registration Date: 29/09/20

Expiry Date: 24/11/20

Land adjacent, Daly Avenue, Hampton Magna, Budbrooke

Display of 12no. flag poles and flags and 1no. free standing, V-board sign (all non-illuminated) FOR Mr R Earley

This application is being presented to Committee due to an objection from the Parish Council having been received.

RECOMMENDATION

The Planning Committee is recommended to approve Advertisement Consent, subject to the standard conditions for Advertisement Consents and the conditions listed at the end of this report.

DETAILS OF THE DEVELOPMENT

The application proposes the display of 12 flags and 1 free standing V-board type sign relating to the approved residential development at the site. The flags are 0.8m x 1.6m on 4.5 metre high flag poles. The flags are located either side of the entrance of the residential development, for which reserved matters were granted under ref: W/19/2112 for land south of Lloyd Close/Daly Avenue. The free standing sign is located to the western side of the entrance to the residential development, close to the edge of the site which abuts Daly Avenue.

THE SITE AND ITS LOCATION

The application site forms part of the wider housing development south of Lloyd Close and Daly Avenue, Hampton Magna.

PLANNING HISTORY

W/19/2112 - Application for Reserved Matters pursuant to condition 1 of planning permission ref: W/17/2387 for details of access, appearance, landscaping, layout and scale of 147 dwellings together with associated works, including vehicular/pedestrian access from Daly Avenue, green infrastructure including a play area, open space and other landscaping and sustainable drainage - Granted.

W/17/2387 - Outline application with all matters reserved except for access, for the erection of up to 147 dwellings together with vehicular/pedestrian access from Daly Avenue; Green Infrastructure including a play area, other open space

and landscaping; sustainable drainage; and other related infrastructure -
Refused; subsequently allowed at appeal.

RELEVANT POLICIES

- National Planning Policy Framework
- Warwick District Local Plan 2011-2029
- BE1 - Layout and Design
- BE3 - Amenity
- TR1 - Access and Choice
- Budbrooke Neighbourhood Plan (2018-2029)
- BNDP7 - Design of Development in Budbrooke Parish
- BNDP9 - Traffic Management and Traffic Improvements

SUMMARY OF REPRESENTATIONS

Budbrooke Parish Council: Objection for the following reasons:

- 12 flagpoles seems too many and even a lower number would cause too much noise when they blow in the wind
- The flags and the lighting are unnecessary when they can only be seen by people who already know the development is there; there is no passing traffic
- The plans state it is non-illuminated but the plans show floodlights
- It appears there may be some obstruction of the public right of way
- The proposed height (4m) would be an eyesore for residents and 4 years is unacceptable
- The location plan looks as though the site is encroaching onto the grass verge along Daly Avenue

WCC Highways: Objection is raised to the flags which overhang the footway/carriageway; these should either be removed or relocated to a position where they do not overhang the footway/carriageway. Clarification is also sought over whether or not the floodlights shown on the plan have been placed there in error since the application states that all signage is non-illuminated. Otherwise, there is no objection to the proposals.

WCC Ecology: As the existing hedgerow may be affected a CEMP is recommended; one is still awaited in relation to the planning application.

(Officer note – the above cannot be sought in relation to advertisement consent; the matter will be dealt with accordingly in pursuance of the outline permission.)

ASSESSMENT

Impact on visual amenity

Applications for Advertisement Consent can only be considered in terms of amenity and public safety.

In terms of visual amenity, the signage would be appropriately positioned and proportional to the scale and context of the development site. The free standing sign is limited to display only the development name and related information.

There is only one located on one side of the main entrance to the development which is considered to be limited. Furthermore, it is simple, well designed and acceptable along this frontage.

Though there are twelve flagpoles in total and the Parish Council has expressed concern that this number is excessive, officers consider that they are evenly distributed both along the frontage and further within the site. There are four positioned on either side of the entrance into the development, two single flagpoles set further back into the site, on the western side of the main entrance drive and a further two at the end of the main drive (Road No.1) at the junction where the road splits both west and south. As such, the total of twelve would not be located together in close proximity nor would they be read as such from either within the site or from a distance. It is therefore considered, given the scale of the development they would be advertising and given their proposed siting and distribution within the development, that these flagpoles are not unreasonable and would not have a significant impact on amenity.

Concern has also been raised regarding the proposed flagpoles in a residential area in respect of the noise they might make when blowing in the wind (even if the number were reduced). It is noted in the first instance that this type of advertisement consent is not unusual in association with residential development, particularly of this scale and in addition to this, a recent advertisement consent was approved for the adjacent site at Arras Boulevard for a total of 4no. flagpoles and 3no. free standing signs. It is further considered that the signage proposed is proportionate to the scale of development that has been approved on this site; the single V-board sign and flagpoles are mainly located around the main entrance and by their nature are only temporary.

While the signage and flagpoles are temporary in nature, it is still considered appropriate to impose a condition to ensure they are removed once all the residential units have been occupied.

Overall officers are satisfied that the proposal complies with Local Plan policies BE1 and BE3 and Neighbourhood Plan Policy BNP7.

Public Safety

No public safety issues are identified. Whilst the Highways Authority originally raised objection to the proposal, this was specifically on the grounds that some of the flags appeared to overhang the footway/carriageway and it was requested that these flags either be removed or relocated such that they no longer overhung the footway/carriageway. Revised drawing P2 shows this now to be the case; none of the flagpoles result in any overhang or other obstruction and this point raised by the Highways Authority has been fully addressed.

The other point on which clarification was sought related to illumination. The application documentation clearly states that no part of the proposal is to be illuminated and yet there were floodlights annotated on the drawing. Floodlights have since been removed from drawing P2 which had been originally added in error and it is confirmed that all signage is to be non-illuminated.

There are therefore no objections from the County Highways Authority since the proposed V-board and flagpoles would result in no obstructions, glare to motorists or other potential highway safety hazards that would compromise highway safety or would potentially obstruct views for vehicles entering or exiting the site. Therefore, it is considered that the proposed signage would not be harmful to public safety.

The proposal complies with Local Plan Policy TR1 and Neighbourhood Plan Policy BNP9.

SUMMARY/CONCLUSION

The proposed signage is appropriately positioned within the development and proportionate relative to the overall scale and character of the wider development site and would not result in any visual harm to the amenity of the area nor would there be any detriment to highway safety. Accordingly, it is recommended that Advertisement Consent be approved.

CONDITIONS

Statutory Advertisement Consent conditions 1-5, plus:

- 6 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing SK200 Rev.P2, and specification contained therein, submitted on 11 November 2020. **Reason:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies BE1 and BE3 of the Warwick District Local Plan 2011-2029.
- 7 Within 14 days of the occupation of the last residential unit approved under application reference W/19/2112, or any subsequent amendments, the advertisements hereby permitted shall removed in full. **REASON:** In the interest of visual amenity in accordance with Policy BE1 of the Warwick District Local Plan 2011-2029.

Planning Committee: 03 February 2021

Item Number: 6

Application No: [W 20 / 1364](#)

Town/Parish Council: Warwick

Case Officer: Helena Obremski

01926 456531 Helena.Obremski@warwickdc.gov.uk

Registration Date: 27/08/20

Expiry Date: 26/11/20

Homebase Ltd, 46-48 Emscote Road, Warwick, CV34 4QP

Demolition of existing building and erection of a Class E discount foodstore, with car parking, access, landscaping, substation and associated engineering works.

FOR Lidl Great Britain Ltd

This application is being presented to Committee due to the number of objections and an objection from the Town Council having been received.

RECOMMENDATION

Planning Committee are recommended to GRANT planning permission, subject to the conditions listed at the end of this report and a suitable legal agreement to secure the car parking management plan.

Planning Committee are also recommended to delegate authority to the Head of Development Services in consultation with the Chair of Planning Committee to finalise the terms of the legal agreement including any variation to, or clarification of, any sums requested where the revised sums meet the relevant statutory test.

Should a satisfactory legal agreement not have been completed by 3rd March 2021, Planning Committee are recommended to delegate authority to the Head of Development Services to REFUSE planning permission on the grounds that the proposal makes inadequate provision in respect of the issues the subject of that agreement.

DETAILS OF THE DEVELOPMENT

The application seeks planning permission for the demolition of the existing building and erection of a Class E retail foodstore, with associated car parking, access, landscaping, substation and engineering works. The proposed foodstore is to be occupied by Lidl, a discount food retailer.

The proposed building would have a smaller footprint than the existing building and be far smaller in terms of overall scale and mass. The building would be single storey, with a monopitch roof design, with a large glazed frontage facing Emscote Road. The remaining elevations would benefit from a mix of silver and white aluminium cladding. Access to the site remains the same as the existing and 97

parking spaces are proposed, with 2 spaces for electric vehicles (with charge points), 7 disabled spaces and 8 parent and child spaces.

This is a resubmission of a previously refused scheme for a similar development. Although the overall proposed development itself has not been amended, the applicant has submitted additional supporting information with this application, in the form of modelling data regarding the highway network impacts and parking provision for consideration by the Highways Authority.

THE SITE AND ITS LOCATION

The application relates to an existing retail unit (Homebase), positioned to the south of Emscote Road and is accessed from Pickard Way. Residential properties surround the site to the east, south and west, with a vehicle service and repair shop positioned on the opposite side of Emscote Road.

The site is located outside of the town centre and is in Flood Zone 1.

PLANNING HISTORY

W/19/0827 - planning permission refused for detailed planning application for demolition of existing building and erection of a Class A1 retail foodstore with associated car parking, access, landscaping, substation and engineering works.

W/18/0170 - application withdrawn for variation of Condition 1 of planning permission W/98/1450 to allow for the sale of food and drink, toiletries, toys and games and non-fashion clothing and footwear (limited only to: underwear and nightwear; slippers, baby clothing, school wear; and seasonal or safety items: boots, sandals, hats, gloves, scarves, partywear/costumes) across 780sqm of the floorspace of the building.

W/98/1450 - application granted for variation of Condition 4 (Use Class) of W/84/0187 to allow the sale of pets, pet food and other pet related products.

W/97/1253 - application granted for variation of Condition 4 of W/84/0187 (restriction on goods to be sold).

W/95/1343 - application granted for alterations to elevations; construction of an entrance ramp; alterations to car parking layout and alteration to refuse area and amend condition 4 of pp. W/84/0187 (sales restricted to DIY goods, etc.) for sublet area.

W/88/1641 - application granted for alterations to elevation to provide new entrance.

W/84/0187 - application granted for alterations and extensions to form retail store and garden store. Erect 3 storey block of 30 flats for the elderly and new link road.

RELEVANT POLICIES

- National Planning Policy Framework

- Warwick District Local Plan 2011-2029
- BE1 - Layout and Design
- BE3 - Amenity
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets
- TR1 - Access and Choice
- TR2 - Traffic generation
- TR3 - Parking
- NE5 - Protection of Natural Resources
- TC1 - Protecting and Enhancing the Town Centres
- TC2 - Directing Retail Development
- FW2 - Sustainable Urban Drainage
- FW3 - Water Conservation
- CC2 - Planning for Renewable Energy and Low Carbon Generation
- CC3 - Buildings Standards Requirements
- Guidance Documents
- Parking Standards (Supplementary Planning Document)
- Distance Separation (Supplementary Planning Guidance)
- The 45 Degree Guideline (Supplementary Planning Guidance)
- Air Quality & Planning Supplementary Planning Document (January 2019)

SUMMARY OF REPRESENTATIONS

Warwick Town Council: Objection, supports comments made by Highways who formerly objected to the proposal.

WCC Highways: No objection, following negotiation between the agent and WCC Highways, subject to inclusion of specific conditions and notes.

WCC Ecology: No objection.

WCC LLFA: No objection, subject to conditions.

Environmental Health: No objection, subject to conditions.

Public Rights of Way: No objection.

WCC Landscape: Objection, the existing trees provide a degree of visual amenity and reduce sense of scale of car park, so should be retained. All other comments have been addressed.

Public Responses: 19 Objections:

- There is no need for the proposed development as there is a Lidl within walking distance to the site and other supermarkets within the local area. People are shopping more online, so the store will not be required in the future. A DIY store is needed more.
- There are no benefits derived from the development.
- Additional traffic will cause congestion in an already busy area.

- Local residents will not be able to access parking spaces as a result of traffic congestion and under provision of parking on site.
- Noise disturbance from construction works, HGV deliveries and plant equipment, and from the proposed development and car park.
- The proposed development will cause additional pollution to the area and we should be aiming to decrease our carbon footprint.
- Loss of economic amenity.
- People will not visit the store on foot and this will result in people taking shopping home in shopping trolleys, which may be abandoned, increased littering.
- Property prices will devalued.
- One of the provisions of Homebase originally being given permission to build was that they must provide a dual means of access for the estate - this has never been implemented and is a major concern for emergency vehicles having to attend any incident in the area.
- Health impacts of the substation added very close to houses on Avon Street - the EMFs emitted can raise the risks of developing health problems.
- Request to locate plant equipment and substation at front of the store, away from nearby residents.
- Suggestions to limit opening hours after peak traffic period, alterations to road and site layout to provide improved highway safety and traffic calming measures.
- Loss of trees which provide habitats for wildlife which provides amenity to local residents and screening from existing development and reduce air pollution.
- Loss of landscaping will result in parked cars being positioned closer to the neighbouring properties and resulting impacts from noise. Requests that separating wall is made higher to mitigate impacts.
- If there was an accident, incident, or fire, towards the end of Pickard Street causing the street to become blocked, then these bollards could be collapsed or removed. This would then allow access for emergency vehicles and provide the only entrance and exit for the whole of the estate. This issue needs addressing as otherwise there would be a state of gridlock.
- One of the conditions of the original permission was that access for emergency vehicles was provided at the southern end of the site and this was done by means of removable metal posts. The current application describes that as "disused" and asks for simple pedestrian access. It would be more appropriate to have the loading bay and plant facility at the northern end of the site, reducing traffic congestion and impact on neighbouring properties.

18 Support:

- The area is only serviced by Tesco and residents are restricted by choice so there is need for the development, and will be cheaper than surrounding supermarkets.
- Due to climate change, where people shop, and the convenience of that shopping, will become more important giving greater need for a second cost effective weekly-shop food store in the area for the residents.
- The development will reduce traffic congestion on the south side of the town.
- Road infrastructure and traffic management is already in place.

- The proposed development is smaller and lower with additional landscaping, and will improve the entrance to Warwick as the existing building is an eyesore, improving the appearance of the area.
- The landscaping and development would enhance the area.
- There are a large number of local residents who do not have access to a car.
- Lidl have a good reputation.
- Homeless people have been sleeping in the doorway which has a negative visual impact owing to items left behind.
- Reopening of the site will provide job opportunities.
- Adequate parking is provided.

2 Neutral:

- The current site is an eyesore and the new superstore would be well received.
- The landscape proposal appears encouraging.
- It should be a key priority to reduce air pollution for nearby residents.
- The development will have a devastating impact on traffic congestion and there is a lack of cycle storage and EV charging points.
- Further energy efficiency measures should be incorporated.
- Lidl should be responsible for increased bins in immediate area.
- Lidl should take responsibility for the pathway behind the site, the existing path has been neglected and can be seen as intimidating and unwelcoming.
- There are currently issues with littering on the site and potential for the travelling community to use the site which should be addressed urgently.
- The site is used as a footpath which presents security risk to nearby residential properties.

ASSESSMENT

The main issues relevant to the assessment of this application are as follows:

- Principle of the Development
- Design
- Impact on Neighbouring Residential Amenity
- Parking, Highway Safety and Traffic Generation
- Ecological Impact
- Air Quality
- Other Matters

Principle of the Development

Local Plan policy TC2 states that within the town centres, new retail development should be located as a first preference in the retail areas defined on the Policies Map. Where suitable sites are not available in the retail areas, sites on the edge of the retail areas will be considered and, if no suitable sites are available in any of the preferred locations, out-of-centre sites will be considered.

The site is 'out of centre' and therefore in order to comply with the requirements of Local Plan Policy TC2 (Directing Retail Development) the application has to be accompanied by a satisfactory Sequential Assessment and a Retail Impact

Assessment. These are necessary in order to satisfy the Council that the proposal has assessed / appropriately discounted any sequentially preferential alternatives and that the proposal will not have any significant adverse impact on planned investment / town and local centre vitality and viability.

Having reviewed the applicant's submission, Officers are satisfied that the applicant has satisfactorily conducted a sequential analysis. To summarise, the absence of suitable and available sequentially preferential sites will have not changed since the appeal decision at The Leamington Retail Park (M and S).

The Council commissioned a Retail Study in 2018 (Warwick District Council Retail and Leisure Study 2018, Carter Jonas) which identifies limited retail (convenience capacity) in the short to medium term. It could be considered that the proposal would make a qualitative as well as a quantitative addition to convenience food offer in the District.

The application has to demonstrate that it will not have a significant detrimental impact on the vitality and viability of nearby town centres and Local Centres or be an impediment to planned town centre investment opportunities.

The retail model for Lidl is that of a 'deep discounter'- they sell a more modest range of convenience goods products / lines than the typical larger supermarkets. Notably they do not sell tobacco, newspapers, or individual confectionary items and stocks limited pre-packed fish and meat and individual fruit and vegetable products. This places Lidl in a different market from most independent retailers. The same issues, coupled with the lack of a post office, pharmacy, delicatessen, financial products or other in house facilities mean that the overlap with conventional supermarkets is limited.

It is noted that Lidl stores offer a limited range of non-food items, however these **items tend to be 'one-off' specials and the range of goods on offer changes frequently.**

Lidl's primary trade is in bulk, not top – up shopping. As a consequence of this, and by virtue of its restricted product range it does not directly compete with town / local centre convenience stores or independent / multiple butchers, bakers and greengrocers. Therefore, Officers are satisfied with the retail impact assessment that has been submitted with the application. It sets out the Lidl retail model results in trade diversion being predominantly focussed on other supermarket concerns (most of which are out of centre) and that none of these impacts would cause businesses to close.

For reasons set out below, it is considered necessary to limit any approval to a personal permission for Lidl and to a foodstore. This would also satisfy any concerns regarding the impact on the viability and vitality of the town centre which would be presented in granting permission for an unrestricted retail unit as outlined above. The proposal is therefore considered to comply with the requirements of policy TC2.

Design

The National Planning Policy Framework (NPPF) places significant weight on ensuring good design which is a key aspect of sustainable development and should positively contribute towards making places better for people. The NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving character, the quality of an area and the way it functions. Furthermore, Warwick District Council's Local Plan 2011 - 2029 policy BE1 reinforces the importance of good design stipulated by the NPPF as it requires all development to respect surrounding buildings in terms of scale, height, form and massing. The Local Plan calls for development to be constructed using appropriate materials and seeks to ensure that the appearance of the development and its relationship with the surrounding built and natural environment does not detrimentally impact the character of the local area.

Members of the public who have supported the proposal consider that the development is smaller and lower with additional landscaping, and will improve the entrance to Warwick as the existing building is an eyesore, improving the appearance of the area.

The existing building serving the site is an incongruous, imposing feature within the street scene, being a substantial structure with little design merit, or relationship with its surroundings. The area around the site has a mixture of much smaller scale development, consisting of two storey terrace dwellings of brick and render, with tiled roofs. Opposite to the site is a vehicle repair centre, which is single storey and also of little architectural quality. However, the repair centre is of an appropriate design for its purpose and being single storey, does not have a significant impact on the street scene.

The design of the proposed building appears as a modern single storey structure, with a mono-pitched roof, large glazed elements and metal cladding, which is similar to the design of other existing Lidl's. Whilst the design would not necessarily directly relate to other development within the street scene, the existing building is already a stark contrast to the established character of the area, which is also relatively varied along Emscote Road and behind to Pickard Street. The modern, simple design would sit comfortably within the mixed street scene and would not appear out of keeping. The design style which Lidl adopts is recognisable and appropriate for its purpose. Although taller than a traditional single storey structure, owing to the angled design, it would sit more comfortably opposite the single storey vehicle repair shop facing to the site.

The proposed development will also move the building on the site slightly further back than the current structure and will provide a modern replacement which is of a substantially smaller scale than the existing development. The footprint and

overall height of the building would be far smaller than the existing building, thus reducing the impression of the built form within the street scene. By setting the proposed building further back and also introducing more soft landscaping at the front of the site, this softens the existing harsh solid frontage and provides an improvement to the street scene.

There has been concern raised regarding the loss of four trees which currently occupy the central portion of the car parking area. It must be highlighted that these are not protected by a TPO or located within a Conservation Area so could be removed at any time lawfully by the applicant. WCC Landscape has requested that these be retained. However, the agent informed Officers that there is a gas easement across the car park and this is why there is no planting proposed in the centre of the site. Lidl have taken legal advice in respect of this matter and have been informed that it will be inappropriate to reintroduce trees here as they will likely have to be removed again in the near future. The applicant has however proposed replacement tree planting at the side and rear of the site and increased soft landscaping across the site as mentioned above, accommodating all other requests from WCC Landscape. Whilst the loss of the trees in the centre of the site is regrettable, owing to the constraints across the site and pressure this is likely to have on their removal regardless of the outcome of this application, the fact that the trees have no statutory protection and could be removed at any time, and overall improvements that the proposal would bring to the site in visual terms, the loss of the trees is considered to be adequately mitigated by the redevelopment of the site as a whole.

Therefore, it is considered that the proposed development would represent an enhancement to the street scene, which harmonises well with the character of the area. It should be noted that the design of the proposed development and loss of trees was accepted under the previous application. The development is therefore considered to be in accordance with Local Plan policy BE1.

Impact on Neighbouring Residential Amenity

Warwick District Local Plan policy BE3 requires all development to have an acceptable impact on the amenity of nearby users or residents and to provide acceptable standards of amenity for future users or occupiers of the development. There is a responsibility for development not to cause undue disturbance or intrusion for nearby users in the form of loss of privacy, loss of daylight, or create visual intrusion.

Members of the public raise concerns regarding noise nuisances from the construction works, HGV deliveries and refrigeration / plant equipment, and

increased vehicular movements in the parking area. Members of the public also raise concerns regarding EMFs which can raise the risks of developing health problems from the proposed substation. There is a request to locate plant, equipment and substation at the front of the store, away from nearby residents. Members of the public consider that the loss of landscaping will result in parked cars being positioned closer to the neighbouring properties and therefore creating greater noise impacts. They request that the separating wall is made higher to mitigate impacts.

As detailed above, the proposed building would be significantly smaller than the existing property and therefore visually, the development is likely to improve outlook and light to neighbouring properties. There are no proposed windows within the building which would lead to a loss of privacy to neighbouring properties.

Environmental Protection were consulted and have requested that a condition is added to ensure that noise emanating from plant and equipment at the site does not detrimentally impact on neighbouring residential amenity, and a condition for a construction management plan to ensure that construction and demolition works do not detrimentally impact on neighbours. They also request a condition limiting the hours of deliveries and a condition for a detailed lighting scheme in order to protect neighbouring amenity. These conditions are considered to be reasonable and necessary to ensure that neighbouring residential amenity is protected.

The positioning of cars closer to residential properties and the request to increase the height of the boundary wall are not considered to be reasonable; the car park is already in use and the smaller distance which cars would be positioned closer to neighbouring properties is not considered to have a material impact on amenity.

It should be noted that the previous application was not refused on the grounds of impact on neighbouring amenity. The proposal is therefore considered to be in accordance with Local Plan policy BE3.

Highway Safety and Traffic Generation

Local Plan policy TR2 states that all large-scale developments that result in the generation of significant traffic movements should be supported by a Transport Assessment, and where necessary a Travel Plan, to demonstrate the practical and effective measures to be taken to avoid the adverse impacts of traffic.

Members of the public have raised concerns regarding traffic congestion and highway safety. Members of the public also express concern regarding the access

for emergency vehicles, and that there would be a detrimental impact on highway and pedestrian safety. It is requested that opening hours are limited to after the peak traffic period, and that there are alterations to the road and site layout to provide improved highway safety and traffic calming measures. It is also suggested that it would be more appropriate to have the loading bay and plant facility at the northern end of the site, reducing traffic congestion and impact on neighbouring properties. However, supporters of the proposal state that the development is likely to ease traffic congestion, and that sufficient road infrastructure and traffic management is already in place.

The access to the site would be slightly amended at the entrance, to accommodate parking spaces. WCC Highways have raised no concerns regarding the proposed access arrangements, or in respect to highway or pedestrian safety.

WCC Highways objected to the previous application, which was refused on the grounds that the development would result in the generation of significant traffic movements, leading to significant delays and further congestion along a route which already experiences a high level of congestion. This was considered to have a severe impact on the highways network, which was contrary to the NPPF and Local Plan.

Paramics modelling details were agreed by the applicant and WCC Highways, and then undertaken.

As the modelling information is based specifically on the Lidl traffic modelling data generated by the County Highways Authority, another retailer in the same use could potentially have a more severe impact on the highways network, if left uncontrolled. For this reason, Highways have recommended that if planning permission is granted, a condition is used to restrict the development to a personal permission for Lidl only. Given that this is a sensitive site where the wider traffic network could be impacted to a severe extent if uncontrolled, it is considered reasonable and necessary for the purposes of the development to attach a condition limiting an approval to a personal permission. A condition is also recommended for the installation of MOVA method of control prior to occupation which has been added.

Following a detailed review of all of this additional information, WCC Highways have now raised no objection to the scheme. For the reasons set out above it is considered that the development would have an acceptable impact on the highways network, subject to conditions to ensure that adequate mitigation measures are put in place and a condition limiting an approval to Lidl only. The proposal is therefore considered to be in accordance with Local Plan policies TR1 and TR2.

Parking

Members of the public raise concern regarding the impact of the development on nearby residents' parking, which already experiences severe parking stress. They suggest that there is a lack of cycle storage and EV charging points. Objectors to

the development suggest there is inadequate parking, whilst supporters suggest that there are sufficient levels provided.

There are currently 104 car parking spaces provided, which would be reduced to 97. The existing parking requirement in accordance with today's adopted standards would be 259 spaces and the proposal requires 162 spaces. The net reduction in the number of required spaces is 97 spaces, however, this is still an under provision of 65 spaces for the proposed development, in accordance with the standards.

The Council's Vehicle Parking Standards guidance does allow for flexibility in the application of the standards to specific development proposals and paras 4.7 to 4.10 of the document outline the occasions when strict adherence may not be required. The applicant proposes that they meet criterion 5, where "the development will generate significantly less parking than prescribed in the standard". They suggest that this is because a discount retailer with fewer lines than an open Class E retailer tends to produce significantly shorter dwell times within the store. The applicant informs that typically, the average length of stay of a Lidl customer is between 20 and 25 minutes. The applicant states that it is length of stay that has a particularly burdensome effect on the demand for parking.

Previously, the information provided by the applicant failed to take into consideration the modelling data on discount foodstores collected by the Highways Authority. Concern was raised by the Highways Authority using the Aldi and Lidl parking data that the car park would be at capacity during peak times, leading to queuing and parking within the nearby highway. However, using the Lidl only trip rates provided to the applicants by the Highway Authority, it has been identified in the submitted Technical Notes that sufficient parking is available for the proposal. The information shows that at no point would the car park reach full capacity, with at least 10 car parking spaces available at peak times, with much more generally available. Given that it is proposed that a condition limiting the development to a personal permission is both reasonable and necessary, assessing just the data relating to Lidl only is considered to be a suitable means of assessing the required level of parking provision under these circumstances.

As a precautionary measure, the Highways Authority suggest that in order to identify any issues which may arise in future years, they require a car-parking management plan, to include pre and post opening on-street parking surveys to monitor this matter. The management plan will be secured through a legal agreement, which requires that if it is found that there is erroneous parking within nearby residential streets as a result of the proposed development, the developer will be required to pay a financial contribution towards a Traffic Regulation Order, which would restrict on street parking to residents only. The Highways Authority also recommend a condition for the laying out of the car parking areas in accordance with the approved plans which has been added.

Therefore, subject to the condition which limits an approval to a personal permission and a legal agreement to secure a car parking management plan, the proposal is considered to provide adequate parking arrangements. The development is considered to be in accordance with Local Plan policy TR3 and the Vehicle Parking Standards.

Ecological Impact

Members of the public have objected on the grounds of a loss of trees which provide habitat for wildlife.

WCC Ecology have assessed the application and confirm that their comments remain largely the same as the previous application. The development will result in a minor net gain to biodiversity, which is in accordance with the requirements of the NPPF and Local Plan policy NE2. WCC Ecology previously recommended that a condition is attached for the provision of a scheme detailing biodiversity enhancements (such as a green wall). However, WCC Ecology have now confirmed that there would be a small net biodiversity gain as a result of the scheme, which means that the development is policy compliant as proposed, therefore it would be onerous to impose a condition of this nature on the application.

Therefore, the development is considered to be in accordance with Local Plan policy NE2.

Air Quality

Members of the public raise concern regarding increased pollution from additional traffic, loss of trees and building works in an area where there are already high levels of pollution.

The applicant has provided an Air Quality Assessment and follow up air quality note, which has recalculated the air quality damage costs using the updated traffic data for the current planning application. The damage costs have slightly increased using this updated traffic data, however, the costs of the proposed Type 3 mitigation measures (1no rapid electric vehicle charging point and associated works) still exceed the value of the revised damage costs. The applicant has provided a site plan drawing showing where the proposed electric vehicle charging infrastructure will be installed and has also provided details of the proposed charging infrastructure. In addition to the provision of a rapid electric vehicle charging point, the applicant also proposes to install 4no fast charging points (2no twin charging units) to satisfy Type 1 mitigation measures under the Warwick District Council Air Quality SPD (2019). Proposals for Type 2 mitigation measures have yet not been provided, however, this can be secured by a planning condition. The proposed conditions by Environmental Health to secure the mitigation measures have been added.

Subject to suitable mitigation for the impact of the development on air quality, the development is in accordance with Local Plan policy NE5.

Other Matters

Contaminated Land

The applicant has undertaken a contamination assessment and ground investigation of the site which has concluded that further investigation is required to adequately characterise the site. Further investigation would include ground gas and VOC monitoring due to the thickness of made ground encountered and the presence of VOCs in the groundwater. As a result, Environmental Protection recommend a condition is imposed to ensure that a site investigation scheme and method statement are provided prior to commencement of works, which has been added.

Drainage and Water Efficiency

Members of the public consider that there would be an increased risk of flooding. However, the site is located in Flood Zone 1 with a low risk of flooding. It should also be noted that the proposed building would be smaller than the current property and that additional soft landscaping is proposed in comparison to the existing arrangement.

The Local Lead Flood Authority (LLFA) have no objection to the proposal, subject to a condition requiring that the development is carried out in accordance with the Flood Risk Assessment and outline drainage strategy provided in support of the application. This is considered reasonable and necessary for the purposes of the development, and has been added. The proposal is therefore considered to be in accordance with Local Plan policy FW2.

Waste

Members of the public consider that the proposal would result in additional littering. The applicant would be responsible for their own waste collection arrangements, which are likely to be similar to those at the existing site. Officers have no reason to believe that adequate waste storage and disposal cannot be accommodated by the applicant.

BREEAM Requirements

As the proposal results in the construction of over 1,000sqm of non-residential floorspace, a pre-assessment stage assessment by an accredited BREEAM assessor demonstrating how the development will be designed and constructed to **achieve a minimum BREEAM standard 'very good' is required. This was provided** by the applicant which confirms that the development could meet 'very good'

BREEAM standard required. A condition will be imposed to cover the requirement for additional information relating to the design stage and to ensure that the development is carried out in accordance with the details submitted.

Miscellaneous

Members of the public consider that there is economic disadvantage for the remaining local confectionery/tobacco/newsagent shops as the area is already served by Tesco and Sainsburys plus more people are now shopping online, so the proposal is not needed. They also object on the basis of the loss of a home / DIY store and state that there is a preference for an alternative retailer such as B&M. However, this preference does not represent a material planning consideration so cannot be assessed as part of this application.

Conversely, supporters of the proposal state that the area is only serviced by Tesco and residents are restricted by choice so there is need for the development, and will be cheaper than surrounding supermarkets. Furthermore, due to climate change, where people shop, and the convenience of that shopping, will become more important giving greater need for a second cost effective weekly-shop food store in the area for the residents. Members of the public also state that there are a large number of local residents who do not have access to a car. These comments are noted, although do not form a material consideration.

Supporters of the proposal note that reopening of the site will provide job opportunities which is noted.

Members of the public consider that property prices will devalued as a result of the development. However, this is not a material planning consideration.

WCC Public Rights have not objected to the proposal, however, they note that an application has been submitted to Warwickshire County Council for a Definitive Map Modification Order (DMMO) to add a public footpath to the Definitive Map that would abut onto part of the eastern boundary of the application site. The Public Rights of Way Officer cannot confirm whether the application is likely to be successful. However, they state that the proposals do not appear to obstruct the route that is claimed to be an unrecorded public footpath, therefore no concerns are raised.

Members of the public state that there are no material benefits to the scheme, however, for the reasons outlined above Officers disagree with this view.

Members of the public have stated that homeless people have been sleeping in the doorway which has a negative visual impact owing to items left behind. Furthermore, they state that there are currently issues with littering on the site and potential for the travelling community to use the site which should be addressed urgently. They also state that site is used as a footpath which presents a security risk to nearby residential properties.

Conclusion

The proposed development would result in enhancements to the street scene and make use of a vacant site. Evidence has submitted to demonstrate compliance with retail policies. The scheme is considered to adequately mitigate the impact on neighbouring amenity and highway infrastructure, subject to a legal agreement as set above and the conditions set out within the report. Furthermore, adequate parking arrangements are considered to have been provided and the development would result in a small net biodiversity gain. For these reasons, it is recommended that planning permission is granted.

CONDITIONS

- 1 The development hereby permitted shall begin not later than three years from the date of this permission. **Reason:** To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawings PL-03 Rev A (site plan), PL-04 Rev A (floor plan), PL-05 Rev A (roof plan), PL-06 Rev C (elevations) and SK-07 Rev C (site plan including finished floor levels) submitted on 27th August 2020 and drawing 8934-L-01 Rev F (soft landscaping) submitted on 9th October 2020, and specification contained therein. **Reason:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies BE1 and BE3 of the Warwick District Local Plan 2011-2029.
- 3 No development shall take place until: -
 1. A site investigation has been designed for the site using the information obtained from the approved desk-top / preliminary study and any diagrammatical representations (conceptual model). The investigation must be comprehensive enough to enable:
 - A risk assessment to be undertaken relating to human health
 - A risk assessment to be undertaken relating to groundwater and surface waters associated on and off site that may be affected
 - An appropriate gas risk assessment to be undertaken
 - Refinement of the conceptual model
 - The development of a method statement detailing the remediation requirements

a) The site investigation has been undertaken in accordance with details approved by the local planning authority and a risk assessment has been undertaken.

b) A method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters using the information obtained from the site investigation, has been submitted to the local planning authority. The method statement shall include details of how the remediation works will be validated upon completion. This should be approved in writing by the local planning authority prior to the remediation being carried out on the site.

2. All development of the site shall accord with the approved method statement.

3. If during development, contamination not previously identified, is found to be present at the site then no further development shall take place (unless otherwise agreed in writing with the local planning authority for an addendum to the method statement). This addendum to the method statement must detail how this unsuspected contamination shall be dealt with.

Upon completion of the remediation detailed in the method statement a report shall be submitted to the local planning authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved method statement. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report

Reason: To safeguard health, safety and the environment in accordance with Policies BE3 and NE5 of the Warwick District Local Plan 2011-2029.

- 4 The development hereby permitted shall not commence unless and until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall provide for: details of any temporary measures required to manage traffic during construction, plans and details for the turning and unloading and loading of vehicles within the site during construction, dust suppression, noise and vibration, demolition or clearance works, details of wheel washing, site working hours and delivery times, restrictions on burning and details of all temporary contractors buildings, plant and storage of materials associated with the development process.

A model CMP can be found on the Council's website (https://www.warwickdc.gov.uk/downloads/file/5811/construction_management_plan) or by searching 'Construction Management Plan'. The development hereby permitted shall only proceed in strict accordance with the approved CMP. **Reason:** In the interests of highway safety and the amenities of the occupiers of nearby properties, the free flow of traffic and the visual amenities of the locality in accordance with Policies BE3, TR1 and NE5 of the Warwick District Local Plan 2011-2029.

- 5 No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority in consultation with the LLFA. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall include the following information:
- Demonstrate that the surface water drainage system(s) are designed **in accordance with 'The SuDS Manual', CIRIA Report C753** through the submission of plans and cross sections of all SuDS features including the underground cellular storage.

Reason: To prevent the increased risk of flooding; to improve and protect water quality; and to improve habitat and amenity, in accordance with Policies FW1, NE2 and BE3 of Warwick District Local Plan 2011 - 2029.

- 6 No development shall be carried out above slab level unless and until a hard landscaping scheme has been submitted to and approved in writing by the local planning authority. Details of hard landscaping works shall include boundary treatment, including full details of the proposed boundary walls, railings and gates to be erected, specifying the colour of the railings and gates; footpaths; and hard surfacing, which shall be made of porous materials or provision shall be made for direct run-off of water from the hard surface to a permeable or porous area. The hard landscaping works shall be completed in full accordance with the approved details within three months of the first occupation of the development hereby permitted; and all planting shall be carried out in accordance with the details contained within the approved soft landscaping plan in the first planting and seeding seasons following the first occupation. Any tree(s) or shrub(s) which within a period of five years from the completion of the development dies, is removed or becomes in the opinion of the local planning authority seriously damaged, defective or diseased shall be replaced in the next planting season with another of the same size and species as that originally planted. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 - Transplanting Root-balled Trees and BS4428 - Code of Practice for General Landscape Operations. **Reason:** To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in

accordance with Policies BE1, BE3 and NE4 of the Warwick District Local Plan 2011-2029.

- 7 No development shall be carried out above slab level unless and until samples of the external facing materials to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details. **Reason:** To ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the locality in accordance with Policy BE1 of the Warwick District Local Plan 2011-2029.
- 8 Prior to the occupation of the development hereby permitted, one twin 50kW DC rapid electric vehicle recharging point and two twin 7kW fast electric vehicle recharging points shall be installed in accordance with the approved details along with cabling for an additional four 7kW fast electric vehicle recharging points. Thereafter the electric vehicle recharging points shall be retained in accordance with the approved details and shall not be removed or altered in any way (unless being upgraded). **Reason:** To ensure mitigation against air quality impacts associated with the proposed development in accordance with Policy NE5 of the Warwick District Local Plan.
- 9 No development shall take place above slab level until an appropriate scheme comprising of Type 2 mitigation measures in accordance with **Warwick District Council's Air Quality Supplementary Planning Document** (January 2019) has been submitted to and approved by the local planning authority. The approved scheme shall then be implemented in full and shall not be altered in any way without expressed written consent from the local planning authority. **Reason:** To ensure mitigation against air quality impacts associated with the proposed development in accordance with Policy NE5 of the Warwick District Local Plan.
- 10 No development shall be carried out above slab level unless and until a Design Stage Assessment by an accredited BREEAM assessor demonstrating how the development will be designed and constructed to achieve as a minimum BREEAM standard 'very good' (or any future national equivalent) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved details. The development shall not be occupied unless and until a Completion Stage Assessment by an accredited BREEAM assessor demonstrating that the development achieves as a minimum BREEAM standard 'very good' (or any future national equivalent) has been submitted to and approved in writing by the Local Planning Authority. **Reason:** To deliver reductions in carbon dioxide emissions, building running costs, energy consumption and

water use in accordance with the provisions of Policy CC3 in the Warwick District Local Plan 2011-2029.

- 11 The development shall not be occupied until MOVA (Microprocessor Optimised Vehicle Actuation) method of control has been installed at the Emscote Road/Pickard Street junction in accordance with the details approved under this planning permission. **Reason:** In the interests of highway safety and the free flow of traffic in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.

- 12 The development hereby permitted shall not be occupied unless and until the cycle and car parking areas, and loading/unloading areas indicated on the approved drawings have been provided and thereafter those areas shall be kept marked out and available for such use at all times. **Reason:** To ensure adequate off-street car parking and servicing facilities in the interests of both highway safety and visual / residential amenity in accordance with Policies BE1, BE3 and TR3 of the Warwick District Local Plan 2011-2029.

- 13 Prior to installation of any lighting, a detailed lighting strategy for the development shall be submitted to the Local Planning Authority for approval and the development shall be carried out in strict accordance with these approved details. The detailed lighting strategy shall include:

- a layout plan detailing the position and type of the proposed lighting for both the construction and operational phase lighting. This should incorporate a zone of influence contour plan showing illuminance levels in relation to residential receptors prior to work starting. The lighting assessment should provide maximum vertical illuminance levels at nearby residential receptors.
- mounting heights and beam orientation, description and type of luminaries / lamp and angle of lighting and predicted light spill/ trespass beyond the site.
- steps taken to minimize light trespass, glare and sky glow.
- proposed time of operation of the lighting in the scheme including details of any control such as movement detectors and timers and a CMS (Central Management System).
- purpose of the lighting – e.g. general amenity , security, advertising.

Reason: To ensure that the development would not cause unacceptable disturbance to the detriment of the amenities of the occupiers of nearby properties in accordance with Policy BE3 of the Warwick District Local Plan 2011-2029.

- 14 Noise arising from any plant or equipment, when measured one metre from the façade of any noise sensitive premises, shall not exceed the background noise level by more than 3dB(A) (measured as LAeq(5

minutes)). If the noise in question involves sounds containing a distinguishable, discrete, continuous tone (whine, screech, hiss, hum etc) or if there are discrete impulses (bangs, clicks, clatters, thumps etc.) or if the noise is irregular enough to attract attention, 5dB(A) shall be added to the measured level. **Reason:** To protect the amenities of the occupiers of nearby properties in the locality in accordance with Policy BE3 of the Warwick District Local Plan 2011-2029.

- 15 No deliveries, waste collections or other noisy external activities likely to cause nuisance to nearby residents shall take place before 0730 hours or after 2130 hours on Monday to Saturday or before 0900 hours or after 1800 hours on Sundays. **Reason:** To ensure that the development would not cause unacceptable disturbance to the detriment of the amenities of the occupiers of nearby properties in accordance with Policy BE3 of the Warwick District Local Plan 2011-2029.

- 16 The development permitted by this planning permission shall be carried out strictly in accordance with the approved Flood Risk Assessment (FRA) and outline drainage strategy (by Baynham Meikle, ref: W_20_1364-Revised_FRA, dated July 2019) and in particular the following mitigation measures detailed within the document:

- Limit the discharge rate generated by all rainfall events up to and including the 100 year plus 30% (allowance for climate change) critical rain storm to 35.95 l/s for the site.
- Provide provision of surface water attenuation storage as stated within the FRA of 120m³ in accordance with '*Science Report SC030219 Rainfall Management for Developments*'.
- Installation of a Class I full retention separator to remove fuels/oils from surface water runoff upstream of the attenuation.

Reason: In the interests of preventing increased flood risk, in accordance with Policy FW1 of the Warwick District Local Plan 2011-2029.

- 17 The development hereby permitted shall be carried out only by Lidl Ltd and must be occupied only by Lidl Ltd. **Reason:** Planning permission is granted only on the basis of Lidl trip rates and the associated impact on the Highway Network. Use of the development by an alternative company would require a further assessment to be made by the LPA in conjunction with the Highways Authority.

- 18 The development hereby permitted shall be used as a foodstore and for no other purpose including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 2005, (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). **Reason:** Since the retail planning assessment has been based on the fact that

the proposals are for a foodstore and not any other type of retail use, in accordance with Policy TC2 of the Warwick District Local Plan 2011-2029.

Application No: [W 20 / 1642](#)

Town/Parish Council: Bishops Tachbrook
Case Officer: Gary Fisher

Registration Date: 13/10/20

Expiry Date: 12/01/21

01926 456502 gary.fisher@warwickdc.gov.uk

**Asps Farm, Banbury Road, Bishops Tachbrook, Leamington Spa, CV34
6SS**

Variation of conditions 1, 2, 5, 9, 10 and 18 and removal of conditions 19 and 21 of planning permission W/14/0300 (Outline planning application with all matters reserved except access for the erection of up to 900 dwellings, a primary school, a local centre and a Park and Ride facility for up to 500 spaces together with associated infrastructure, landscaping and open space).

FOR BSL II LLP

This application is being reported to Planning Committee because it is recommended that planning permission be granted subject to the completion of a legal agreement.

RECOMMENDATION

Planning Committee are recommended to GRANT planning permission subject to the conditions set out in the report and the completion of a Section 106 Agreement duplicating the requirements of the agreements completed in connection with planning permission reference W/14/0300 and the revisions identified in this report.

Planning Committee are also recommended to delegate authority to the Head of Development Services in consultation with the Chair of Planning Committee to finalise the terms of the Section 106 agreement including any variation to, or clarification of, the sums requested where the revised sums meet the relevant statutory test.

Should a satisfactory Section 106 Agreement not have been completed by 28 February 2021, Planning Committee are recommended to delegate authority to the Head of Development Services to REFUSE planning permission on the grounds that the proposal makes inadequate provision in respect of the issues the subject of that agreement.

DETAILS OF THE DEVELOPMENT

This application seeks to update outline planning permission reference W/14/0300 which was granted on appeal in January 2016 particularly in respect of highways and related matters.

The substantive proposal remains as originally approved for a residential development of up to 900 dwellings, a primary school, local centre and a park and ride facility for up to 500 spaces with access from Europa Way and Banbury Road, areas of public open space, landscaping enhancements and archaeological mitigation, on land at The Asps bound by Europa Way (A452) to the east and Banbury Road (A425) to the west.

Outline planning permission was originally granted subject to 26 conditions and 2 Section 106 Agreements, the latter to deliver a range of infrastructure including the provision of a park and ride facility.

This application does not propose any changes to the substantive scheme in itself but rather seeks to: -

- i. Vary conditions 1, 2, 5 and 9 to reflect the submission and approval of some Reserved Matters and the discharge of some conditions since the original grant of permission.
- ii. Update condition 10 which requires the submission of a Construction Management Plan to allow for the construction of a temporary construction access.

Note: this application does not propose any details or the location of that temporary access but rather introduces a mechanism to enable it to be brought forward.

- iii. Following discussions with the Highways Authority, vary condition 18 to revise the triggers for the timing and delivery of the highway works thereby enabling the phased delivery of the required supporting highway infrastructure .
- iv. Again following discussions with the Highways Authority, remove condition 19 which requires the submission and approval of road safety audits prior to the commencement of development. It is intended that the need for those audits will be controlled in connection with the proposed changes to condition 18.
- v. For clarity, focus the requirements relating to the provision of the Park and Ride facility into a revised Section 106 Agreement rather than as is currently the case splitting those requirements between planning conditions and that Agreement and revising the terms of the agreement to strengthen its proposals in respect of the park and ride facility.

Doing so will enable the removal of condition 21 which sets out the further details of the Park and Ride to be submitted and which will be incorporated into the Agreement taking account of ongoing discussions concerning the manner in which that facility will be provided.

- vi. Facilitate the transfer of a portion of the on-site public open space area to the ownership of the District Council in connection with the delivery of strategic green space within the area.

Should Planning Committee resolve to grant planning permission, the decision notice will repeat all of the conditions originally imposed on the outline planning permission and the revised Section 106 agreement will repeat all of the requirements included in the original documents save for the revisions proposed by and linked to this revised application.

THE SITE AND ITS LOCATION

The application site comprises agricultural land which is bounded by Europa Way to the east and Banbury Road to the west which meet at its southern end.

The Tach Brook is located to the north side of the site where there are a number of trees. The area immediately adjacent to the brook is located within Flood Zone 2 and 3, with the remaining part of the site is located within Flood Zone 1.

In view of its location, there are a number of significant Heritage Assets located adjacent to or in close proximity to the application site.

KEY PLANNING HISTORY

W/14/0300: Outline application with all matters reserved apart from access for residential development; primary school; local centre; park and ride facility; associated infrastructure, landscaping and open space. Refused May 2014 and granted on appeal in January 2016.

W/14/0300: Part discharge of condition 5 (phasing) in relation to parts i), ii), iii), iv), vi) and vii) of the condition. Granted December 2018.

W/14/0300: Discharge of condition 9 (Design Code). Granted December 2018.

W/18/2336: Reserved matters approval for the appearance, landscaping, layout, and scale of the advanced planting phase of development relating to outline planning permission W/14/0300. Granted May 2019.

W/19/0229: Reserved matters approval pursuant to condition 1 of planning permission W/14/0300 for details of appearance, landscaping, layout, and scale of 65 dwellings constituting sub-phase 1a. Granted October 2019.

RELEVANT POLICIES

- National Planning Policy Framework

Warwick District Local Plan 2011-2029

- DS2 - Providing the Homes the District Needs
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- DS5 - Presumption in Favour of Sustainable Development
- DS11 - Allocated Housing Sites
- DS15 - Comprehensive Development of Strategic Sites
- PC0 - Prosperous Communities
- H0 - Housing
- H1 - Directing New Housing
- H2 - Affordable Housing
- H4 - Securing a Mix of Housing
- SC0 - Sustainable Communities
- BE1 - Layout and Design
- BE2 - Developing Strategic Housing Sites
- BE3 - Amenity
- BE5 - Broadband Infrastructure
- BE6 - Electronic Communications (Telecommunications and Broadband)
- TR1 - Access and Choice
- HS1 - Healthy, Safe and Inclusive Communities
- HS4 - Improvements to Open Space, Sport and Recreation Facilities
- HS6 - Creating Healthy Communities
- HS7 - Crime Prevention
- HS8 - Protecting Community Facilities
- CC1 - Planning for Climate Change Adaptation
- CC2 - Planning for Renewable Energy and Low Carbon Generation
- CC3 - Buildings Standards Requirements
- FW1 - Development in Areas at Risk of Flooding
- FW2 - Sustainable Urban Drainage
- FW3 - Water Conservation
- FW4 - Water Supply
- HE1 - Protection of Statutory Heritage Assets
- HE4 - Archaeology
- NE1 - Green Infrastructure
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets
- NE3 - Biodiversity
- NE4 - Landscape
- NE5 - Protection of Natural Resources
- DM1 - Infrastructure Contributions

Guidance Documents

- Residential Design Guide (Supplementary Planning Document- May 2018)
- Open Space (Supplementary Planning Document - April 2019)
- Parking Standards (Supplementary Planning Document)
- Air Quality & Planning Supplementary Planning Document (January 2019)
- Sustainable Buildings (Supplementary Planning Document - December 2008)
- Affordable Housing (Supplementary Planning Document - July 2020)
- Warwickshire Landscape Guidelines SPG
- Garden Towns, Villages and Suburbs - A prospectus for Warwick District Council (Consultation document - May 2012)

SUMMARY OF REPRESENTATIONS

Warwick Town Council: Response anticipated and to be reported via the Committee Update report.

WCC Highways: No objection

Public Response:

1 third party letter received neither objecting nor supporting, and raising the following comments: -

- No objection in principle to a large building development because homes are needed.
- However, there is concern about water supply because there is no mains water.
- How will development be facilitated without potentially cutting off the water source to the existing properties?

ASSESSMENT

The main issues relevant to the consideration of this application are:

- The scope of this proposal.
- The variation and updating of conditions 1,2,5 and 9 to reflect submissions that have been made since the original grant of planning permission.
- The desirability or otherwise of the provision of a temporary construction access on highway safety grounds.
- Ensuring that all appropriate highway improvements and infrastructure to serve the development continue to be delivered and that the timing of their delivery is acceptable in the interests of highway safety and the effectiveness of the highway network.
- Ensuring that the proposals for the park and ride facility and their timing are delivered as intended at the time of the original appeal decision.

The Scope of this Application

For the purposes of clarity and the avoidance of doubt, it is important to note that the proposals the subject of this application are intended to assist in the bringing forward of this development in as effective and timely a manner as possible.

This application does not propose any revisions to the substantive proposal or indeed to the overall purposes of, and level of control exerted by the original planning conditions or section 106 Agreement.

Rather, it proposes revisions to a small number of those conditions and elements of the agreement to rationalise the mechanisms by which the required infrastructure (now including a temporary construction access) will be delivered to serve this development and wider area.

The scope of the assessment of this application is therefore focussed on those matters.

Variation of Conditions

Condition no. 1 of the extant planning permission requires the submission of the reserved matters for each phase of the development detailing the appearance; landscaping; layout and scale of that element.

The application proposes that the wording of that condition be amended to reflect the submission and approval of 2 Reserved Matters applications relating to advanced planting and sub-phase 1a for 65 dwellings.

Condition no. 2 of that permission requires that the first reserved matters application be submitted within 3 years of the grant of outline planning permission and that the remainder shall be submitted within 10 years of the commencement of development.

Those first reserved matters (relating to the advanced planting phase) were submitted within that timescale and subsequently approved.

The proposed variation of those conditions is incidental to the main purposes of this application, comprises good practice; in itself raises no further issues and it is therefore proposed that they be revised to reflect those further submissions.

Condition no. 5 of the extant planning permission requires the submission of a phasing plan for the construction and delivery of the development covering the following matters: -

- i. each phase of housing within the site;
- ii. the local centre;
- iii. the shelter belt facing the Banbury Road;
- iv. the Banbury Road and Europa Way site accesses;
- v. the Highways Works identified in condition 18 below;
- vi. the on-site public open space, to include (but not confined to) sports pitches, a community orchard, allotments and play areas;
- vii. the Park and Ride car park.

The proposal to vary that condition arises from the previous submission of a phasing plan and discharge of that condition in all respects apart from bullet point 5 which in itself relates to the phasing of the following highway improvements: -

- Europa Way Access Interim Signal;
- Banbury Road Access Indicative Design;
- Gallows Hill Roundabout Potential Mitigation Scheme
- Banbury Road/Myton Road Potential Mitigation Scheme;
- Greys Mallory Roundabout Potential Mitigation Scheme;
- Banbury Road/Gallows Hill Potential Mitigation Scheme;
- Europa Way Corridor Potential Mitigation Scheme.

By way of proposed revisions to Condition 18 (see below), the timing of those improvements is now proposed to be expressed relative to the occupation of dwellings within the site rather than by means of a phasing plan.

On the basis that such an approach is considered to be acceptable (again see below), the inclusion of that bullet point within revised condition 5 is unnecessary.

Condition 5 is therefore proposed to be varied to reflect i. the submission and approval of a phasing plan covering all of the above aspects with the exception of bullet point 5, and ii. the removal of said bullet point.

In so doing, condition 5 becomes a compliance condition requiring the development to be delivered in accordance with the approved phasing plan.

In view of the timing of the highway improvements listed above now being proposed to be delivered through revised condition 18 rather than this condition, there are no highways concerns about the revision of condition 5 in this manner which is therefore considered to be acceptable.

Condition no. 9 requires the submission of a site-wide design code to guide and inform the development of the site. That code was submitted and approved by the Council in 2018 thereby discharging this condition which is therefore proposed to be revised to require that the development is completed in accordance with that approved code.

Temporary Construction Access

This application proposes to introduce a mechanism via the revision of condition 10 whereby a temporary construction access could be brought into use to assist with the development of this site. At this stage, no details of the location or configuration of any such access have been proposed – those would come forward at a later date. Rather, this application purely relates to the introduction of a mechanism to enable such an access to be considered.

Condition no. 10 relates to the requirement for the submission of a construction method statement (CMP) to ensure that construction activities at the site are undertaken in an acceptable manner. A CMP for each phase of the development is to be submitted prior to the commencement of any development for that phase.

It is perfectly legitimate for a temporary construction access to be secured as part of a CMP as is proposed here.

It is considered that the introduction of the flexibility to provide a construction access on a temporary basis is an appropriate means of seeking to offer the most effective connection to the highway network for construction traffic and in so doing provide wider highway safety benefits during construction.

There is no objection from the highways authority in this regard and therefore this aspect of the proposal is considered to be acceptable in principle. The details of the siting and configuration of any such access will be considered at a later stage.

Highway infrastructure and Improvements

Condition no. 18 of the extant planning permission currently requires that the design, construction, completion and adoption of the highways works listed be secured through a Highways Agreement which is in place prior to the commencement of development.

The applicant has been in discussion with the Highways Authority about alternative means of ensuring that the required highways improvements can be delivered at the right point as the development progresses in a slightly more flexible manner.

The result of those discussions is that the following triggers have been agreed between the parties: -

- Completion of the access to the site from Banbury Road: prior to the occupation of any dwellings.
- Completion of the access to the site from Europa Way: prior to the occupation of 201 dwellings.
- Completion of the Europa Way Corridor Mitigation Scheme: prior to the occupation of 401 dwellings.
- Completion of the Banbury Road/Myton Road Junction Mitigation Scheme: prior to the occupation of 201 dwellings.
- Completion of the Banbury Road/Gallows Hill Junction Mitigation Scheme: prior to the occupation of 201 dwellings.
- Completion of the Greys Mallory Roundabout Mitigation Scheme: prior to the occupation of 401 dwellings.

All of those highways improvements remain subject to Highways Agreements to be completed in advance of the commencement of the works in question but not necessarily prior to the commencement of the whole development as originally required.

With regard to the Europa Way Interim Access signal, this is no longer needed due to the manner in which the works are now planned to be progressed.

As indicated above, the Highways Authority have been integral to the discussions with the applicant on these points. As part of this application, the applicant has submitted the appropriate traffic modelling analysis which has been fully considered and led the Highways Authority to the view that the revised arrangements are acceptable in highway management and safety terms and who therefore raise no objection to this element of the proposals.

On that basis, the proposed revisions to the condition 18 are considered to be acceptable.

Condition no. 19 of the extant planning permission is linked to the originally proposed condition no. 18 and requires the submission and approval of road safety audits prior to the commencement of any development.

Such audits are an integral part of the process of designing and adopting areas of public highway and therefore implicitly included in the revised requirements of condition 18.

That being the case, the applicant contends that condition 19 in itself is superfluous and no longer required, a view with which the Highway Authority concurs and raises no objection.

It is therefore considered that the proposed removal of condition 19 is acceptable.

Park and Ride Facility

Condition 21 of the extant planning permission requires that prior to the commencement of any development at the site, the specification for the Park and Ride shall be submitted to and approved by the Local Planning Authority.

The condition sets out that said specification shall include, but is not limited to the following: -

- the layout, surfacing and demarcation of a 500 space car park, to include disabled parking provision;
- any necessary supporting infrastructure including signage, ticket machines, toilets, shelters, lighting;
- marketing and branding, including creation and maintenance of a dedicated website;
- the contracted operator and the contract term; staffing and operational information; routing; timetable and operating days and hours to provide two services, one to Warwick running Monday to Friday 07:00 to 19:24 (except on public holidays) and Saturday 07:45 to 18:54, and the other to Leamington Spa Monday to Friday 07:00 to 19:25 (except on public holidays) and Saturday 07:30 to 18:55;
- maintenance standards;
- financial viability information;
- long term management of the Park and Ride, including flexibility to allow for the possibility of the District or County Council to operate the Park and Ride.

The Park and Ride section 106 agreement repeats the above requirements whilst also, amongst other matters requiring that: -

- no development shall commence until a bus operator has been secured to run a bus service between the application site and Leamington and Warwick with a 15 minute frequency (Monday to Saturday) for a 10-year period from the occupation of the 1st dwelling at the site;
- no dwelling shall be occupied until the park and ride facility is operational with 500 car spaces;
- a park and ride monitoring report shall be submitted to both the District and County Council on an annual basis;
- an offer is made for the park and ride facility to be transferred to the County Council.

The applicant is concerned that the existing obligations on the land owner to ensure the operation of the park and ride in an indefinite manner unintentionally extend to future households within the site, and insodoing may be viewed as unhelpful in securing the continued future operation of the facility.

For that reason, in order to seek to strengthen the obligations concerning the park and ride facility, discussions have been ongoing between the applicant along with the County and District Councils concerning the revision of the agreement to provide for the transfer of the constructed park and ride facility to the District Council along with a payment to the County Council to ensure the operation and maintenance of the facility for 10 years.

In connection with those proposals the section 106 agreement is being revised to require: -

- i. The delivery of the park and ride facility in accordance with the same specification requirements as originally intended;
- ii. The transfer of the physical park and ride asset to the District Council;
- iii. The provision, over a period of 10 years of a contribution of £3.5 million to the County Council for the maintenance and management of the facility over that period.

It is considered that the proposed revisions to the Section 106 agreement in respect of the park and ride facility introduce a robust mechanism for ensuring its delivery as originally envisaged and through the proposed involvement of both the District and County Council strengthen the requirement to do so.

As a consequence of the proposed revised requirement of the section 106 agreement, Officers concur that condition 21 becomes superfluous given that all of its requirements are proposed to be repeated in the agreement itself.

For those reasons, the revisions to the agreement and deletion of condition 21 are considered to be acceptable.

Miscellaneous Revisions to the Agreement

The proposal to transfer a proposed area of on-site public open space to the District Council is not considered to depart from the overriding purposes of providing such facilities and indeed would support and strengthen that approach.

Additional clauses are proposed to be added into the agreement to further strengthen the requirements relating to the delivery of open space more generally within the site.

Within the context of the consideration of this application, in response to requests from the Education Authority, the opportunity is being taken to slightly revise the terms of the agreement insofar as it relates to educational provision entirely in line with those requests.

Conclusion

It is considered that the proposed revisions set out above retain and strengthen the controls in place to ensure the delivery of the infrastructure required to service this development within the surrounding area and it is therefore recommended that planning permission be granted subject to the revised conditions and Section 106 Agreement proposed.

CONDITIONS

- 1 Details of appearance, landscaping, layout and scale (hereinafter called '**the reserved matters**') relating to each phase of development shall be submitted to and approved in writing by the local planning authority before any development begins in respect of that phase. Development shall be carried out in accordance with the approved details.

The reserved matters for the advanced planting phase and sub-phase 1a for 65 dwellings shall be carried out in accordance with the details approved by planning permission references W/18/2336 and W/19/0229 respectively or in accordance with details approved under this condition.

- 2 Following the approval of the first reserved matters application which took place within three years from the date of the original permission, all outstanding reserved matters applications shall be submitted to the local planning authority for approval no later than ten years from the date of commencement of the development.
- 3 The development to which this permission relates shall begin within three years of the date of this permission or within two years of the approval of the first application for reserved matters, whichever is the later.
- 4 Insofar as access is concerned, the development hereby permitted shall be carried out in accordance with the following plans: Europa Way Access Peter Brett Associates plan 28353/015/003 Rev A; and Banbury Road Access Peter Brett Associates plan 28353/015/004 Rev B.
- 5 The development shall be undertaken in accordance with the phasing plan submitted in accordance with condition no. 5 imposed on planning permission reference W/14/0300 and approved on 19th December 2018 and in the following documents:
 - **Plan SK10** – Residential and Open Space Phasing (10/8/18) and letter dated 14th August 2018

- Email dated 19th December 2018 (which confirms that that the advanced planting stage would be completed before the occupation of the 100th dwelling)

or in accordance with any updated phasing plan which is subsequently submitted to and approved in writing by the Local Planning Authority pursuant to this condition.

- 6 The development hereby permitted shall be carried out substantially in accordance with the details described on the following plans:

Site Location Plan EDP 1871/125
 Illustrative Masterplan EDP 1871/140a
 Parameters Plan: Land Use EDP 1871/116c
 Parameters Plan: Maximum Building Heights EDP 1871/117b
 Parameters Plan Advanced Planting EDP/1871/143

- 7 An area of land measuring no less than 0.5 hectare shall be reserved for a local centre. This area of land should broadly be in the location identified on drawing No EDP 1871/116C. Any reserved matters proposal for development on this land must provide a mix of A1 and A2 and A3 and A4 and D1 floorspace, and a police post and associated off-street servicing and parking facilities, all of which shall be delivered in accordance with the phasing plan.

- 8 Prior to the commencement of development in any phase, details of the mix of type and size of market dwellings to be provided in that phase, **informed by the most up to date version of the Council's "Development Management Policy Guidance: Mix of Market Housing on New Development Sites"** shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 9 All reserved matters applications shall be informed by the Site Wide Design Code "The Asps Warwickshire Design Code" dated 18th December 2018, submitted in accordance with condition no. 9 imposed on planning permission reference W/14/0300 and approved on 20th December 2019 or with any revisions to that Design Code which shall first have been submitted to and approved in writing by the Local Planning Authority.

- 10 No phase of development shall commence until a Construction Method Statement for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction Method Statement shall thereafter be adhered to throughout the construction period for that phase. The Construction Method Statement shall include, but is not limited to, the following matters:

- the parking of vehicles of site operatives and visitors;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- the erection and maintenance of a security hoarding including decorative displays and facilities for public viewing where appropriate;
- wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
- measures to control the emission of dust and dirt during construction;
- a scheme for recycling/disposing of waste resulting from construction works; and
- the positioning and alignment (both vertical and horizontal) of a temporary construction access road, the details of which shall be agreed in consultation with the Highways Authority.

11 No phase of development shall commence until a Construction and Environmental Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction and Environmental Management Plan shall thereafter be adhered to throughout the construction period for that phase. The Construction and Environmental Management Plan shall address, but is not limited to, the following matters:

- pre-commencement checks for protected and notable species, with subsequent mitigation as deemed appropriate; and
- appropriate working practices and safeguards for other wildlife (dependent on further survey work) that are to be employed whilst works are taking place on site.

12 No phase of development shall commence until a detailed Landscape, Arboriculture and Ecological Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The Plan shall include details of maintenance of all new planting. The plan shall also include details of habitat management, such as for pond, wildflower grasslands, and habitat for protected species. Development shall be carried out in accordance with the approved Plan.

13 No phase of development shall commence, nor shall any equipment machinery or materials for the purpose of the development hereby permitted be brought onto any phase, until all existing trees and hedges to be retained within that phase have been protected by fencing in line with ***BS 5837: 2012 Trees in relation to design, demolition and construction – Recommendations***, pursuant to a scheme that shall

previously have been submitted to and approved in writing by the local planning authority.

Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the ground levels be altered or any excavation take place without the prior consent in writing of the local planning authority. The approved protection measures shall not be removed other than in accordance with a timetable that shall previously have been submitted to and approved in writing by the local planning authority.

- 14 No phase of development shall take place under any reserved matters consent until a scheme for that phase showing how either:

a) at least 10% of the predicted energy requirement of the development will be produced on or near to the site from renewable energy resources;

or

b) a scheme showing how at least 10% of the energy demand of the development and its CO₂ emissions would be reduced through the initial construction methods and materials has been submitted to and approved in writing by the local planning authority.

No dwelling within that phase shall be occupied until all the works within the scheme that relate to that dwelling have been completed and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturers specifications.

- 15 No phase of the development shall commence unless and until a programme of archaeological works has been secured in accordance with a written scheme of investigation which has previously been submitted to and approved in writing by the local planning authority in respect of that phase. Development shall be carried out in accordance with the approved scheme. The details to be submitted shall include provision to be made for publication and dissemination of the analysis and recording, and provision to be made for archive deposition of the analysis and records of the site investigation.

- 16 No phase of development shall commence until the following information has been submitted and approved by the local planning authority in respect of that phase: -

(1) (a) A site investigation has been designed for the site using the information obtained from the desk-top study as identified at Chapter 10 of the Environmental Statement and any diagrammatical representations (conceptual model). This should be submitted to and

approved in writing by the local planning authority prior to that investigation being carried out. The investigation must be comprehensive enough to enable:

- **a risk assessment to be undertaken relating to human health;**
- **a risk assessment to be undertaken relating to groundwater and surface waters associated on and off site that may be affected;**
- **an appropriate gas risk assessment to be undertaken;** refinement of the conceptual model; and
- **the development of a method statement detailing the remediation requirements.**

(b) The site investigation has been undertaken in accordance with details approved by the local planning authority and a risk assessment has been undertaken.

(c) A method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters using the information obtained from the site investigation, has been submitted to the local planning authority. The method statement shall include details of how the remediation works will be validated upon completion and shall be approved in writing by the local planning authority prior to the remediation being carried out on the site.

(2) Development of the site shall accord with the approved method statement.

(3) If during development, contamination not previously identified, is found to be present at the site then no further development shall take place (unless an addendum to the method statement, detailing how the unsuspected contamination shall be dealt with, has been submitted to and approved in writing by the local planning authority). This addendum to the method statement must detail how this unsuspected contamination shall be dealt with.

(4) Upon completion of the remediation detailed in the method statement, a report shall be submitted to the local planning authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved method statement. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.

17 No phase of development hereby permitted shall commence until details of surface water drainage works for that phase have been submitted to and approved in writing by the local planning authority, demonstrating means of disposing of surface water and associated SUDS facilities from the development, that surface water runoff would not exceed runoff

from the undeveloped site and would not increase the risk of flooding off-site, in accordance with the Flood Risk Assessment dated November 2013 ref: 28353/019 and The Asps Hydraulic Modelling Report prepared by Peter Brett Associated Ref. 28353. The scheme to be submitted, which shall be based on an assessment of the hydrological and hydrogeological context of the site, shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation in relation to each phase of the development; and,
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker, or any other arrangements to secure the operation of the scheme throughout its lifetime.

The approved scheme shall be installed in strict accordance with the approved details and timetable. It shall be retained thereafter and shall be managed and maintained in strict accordance with the approved details.

- 18
- a) No dwellings shall be occupied until the access to the site from Banbury Road has been constructed in accordance with a Highways Agreement with the Highways Authority in general accordance with Drawing 28353-015-004 Rev B, which secures its subsequent adoption as publicly maintainable highway, or an alternative arrangement is agreed with the Highways Authority to secure the necessary mitigation.
 - b) No more than 200 dwellings shall be occupied until a Site access is provided to Europa Way. No more than 400 dwellings shall then be occupied until the Europa Way Corridor Potential Mitigation Scheme has been constructed in accordance with a Highways Agreement with the Highways Authority in general accordance with Drawing 28353-5501-005, which secures its subsequent adoption as publicly maintainable highway, or an alternative arrangement is agreed with the Highways Authority to secure the necessary mitigation.
 - c) No more than 200 dwellings shall be occupied until the Banbury Road/Myton Road Junction Mitigation Scheme has been constructed in accordance with a Highways Agreement with the Highways Authority in general accordance with Drawing 28353-5501-002 which secures its subsequent adoption as publicly maintainable highways, or an alternative arrangement is agreed with the Highways Authority to secure the necessary mitigation.
 - d) No more than 200 dwellings shall be occupied until the Banbury Road/Gallows Hill Junction Mitigation Scheme and no more than 400

dwellings shall be occupied until the Greys Mallory Roundabout (including section of Warwick bypass) have been constructed in accordance with a Highways Agreement with the Highways Authority in general accordance with Drawings 28353-5501-003 and 28353-85501-004, which secures their subsequent adoption as publicly maintainable highways, or an alternative arrangement is agreed with the Highways Authority to secure the necessary mitigation.

e) No more than 100 of the dwellings hereby permitted shall be occupied until the Europa Way/Gallows Hill/Heathcote Lane/Harbury Lane roundabout scheme is constructed in accordance with a Highways Agreement with the Highways Authority in general accordance with Drawing 28353-5501-001 which secures its subsequent adoption as publicly maintainable highways, or an alternative arrangement is agreed with the Highways Authority to secure the necessary mitigation.

- 20 Each phase of development hereby permitted shall be carried out in strict accordance with details of a scheme for the provision of onsite footpaths which link with the wider public rights of way network, that shall previously have been submitted to and approved in writing by the local planning authority in respect of that phase.
- 22 No phase of development shall commence until a detailed lighting scheme for public areas in that phase, including roads and footways, has been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 23 No phase of development shall commence until a scheme for that phase, detailing arrangements to protect future residents of the development hereby permitted from traffic noise, in accordance with the mitigation measures set out in Chapter 14 of the Environmental Statement, has been submitted to and approved in writing by the local planning authority. No dwelling within a phase shall be occupied until the commensurate noise mitigation measures have been implemented in accordance with the approved details, which measures shall be retained thereafter.
- 24 Noise arising from any plant or equipment installed at any of the commercial units hereby permitted (i.e. any unit falling within Use Classes A1, A2, A3, A4 or D1), when measured one metre from the façade of any noise sensitive premises, shall not exceed the background noise level by more than 3dB(A) (measured as LAeq(5 minutes)). If the noise in question involves sounds containing a distinguishable, discrete, continuous tone (whine, screech, hiss, hum etc) or if there are discrete impulses (bangs, clicks, clatters, thumps etc) or if the noise is irregular enough to attract attention, 5dB(A) shall be added to the measured level.

25 None of the commercial units hereby permitted shall be used as a restaurant; cafe or drinking establishment, i.e. for purposes falling within the former Use Class A3 and use Class A4 unless and until:

(a) an odour assessment has been undertaken to assess the impact of odour arising from cooking and any proposed fume extraction system that is required to serve that unit;

(b) the results of the odour assessments carried out to comply with criterion (a), together with details of any necessary mitigation measures, have been submitted to and approved in writing by the local planning authority; and

(c) any necessary mitigation measures approved under (b) have been implemented in full accordance with the approved details.

The odour mitigation measures installed and shall be retained thereafter and shall be operated and maintained in accordance with **manufacturer's instructions.**

26 No phase of the development shall commence until a scheme for the provision of adequate water supplies and fire hydrants necessary for fire fighting purposes in that phase, has been submitted to and approved in writing by the local planning authority. That phase of development shall not then be occupied until the scheme has been implemented in accordance with the approved details.

Planning Committee: 03 February 2021

Item Number: 8

Application No: [W 20 / 1842](#)

Town/Parish Council: Baginton

Case Officer: Helena Obremski

01926 456531 Helena.Obremski@warwickdc.gov.uk

Registration Date: 02/11/20

Expiry Date: 28/12/20

Stags Head Farm, Bubbenhall Road, Baginton, Coventry, CV8 3BB

Removal of Agricultural occupancy condition (condition 2) attached to planning permission ref- W/84/0578. FOR Mr M Thompson

This application is being presented to Committee as the Parish Council supports the application and it is recommended for refusal.

RECOMMENDATION

Planning Committee are recommended to REFUSE planning permission for the reasons set out in the report.

PROPOSED DEVELOPMENT

Planning permission is sought for the removal of the agricultural occupancy condition attached to planning permission ref: W/84/0578.

THE SITE AND ITS LOCATION

The application relates to the farmhouse associated with Stags Head Farm. Part of the former barn was converted to a farmhouse under the 1984 permission, subject to an agricultural occupancy condition. The remaining outbuildings/barn associated to the holdings are in use as workshop, store etc. The site is situated within Green Belt to the south of Coventry Airport.

PLANNING HISTORY

Planning permission was granted under application ref: W/84/0578 for the change of use of part of barns to farmhouse at Stags Head Farm. It was subject to a number of conditions including Condition 2, which states that:

"The occupancy of the dwelling shall be limited to persons solely or mainly employed or last employed locally in agriculture, as defined in section 290 (1) of the Town and Country Planning Act 1971, or in forestry, or the dependant of such persons residing with him (but including the widow or widower of such persons)."

The reason given for the condition is: *"The site is within the West Midlands Green Belt and the development is only permitted to meet the needs of agriculture, forestry, or of the rural community, in accordance with the Green Belt policy as defined in the County Structure Plan."*

RELEVANT POLICIES

- National Planning Policy Framework
- Warwick District Local Plan 2011-2029
- DS18 - Green Belt
- H1 - Directing New Housing
- BE4 - Converting Rural Buildings
- H12 - Housing for Rural Workers

SUMMARY OF REPRESENTATIONS

Baginton Parish Council: Supports application, with the significant loss of agricultural land in the immediate area to allow the vast industrial developments such as Whitley South, Gateway South, HS2, King's Hill Housing etc, it is becoming increasingly difficult to justify an 'agricultural only' condition that was valid 36 years ago in a very different environment. The applicant has made significant efforts to market the property with the condition imposed, but there has been no interest. This condition must now be removed.

KEY ISSUES

The main issues relevant to the consideration of this application are:

- Principle of the removal of the condition;
- Whether the proposal constitutes appropriate development in the Green Belt and, if not, whether there are any very special circumstances which would outweigh the harm by reason of inappropriateness and any other harm identified

Principle of the removal of the condition - provision of an unrestricted new dwelling

The farmhouse to which this application relates was granted planning permission in 1984 and 1997 subject to an agricultural occupancy condition. The need demonstrated at that time was to accommodate the owner of the 27 acre (approx.) holding for the purposes agricultural and horticultural use at and in close proximity to Stags Head Farm.

The site is located outside of any defined settlement and therefore on a site where, **in accordance with Council's current settlement strategy, planning permission** would only be granted in accordance with the provisions of the National Planning Policy Framework and the Warwick District Local Plan. Paragraph 79 of the NPPF seeks to avoid isolated homes in the countryside, unless it meets one of the 5 exceptions set out:

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;

c) the development would re-use redundant or disused buildings and enhance its immediate setting;

d) the development would involve the subdivision of an existing residential dwelling; or

e) the design is of exceptional quality, in that it:

- is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and

- would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

Policy H1 of the Warwick District Local Plan draws from Para 79 of the NPPF and sets out where new housing is to be directed. The location of the site does not meet the criteria in H1 (d). Nevertheless, part (e) of the policy states that elsewhere in the countryside housing development will be permitted where the development would re-use redundant or disused buildings in accordance with Policy BE4 and there would be an enhancement to the immediate setting.

The property is currently vacant, and as a rural workers dwelling, could be considered as a disused rural building. However, the proposal would not result in an enhancement to the immediate setting, which is a specific requirement of both the NPPF and policy H1 in permitting new residential development within the countryside.

The applicant proposes that condition 2 is no longer reasonable or necessary and seeks its removal. The information provided with the application confirms that the property has been empty since August 2018. The following advertising of the property has been carried out according to the agent:

- 1st April 2019 - 1st September 2019: property advertised by Fine and Country Estate Agents, **without** the agricultural occupancy advertised, or reflected in the sale price of £650,000 (details provided).
- 13th September 2019 - present: marketing of the property by Course and Shelton at a price of £450,000 to reflect the agricultural occupancy tie on Rightmove, On the Market, company website, within the company office, newspaper articles (for 4 weeks), and a "for sale" board was erected at the property. The agricultural tie is detailed within the advertising information (details provided).

The agent informs that there have been approximately 100 enquiries regarding the property, but none of the interested parties have been able to fulfil the agricultural tie requirements. The agent states that all prospective viewers of the property are required to fill out a form in relation to their employment, and that none have met the necessary requirements. A copy of the form is provided, which includes requests for proof of employment in agriculture and employers details, amongst other information. However, none of the responses have been submitted

for the Council to assess. A sample of the property enquires were provided by the agent which consist mainly of electronic requests to view the property.

The agent proposes the following reasons for allowing the removal of condition 2:

- within the local area there has been a large amount of commercial development (and likely to be continuing development), and therefore there is a greater demand for unrestricted dwellings.
- the above marketing exercise shows that there is no requirement for the restriction as no-one can fulfil the requirements.
- it is more preferable to use the property to contribute towards the national housing shortage, rather than it be empty for a continued period of time, where it is likely to become derelict and incapable of occupation. Furthermore, the property has been vandalised.
- those who have been interested in the property have stated that the land available with it would not sustain an agricultural unit.
- the purchase price is beyond that which a rural worker could afford, and the property is worth more now than previously advertised at.

Although the agent states that the land associated with the dwelling would not provide a sustainable agricultural unit, no formal evidence has been presented to demonstrate this, other than comments from prospective viewers that this is the case. However, as confirmed by the agent, none of these parties meet the requirements of the agricultural tie, so are not considered to provide an informed view on this. However, even if this were the case and the land offered with the dwelling provided an unsustainable unit, it also has to be considered whether there is a need for an agricultural dwelling in the wider area. In terms of the wider need, no specific details have been provided to indicate the level of existing stock of restricted properties in the area, and the marketing focuses purely on the application property.

Officers have doubts regarding the marketing strategy provided by the agents, who are a traditional residential estate agent - the marketing appears to have been carried out in the same way of that as an open market property. The application property is an agricultural property for which there will be a more limited and specific market, whereas the platforms used to advertise the property are for general residential properties.

Furthermore, the property has not been advertised in any specialist agricultural publications, whether online or in a traditional format, which would offer some potential as a resource to find another compliant occupier for the property. Moreover, the advertisements in the local papers by the applicant have only been for a limited period of 4 weeks.

Based on the above, it is considered that the lack of bespoke targeted advertising has prevented the market being properly tested as to the need for this agricultural workers dwelling.

In terms of the sales value, the agent relies on the fact that there was a sale agreed at the value of £650,000 when the agricultural tie had not been properly advertised, then the value was reduced by 34% to £450,000 accordingly. Whilst a reduction of 30-35% of the market value is typically accepted as the discount for a restricted occupancy condition, it would be appropriate in this instance where open market housing generates high house prices, and where a property is attractive because of its setting in the countryside, to apply a higher discount. The

applicant goes on to say that the value is above that which most rural workers can afford, however, the price has not been reduced in order to test the market at a lower level. It may well be the case that the property, even at a reduced price, is unaffordable for persons on a basic agricultural wage, however the condition allows for the occupier to be mainly or lastly employed in agriculture, which could be someone with other income sources available, or a retired farmer.

Furthermore, it is understood that the property has not been marketed for rent at any stage. The rental market for agricultural dwellings represents an alternative source of future occupants that has not been tested. In making this assessment, Officers are mindful of appeal decision APP/D0840/W/19/3220751 for removal of an agricultural occupancy condition which bares similarities to this case, which was dismissed.

It is concluded that there is insufficient substantive evidence to demonstrate that there is no realistic prospect of there being a need or demand for an agricultural workers dwelling at the holding or in the wider area. The potential market for the property as an agricultural worker's dwelling has not been sufficiently tested. Condition 2 still remains reasonable and necessary and its removal would be contrary to Local Plan policy H1.

Whether the proposal constitutes appropriate development in the Green Belt and, if not, whether there are any very special circumstances which would outweigh the harm by reason of inappropriateness and any other harm identified

As the proposal represents the reuse of an existing building, there would be no harm caused to the openness of the Green Belt. As the property already has lawful use as a dwelling (albeit restricted to an agricultural worker), it is unlikely that the removal of condition 2 would materially alter the way in which the property was used in relation to the openness of the Green Belt.

The development is therefore considered to represent appropriate development within the Green Belt and is considered to be in accordance with Local Plan policy DS18.

Conclusion

To conclude, Officers consider that there is insufficient substantive evidence to demonstrate that there is no realistic prospect of there being a need or demand for an agricultural workers dwelling at the holding or in the wider area. The potential market for the property as an agricultural worker's dwelling has not been sufficiently tested. Condition 2 still remains reasonable and necessary and its removal would be contrary to Local Plan policy H1.

REFUSAL REASONS

- 1 Policy H1 of the Warwick District Local Plan 2011-2029 directs new housing to the urban areas, allocated housing sites, Growth Villages and Limited Infill Villages. Policy H1 also sets out criteria where new housing will be permitted in the open countryside.

The removal of condition 2 of application W/84/0578 would lead to the provision of a unrestricted new dwelling. Insufficient substantive evidence has been provided to demonstrate that there is no realistic prospect of there being a need or demand for an agricultural worker's dwelling at the holding or in the wider area. The potential market for the property as an agricultural worker's dwelling has not been sufficiently tested.

The application site is not located within any of the identified sites for new housing development and fails to meet the criteria set out for new housing within the open countryside under Policy H1. This would therefore lead to the provision of an isolated dwelling and unsustainable form of development which is contrary to Local Plan policy H1 and paragraph 79 of the NPPF.

List of Current Planning and Enforcement Appeals February 2021

Public Inquiries

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Inquiry	Current Position

Informal Hearings

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Hearing	Current Position

Written Representations

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Current Position
W/19/1973	Wooton Grange Farm House, Warwick Road, Kenilworth	Extensions and Alterations Delegated	Jonathan Gentry	Questionnaire: 23/4/20 Statement: 15/5/20	Ongoing
W/19/0860	6 Phillippes Road, Warwick	Change of use to Garden and Erection of Fencing	Emma Booker	Questionnaire: 22/7/20	Ongoing

		Committee Decision in accordance with Officer Recommendation		Statement: 13/8/20	
W/19/1604	17 Pears Close, Kenilworth	First and Ground Floor Extensions Delegated	George Whitehouse	Questionnaire: 19/6/20 Statement: N/A	Ongoing
W/19/1558	Land rear of 14 – 16 Randall Road, Kenilworth	Detached Bungalow Delegated	Helena Obremski	Questionnaire: 26/6/20 Statement: 24/7/20	Appeal Dismissed
<p>The Inspector noted that the access track is narrow due to the proximity of existing structures and boundary treatments, making it particularly constrained for regular vehicular traffic associated with a modest family dwelling, including visitors and deliveries, which could include larger vehicles. Furthermore, in parts, landscaping overhangs this track and there is limited natural surveillance. For these reasons, he considered that the track would be uninviting as a daily access, particularly at night as there is no lighting along it. Additionally, he found the lack of a footpath along the commercial car park offers poor legibility and access for pedestrians and this would increase the likelihood of conflict with vehicles, which is likely to be exacerbated outside of daylight hours. Despite the lack of objection from the Council's Highways Officer, he concluded that the access arrangement for the new dwelling would be unappealing and unsafe and therefore unsuitable contrary to Policy TR1.</p> <p>The Inspector noted that the distance from the proposed dwelling to the nearest Council's kerbside waste and recycling collection points, significantly exceeds the British Standards requirements as set out in BS 5906:2005 'Waste management in buildings – Code of practice' as referenced within the Council's Warwick District Council Design Guide Residential, May 2018 (Design Guide). Consequently, while the future occupiers could keep waste and recycling containers near the proposed dwelling, they would still be required to move these over an excessive distance. This type of arrangement would be particularly inconvenient for occupants when moving full containers and could lead to the waste and recycling containers being left for extended periods of time near the highway, thus having a detrimental impact on visual amenity.</p>					
W/19/1572		2 Dwellings			

	Land off Birmingham Road and A46, Warwick	Delegated	Helena Obremski	Questionnaire: 26/6/20 Statement: 24/7/20	Appeal Dismissed
<p>The Inspector noted that appeal site forms part of a wooded area with mature, mixed broadleaved and coniferous trees, which is covered by a TPO. This wooded area is prominent due to its location adjacent to the highway and It makes a positive contribution to the landscape character and visual amenity of the area and forms part of a soft edge to the urban area into Warwick.</p> <p>In contrast, and irrespective of some attention to design, he found considered that the proposal would introduce two sizeable dwellings on a site which is free of any significant built development. As a consequence of the proposed layout the rear elevations of the new dwellings would face the A425, providing a strong built form close to this road. This would be inconsistent with the prevailing arrangement of development, where buildings generally have frontages facing the A425 and are set-back from it, and in certain cases are screened by landscaping. In particular, the proposal would result in the permanent loss of a substantial number of protected trees at the centre of the site. The proposal would introduce an incongruous form of development which would not be in keeping with the prevailing pattern of development. The incongruity of the proposed development would be exacerbated by its prominent location.</p> <p>In the absence of any appropriate mitigation against air quality exposure impacts, the Inspector said that he cannot be certain that future residents of the development would not be exposed to air pollutants above the national objective levels. It has also not been clearly shown that the occupiers of the proposed development would not be exposed to undue noise disturbance. Given the proximity of the highway network to the appeal site, high levels of local traffic and the sensitive nature of the proposed use (residential), matters relating to living conditions are significant and cannot be left to conditions. For these reasons, he concluded that the proposal would fail to provide satisfactory living conditions for future occupants of the proposed development.</p> <p>The Inspector considered that it has not been substantiated the proposal would not result in a net biodiversity loss. Although additional planting could be secured by condition, he could not be certain that the suggested enhancements would bring a net gain in biodiversity. While the appellant also suggested that an offsetting payment can be made to compensate for any biodiversity loss, in the absence of any legal agreement between the parties in respect of this, he was unable to attach any weight to this suggestion.</p>					
W/19/1963 and W/19/1964/LB	Rectory Cottage, Church Lane, Lapworth	Demolition of Garage Block and erection of Sun Room Delegated	George Whitehouse	Questionnaire: 19/8/20 Statement: 16/9/20	Ongoing

W/20/0097	10 Wasperton Road, Wasperton	Change of Use of Store Room to Dog Grooming Salon Delegated	Rebecca Compton	Questionnaire: 19/8/20 Statement: 16/9/20	Ongoing
W/19/1197	89 Shrubland Street, Leamington	Change of Use to HMO Appeal against Non- Determination	Rebecca Compton	Questionnaire: 1/9/20 Statement: 29/9/20	Appeal Dismissed and Costs Application Refused.

The Inspector noted that the appeal property appears well maintained and evidence of a reduction in community cohesion attributable to its use as an HMO has not been presented. However, he considered that Policy H6 is concerned with the cumulative effect of HMOs within a given area and it is unlikely that any HMO would have an appreciable effect on community cohesion alone.

An exception to criterion a) can be made for an HMO on a main thoroughfare in a mixed-use area. However, he noted that apart from Brunswick Street, which leads towards the town centre and carries bus routes, the roads in the immediate vicinity of the appeal site are relatively quiet and do not have the appearance of main thoroughfares. A number of nearby non-residential uses have been identified, which he saw on his visit. These include Shrubland Street Primary School, diagonally opposite the appeal site, and the Brunswick Hub, a community facility further west on Shrubland Street, across Brunswick Street as well as the Jet Public House and a convenience store on the corner of Brunswick Street and Shrubland Street. However, he considered that these non-residential uses are secondary to, and clearly exist to support, housing in the local area, which has a predominantly residential character. Accordingly, he concluded that it has not been demonstrated that the appeal site is on a main thoroughfare or within a mixed use area to which the exception to criterion a) applies.

Compliance with the first requirement of the enforcement notice, to cease the HMO use and any other multi occupation use, would resolve the breach of planning control alleged in the notice. However desirable it may be, the second requirement, to reinstate the land to its former use as a single dwellinghouse, seeks a further step to be taken and is therefore excessive. Varying the notice to delete the second requirement would allow the breach of planning control to be resolved without injustice to the appellant.

In the Hearing it was agreed between the parties that varying the period for compliance with the requirements of the notice to align with the end of the current academic year at the end of June 2021 would minimise disruption to the current occupiers. As this variation would not shorten the period for compliance, it can be made without injustice.

W/20/0980	9 Camberwell Terrace, Leamington	Front Lightwells Delegated	Emma Booker	Questionnaire: 25/9/20 Statement: 19/10/20	Ongoing
W/20/0271	The Hay Barn, Packwood Lane	Replacement Garage Delegated	Jonathan Gentry	Questionnaire: 8/9/20 Statement: 30/9/20	Appeal Dismissed and Costs Application Refused.

The matter of dispute between the Council and the **appellant relates to whether the proposal is 'materially larger'**. The Inspector noted that **neither the Council's policies nor the Framework provide a definition for what** would be considered a materially larger replacement building. Following an appeal decision the Council applies an approach that an increase of up to approximately 5% may be held as not materially larger. The parties agree that the replacement double garage would have a floor area of approximately 58 square metres, which would represent an increase in footprint of approximately 26% when compared with the existing structure. Therefore, the Council considers, in this instance, it would be materially larger. However, the Inspector considered that an assessment of whether a building **is 'materially larger' is a matter of planning judgement. Whilst** floorspace and/or volume calculations can be used to determine whether or not a proposal would be materially larger than an existing building, in his view, it is also important to consider the visual increase, taking into account any increase in the overall scale, bulk, mass, and height in comparison with the existing building. The site-specific circumstances and siting of buildings also need to be taken into account.

The existing building is formed of 3 elements, which vary in terms of roof style and height. The storage areas located to the south and east are significantly lower in height than the main part that includes the garage. The proposal would consist of one rectangular structure, which, in addition to the larger footprint, would also exceed the highest part of the existing building. Thus, the replacement building would have a much greater visual bulk and mass. Accordingly, due to its greater footprint, height, bulk, and mass, the proposed garage would be materially larger than the existing structure.

It was also put to the Inspector by the appellant that the development should also be considered as limited infilling or partial/complete redevelopment of previously developed land. Previously developed land is defined in the Framework as land which is or was occupied by a permanent structure. However, under the provision of paragraph 145 (g) of the NPPF the proposal would be required to have no greater impact on the openness of the Green Belt than the existing development. Due to the increased size, mass and height of the proposed garage, it would be more prominent in views from the footpath through the vegetation and trees than the existing buildings. As a result, both in spatial and visual terms, the openness of the Green Belt would be reduced, and consequently the proposal would have a greater impact on openness than the existing development and therefore the proposal would not comply with paragraph 145 (g) of the Framework.

COSTS:

The key arguments are that the Council has demonstrated unreasonable behaviour due to its arbitrary adoption of threshold to determine what is '**materially larger**' and **because the Council refused to allow the appellant** reasonable time to advance a full justification. The Inspector considered that the threshold figure of 5% used by the Council is justified only by reference to a previous appeal decision where the Inspector considered that an increase in floorspace of development 9% was inappropriate. However, it is also apparent that the Inspector in that case considered factors other than solely the floor space to reach a conclusion that the development would evidently result in a building of increased scale and massing on the appeal site and that it would be materially larger than the existing dwelling it would replace. Furthermore, notwithstanding **the Council's intention of providing a level of consistency**, there is no meaningful justification for the use of the figure of 5% rather than 9% in the appeal decision. Therefore, in the absence of it being adopted policy, and instead only informal guidance, while a material consideration, the weight afforded to it is limited. Furthermore, whilst the planning officer report concluded that the proposal would be inappropriate development due to an increase of 26% in floor area, its reliance solely on this one material consideration, without showing consideration to the evidence submitted by the applicant is unreasonable. However, the Inspector concluded that whilst reliance solely on the informal guidance was unreasonable, it was not unreasonable, for the reasons set out in the appeal decision for the application to have been refused. Accordingly, there has been **no wasted expenditure by the appellant due to the Council's unreasonable** behaviour.

As a result of this appeal decision **officers have been advised to ensure that 'materially larger' is not assessed only by reference to** floor area but also with regard to other relevant factors. The Policy team have also been recommended to provide a definition in the next Local Plan.

W/20/0170	Eversleigh Nursing Home, 2-4 Clarendon Place, Leamington	Car parking and Landscaping Delegated	Helena Obremski	Questionnaire: 13/10/20 Statement: 10/11/20	Appeal Dismissed
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The Inspector noted that the setting of the property is enhanced by the presence of an area of garden which lies between the crescent and the main road, providing an oasis of green in a street that is otherwise almost devoid of green space until one reaches the large green space at Clarendon Square to the north. The garden makes a valuable contribution to the CA, providing relief from the predominantly built environment nearby and a soft buffer between the busy street and the buildings. Its rarity in the immediate area adds to its importance.

Existing car parking serving the nursing home comprises three spaces immediately to the front of the building and five angled spaces close to the boundary with Bethany House to the north. Owing to their positioning and the scale of the buildings he considered that these have a limited effect on the character and appearance of the CA or the setting of Bethany House whose own frontage is entirely given over to car parking.

The proposed car parking spaces would cut into the existing garden area to the front of the appeal building to provide five angled spaces accessed from the crescent. He considered that although a grassed area would remain at either end of the garden and between the car parking spaces and the boundary wall this would be significantly diminished and fragmented. Despite landscaping on the boundary with the main road, the character and appearance of the site would change from an open green space to predominantly a car park with peripheral grass and planting. Surfacing of the parking spaces would be with Grasscrete. The appellant suggests that Grasscrete would minimise the impact on the CA when the car parking spaces were vacant. However, the Inspector said that this would have no effect **when the spaces were in use which, given the appellant's evidence regarding** the need for them, would be expected to be much of the time, including overnight. Moreover, he felt was of the opinion that Grasscrete often results in patchy vegetation, especially when driven over frequently, which has a scruffy appearance, out of keeping with the neat and well maintained character of the existing green space. This harm to the significance of the listed building would be less than substantial and placed at the lower end of that scale.

In terms of the CA, he considered the effect would be greater owing to the significant incursion into the existing garden to the front of Eversleigh House. This would be clearly visible from the main road as well as from the crescent and from windows in the appeal property. The effect would be to erode significantly the openness and tranquillity of the green space and detract from the setting of the appeal property and others on the crescent through intrusive and discordant development within close proximity. He considered that the harm to the significance of the CA would be less than substantial, but at or above the mid-point on that scale.

W/20/0285	Pool Peace Bungalow Five Ways Road, Shrewley	Appeal against the refusal of a Certificate of Lawfulness for the Continued Occupation of a Dwelling without complying with an Agricultural Occupancy Condition. Delegated	Andrew Tew	Questionnaire: 26/11/20 Statement: 24/12/20	Ongoing
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W/20/0331	The White House, Five Ways Road, Shrewley	Replacement Dwelling Delegated	Andrew Tew	Questionnaire: 13/11/20 Statement: 11/12/20	Ongoing
W/20/0420	2 Penns Close	Decking and Steps Delegated	George Whitehouse	Questionnaire: 18/11/20 Statement: 10/12/20	Appeal Allowed and Costs Application Refused.

The main issue in this case is the effect of the proposal on the living conditions of the occupiers of No 3 Penns Close having particular regard to its effect on privacy. The Inspector noted that users of the decked area would be able to see into part of the rear garden of No 3, but considered that such views would however be limited given the presence of a tall boundary fence, and the existing building at No 3 on the boundary with the host property, which provides a degree of screening to the garden. Moreover, he considered that the views that could be obtained from this area would be very similar to that which is achieved from the existing fenestration on the rear of the host property. Furthermore, he felt that given the limited depth of the decked area and the presence of doors opening out on to it, there would be a high probability that the area would primarily be used for access purposes as opposed to sitting out on or being used for outdoor dining or entertaining. As such it would be unlikely that users of the deck would be using the area for long periods of time such that the occupiers of No 3 would consider that the privacy of their rear garden was being compromised. Given the oblique angle from the landing decked area towards the rear of No 1, he found that views into the master bedroom would be unlikely and the privacy of the occupiers of No 1 would not be harmed by the proposal. Furthermore, views from the area into the rear garden of No 1 would be limited because the existing fencing on the common boundary would provide a degree of screening.

COSTS:

The Inspector was satisfied that with the benefit of the scaled plans, and having stood on the existing decking, the Planning Officer would have been in a position to assess the impact of the proposed development on neighbouring residents. Moreover, having identified a concern about the potential overlooking of No 3 from this area, the Council provided the applicants with an opportunity to amend the scheme. Such an approach was entirely reasonable in **the Inspector's mind**. Although the Inspector found differently to the Council in terms of the effect of the scheme on the living conditions of the neighbouring occupiers, he was satisfied that it

substantiated its reason for refusing the application, providing an objective analysis in its report including making reference to the difference in levels between the host property and No 3, the impact of the proposal on the privacy to neighbouring occupiers and making reference to development plan policy. Whilst the lack of precision and clarity in the drafting the decision notice cannot be condoned, it is clear that the decision related to a refusal of planning permission of the proposed development on the grounds set out in the decision notice. Consequently, he found that the error has not led to any additional expense being incurred by the applicant.

W/20/0992	6 Tithe Barn Close	2 storey rear extension Delegated	George Whitehouse		Appeal Dismissed
<p>The Inspector noted that the neighbouring property at No.4 has a side window facing the side elevation of the appeal property and that this window serves a bedroom and is the only window serving the room. At present, the side bedroom window in No 4 faces directly onto the two storey side elevation of the appeal dwelling but, at a slight angle, it has an open outlook over the existing single storey rear projection. The Inspector assessed that the proposed first floor extension would block this outlook, replacing it with a blank wall that would lie some 2m away and considered that this would result in an oppressive and overbearing effect. In addition, the extension would materially reduce the level of daylight reaching the side window which would make the room gloomy and uninviting. However, due to the north facing aspect of the window the effect on sunlight would be limited. He concluded that the proposal would have a materially harmful effect on the living conditions of occupiers of 4 Tithe Barn Close with respect to outlook and daylight and the lack of objection would not alter that.</p> <p>The appellant refers to the 45 degree rule. The Council's delegated report makes clear that this is not breached in this case and the Guideline explains that it does not apply at the side of a dwelling. Nevertheless, this did not alter or outweigh the Inspector's findings regarding the harm to the living conditions of neighbours.</p>					
W/20/0940	Glenthorne, Five Ways Road, Shrewley	Appeal against a Certificate of Lawfulness for the use of a Building as a Dwelling. Delegated	Helena Obremski	Questionnaire: 14/12/20 Statement: 4/1/21	Ongoing
W/20/1091	Terets Lodge, Rising Lane, Lapworth	Single Storey Rear Extension Delegated	Jonathan Gentry	Questionnaire: 14/12/20 Statement: 4/1/21	Ongoing

W/20/0483	17 Gaveston Road, Leamington	Appeal against the refusal of a Lawful Development Certificate for the Use of the Property. Delegated	Andrew Tew	Questionnaire: 3/12/20 Statement: 31/12/20	Ongoing
W/20/1167	Great Pinley Barns, Nunhold Road, Shrewley	Removal of Condition Restricting Permitted Development Rights Delegated	Andrew Tew	Questionnaire: 14/12/20 Statement: 25/1/21	Ongoing
W/20/1055	Hobournes, Upper Spring Lane, Kenilworth	Two Detached Dwellings Committee Decision contrary to Officer Recommendation	Helena Obremski	Questionnaire: 14/12/20 Statement: 25/1/21	Ongoing
W/20/1275	River Studio, Old Milverton Lane, Old Milverton	Removal of Condition Restricting Permitted Development Rights Delegated	Helena Obremski	Questionnaire: 21/12/20 Statement: 1/2/21	Ongoing
W/20/0774	1 Beaurevoir Way, Warwick	Erection of a Dwelling Delegated	Rebecca Compton	Questionnaire: 21/12/20 Statement: 1/2/21	Ongoing
New W/20/1264	The Lodge, Wattcote Farm, Manor Lane, Wroxall	Change of Use to Pilates Studio	Andrew Tew	Questionnaire: 19/1/21 Statement:	Ongoing

		Committee Decision in Accordance with officer Recommendation		16/2/21	
New W/20/0987	Grist Mill, Chesterton Drive, Leamington	Change of use of first Floor to HMO Delegated	Dan Charles	Questionnaire: 18/1/21 Statement: 15/2/21	Ongoing
New W/20/0974	1 Edmondes Close, Woodloes Park, Warwick	Revisions to previously granted planning permission for domestic extensions Delegated	George Whitehouse	Questionnaire: 8/1/21 Statement: 1/2/21	Ongoing
New W/20/1170	2 Adelaide Road, Leamington	Infill of Service Wing Roof Delegated	Rebecca Compton	Questionnaire: 8/1/21 Statement: 1/2/21	Ongoing
New W/20/1321 and 1337	39 Northumberland Road, Leamington	i. Rear stair Tower and ii. One and two storey Extensions Delegated	Thomas Fojut	Questionnaire: 25/1/21 Statement: 16/2/21	Ongoing

Enforcement Appeals

Reference	Address	Issue	Officer	Key Deadlines	Date of Hearing/Inquiry	Current Position
ACT 450/08	Meadow Cottage, Hill Wootton	Construction of Outbuilding	RR	Statement: 22/11/19	Public inquiry 1 Day	The inquiry has been held in abeyance
ACT 097/17	2 Satchwell Place, Leamington Spa	Construction of Fence	RR	Statement: 23/6/20	Written Representations	Ongoing

Grounds of Appeal

The steps to comply with the notice are excessive
The Notice compliance period is too short.

ACT/565/18	41 Clemens Street, Leamington	Erection of structures/fencing to the front of the premises	RR	Statement Due: 5/11/20	Written Representations	Appeal Dismissed. Enforcement Notice Upheld with revisions
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Grounds of Appeal

That the alleged works haven't taken place.
That the alleged works (if they occurred) do not constitute a breach of planning control.

That the steps to comply with the notice are excessive.

ACT/386/19	89 Shrubland Street, Leamington	Change of use to a 7 bed HMO.	RC	Statement Due: 11/09/20	Written Representations	Appeal Dismissed and Costs Application Refused.
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Grounds of Appeal

Planning permission ought to be granted.

See above for commentary on the related planning application.

ACT/354/20	Old Folly Barn, Kites Nest Lane, Beausale, Warwick	Erection of detached car port.	GW	Statement Due: 5/8/20	Written Representations	Ongoing
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Tree Appeals

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Hearing/Inquiry	Current Position