

**To: The Deputy Leader and Members of the Planning and Development Board  
Councillors Simpson, Bell, T Clews, Dirveiks, Gosling, Hancocks, Hayfield, D Humphreys, Jarvis, Jordan, Morson, Moss, Parsons, H Phillips, Reilly and Rose.**

**For the information of other Members of the Council**

For general enquiries please contact the Democratic Services Team on 01827 719237 via e-mail – [democraticservices@northwarks.gov.uk](mailto:democraticservices@northwarks.gov.uk)

For enquiries about specific reports please contact the officer named in the reports.

The agenda and reports are available in large print and electronic accessible formats if requested.

## **PLANNING AND DEVELOPMENT BOARD AGENDA**

**4 JULY 2022**

The Planning and Development Board will meet on Monday, 4 July 2022 at 6.30pm in the Council Chamber at The Council House, South Street, Atherstone, Warwickshire.

The meeting can also be viewed on the Council's YouTube channel at [NorthWarks - YouTube](#).

### **AGENDA**

- 1 Evacuation Procedure.**
- 2 Apologies for Absence / Members away on official Council business.**
- 3 Disclosable Pecuniary and Non-Pecuniary Interests**

## REGISTERING TO SPEAK AT THE MEETING

Anyone wishing to speak at the meeting, in respect of a Planning Application, must register their intention to do so by 1pm on the day of the meeting, either by email to [democraticservices@northwarks.gov.uk](mailto:democraticservices@northwarks.gov.uk) or by telephoning 01827 719221 or 719237.

Once registered to speak, the person asking the question has the option to either:

- (a) attend the meeting in person at the Council Chamber; or
- (b) attend remotely via Teams.

If attending in person, precautions will be in place in the Council Chamber to protect those who are present however this will limit the number of people who can be accommodated so it may be more convenient to attend remotely.

If attending remotely an invitation will be sent to join the Teams video conferencing for this meeting. Those registered to speak should join the meeting via Teams or dial the telephone number (provided on their invitation) when joining the meeting and whilst waiting they will be able to hear what is being said at the meeting. They will also be able to view the meeting using the YouTube link provided (if so, they may need to mute the sound on YouTube when they speak on the phone to prevent feedback). The Chairman of the Board will invite a registered speaker to begin once the application they are registered for is being considered.

- 4 **Minutes of the meeting of the Board held on 6 June 2022** – copy herewith, to be approved and signed by the Chairman.

## ITEMS FOR DISCUSSION AND DECISION (WHITE PAPERS)

- 5 **Planning Applications** - Report of the Head of Development Control

### Summary

Town and Country Planning Act 1990 – applications presented for determination.

- 5a **Application No: PAP/2021/0531 – Land Between Holmfield and Oakdene, Bennetts Road North, Corley**

Erection of bungalow with detached garage

**5b Application No: PAP/2021/0044 - Barn Fishery, Atherstone Road, Hartshill, CV10 0JB**

Change of use of land to use as a residential caravan site for 6 touring caravans, laying of hardstanding and ancillary development

**5c Application No: PAP/2021/0687- 89-91 Main Road, Austrey, Atherstone, Warwickshire, CV9 3EG**

Variation of condition no: 4 of planning permission PAUSAV/0602/96/FAP (PAP/1996/3856) dated 14/08/1996 relating to use of swimming pool for limited community use for private lessons

The Contact Officer for this report is Jeff Brown (719310).

**6 Former Daw Mill Colliery - Report of the Head of Development Control**

**Summary**

The Board is brought up to date as a consequence of the issue of an Enforcement Notice by the Warwickshire County Council.

The Contact Officer for this report is Jeff Brown (719310).

**7 HS2 Sub-Group - Report of the Head of Development Control**

**Summary**

At the February 2022 meeting of the Planning and Development Board, the Board resolved to establish an HS2 Subgroup and that that a group of Members be convened to review HS2 proposals. This report seeks to establish the broad terms of reference and operating practices of the HS2 Subgroup, including arrangements for the delegation of HS2 Consents decisions. It further summarises the HS2 consenting regime and the obligations of North Warwickshire Borough Council in determining consents.

The Contact Officer for this report is Erica Levy (719294).

**8 Exclusion of the Public and Press**

**To consider whether, in accordance with Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following items of business, on the grounds that they involve the likely disclosure of exempt information as defined by Schedule 12A to the Act.**

9 **Enforcement Action** - Report of the Head of Development Control

The Contact Officer for this report is Jeff Brown (719310).

10 **Confidential Extract of the Minutes of the meeting of the Planning and Development Board held on 6 June 2022** - copy herewith, to be approved and signed by the Chairman.

STEVE MAXEY  
Chief Executive



## NORTH WARWICKSHIRE BOROUGH COUNCIL

### MINUTES OF THE PLANNING AND DEVELOPMENT BOARD

6 June 2022

Present: Councillor Simpson in the Chair

Councillors Bell, T Clews, Dirveiks, Gosling, Hancocks, Hayfield, D Humphreys, Jarvis, Jordan, Moss, Parsons, H Phillips and Reilly.

Apologies for absence were received from Councillors Morson and Rose.

Councillors D Clews and M Humphreys were also in attendance and with the consent of the Chairman Councillor D Clews spoke on Minute No 8b (Application No PAP/2021/0155 - Peel House, 79 Witherley Road, Atherstone CV9 1NA).

#### 6 **Disclosable Pecuniary and Non-Pecuniary Interests**

Councillor Reilly declared a pecuniary interest in Minute No 8e Planning Application No PAP/2022/0161 (Land 100 Metres west of Hams Garden Cottage, Church Lane, Lea Marston) - by virtue of his role as Lea Marston Parish Clerk, left the meeting and took no part in the discussion or voting thereon. Councillor Reilly also declared a pecuniary interest in item 13 (Tree Preservation Orders) – by virtue of his role as Dordon Parish Clerk and took no part in the discussion or voting.

#### 7 **Minutes**

The minutes of the meeting of the Planning and Development Board held on 9 May 2022, copies having been previously circulated, were approved as a correct record and signed by the Chairman.

#### 8 **Planning Applications**

The Head of Development Control submitted a report for the consideration of the Board.

**Resolved:**

- a** That in respect of Application No PAP/2020/0246 (Land Adjacent 15, Curlew Close, Warton) be refused for the reasons set out in the report of the Head of Development Control;

**Letter from Mr Hill, [Speakers: Linda Roberts and Matthew Topping]**

- b** That Application No PAP/2021/0155 (Peel House, 79 Witherley Road, Atherstone, CV9 1NA) be refused for the following reason:

**“it is considered that the proposal will lead to an unacceptable loss of amenity to the occupiers of neighbouring property due to overlooking, loss of privacy, additional traffic generation and intensification of development such that the proposal would not accord with Policy LP29 (9) of the North Warwickshire Local Plan 2021”.**

**[Speakers: Leigh Everitt and Ian Ritchie]**

- c** That Application No PAP/2021/0695 (Highfield Farm, Farthing Lane, Curdworth, Birmingham, B76 9HE) be granted subject to the conditions set out in the report of the Head of Development Control and a Community Liaison Group be set up between the applicant, local residents and local Ward Member prior to the building being brought into use, in order to respond to concerns;

**[Speakers: Tashraf Younis and Asim Chaudhry]**

- d** That Application No PAP/2021/0698 (Arden View, Tamworth Road, Fillongley, CV7 8DY) be granted subject to the conditions set out in the report of the Head of Development Control;

- e** That Application No PAP/2022/0161 (Land 100 Metres West Of Hams Garden Cottage, Church Lane, Lea Marston, Warwickshire) be granted subject to the conditions set out in the report of the Head of Development Control; and

- f
- i) **That in respect of Application No PAP/2021/0605 (Land 350 metres north-west of Marlwood Bungalow and Land east of Breach Oak Lane, Corley, Smorrall Lane, Astley) that the Council is minded to support the grant of planning permission for the reasons set out in the officer's report, subject to the final wording of an additional condition in respect of limiting any noise impacts, and that the matter be referred to the Secretary of State under the terms of the 2009 Direction for him to consider whether he wishes to call-in the application for his own determination. If not, then officers are authorised to issue the Notice subject to the conditions as set out the report of the Head of Development Control.**
  
  - ii) **that in respect of application number, PAP/2021/0651 (Land North off Park Lane Farm, Park Lane, Astley) the Council is minded to support the grant of planning permission for the reasons set out in the officer's report and that the matter be referred to the Secretary of State under the terms of the 2009 Direction for him to consider whether he wishes to call-in the application for his own determination. If not, then officers are authorised to issue the Notice subject to the conditions as set out the report of the Head of Development Control.**

**[Speakers: PAP/2021/0605 Paula Ward and Nick Leaney, PAP/2021/0651 Kate Cantwell]**

9 **Appeal Update** - Report of the Head of Development Control

The Head of Development Control brought Members up to date with recent appeal decisions.

**Resolved:**

**That the report be noted.**

10 **Levelling Up and Regeneration Bill** - Report of the Head of Development Control

The Head of Development Control provided an initial summary of the new Planning Bill as set out in the recent Queen's Speech.

**Resolved:**

- i) **That the report be noted and officers update the Board as further detailed information is received and the formal consultation process commences.**

- ii) **A detailed briefing is given to Members before the commencement of the next Planning and Development Board on 4 July 2022.**

**11 Exclusion of the Public and Press**

**Resolved:**

**That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of exempt information as defined by Schedule 12A to the Act.**

**12 Tree Preservation Order – Report of the Head of Development Control**

The Head of Development Control sought authority for the emergency protection of the tree and others in the vicinity under delegated powers. Notice will then be served on the owner, the tenant and immediate neighbours.

**Resolved:**

**That the Board confirms the action taken in the issue of an Emergency Tree Preservation Order for the protection of Trees.**

**13 Tree Preservation Order – Report of the Head of Development Control**

The Head of Development Control set out an approach to the making and possible confirmation of a large number of Tree Preservation Orders.

**Resolved:**

- a **That Orders be made in respect of the individual trees and groups of trees as shown on the Map contained in Appendix A of the report;**
- b **That consultation then be undertaken and that in the event of an objection being received to any Order, the matter be referred back to the Board, but that if no objections are received the confirmation of making an Order be delegated to Head of Development Control, in consultation with the Chairman, the Opposition Spokesperson and the local Members;**
- c **in the event of receipt of an objection, that a report be brought back to Board for Consideration; and**

**d That the Chairman, Opposition Spokesman, Head of Development Control and Head of Legal Services meet to discuss how to deal with officer reports when a substantial number of background papers are involved.**

**14 Confidential Minutes of the Planning and Development Board meeting held on 9 May 2022**

That the confidential minutes of the Planning and Development Board meeting held on 9 May 2022 were received and noted.

Councillor Simpson  
Chairman

Extra Note - At the end of the private session Councillor Simpson raised the following point;

Councillor Simpson stated that a member of the public raised some concerns that we were not properly considering, on every occasion, the way we address the environmental agenda and the need to be clear of the need to provide for cycle storage, footpaths, bridleways. The Head of Development Control has undertaken to emphasise with Planning Officers the need to thoroughly consider all these issues when determining planning applications. The Chairman advised Members to pay particular attention to these details and asked Head of Development Control to do a brief note to Members advising the of Planning Policies.

**Report of the  
Head of Development Control**

**1 Subject**

- 1.1 Town and Country Planning Act 1990 – applications presented for determination.

**2 Purpose of Report**

- 2.1 This report presents for the Board decision, a number of planning, listed building, advertisement, proposals, together with proposals for the works to, or the felling of trees covered by a Preservation Order and other miscellaneous items.
- 2.2 Minerals and Waste applications are determined by the County Council. Developments by Government Bodies and Statutory Undertakers are also determined by others. The recommendations in these cases are consultation responses to those bodies.
- 2.3 The proposals presented for decision are set out in the index at the front of the attached report.
- 2.4 Significant Applications are presented first, followed in succession by General Development Applications; the Council's own development proposals; and finally Minerals and Waste Disposal Applications.

**3 Implications**

- 3.1 Should there be any implications in respect of:

Finance; Crime and Disorder; Sustainability; Human Rights Act; or other relevant legislation, associated with a particular application then that issue will be covered either in the body of the report, or if raised at the meeting, in discussion.

**4 Site Visits**

- 4.1 Members are encouraged to view sites in advance of the Board Meeting. Most can be seen from public land. They should however not enter private land. If they would like to see the plans whilst on site, then they should always contact the Case Officer who will accompany them. Formal site visits can only be agreed by the Board and reasons for the request for such a visit need to be given.
- 4.2 Members are reminded of the "Planning Protocol for Members and Officers dealing with Planning Matters", in respect of Site Visits, whether they see a site alone, or as part of a Board visit.

## 5 **Availability**

- 5.1 The report is made available to press and public at least five working days before the meeting is held in accordance with statutory requirements. It is also possible to view the papers on the Council's web site: [www.northwarks.gov.uk](http://www.northwarks.gov.uk).
- 5.2 The next meeting at which planning applications will be considered following this meeting, is due to be held on Monday, -1 August 2022 at 6.30pm via Teams.

## 6 **Public Speaking**

- 6.1 Information relating to public speaking at Planning and Development Board meetings can be found at:  
[https://www.northwarks.gov.uk/info/20117/meetings\\_and\\_minutes/1275/speaking\\_and\\_questions\\_at\\_meetings/3](https://www.northwarks.gov.uk/info/20117/meetings_and_minutes/1275/speaking_and_questions_at_meetings/3).

## Planning Applications – Index

Item No	Application No	Page No	Description	General / Significant
5/a	PAP/2021/0531	1	<p><b>Land between Holmfield and Oakdene, Bennetts Road North, Corley</b></p> <p>Erection of bungalow with detached garage</p>	General
5/b	PAP/2021/0044	18	<p><b>Barn Fishery, Atherstone Road, Hartshill</b></p> <p>Change of use of land to use as a residential caravan site for 6 touring caravans, laying of hardstanding and ancillary development</p>	General
5/c	PAP/2021/0687	33	<p><b>89-91 Main Road, Austrey</b></p> <p>Variation of condition no: 4 of planning permission PAUSAV/0602/96/FAP (PAP/1996/3856) dated 14/08/1996 relating to use of swimming pool for limited community use for private lessons</p>	



## **General Development Applications**

**(5/a) Application No: PAP/2021/0531**

**Land Between Holmfield And Oakdene, Bennetts Road North, Corley,**

**Erection of bungalow with detached garage, for**

**Mr Beverley**

### **Introduction**

This application is referred to the Board in view of its previous interest in the site.

### **The Site**

This comprises a 0.3 hectare L-shaped parcel of land situated immediately adjacent to Holmfield at the eastern end of a residential frontage comprising some 35 houses along the north side of the road between Stains Farm and Holly Farm. The surroundings are largely rural in character, appearance and function, with the M6 Motorway 500 metres to the north and Corley around a kilometre to the south-east.

A location plan is at Appendix A.

### **The Proposals**

As described above, planning permission is being sought for the construction of a detached single storey dwelling and a detached garage. The dwelling comprises two rectangular sections with shallow pitched roof slopes linked by a narrow, glazed corridor. It would be some 20 metres back from the road frontage which reflects the “building line” of the properties either side. The double garage would stand behind.

The proposed layout is at Appendix B with the proposed elevations at Appendices C and D.

### **Background**

The site has a planning history

- Planning permission was refused for the demolition of Holmfield to the west and its redevelopment by two replacement detached dwellings. This proposal also extended over the application site.
- Planning permission was subsequently granted in 2019 for a single replacement bungalow for Holmfield. This is almost complete. A double garage was included.
- Planning permission was refused in August 2020 for the erection of a new detached bungalow on the current application site. This proposal was similar to the current application. An appeal was lodged but dismissed in January 2021. The Decision letter is at Appendix E.

## **Consultations**

Warwickshire County Council as Highway Authority – No objection subject to conditions  
**Representations**

One letter of support has been received

One letter of objection has been received referring to Green Belt harm; there would be no visual enhancement and adverse impact on neighbouring residential amenity

## **Development Plan**

North Warwickshire Local Plan 2021 – LP1 (Sustainable Development); LP2 (Settlement Hierarchy), LP3 (Green Belt), LP8 (Windfall Allowance), LP14 (Landscape), LP16 (Natural Environment), LP29 (Development Considerations), LP30 (Built Form) and LP35 (Renewable Energy and Energy Efficiency)

## **Other Material Planning Considerations**

The National Planning Policy Framework 2021 – (the “NPPF”)

National Planning Practice Guidance

The North Warwickshire Five Year Housing Land Supply as at 31 March 2022

Air Quality and Planning Guidance SPG – 2019

North Warwickshire Landscape Character Assessment 2010

## **Observations**

### **a) The Green Belt**

The site is in the Green Belt. The NPPF states that the construction of new buildings here is not appropriate development and thus by definition is harmful to the Green Belt. This carries substantial weight and thus the presumption here is one of refusal. However, the NPPF does identify a number of exceptions to this and there are two that might apply in this case. Each needs to be assessed.

The first is when the construction consists of “limited infilling in a village”. In this case it is considered that the proposal might well constitute “infill” because of the site’s position vis-à-vis the development to the west. However, the “gap” here is large and visually noticeable; there is a continuous line of development to the west but not to the east, with other sizeable gaps. There is thus some doubt that the proposal would accord with the test of “limited infill” development. However, the matter is settled with the adoption of the 2021 Local Plan. Here Policy LP3 in respect of the Green Belt says that “limited infilling in settlements washed over by the Green Belt will be allowed within the infill boundaries as defined on the Policies Map.” The site is not within such a defined boundary. Additionally, LP3 says that “limited infilling may also be acceptable where a

site is clearly part of the built form of a settlement – i.e. where there is substantial built development around three or more sides of a site.” This does not apply here. Moreover, the Inspector in the recent appeal concluded that the appeal scheme is not “limited infill development in a village” – paragraph 11 of Appendix E. It is not considered that there has been any physical change in circumstances at or adjoining the site to warrant a different conclusion. As a consequence of all of these matters, the current proposal does not satisfy this first exception.

The second exception is where the construction consists of the “partial or complete redevelopment of previously developed land (“PDL”). There are conditions attached to this exception, but it is first necessary to assess whether the proposal passes the definition of “PDL” in the NPPF. This was a matter that the Inspector looked at in the recent appeal. He concluded that the site was PDL – paragraph 13 of Appendix E.

However as referred to above and as set out in the Appeal Decision letter, this does not necessarily lead to the proposal automatically becoming appropriate development in the Green Belt. This is because the exception is governed by two conditions. The proposal is not being promoted as “meeting an identified affordable housing need within the area of the Local Planning Authority” and as such it would not accord with this condition. The second is that the proposal should not have a greater impact on the openness of the Green Belt than the existing development. The Inspector as indicated above, looked at this condition and concluded that that “proposal would have a greater impact on the visual openness of the Green Belt than the currently undeveloped land”. As a consequence, “the proposal would have a moderately adverse impact on the openness of the Green Belt” – paragraph 14 of Appendix E. It would thus fail to meet the terms of this exception. The physical characteristics of the site and adjoining land have not changed since the date of that decision and neither is this a materially different proposal in terms of size or scale. As such there is no new evidence to warrant a different conclusion.

The proposed development is thus inappropriate development in the Green Belt. Substantial Green Belt harm is thus caused. The Board should now establish if other harms are caused.

#### **b) Other Harms**

The Highway Authority has raised no objection subject to standard conditions and this replicates its position at the time of the proposal that subsequently went to appeal. The Inspector in that case neither found the evidence to support a highway refusal reason. As such it is acknowledged that the proposal would accord with Local Plan policy LP29 and the relevant section of the NPPF.

To the northwest of Holmfield there are properties which show a variety of built-form, sited within narrow long rear gardens with further properties to the south-east. The immediate property to the west is a newly constructed bungalow. The proposed form is unusual in that it is made up of two sections, but their design and character would not be materially out of-keeping with the general appearance of the residential frontage here. As such it is acknowledged that the proposal would generally accord with Local Plan Policies LP1 and LP30.

No harm is considered to be caused to neighbouring residential amenity. The low profile of the dwelling and its separation from adjacent properties ensures that light and sunlight losses as well as overshadowing would be minimal. There would be change in that there would be greater levels of activity on the site, but the general locality is not isolated or immune from human or vehicular activity. Because of the size of the site, it is considered that there would be no material adverse impact. The proposal would therefore accord generally with Local Plan policy LP29.

As such it is not considered that there are other harms that amount to them having an adverse impact. It is note-worthy too, that the Inspector in the recent appeal decision did not raise any other issues.

### **c) The Applicants Case**

This proposal is effectively a resubmission of the proposal recently dismissed at appeal.

The applicant at that time argued his case on several counts – that the design of the proposal would be of “exceptional quality, outstanding and innovative”; that the development of the site would reduce “anti-social behaviour”, that the development would be comparable with other planning permissions granted by the Council for housing in the Green Belt, that it would be a “self-build” project and that the applicant would offer contributions to a “local project” if the Council agreed.

In this current application the applicant is arguing on several points.

Firstly, he says that this is a “self-build” project. There is he continues, a need for the Council to identify and plan for smaller building sites, so as to accommodate small house builders. It is acknowledged that the NPPF says at paragraph 62 that all types of housing should be reflected in planning policies – including people who wish to “commission or build their own homes”. The Council is also required to keep a register of self-build plots for those who wish to build themselves. In these respects, it is considered that this proposal would help with this outcome and thus it carries moderate weight in the final planning balance.

Secondly, he refers to the conclusion of the Inspector that this is PDL and thus redevelopment remains relevant and appropriate. Moreover, it remains his view that the proposal would not conflict with the purposes of including land within the Green Belt; it would only have a “moderate” adverse impact as found by the Inspector and he refers to other appeal decisions in other Local Authorities which he says are equivalent to his case. In respect of this argument, Green Belt harm is still caused and there is no new evidence forwarded by the applicant to suggest a review is needed of the Inspector’s findings on PDL and “infilling”. Whilst other appeal decisions might be relevant, they are case specific. Here of course there is an equivalent recent appeal decision for the application site. This argument therefore carries no weight in the final planning balance.

Thirdly he argues that the bungalow would include ground source heat pumps, solar panels, rainwater harvesting and highly insulated building techniques. These benefits are acknowledged, but the new Building Regulations coming into effect later this year, will make these attributes mandatory for all new builds and thus there is nothing exceptional to warrant any weight being given to this argument.

#### **d) The Final Planning Balance**

Members will be aware that having found that the proposal causes substantial definitional Green Belt harm and moderate actual Green Belt harm, the Board had to assess whether the matters put forward by the applicant are of such weight to “clearly” outweigh the total harm caused and thus amount to the very special circumstances necessary to support the application.

It is considered that they do not for the following reasons.

Firstly, the Council has a five-year housing land supply as evidenced in the latest monitoring report – 6.2 years. There is thus no overriding need to boost that supply through just one house.

Secondly, the recently adopted Local Plan is not out of date and gives added weight to the analysis of the exceptions for when proposed new building construction can be considered as being appropriate development. The contents of Policy LP3 thus carry full weight here. That definitional Green Belt harm carries substantial weight.

Thirdly, the greater public interest here rests with the national and local planning policy objectives of retaining the permanence and openness of the Green Belt.

#### **Recommendation**

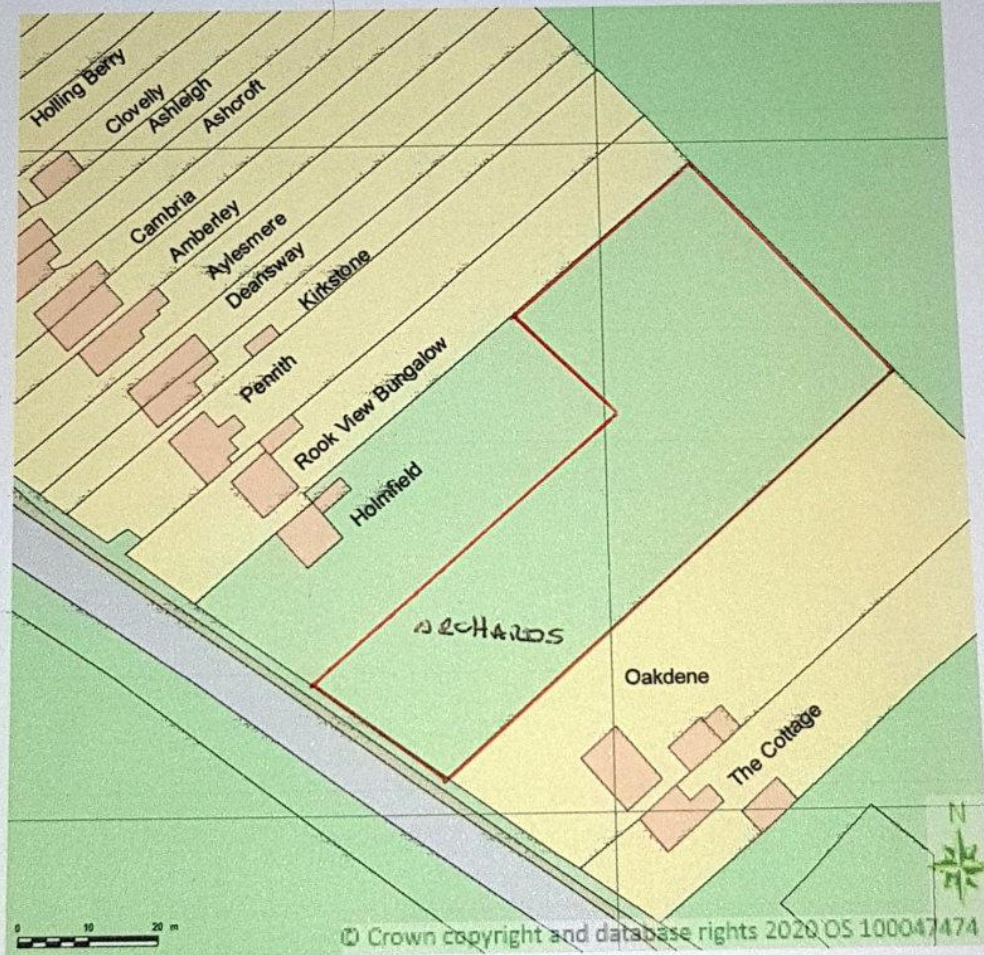
That planning permission be **REFUSED** for the following reason:

1. “The site is located within the Green Belt where the construction of new buildings is considered to amount to an inappropriate form of development. The proposal is not considered to accord with any of the exceptions defined in the National Planning Policy Framework which would make this proposal appropriate development. Moreover, the proposal would introduce built form into a presently open area materially reducing openness from both a spatial and a visual perspective. The matters raised by the applicant are not of sufficient weight to clearly outweigh the harm caused. Accordingly, the proposals do not accord with Policy LP3 of the North Warwickshire Local Plan 2021 and Section 13 of the Framework.



**SITE LOCATION PLAN  
AREA 2 HA  
SCALE 1:1250 on A4  
CENTRE COORDINATES: 431083, 285551**

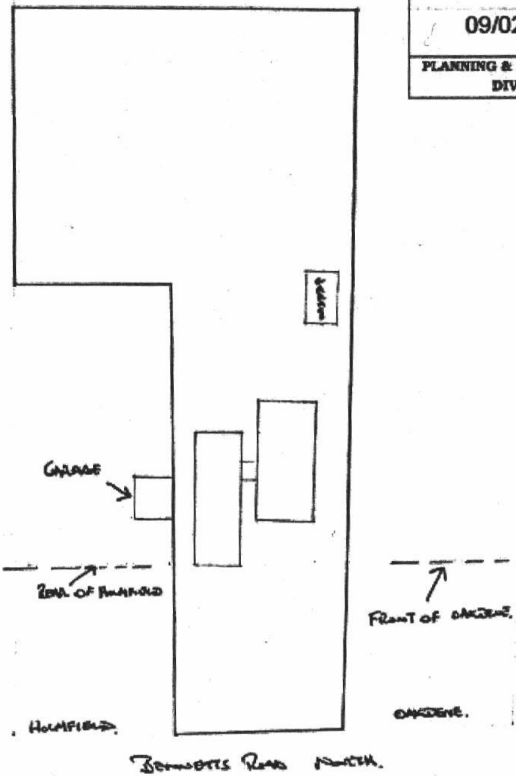
NORTH WARWICKSHIRE  
BOROUGH COUNCIL  
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8/09/2021  
PLANNING & DEVELOPMENT  
DIVISION



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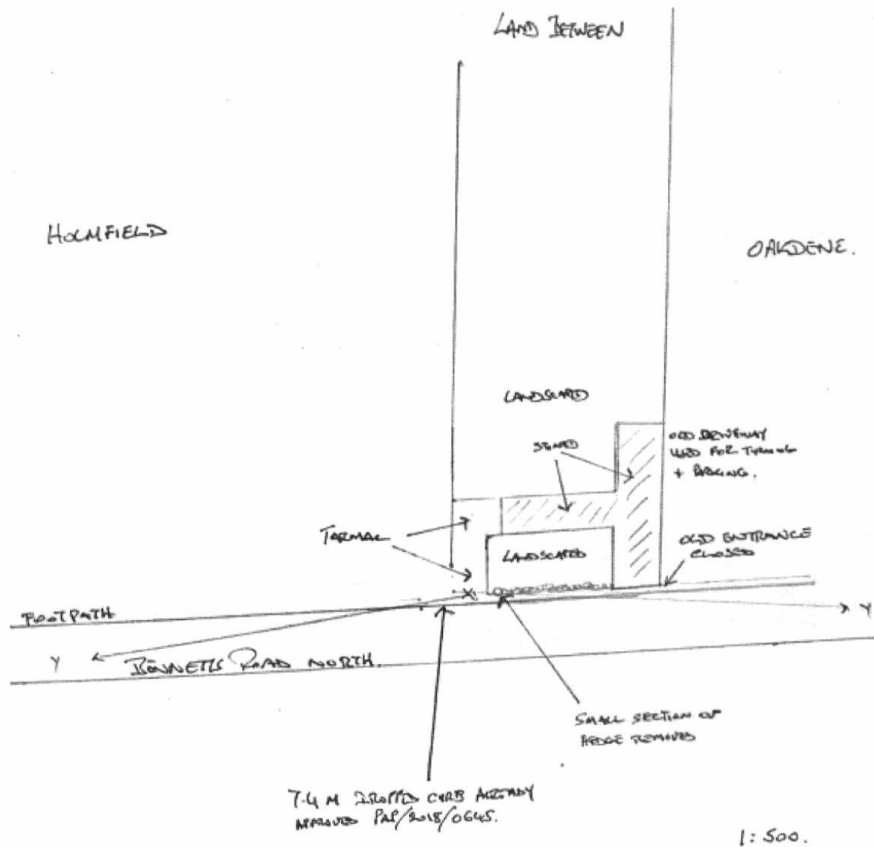
Appendix B – Site layout

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09/02/2022  
PLANNING & DEVELOPMENT  
DIVISION



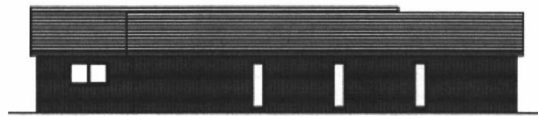
SCALE 1:500

APPENDIX C





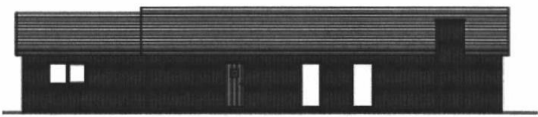
**Appendix C - elevations**



**Side Elevation  
As Proposed**



**Front Elevation  
As Proposed**



**Side Elevation  
As Proposed**

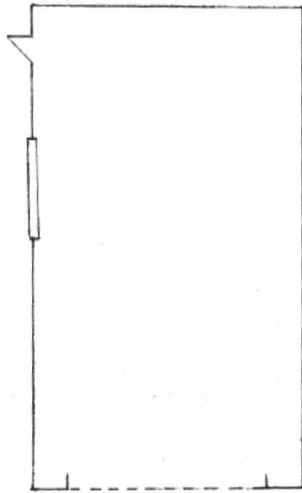


**Rear Elevation  
As Proposed**

Appendix D –layout of dwelling and garage

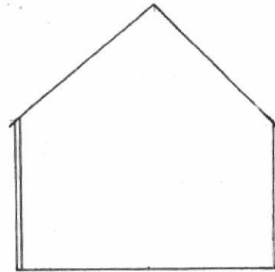


142/2621/0531



NORTH WARWICKSHIRE BOROUGH COUNCIL
<b>RECEIVED</b>
09/05/2022
PLANNING & DEVELOPMENT DIVISION

← PLAN



LAND BETWEEN HOLMFIELD + OAKDEN

SCALE 1:50



## Appeal Decision

Site Visit made on 8 December 2020 G Sibley MPLAN MRTPI

### Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2021

### Appeal Ref: APP/R3705/W/20/3258573

### Orchards, Bennetts Road North, Corley CV7 8BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Dereck Beverley against the decision of North Warwickshire Borough Council.
- The application Ref PAP/2020/0236, dated 19 May 2020, was refused by notice dated 20 August 2020.
- The development proposed is new build bungalow.

### Decision

1. The appeal is dismissed.

### Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### Main Issues

3. The main issues are:
  - i. Whether the proposal would be inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan documents.
  - ii. Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

### Reasons for the Recommendation

#### *Inappropriate development*

4. Paragraph 143 of the National Planning Policy Framework (the Framework) identifies that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 states that new buildings should be regarded as inappropriate in the Green Belt, save for a limited number of exceptions. The exceptions include, under paragraph 145 (e), limited infilling in villages.
5. There is no specific definition of 'limited infilling' within the Framework or the North Warwickshire Local Plan Core Strategy (adopted 2014) (CS) and,

<https://www.gov.uk/planning-inspectorate>

similarly, what constitutes a 'village' is not defined. The site is not located within any of the defined settlements referred to in Categories 1 – 4 in Policy NW2 of the CS and, in terms of planning policy, is outside of any defined settlement boundary within the countryside that is washed over by the Green Belt. However, category 5 of the policy identifies that there are settlements within the district that are washed over by the Green Belt where no settlement boundary has been identified. Whether any given settlement or location would amount to a 'village' is not specifically defined within the settlement hierarchy of the development plan.

6. Policy NW3 of the CS sets out the Council's approach to development in the Green Belt in more detail and states that infill boundaries will be brought forward to indicate where infill and limited redevelopment would be permitted. I understand that the Council is seeking to identify 'infill boundaries' within an emerging plan which has reached examination stage. The Council have indicated that village locations have been identified and that the appeal site falls outside an area where infill would be permitted. Notwithstanding that point, no extracts from the plan have been provided and it is not clear if there are any outstanding objections to it. As such, I can give little weight to emerging policy and it is necessary to exercise planning judgement to ascertain whether the proposal would amount to 'limited infilling' within a 'village'.
7. Infilling is normally associated with the completion of an otherwise substantial built up frontage of several buildings or at the very least, the consolidation of a largely built up area.
8. The site is located between two dwellings within a run of ribbon development along Bennetts Road North which is located to the north of Coventry but outside of the settlement boundary for the city. The site and the wider ribbon development is washed over by the Green Belt and other than the line of houses, there does not appear to be the services and facilities that would typically be associated with a village.
9. The prevailing character of the immediate area is semi-rural with rural roads featuring ribbons of primarily single depth residential development interspersed with fields and countryside. The site is located towards the end of a row of development on such a road. The dwellings either side of the appeal site create a built-up frontage and the site is capable of accommodating a single dwelling in such a way as to continue the built-up frontage. Accordingly, the proposal would fall within the scope of the 'limited infill' aspect of Paragraph 145 (e) of the Framework.
10. However, whilst there are other residential properties nearby, the presiding character around the site remains semi-rural. The site is physically and visually disconnected from Coventry as well as any other settlements nearby. Residents would have to travel to reach the services and facilities available in Coventry City centre or the suburbs to the north of Coventry. Given the separation and the absence of nearby local services or facilities, this leads me to conclude that the location of the infill would not be within a 'village' for the purposes of Paragraph 145 (e).
11. For the reasons outlined above, I do not consider that the appeal scheme represents a limited infill development in a village. It cannot therefore be

treated as being within the exceptions identified in paragraph 145 of the Framework. Consequently, I conclude that the proposal would not meet criterion (e) of paragraph 145 of the Framework.

12. Paragraph 145 (g) permits the infilling or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt than the existing development.
13. The appellant notes that there was a dwelling on the site that has since been demolished but the remains of foundations are still in place. Third party comments support that position and noted that the house was demolished in the late 1980s. Having viewed the site there is evidence of previous development in terms of the composition of the base material on the ground. As such, despite the site being presently free of built form, there was in all likelihood a dwelling on the site and I am satisfied that the site is previously developed land having regard to the definition within the Framework.
14. Nevertheless, the dwelling has been demolished and as such, the site is now open and undeveloped. The proposed dwelling would introduce new built form into the Green Belt where there is none above ground level. This would have a harmful impact upon the spatial openness of the Green Belt. Furthermore, whilst the site is bounded by hedgerows and the proposal would be a single storey dwelling with a garage, the buildings would be seen over the hedges as well as through the driveway for the proposed dwelling. As such, the proposal would have a greater impact on the visual openness of the Green Belt than the currently undeveloped site. As a consequence, the proposal would have a moderately adverse impact on the openness of the Green Belt.
15. The appellant also notes that the site could be considered previously developed land because it is garden land located outside of the built-up area. Notwithstanding whether or not the site is garden land, as noted above, the proposal would have a greater impact on the openness of the Green Belt and as a result, the proposal would fail to meet criterion (g) of Paragraph 145 of the Framework.
16. Given that the proposal would infill the gap between two existing dwellings, and that the site represents previously developed land, I am satisfied that it would not result in encroachment in the countryside. Nonetheless, that does not affect my conclusions on whether the proposal amounts to inappropriate development, having regard to the specific criteria within paragraph 145 of the Framework.
17. Therefore, the proposed development would be inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

*Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal*

18. The appellant has referred to paragraph 79 (e) of the Framework which permits isolated homes where the design of the dwelling 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.

19. Notwithstanding whether or not the dwelling would be truly outstanding or innovative, the proposed dwelling is located within run of ribbon development with dwellings either side of it. As such, it cannot be considered isolated in either a physical or a functional sense for the purposes of Paragraph 79 (e) of the Framework. Consequently, the proposal would fail to meet criterion (e) of the Paragraph 79 of the Framework.
20. The surrounding dwellings are a mix of two storey and single storey dwellings, some of which have garages and because the dwelling would be located within a run of ribbon development a single storey dwelling, with a garage, in this location would not appear out of character. Most of the dwellings locally are rendered, although the neighbouring dwelling is a red brick building. The proposed buff stone is not commonly used within the immediate street scene but its use here would not be unduly harmful given the existing range of materials used within the immediate area. The bungalow itself would include a central glass aperture which would separate the two side sections of the dwelling. This would create an interesting architectural feature that is not common within the area. Nonetheless, the built form either side of the glass aperture would have the appearance of a relatively standard bungalow, with some modern elements. Consequently, whilst the dwelling would be attractive, the design of the dwelling would not be exceptional. For this reason, a single storey dwelling with a garage would not appear out of character for the area and the appearance of the dwelling, whilst not exceptional, would not harm the character or appearance of the street scene. Nevertheless, good design would be an expectation of any development, having regard to local and national planning policy and this does not amount to a positive effect in favour of the proposal.
21. The appellant has provided an email where they have offered to contribute to a local project if the Council agreed. Whilst I note that offer, no legal agreement under section 106 of the Town and Country Planning Act 1990 has been provided with the appeal and the email cannot be relied upon to guarantee any contribution. In any event, it would only be possible to take into account any contributions that are necessary to make a development acceptable in planning terms. In other words, matters that would be required to mitigate the harmful impact of the scheme. I can see no obvious connection between the suggested offer of a contribution to a local project and the harm that would arise in terms of inappropriate development within the Green Belt and the harm to the openness of the Green Belt. As such, I attach no weight to that matter.
22. The appellant, as well as third parties, note that because the site has been vacant it has been used for anti-social purposes and by developing the site, the proposal would stop such behaviour from taking place in the future. Whilst the proposal could stop the anti-social behaviour from taking place, a similar outcome could be reached through appropriate security measures around the site that would not require the erection of a permanent structure which harms the openness of the Green Belt. Accordingly, I attribute very limited weight to this consideration.

23. The appellant has referred to a number of residential applications and appeals that were allowed in the Green Belt. As set out by the Council, the approved applications and appeals were substantively different to these proposals, including extensions to existing dwellings and sites located in identified settlements in Policy NW2 of the CS. Because those proposals were in the Green Belt, the assessment of each proposal is site specific and conclusions, in terms of openness, are generally unique to each proposal. As such, there are limited comparisons that can be drawn between those schemes and this one. Furthermore, each case must be assessed on its own merits and the Council or the Planning Inspectorate permitting schemes elsewhere would not justify these proposals.
24. The appellant has highlighted that the dwelling would be a self-build project, although limited supporting information in that respect has been provided. However, I have no reason to doubt that position. The Council are required to keep a register of self-build plots and the proposed dwelling would help to the Council to deliver one additional self-build plot. To that end, I attach limited weight to this positive consideration.
25. The proposal would deliver an additional dwelling which would provide a modest contribution towards the Council's 5-year housing land supply and I attach limited weight to this positive consideration having regard to the scale of the development.

#### **Conclusion and Green Belt balance**

26. Paragraph 143 of the Framework identifies that inappropriate development in the Green Belt should not be approved except in very special circumstances. Paragraph 144 states that substantial weight must be given to any harm to the Green Belt and that very special circumstances will not exist unless that harm, and any other harm arising from the proposal, is clearly outweighed by other considerations. The proposed development would cause harm to the Green Belt by reason of inappropriateness and would result in a reduction in the openness of the Green Belt, which would conflict with one of the key purposes of designating land within the Green Belt and the relevant policies of the development plan. I attach substantial weight to those matters.
27. Whilst I have found no harm to the character and appearance of the area, that would be an expectation of any development and does not amount to a positive effect in favour of the proposal. On the other side, the redevelopment of the site would stop the site being used for anti-social behaviour and the proposed dwelling would contribute towards the Council's 5-year housing land supply and redevelop a previously developed site. To these considerations I collectively attach moderate weight.
28. The other considerations in support of the appeal do not, on balance, clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist.
29. Having regard to the above, the identified conflict with the development plan and having had regard to all other matters raised, I recommend that the appeal should be dismissed.



*G Sibley*

APPEAL PLANNING OFFICER

**Inspector's Decision**

30. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the appeal should be dismissed.

*Chris Preston*

INSPECTOR

## **General Development Applications**

**(5/b) Application No: PAP/2021/0044**

**Barn Fishery, Atherstone Road, Hartshill, CV10 0JB**

**Change of use of land to use as a residential caravan site for 6 touring caravans, laying of hardstanding and ancillary development, for**

**Mr McGinley**

### **Introduction**

This application is reported to the Board given the Board's previous interest in the Kirby Glebe site.

### **The Site**

This is land at the western end of a single width unmade access track leading off the Atherstone Road to beyond where the former Kirby Glebe Farm was located. It is around 800 metres from the site to the junction. This is close to the B4111 road junction where it passes under the West Coast main railway line. That line is some 120 metres to the north of the site.

The site presently comprises a brick building, formerly a barn, a fully hard surfaced area, a substantial brick gated access and it has no defined boundary treatment. The site has several caravans already on it – two statics and three tourers together with two motorhomes and some portable amenity structures.

There are a significant number of residential caravan developments to the east along either side of the track referred to above. The site is separated from these by a hedgerow, tree planting and the lakes of a former fishery enterprise. There is a collection of residential properties at the rail bridge junction; a further two cottages about 800 metres to the east along the B4111, and four or five cottages on the B4111 on the other side of the railway line. The Dobbies garden centre is on the B4111 immediately 250 metres both of the site.

The AE100 Public footpath runs north/south to the north-west of the site

The location plan submitted which illustrates these features is at Appendix A.

The application site plan is at Appendix B – identified as Barn Fishery on Appendix A

### **Initial Background Information**

A planning permission to use the land here as a fishery was granted in 2011 and this was implemented – the lakes and planting remain on site.

Planning permission was granted in 2020 for the conversion of the barn that stood on the land to residential use. This has commenced in a limited way – e.g. roof repairs.

## **The Proposal**

This is described as being for a proposed change of use of land to use for a residential caravan site for six touring caravans, the laying of hardstanding and ancillary development.

The current application was submitted on the basis that the applicant would convert the barn on the site to a dwelling for himself and re-instate the fishery business. That work would be undertaken by the applicant and his four adult sons. Whilst doing this work the applicant would be without a home and thus needs to accommodate himself and his family. As a consequence, six touring caravans were needed for the whole family. Because the family defined themselves as coming under the gypsy and traveller definition, the applicant sought a three-year temporary consent in order to allow time for the conversion and site works, as and when he was present on the site.

At the present time, there are two static mobile homes and three touring caravans on the site. Along with each caravan there is a temporary moveable amenity trailer which includes washing facilities and toilets totalling five in total. There are also two motorhomes on site. This overall description covers a site larger than the applicatin site.

Information has been sought from the agent to support the application and indeed to verify the scope of the application given the changes on site that now vary from the original description. However nothing has been submitted to support the applicant's circumstances.

The proposed layout as submitted, is shown at Appendix C

## **Further Background**

As referred to above, there are a large number of residential caravans to the east. This is collectively known as the Kirby Glebe site. For the purposes of this report and in dealing with planning matters here, the Kirby Glebe site has been seen as comprising three parts.

These three parts are illustrated on Appendix D and are described below.

There is the "consented" area at the far east of the general area which extends to the north and south of the central access track. Here there are planning permissions for 16 pitches providing up to 38 caravans (touring and static) and 13 amenity buildings.

Between this and the application site is an "unconsented area". This land is the subject of two outstanding planning appeals conjoined with twelve enforcement appeals as the planning applications are now being dealt with as retrospective applications. Together appeals if allowed would add 11 pitches, 22 more vans and 7 more buildings to the already consented area. These appeals are to be heard on 13 and 14 September.

Beyond the unconsented area are the "Injunction Sites" being two areas of land the subject of Court Orders. They prevent the stationing of caravans or mobile homes on

the land, or the undertaking of development including the digging of trenches, the erection of buildings or the laying of hardstanding without the written consent of the Council. The current application site is covered by one of the Orders. The Council has been successful in bringing contempt proceedings to the Court in respect of this Order.

## **Consultations**

Warwickshire County Council as Highway Authority – It objects because of increased use of the access onto Atherstone Road which is causing deterioration to the physical access and increasing road safety concerns.

## **Representations**

One letter of objection has been received indicating the following issues:

- The road access is not acceptable
- There are other relevant applications that should be considered.
- Concerns relating to the use of the development once complete.

## **Development Plan**

The North Warwickshire Local Plan 2021 - LP1 (Sustainable Development); LP2 (Settlement Hierarchy), LP5 (Amount of Development), LP10 (Gypsy and Travellers), LP14 (Landscape), LP29 (Development Considerations) and LP30 (Built Form)

Mancetter Neighbourhood Plan 2017 - DP1 (Sustainable Development); BE2 (Protecting and enhancing Local Character) and NE and L1 (Protecting Countryside and Landscape)

## **Other Material Planning Considerations**

Warwickshire Local Transport Plan 2011-2026

The Planning Policy for Traveller Sites – (the “PPTS”)

Kirby Glebe Appeal decisions referenced APP/R3705/W/17/3188036 and APP/R3705/C/05/2001114

The Highfield Lane Corley appeal decision referenced APP/R3705/W/18/3199149

The North Warwickshire Landscape Character Appraisal 2010

The Local Development Scheme 2022

## Observations

### Introduction

The site is outside of the development boundary of Hartshill - the closest settlement named in the Local Plan settlement hierarchy. The boundary is some 600 metres to the south. The development itself is situated in Mancetter Parish's area albeit the main settlement is over a kilometre due west of the application site. Members will know that in such a location outside of settlements, new residential development is not normally permitted unless it is for a purpose in connection with the use of that land; where it requires an essential rural location or where it is affordable housing explicitly to meet local community needs – see policy LP2. This would suggest a starting point of refusal in this case, but there are material planning considerations that outweigh this presumption.

Firstly, the PPTS does recognise that sites for travellers should not be restricted to urban or built-up areas. There may thus be support for sites to be permitted outside of development boundaries. Indeed, and secondly this approach is explicitly followed in Policy LP10 of the Local Plan dealing with gypsy and traveller sites. As such therefore, the Board is reminded that because of these circumstances, the starting point here is that planning permission should be assessed against the criteria within the Local Plan as a whole and not just in respect of LP2. The PPTS will be material consideration of weight in any subsequent assessment. Apart from the point made above, the PPTS also indicates at paragraph 14 that *“when assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community”*.

### Local Plan Policy

Policy LP10 of the Local Plan remains the key policy consideration here. The site is not in the Green Belt and thus the criteria outlined in the policy remain of full weight. The criteria are outlined below, and the policy as a whole does accord with paragraph 11 of the PPTS.

There are five matters listed in this policy.

- 1) The size of the site and number of pitches is appropriate in scale and size to the nearest settlement in the settlement hierarchy and its range of services and infrastructure;
- 2) The site is suitably located within a safe, reasonable walking distance of a settlement boundary or public transport service, and access to a range of services including school and health services;
- 3) Avoiding sites vulnerable to flooding or affected by any other environmental hazards that may affect the residents' health and welfare;
- 4) The site has access to essential utilities including water supply, sewerage, drainage and waste disposal;
- 5) The site can be assimilated into the surroundings and landscape without any significant adverse effect.

The first is that the size and number of pitches proposed should be appropriate in scale and size to the nearest settlement in the settlement hierarchy and its range of services and infrastructure. The nearest named settlement in the hierarchy identified in Policy LP2 is Hartshill. The population of Hartshill is 3596 (Census 2011) and the population of Mancetter is 2339 (Census 2011), both are attached to larger settlements of Nuneaton and Atherstone respectively. The proposal is for potentially two or three pitches and this is appropriate to the size of the adjacent settlements.

The second element is that the site is accessible. It can be argued that although there is a bus stop close to the main road, it is some distance away. There are also limited public footpaths in the area and a full range of services can only be found in Hartshill, Mancetter or the larger towns. However, previous appeal decisions have concluded that the bus service here is frequent, runs throughout the week and at weekends, in both directions and it gives access to a full range of services in Hartshill, Atherstone, Nuneaton and Coventry. Given this background, the proposal would satisfy this criterion – a matter of fact agreed by previous appeal decisions. There is also reference to a site being within a reasonable safe walking distance of a settlement. In this case it is agreed that there is no pavement or footway into Hartshill. However as above, two different Planning Inspectors have concluded that the bus service offers an alternative means of access that outweighs the issue of the lack of a footpath.

The third criterion is that the site avoids areas which are vulnerable to flooding and where there may be other environmental hazards. The site is close to the railway where noise will impact on the site. This site is established with a number of residential occupiers, and it is not ideal for a residential use here, however again previous Inspectors have concluded that this criterion is met here. The fourth criterion is that the site should have access to essential utilities. This is the case here.

However, it is the fifth criterion that is of major concern – namely that the site should be capable of assimilation into the surroundings and landscape without any significant adverse effect. In this respect there are number of relevant Development Plan policies which assist with this assessment.

Policy BE2 of the Neighbourhood Plan says that development should recognise and complement the local character of the Parish. The explanation of the policy refers to the views both up to the higher ground to the south and from that ground out over the Anker Valley to the north. To a large extent therefore this relates to landscape impacts arising from new developments. The starting point for this is the North Warwickshire Landscape Character Appraisal. The application site lies in the Baddesley to Hartshill Uplands Area. This describes the main characteristics as being a “distinct and unified upland and steeply undulating landscape located upon a rocky escarpment. The landform gives rise to upland woodland, heath and marginal pastoral farmland. Although the area contains settlements and industry this is generally absorbed by the prevailing wooded upland character. The southern half is heavily disturbed by quarrying activities and related modern industries.” The issue is thus whether this proposal would significantly and demonstrably adversely cause harm to these characteristics. In overall terms it is considered not, as those impacts are confined to a very small part of the whole Landscape Character Area; there is other development in the immediate area that is also visible – Dobbies garden centre, the railway line, other houses, barns and stables - and there are significant established hedgerows in the area.

However, the proposal should be assessed cumulatively with the remainder of the Kirby Glebe site. If the two outstanding planning appeals are allowed, this current proposal would extend built development with a wholly residential and urban appearance into open countryside well beyond the established fishery tree planting. This conclusion would also apply if the appeals are dismissed. The application site would become an “island” of development separated spatially and visually from the consented area at Kirby Glebe by a hedgerow and tree planting. It is acknowledged that impacts would be mitigated to some extent because of the approved barn conversion, but the proposal is for development well over and above that which might be associated with its conversion.

Policies LP1, LP14 and LP30 of the Local Plan say that new development must enhance views into and out of the area and demonstrate a high quality of sustainable design that positively improve the individual settlement’s character, appearance and environmental quality of an area. This means that if a proposal is to be refused, it is necessary to show that significant harm would be caused to the environmental quality of the area. The proposal would extend the area currently occupied – both the consented and unconsented areas - with similar development by some 10% in land area and by 5% in terms of the increased number of permitted caravans. The % increases are much greater if they just take the consented area into account. In overall terms it is considered that the requirements of these two policies are not met - there is no positive improvement, rather the reverse.

Policy LP29 includes a list of matters which affect all development proposals. The two of most relevance here are those relating to vehicular access and to residential amenity. In respect of the second of these then it is not considered that this development would materially impact on the residential amenity of neighbouring residential occupiers in respect of loss or privacy, overshadowing or overlooking. Members are reminded that matters relating to loss of a view are not material planning considerations. In respect of access matters then it is of significant weight that the County Council as Highway Authority has objected to the proposal. That objection refers to the increased use of a substandard access that is unlikely to be improved as it is not within the control of the applicant. No evidence has been submitted with the application such as Road Safety Audits to suggest that there is not a highway safety issue here. The County Council’s objection has been referred to the applicant’s planning agent, but no response has been received and thus there is no rebuttal evidence available for the County Council to review its objection. The Highway Authority therefore considers that there is sufficient concern so as not to meet the guidance set out the NPPF. This is particularly pertinent in that highway issues will be one of the issues to be assessed in the forthcoming appeals where the County considered that the proposals for the “unconsented” area would not be acceptable. The current proposal intensifies the use of the same access. It is in these circumstances that substantial weight should be attached to this objection as the Council’s Core Strategy Policy LP29 (6) cannot be achieved.

### **Other considerations**

The site is not within a Conservation Area or other designated heritage, ecological or landscape area. It neither would affect the setting of any such areas.

## **Existing Provision and Level of Gypsy sites**

Policy LP5 has been found to be “sound” being based on up-to-date evidence following the adoption of the North Warwickshire Local Plan. The requirement is for a minimum of 19 pitches between 2019 and 2033. Appendix E shows that this requirement is being realised – 12 pitches to date. The requirement in there for Gypsy and Traveller accommodation is based on the evidence contained in an up to date and jointly commissioned Gypsy and Traveller Accommodation Assessment. The policy is also accompanied in its reasoned justification by a commitment to prepare a DPD on Gypsy and Traveller sites. This now appears in the Council’s latest Local Development Scheme of 2022. It is considered that in these circumstances, the Council is meeting its obligations to permit gypsy and traveller accommodation. Until the DPD is adopted, the Council will rely on the content of Policy LP10 for its determination of gypsy and traveller accommodation. It is considered that this is the proper approach towards the identification of site allocations to meet this requirement. The Draft Gypsy and Travellers DPD is likely to be adopted in early 2023.

An argument often used in respect of the Kirby Glebe site is that there could be a disproportionate level of gypsy and traveller sites in the Hartshill area. It is agreed that the PPTS in paragraph 14 says that “when assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community”. Paragraph 25 says that “Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of and do not dominate the nearest settled community and avoid undue pressure on the local infrastructure”. An approval here in this case, plus the accommodation on the consented site would lead to there being some 17 or 18 families in this general area close to Hartshill. That would not “dominate” that settlement. Moreover, it would not give rise to undue pressure on the local infrastructure as the Council’s adopted Plan allocates almost 400 houses in Hartshill and further numbers in Ansley Common. The two Kirby Glebe appeal decisions referred to above also came to the same conclusion. Moreover, no evidence has been submitted to show that there has been an adverse “social” impact directly arising from the established sites. As a consequence, a refusal based on this “harm” could not be supported.

## **The Applicant’s Case**

There is limited information for the application in support of the scheme and relation to the personal circumstances of the applicant. The application that has been submitted includes some evidence to indicate that the caravans are required on site to carry the works to convert the barn. It was proposed that the barn would be converted over a period of 3 years.

At the last visits to the property little to no works in respect of the conversion at all have been carried out – it being used for storage and as a gym. The original decision notice for the barn conversion allowed one caravan (condition 12) on the site while works on the conversion commenced and removed any rights inferred in the covering letter relating to other caravans for self-build projects (condition 13). As it stands there is limited evidence to indicate that the applicant is intending to convert the barn, or that the family as a whole has been involved with any conversion works. There has been no



evidence either of the intention to re-commence the fishery business. At present too, the original application site for the conversion has been extended well beyond that approved and the impact on the landscape is concerning.

The Council acknowledges the need to assess the personal circumstances of the appellants families. In respect there is no information submitted other than that the family is a travelling family. There has been no information supplied or volunteered in respect of the “best interests” of any children on the site. Members are reminded of their Public Sector Equality Duty and the advice in the PPTS at paragraph 24 where the personal circumstances of the applicant are relevant in making a determination in these cases. However, this is difficult to undertake in the absence of relevant information.

Members are asked to determine the application as submitted and separate that assessment from what may be on the site presently. It is considered that the harms caused under the Development Plan policies referred to in this report are sufficient to outweigh the applicant’s case and thus a refusal is recommended below.

## **Enforcement**

If this recommendation is agreed by the Board it will need to consider the expediency of enforcement action. The Board has already been reminded that there is development on the site. It is a material change in the use of land to a residential and that it is not that which is contained in the planning application as submitted – namely it covers a larger area with additional hard-standing and additional development. It also extends beyond the area that was consented for the barn conversion – see Appendix F. It constitutes a breach of planning control. The Board will need to decide whether or not it is expedient to serve an Enforcement Notice in respect of this breach. Such a Notice would require the cessation of the whole of the unauthorised area for the stationing of caravans for residential use; the removal of all ancillary structures and outbuildings, electric hook-up points, the whole of the walled and gated access and all other vehicles, trailers and equipment from the land, the removal of the whole of the hard surfaced area from the land and the removal of all materials equipment and debris associated with compliance of these requirements together with the reinstatement of the area to a grass surface. A compliance period of six months would be an appropriate period. The reasons for service are those highlighted in this report leading to the refusal recommendation. As the site is larger than that within the planning application considered above, it is considered that the harms caused are material greater than that identified in the assessment of that application.

There clearly will be an impact on the occupiers of this site if the Notice is served and it contains these requirements. This would in short make any occupants homeless which could result in “road-side” accommodation being used and to the disruption of any child’s education. However, the Board has not been made aware of any such personal considerations and the greater harms here relate to the need to uphold the up-to-date Development Plan policies, particularly when they relate explicitly to the overall requirements for gypsy and traveller accommodation in the Borough.

## Recommendations

A) That the application be **REFUSED** for the following reason:

1. It is not considered that the proposal accords with policies LP1, LP10, LP14, LP29 (6) and LP30 of the North Warwickshire Local Plan 2021 and Policies DP1 and BE2 of the Mancetter Neighbourhood Plan 2017, as supplemented by Sections 9 and 12 of the National Planning Policy Framework 2021, in that the site cannot be assimilated into the surroundings and landscape without significant adverse impact and neither has it been shown that it can provide safe and suitable access.

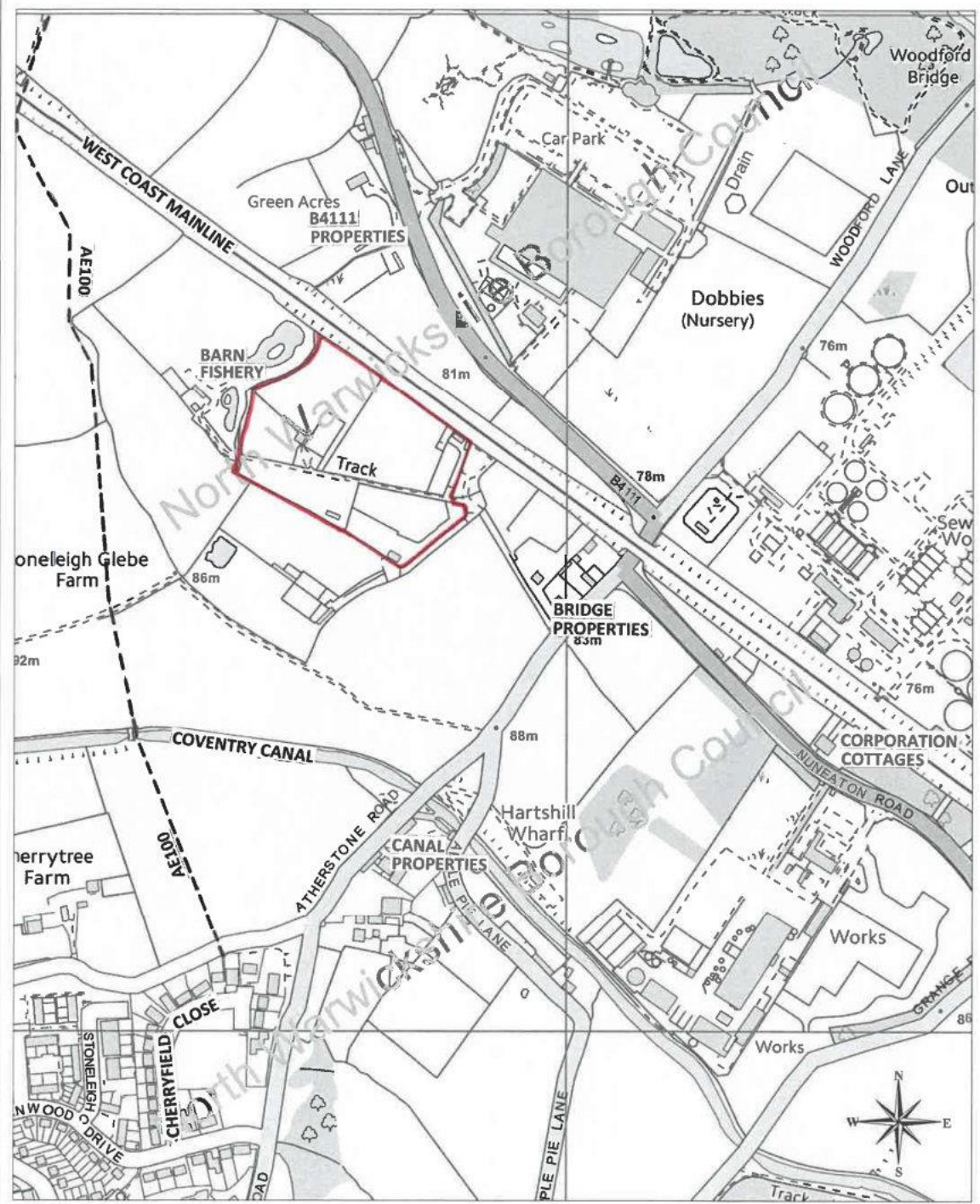
### Notes

a) The Local Planning Authority has met the requirements of the NPPF in this case by engaging the applicant to see if objections and representations could be overcome but that has not been the outcome.

B) That authority be given to the Head of Legal Services to issue an Enforcement Notice under Section 172 (1) of the Town and Country Planning Act 1990 in respect of the unauthorised development described in this report, for the reasons as also identified and with a compliance period of twelve months.

# APPENDIX A

## APPENDIX ONE



Date: 01/03/21  
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Ordnance Survey 100017910

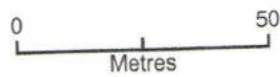




**APPENDIX B**

Barn Fishery

**PAP/2021/0044**



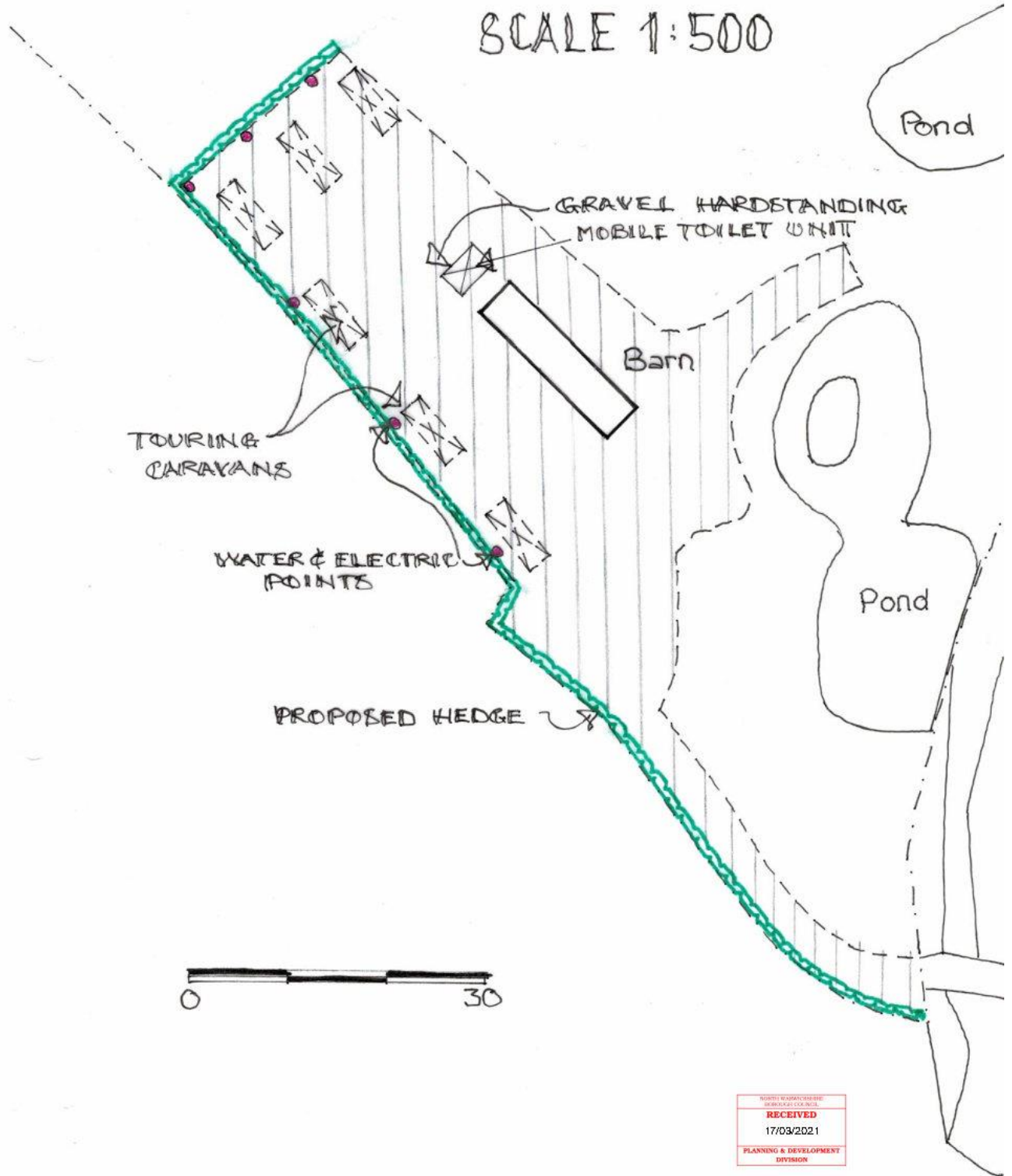
Plan Produced for: Philip Brown Associates Ltd  
Date Produced: 14 Jan 2021  
Plan Reference Number: TQRQM21014234643517  
Scale: 1:1250 @ A4

NORTH WARWICKSHIRE  
BOROUGH COUNCIL  
**RECEIVED**  
18/01/2021  
PLANNING & DEVELOPMENT  
DIVISION

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# SITE LAYOUT PLAN

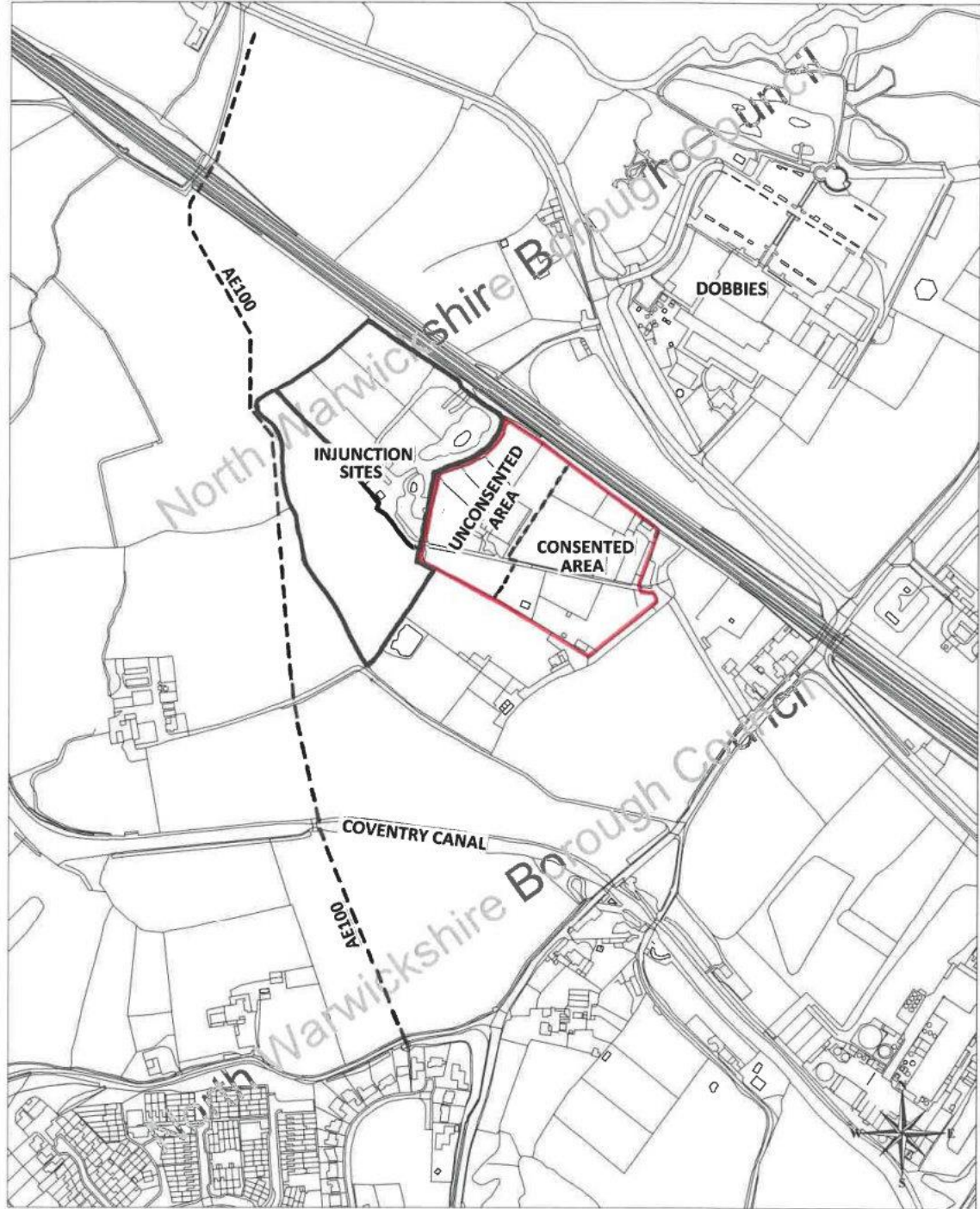
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# APPENDIX D

## APPENDIX TWO



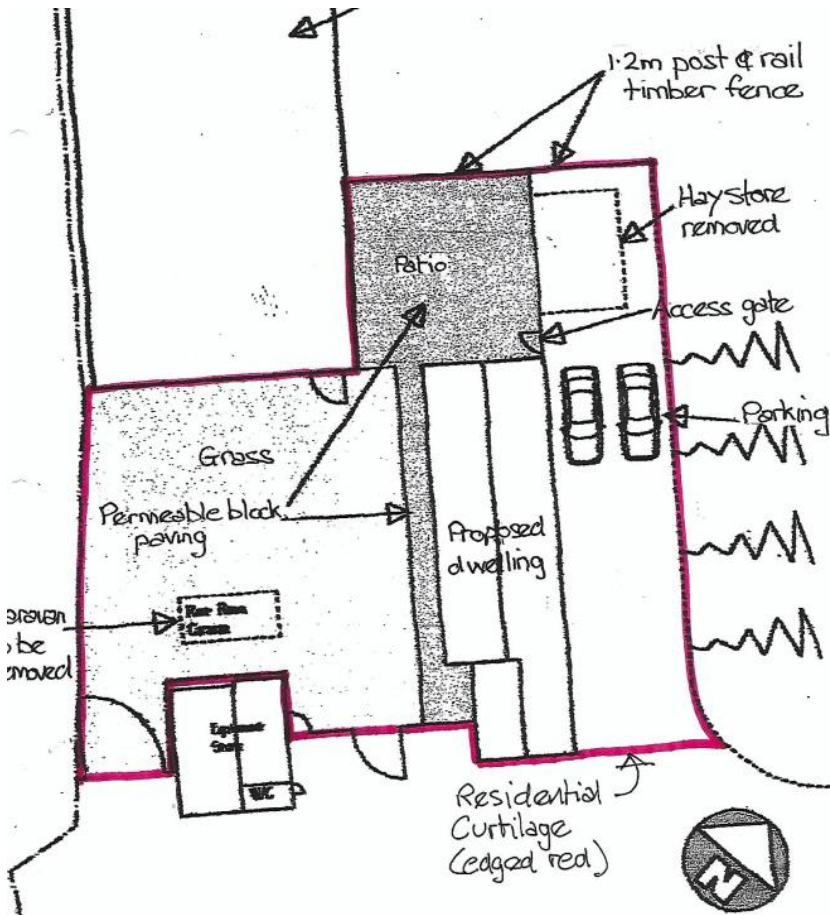
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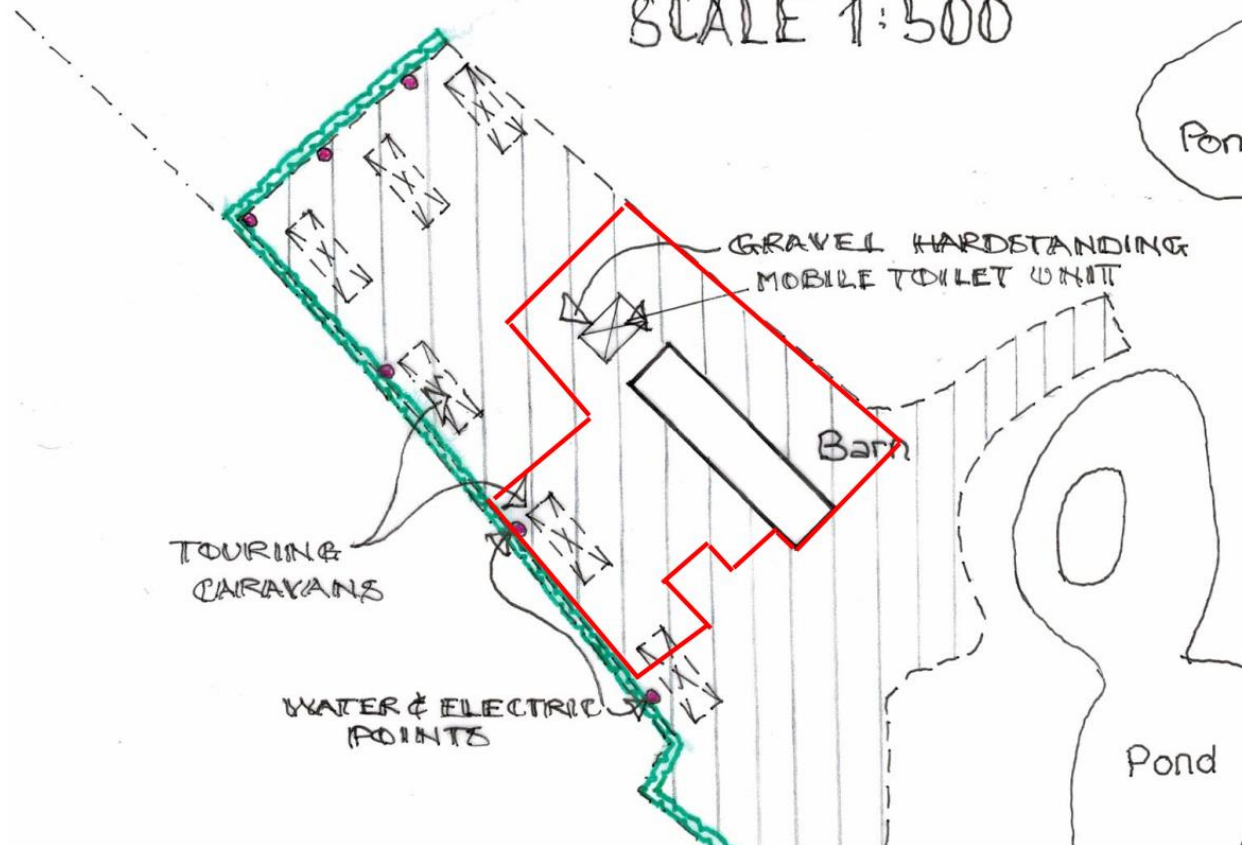


Table of Planning Permissions Granted

Planning Reference	Pitches	Date
<b>a) Kirby Glebe</b>		
PAP/2018/0723	2	25/1/19
PAP/2019/0086	1	26/2/19
PAP/2019/0203	4	16/5/19
<b>b) Mancetter</b>		
PAP/ 2018/0050	1	8/12/21
<b>c) Corley</b>		
PAP/2017/0547	2	29/8/19
PAP/2019/0529	2	9/12/21
<b>TOTAL</b>	12	



SCALE 1:500





## General Development Applications

(5/c) Application No: PAP/2021/0687

89-91 Main Road, Austrey, Atherstone, Warwickshire, CV9 3EG

Variation of condition no: 4 of planning permission PAUSAV/0602/96/FAP (PAP/1996/3856) dated 14/08/1996 relating to use of swimming pool for limited community use for private lessons, for

Mr & Mrs Hames

### Introduction

This application was referred to the May Board meeting, but a determination was deferred in order to invite the applicant to consider reducing the use of the pool and to consider an alternative access.

The applicant has proposed a reduction but wishes to retain the use of the access as originally proposed. This report brings matters up to date. A copy of the previous report is attached at Appendix A.

### Amended Proposal

The applicant has taken up the invitation to reduce the proposed use and the amended hours are shown below, compared with that originally proposed.

<b>Amended Hours</b>	<b>Original Hours</b>
Mondays 1000 to 1400 (4 cars per 30 mins – so 32 over the period) cars)	1000 to 1430 (4 cars per 30 mins – 40 cars)
Mondays 1630 to 1800 (lessons extended to 45 mins) mins) (1 car every 45 mins – so 2 cars over the period)	1630 – 1800 (lessons of 30 mins) (4 cars over the period)
Wednesday 1000 – 1215 of 30 mins) (1 car every 45 mins – so 3 cars over the period)	1000 – 1230 (lessons of 30 mins) (5 cars over the period)
Wednesday 1300 – 1400 (4 cars per 30 mins – so 8 over the period) cars)	1300 – 1430 (4 cars per 30 mins – 12 cars)
No Wednesday evening period lessons with 6 in each) (no cars) period)	1600 to 1900 (30 mins lessons) (36 cars over the period)

Fridays 1000 to 1400

(1000 to 1430)

(4 cars per 30 mins – so 32 over the period)  
period)

(40 cars over the

## **MAXIMUM USE**

154 car movements in the week  
in the week

272 car movements

The amended proposal was forwarded to the County Council and it maintains its objection based on there being a greater and significant increase in use of the access onto Austrey Lane which the Highway Authority consider is sub-standard and not capable of improvement – see Appendix B.

## **Observations**

As reported to the May Board, the use here was one that officers consider could be supported in principle, but it was the scale of the this that led to the main issue – extra traffic using the access off Flats Lane onto the Austrey Road. The Highway Authority is maintaining its objection, notwithstanding the amended, reduced scale of the use now being considered. It considers that the greater use of the access is still not acceptable.

The applicant disagrees. He argues that the 2021 appeal decision – copied into the Appendix to this report - established that the access was acceptable for the existing use plus the additional traffic arising from a two-bedroom bungalow, because the normal dimensions for the north-western vision splay could be relaxed given the local road conditions, a speed survey and the imposition of a condition requiring improvements at the junction and to widen the access track to three metres. He says that that condition and widening can be applied to the current proposal. Additionally, he argues that the County Council has not given sufficient weight to the fact that the proposal has reduced and that the use proposed would be staggered or spread over three days in the week and that too, it would be limited to a few hours on each of those days. The traffic would in his view be “absorbed” into existing traffic flows.

It is not considered that the impact of additional traffic on the capacity of the local highway network is the issue here. It is whether the increased use of this access would be acceptable in road safety terms given that there is sub-standard vision to the north-west. This situation was found to be acceptable for the appeal proposal, but the issue is whether it is also acceptable for the additional use as set out above in the amended proposal. The increase in movements over the appeal proposal is considered to be material – up to 150 additional movements a week - but the impact of that increase is mitigated by its limitation to certain days and hours. However, at those times there would be a material impact and it is that which causes the Highway Authority to maintain its objection.

As such, that Authority considers that the impact does not accord with the terms of the NPPF and thus by association, the content of Policy LP29 (6) of the Local Plan.

Substantial weight is thus given to this, and it is thus the case that that outweighs the benefits of the proposal.

This therefore leads to a recommendation of refusal.

The Board, if it resolves to refuse planning permission will need to consider the expediency of enforcement action. That would require cessation of the “mixed community use for private swimming lessons” and reversion to the terms of the original permission – a personal use under condition 4 of PAP/1996/3856. As a consequence, the community benefits of the use would be lost. The Board could consider “lesser” measures, whereby the Notice itself would apply conditions upon the maximum levels of use. However, that “threshold” is unknown, and it is for the applicant to show to the Highway Authority’s satisfaction that a lesser figure can be acceptable.

There will clearly be an impact here in the loss of this facility and the benefits that it brings. There will also be a financial impact on the owner and on the instructors who take the lessons. These impacts will need to be considered in the planning balance assessment which the Board undertakes in its determination of the application. It is considered that the highway objection is justified in this case because of the intensification of use proposed of the substandard access.

A compliance period of three months is appropriate in order that there is proper management of the reduction in bookings over a reasonable time.

### **Recommendation**

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

“It is considered that the greater use to be made of access arrangements onto Main Road through this proposal is substantial and that such an intensification of use is unacceptable given the physical characteristics of that access – width and visibility. This is of such a degree that there are highway safety concerns and as such the proposal does not accord with Policy LP29 (6) of the North Warwickshire Local Plan 2021 nor paragraph 111 of the National Planning Policy Framework 2021”

- b) That authority is given not the Head of Legal Services to issue an Enforcement Notice under Section 172 (a) of the Town and Country Planning Act 1990 for the reasons set out in the recommendation (a) above; that the requirements of that Notice are “the mixed community use for private swimming lessons of the pool” shall cease, and its use shall revert to that set out in Condition 4 of planning permission PAP/1996/3856) with a compliance period of three months.

### **Notes:**

- i) The Local Planning Authority has met the requirements of the NPPF in this case through engagement with the applicant in order to see particularly if the objection from the Highway Authority could be overcome so as to result in a positive outcome. That has not been possible and thus a decision has been made that accords with the Development Plan.

## General Development Applications

(5/a) Application No: PAP/2021/0687

89-91 Main Road, Austrey, Atherstone, Warwickshire, CV9 3EG

Variation of condition no: 4 of planning permission PAUSAV/0602/96/FAP (PAP/1996/3856) dated 14/08/1996 relating to use of swimming pool for limited community use for private lessons, for

Mr & Mrs Hames

### Introduction

This application is referred to the Board because the outcome may require an assessment of the expediency of taking formal enforcement action.

### The Site

This is a large detached residential property on the north side of Main Road set between another residential property to the west and the Austrey Baptist Church to the east. There is residential property and the village shop on the opposite side of the road.

The property has a large rear curtilage with a number of outbuildings. It has also been extended.

A location plan is attached at Appendix A.

### The Proposal

Planning permission was granted in 1996 for alterations and extensions to include the re-design of a swimming pool and conservatory. This permission was taken up and the approved works completed. The permission was subject to conditions, one of which, number 4, says that:

"The swimming pool hereby approved shall not be used for any purpose other than for purposes incidental to the enjoyment of the dwelling house known as Charity House, 89 Main Road, Austrey as such."

The reason for the condition was, "in order to prevent any unauthorised use of the property".

The current application seeks to vary this condition so as to read:

"The swimming pool shall be used for the incidental enjoyment of Charity House and limited mixed community use for private swimming lessons by appointment only, during the hours of:

Monday: 1000 to 1430 and 1630 to 1800 hours

Wednesday: 1000 to 1430 and 1600 to 1900 hours

Friday: 1000 to 1400 hours"

5a/1

The application arises as a consequence of a breach of the approved condition 4. Officers are satisfied that they had sufficient evidence to conclude that there had been a breach, resulting in the unauthorised use of the pool. The owner has acknowledged the breach and elected to submit this application to vary the condition in order to remedy that breach. Members are reminded that this course of action is enabled through planning legislation.

The applicant has indicated that the lessons cover children supported by a guardian in the pool guided by a swimming instructor on the side of the pool. This is done in groups rather than on an individual basis and with 5 or 6 sessions a day. The capacity of the pool is said to limit the usage to no more than groups of five. There is a swimming instructor present. Parking is to the rear of the house on an existing grassed area close to the pool. It is intended to pave this with grasscrete. It is said that there is space for eleven cars to account for a change over between lessons. One wheelchair accessible bay is to be included.

Vehicular access to the parking area for visitors is via a single lane track that emerges onto an agricultural access, known as Flats Lane, which in turn exits onto Main Road, between number 99 Main Road and 5 Kirtland Close.

#### **Other Material Background Information**

Members will recall that planning permission was granted on appeal in September 2021 for the conversion of an outbuilding at the rear of the main house for residential use. That permission included vehicular access via the same track referred to above and via the same stretch of Flats Lane onto Main Road.

A copy of this decision is at Appendix B and note should be taken of condition 3 which requires improvements to the access onto Main Road – i.e.:

“Development shall not take place until full details and specifications for the approved improvements to the access have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the works have been carried out in accordance with the approved details. The access shall thereafter be retained as approved”.

It is understood that the works to the outbuilding may have taken place and that occupation may have occurred in breach of this condition as no details have been submitted for discharge.

The location of the outbuilding the subject of this decision has been added to Appendix A.

Austrey Baptist Church and 87 Main Road are both Grade 2 Listed Buildings.

## **Consultations**

Warwickshire County Council as Highway Authority – It has remained concerned since the application was submitted because of the intensification of use of the access onto Main Road. The issue is the substandard visibility to the north from this access. The Authority is mindful of the appeal decision but is of the view that the proposed use under this application will intensify its use. Additionally, it cannot see how improvements can be made. The last response is at Appendix C.

## **Representations**

Austrey Parish Council – Whilst acknowledging the need for children to learn to swim, it has serious concerns for the following reasons summarised from its letter – attached at Appendix D.

- The breach here started in the summer of 2021 when there was a noticeable increase in traffic using Flats Lane. This is unsuitable for increased usage because of its surface, visibility and emergence opposite the very well used shop. The established access into the site in front of number 89 should be used.
- The use is not “limited” as evidenced from internet usage - 27 lessons are advertised per week. Moreover, usage is wider than the “community” with people travelling from much further afield than the village.

Eight letters of objection have been received from local residents repeating the matters raised by the Parish Council.

Eight letters of support have been received from users of the pool.

## **Development Plan**

The North Warwickshire Local Plan 2021 – LP1(Sustainable Development); LP2 (Settlement Hierarchy), LP15 (Historic Environment), LP21(Services and Facilities) and LP29 (Development Considerations)

Austrey Neighbourhood Plan 2017 – AP3 (Views); AP8 (5-Minute Walkable Neighbourhood)

## **Other Material Planning Considerations**

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

The National Planning Practice Guidance – (the “NPPG”)

## **Observations**

The site is within the village Development Boundary as defined by Policy LP2 of the Local Plan and thus the principle of the use of the pool for more than personal use is acknowledged, as services and facilities are to be supported within such a boundary. The issues with the case are thus to look at the potential impacts of the proposed variation in use.

The site is close to two Listed Buildings. The Council is under a Statutory Duty to have special regard to the desirability of preserving their settings and any features of special architectural or historic interest which they possess. The proposal has no direct impact on the fabric of either of the two heritage assets. However, because of their proximity – particularly that of the Church - it is the impact on their settings that is more important here. The proposal relates to the use of an existing building and thus their settings would not necessarily be affected as opposed to the erection of a new building.

However, the greater activity associated with the proposed use – traffic travelling along the track; the parking required and the general increase in activity will change the ambience of the setting of the Church. This however is considered to be at the lower end of less than substantial, but nevertheless that will still carry significant weight in the final planning balance.

None of the representations received focus on adverse impacts on neighbouring residential amenity. The curtilage of the site is large and thus impacts will be limited. However, there be a very limited impact because of increased traffic alongside the neighbouring house to the south as this adjoins the access onto Main Road.

The main matter here is the adequacy of the access onto Main Road to cater for increased usage.

The starting point is that there is an approval for some increased usage due to the appeal decision subject to some improvements being undertaken. Details of those improvements have not been submitted but they would include widening of the access track as this was marked on one of the plans approved at appeal. The inspector in coming to her decision considered that, "traffic flow and speed in the locality of the access is slowed by on-road parking by customers of the post office/shop on the opposite side of Main Road and by the frequent turning of vehicles in the road." She continues by saying that she "observed these conditions" and concluded that "these factors lead to an overall reduction in traffic speeds in the area" – see Paragraphs 8 and 9 of Appendix B. She came to the conclusion that the traffic generation from the proposed two bedroomed dwelling would not be material in terms of increased vehicle movements. She therefore was prepared to agree to the access being used, despite its sub-standard visibility to the north.

The applicant asks the Board to focus on the Inspector's findings and reasoning – in other words lower traffic speeds in the vicinity of the access enable more use of the access despite the sub-standard visibility, provided that the improvements are completed.

The Highway Authority is saying that the proposal will increase traffic using this access – 5/6 sessions a day with 4/5 people visiting suggests a minimum of 40 movements a day. This is considered not to be safe even given the lower traffic speeds. Additionally, third party parking in Flats Lane can reduce the available width here, thus adding to the concern.

Policy LP29 (6) of the Local Plan requires "safe and suitable access to a site for all users". The NPPF says that " development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

5a/4

The Inspector's decision and the reasoning behind it are considered to be material, but that should not lead to the conclusion that the access is acceptable for all traffic movements using the access. That may well be the case, but the applicant has provided no traffic assessment and no evidence to support his view that the increased use would not lead to adverse road safety impacts with the current physical arrangements at the access. Such evidence would need to take on board that improvements to the northern visibility are not possible because of third party land and physical "pinch-points".

It is considered that the applicant has not proven to the satisfaction of either the Highway Authority or officers that the proposal will satisfy both Local Plan Policy LP29 and the relevant paragraph of the NPPF. However before considering a possible refusal, the Board should make a judgement as to whether the benefits of the proposed use would outweigh this potential refusal.

There is merit in the provision of swimming lessons and this carries weight. However, the benefit should not be open-ended. There are clear highway issues here as well as the less than substantial harm to the setting of the heritage asset. The intensity of use could be restricted by conditions such that the weight to be given to the benefit would outweigh these harms. The applicant considers that the hours and numbers as proposed would form the basis of such conditions. That however, in the view of the Highway Authority and officers is too great a use. It would need to be less, but the applicant has offered no reduction, or the evidence to support the proposed or a lesser usage. Moreover, whilst conditions are appropriate, they would have to satisfy Planning Guidance. As such the enforceability of such conditions is considered not to be straight forward without quite sustained monitoring. For all of these reasons it is considered that as presently proposed, the benefits do not outweigh the harms.

As such a recommendation of refusal is to be considered.

That as Members are aware, will lead to an assessment having to be made on the expediency of enforcement action. Given the strength of the highway concern it is considered that it would be. The requirements of that Notice would be to revert to incidental use as per the original condition. However, that would mean the loss of the benefit which does carry weight. Lesser measures are an option here, but they are unable to be defined without the relevant highway evidence, or the possibility of use of an alternative access – that at the main house.

A recommendation is set out below which may thus be more proportionate in all of the circumstances here.

### **Recommendations**

- a) That the applicant be advised that the Council is minded to refuse planning permission for the reasons given in this report and that as a consequence it is considered that it is expedient to issue an Enforcement Notice requiring reversion of the use of the pool to that defined by the original condition number 4.
- b) That the applicant be invited to review the proposal through reducing the use of the pool and to consider an alternative means of access.



- c) That in doing so, the applicant be advised that it is essential to provide satisfactory technical evidence to show to the Council's satisfaction that that reduced use is acceptable in highway terms.
- d) That the applicant provides robust evidence to show that the improvements to the access as agreed by the 2021 appeal decision have been completed in full, to the written satisfaction of the Local Planning Authority.
- e) That the Board be notified of progress on these matters.

5a/6

5c/41

APPENDIX A



5a/7

5c/42

## Appeal Decision

Site visit made on 22 April 2021

**by Elaine Benson BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

**Appeal Ref: APP/R3705/W/21/3267144**

**89-91 Main Road, Austrey CV9 3EG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
- The appeal is made by Mr Darren Burchell against North Warwickshire Borough Council.
- The application Ref PAP/2020/0303, is dated 18 June 2020.
- The development proposed is conversion of outbuilding to dwelling.

### Decision

1. The appeal is allowed and planning permission is granted for conversion of outbuilding to dwelling at 91 Main Road, Austrey CV9 3EG in accordance with the terms of the application, Ref PAP/2020/0303, dated 18 June 2020, subject to the conditions on the attached Schedule.

### Preliminary Matters

2. The Council confirms that had it had the opportunity to determine the planning application, it would have been refused on highway safety grounds.
3. Since the submission of the appeal, the revised National Planning Policy Framework (the Framework) has been published. Since there is no change to national policy and guidance in relation to the matters at issue in this appeal, the comments of the main parties on the Framework have not been sought.

### Main Issue

4. The Council raises no objections to the principle or most details of the proposed development. Having regard to all of the evidence, including the status of the relevant development plan policies as confirmed by the Council, there are no reasons to disagree. The main issue in this appeal therefore is the effect of the proposed development on highway safety.

### Reasons

5. It is proposed to convert a building comprising a garage and workshop to a dwelling. It is one of a number of outbuildings at the rear of No 89-90 Main Rd, a substantial dwelling in extensive grounds.
6. The appeal building would be served by an existing access which is used by the appellant to reach the rear of their property. The access leads from the appeal site onto Flats Lane before joining Main Rd. Flats Lane also provides access to the garage belonging to the neighbouring property (No 99) which opens onto it. The lane is also used by agricultural vehicles accessing the fields to the rear. A public footpath runs alongside the lane.

<https://www.gov.uk/planning-inspectorate>

7. At issue in this appeal is whether there would be a safe and suitable access to the site at the junction of Flats Lane and Main Rd. The Highway Authority considers it to be substandard due to the limited visibility at the junction of these 2 roads. The required standard of 2.4m x 43m can be achieved to the south. However, to the north visibility is restricted by planting and the building line. It is noted that this standard can be reduced in situations where there are low traffic speeds.
8. Main Rd is the principal route through the village, with streetlights and housing on both sides. The speed limit is 30mph and there are no parking restrictions. There are multiple lay-bys for parking along the length of the road, including directly opposite the site access, and most properties have off street parking. Notwithstanding the pandemic's effect on the number of traffic movements, the submitted road speed data establishes traffic speeds along Main Rd as below the 30mph limit. Moreover, as confirmed by local residents, traffic flow and speed in the locality of the access is slowed by the on-road parking by customers of the post office/shop on the opposite side of Main Rd and by the frequent turning of vehicles in the road. I also observed these conditions and it appears to me that these factors lead to an overall reduction in traffic speeds in the area.
9. Furthermore, in terms of the potential intensification of the use of the access, it is necessary to consider its existing use, including by agricultural vehicles. I am not convinced by the evidence that the number of vehicle movements associated with the occupation of a 2 bedroomed dwelling would have a material effect on the access onto Main Rd such as to harm highway safety. Pedestrians crossing the road at this junction would be aware of the potential for vehicle movements at this point, particularly as the access is already there. In my experience this situation would be little different to many accesses in village and rural locations. Furthermore, the access track would be widened to a uniform 3m along its length which would give additional space for users of the public right of way.
10. In accordance with the aims of the Framework and on the basis of the site-specific considerations, I conclude that the appeal proposal would not lead to an unacceptable impact on highway safety and there would be no severe residual cumulative impacts on the road network. Accordingly, the proposal would comply with the requirements of Core Strategy Policy NW10 (6) which requires proper access to development sites; Policy LP31 of the Submitted Local Plan which continues this approach, and the Proposed Modification MM74 to Policy LP31.

*Other Matters*

11. I have had special regard to the desirability of preserving the settings and any features of special architectural or historic interest which the nearby listed buildings Austrey Baptist Church and 87 Main Rd possess. I concur with the Council that due to the distance between the appeal site and the listed buildings and the presence of intervening buildings there would be no harm to, or loss of, the significance of these designated heritage assets or their settings.
12. There would be minimal alterations to the appearance of the appeal building and new windows would be screened by boundary fencing. There would be no overlooking of adjoining properties or any other harm to the living conditions of neighbouring occupiers.

13. In respect of concerns about potential flood risk in the area resulting from the proposal, the proposal is for a conversion and not new-build development and any surface water would be disposed of by soakaway. Notwithstanding the concerns of the Austrey Parish Council about incidents of flooding and flood damage nearby, there is no convincing evidence that there would be an increased flood risk here. In this regard I share the Council's view.

**Conditions**

14. A condition is necessary which sets out the approved drawing for the avoidance of doubt and in the interest of proper planning. In the interests of visual amenity and highway and pedestrian safety, details and specifications for the approved improvements to the access are required to be submitted to and approved in writing by the local planning authority for approval and thereafter retained.

15. The Council suggested a condition restricting the construction of outbuildings under Class E of the General Permitted Development Order. The Framework and the Planning Practice Guidance indicate that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this specific case the resulting dwellinghouse would have a large garden area, the site is close to the village boundary and it is bounded by a public footpath and nearby fields. There is therefore the potential for buildings otherwise permitted under Class E to harm visual amenities. In this regard I have also considered the Austrey Neighbourhood Plan Policies AP2 and AP3 which among other things seek to retain access to surrounding fields and to protect important views. Accordingly, for these reasons the suggested condition has been imposed.

16. The installation of an electric vehicle charging point is required by condition in the interests of sustainability. A further condition was suggested requiring the submission of a Construction Management Plan. However, as the proposal is for the conversion of a small-scale existing building which is likely to require fewer construction material deliveries and personnel than a new build development, and because the access to the site already exists, I consider that such a condition would be unreasonable and unduly onerous.

**Conclusion**

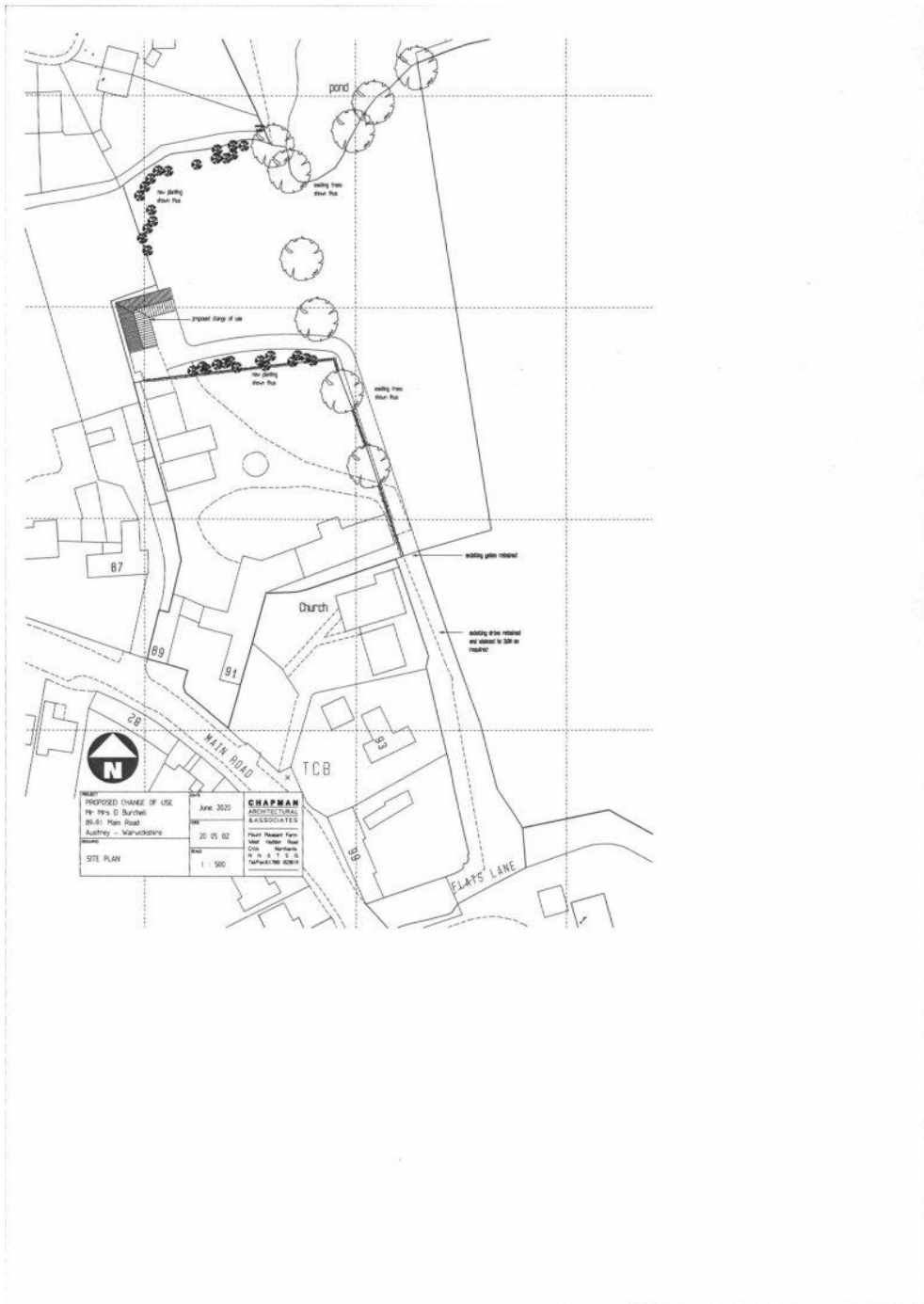
17. I have had regard to all other matters raised, including objections to the proposal from the Parish Council and neighbouring occupiers, but none affect my conclusions. For the reasons set out above the appeal should be allowed subject to the imposed conditions.

*Elaine Benson*

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 20 05 02 and 20 05 04.
- 3) Development shall not take place until full details and specifications for the approved improvements to the access have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the works have been carried out in accordance with the approved details. The access shall thereafter be retained as approved.
- 4) Notwithstanding the provisions of Class E of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no buildings or structures incidental to the enjoyment of a dwellinghouse shall be constructed.
- 5) Prior to the first occupation of the approved development, an electric vehicle charging point shall be installed and maintained in full working order at all times.



5a/12

5c/47

**Jeff Brown**

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**From:** Chris Lancett <chrislancett@warwickshire.gov.uk>  
**Sent:** 22 April 2022 16:35  
**To:** plot64@talktalk.net  
**Cc:** Christina Fortune; 'Pete Hames'; Jeff Brown  
**Subject:** Re: Planning Application PAP/2021/0687: Charity House, 89-91 Main Road, Austrey

OFFICIAL

Afternoon All,

Apologies for the late response, got caught up on another application.

The Highway Authority still has concerns with the proposals. The main concern of the Highway Authority relates to the sub-standard visibility to the north of the access, and it is not considered that the inspectors previous condition covers the visibility.

The Inspectors decision gave significant weight to the level of traffic generation from the development, and they considered that a 2-bed dwelling would not result in a significant increase such that the development would result in a detriment to highway safety. The Appeal decision outlines that the inspector acknowledged the sub-standard visibility however considered that the dwelling would not intensify the use of the access significantly. The condition imposed by the inspector requires details of the access improvements previously proposed i.e resurfacing/widening of the access track to the rear rather than the visibility splays.

The condition being used in this instance would not overcome the concerns of the Highway Authority.

A commercial use is now being proposed which would result in more movements. From the previous details there could be 5 or 6 sessions a day all with 4 people attending. So, there could be a minimum of 40 movements a day on opening days just from people attending.

This would be a significant increase in movements through a sub-standard access which is considered to be detrimental to highway safety.

As outline in my previous emails the measurements do not appear to be correct on the drawings so the required splay does not appear achievable, significant alterations may be required to the kerb line which would not be supported.

It should also be noted that it is unclear if the required width of the access could be provided. As outlined by local residents and as seen on the Highway Authority's last site visit vehicles were parked within Flats Lane (assumed to be No.99) reducing the available width. If the occupiers of No.99 either own that area of Flats Lane or have access rights to park there, how would the width be maintained to allow 2-way flow?

Regards,  
Chris

**Chris Lancett GradCIHT**  
Development Management Engineer  
Planning Delivery  
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Warwickshire County Council

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[www.warwickshire.gov.uk](http://www.warwickshire.gov.uk)



**From:** Heather Hadley  
**Sent:** 27 January 2022 15:28  
**To:** planappconsult  
**Cc:** Heather Swan; Helen Simpson; jacqui@austrey.co.uk; sam; Tristan Fraser; Tony Treadwell; Lynsey Treadwell  
**Subject:** Planning Application PAP/2021/0687

Dear Christana Fortune,

**Ref - Planning Application PAP/2021/0687 - 89-91 Main Road, Austrey**

I write on behalf of Austrey Parish Council to register our concerns regarding the application to change the swimming pool from residential use to commercial use. Whilst we are keen for children to learn to swim we have serious concerns with this application for the following reasons:-

**Highways/ Traffic**

The applicant has been breaching the planning restriction on the swimming pool by providing swimming lessons since summer 21. We are aware of this because of the very noticeable and concerning increased traffic around the track known as 'Flats Lane'. The area known as Flats lane is actually a muddy track providing an occasional entrance to the land at the rear of Charity House. It is in no way sufficient for regular vehicular usage and is a track regularly used by people out for a walk in the village. A previous application to build a new home using this entrance was rejected only 2 years ago citing 'highways' as one of the reasons for rejection.

The mud track turns out opposite the village shop and Postoffice. This is constantly a busy area with cars parking up outside the shop, and has become increasingly busy with the number of new homes built in our village over the past 5 years. The track also turns out right next to Kirtland Close and opposite The Green. Visibility is not good especially with the potential for traffic coming from several angles. It is simply not safe to be using on a regular basis and it's current continued use is causing many residents distress. There is also a concern that further usage will create mud that will encroach on the roadway outside the shop.

If the usage of the pool is for 'limited use' as stated in the application there should be no reason why the main house entrance could not be used and the 'small number of visitors' park on the driveway. The pool is attached to the main house after all so this would make complete sense. There should be absolutely no reason why Flats Lane should be used for this purpose other than convenience for the owner of Charity House to the detriment and danger of the residents of Austrey. Cars attending for swimming lessons should also not be parked up along the road outside Charity House as this also has the potential for accidents restricting the visibility of cars manoeuvring outside the shop and around Kirtland Close and The Green.

Basically, we feel very strongly that the area is not safe or suitable for the increase in traffic this business enterprise is already generating and could continue generating in future.

**Volume of Usage**

The applicant states in their application that the swimming pool will have 'limited community use for private lessons'.

We are already well aware of the usage as the applicant has now been providing lessons for a number of months and is advertising on the Internet. We can confirm in our opinion the usage should not be classed as 'limited'.

There are currently 27 lessons advertised per week of 30 minutes. This is not 'limited usage' but more in line with the number of lessons a town leisure centre would be offering. I doubt very much North Warwickshire Borough council would pass planning for a leisure centre right in the middle of Austrey village. The applicant also states the lessons are for the 'local community'. We already know from the sheer level of traffic people are not arriving on foot and are probably travelling in from other villages. Those travelling from other villages already have the option of swimming facilities in other areas such as Tamworth, Atherstone and Hinckley.

This is not just one or two lessons per week but a business operation on a large scale and is totally inappropriate for its setting.

We hope you will give our comments serious consideration. We are happy to meet up with you explain and discuss the traffic concerns if required.

Yours sincerely,

Heather Hadley  
Parish Councillor  
Austrey Parish Council

## APPENDIX B

Your ref: PAP/2021/0687  
My ref: 210687



### Communities

PO Box 43  
Shire Hall  
Warwick  
CV34 4SX

Tel: (01926) 412359  
chrislancett@warwickshire.gov.uk  
[www.warwickshire.gov.uk](http://www.warwickshire.gov.uk)

Mr J Brown BA Dip TP MRTPI  
Head of Development Control Service  
The Council House  
South Street  
Atherstone  
CV9 1DE

**FAO: Christina Fortune**

21<sup>st</sup> June 2022

**PROPOSAL: Variation of condition no: 4 of planning permission  
PAUSAV/0602/96/FAP (PAP/1996/3856)  
LOCATION: 89-91 Main Road, Austrey, Atherstone**

Warwickshire County Council, hereby known as the 'Highway Authority', has undertaken a full assessment, of the planning application, at the request of North Warwickshire Borough Council in its capacity as the Local Planning Authority.

Since the initial response the Highway Authority has had multiple discussions/emails etc between the applicant/agent and LPA to discuss the potential affects of various proposed sessions. The most recent proposal is to have the following sessions:

*Monday Mothers & baby 10-2pm only - losing 30 minutes compared to current.  
4 cars per 30 mins.*

*Monday 4:30 - 6pm family swim specific to disabled instruction where needed - making the lessons 45 minutes (compared to current 30 mins).  
1 car every 45 mins.*

*Wednesday plus size ladies with access / mobility needs 10-12.30  
1 car every 45mins*

*Wednesday mother & baby 1-2pm only - losing 30 minutes compared to current  
4 cars every 30 mins*

*No Wednesday evening (losing 3 hours)*

*Friday 10-2pm as before  
4 cars every 30 mins*

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*Working for  
Warwickshire*

5c/51

The Highway Authority still has concerns with the proposed use as the existing access is considered to be sub-standard.

Guidance suggests that accesses onto roads with a speed limit of 30mph should be provided with visibility splays with an 'x' distance of 2.4 metres by 'y' distances of 43 metres. In this instance the access is located on the outside of a bend so an additional splay is required at a tangent to the kerbline to ensure other vehicles/highway users would be visible over the entire length of the 'y' distance. It is this additional splay that cannot be achieved due to the location of the existing building line of No.99. A plan has been provided to show the splay would be achievable from an 'x' distance of 2 metres however the Highway Authority does not consider that this location would be suitable for such an 'x' distance to be used. In order for a 2 metre 'x' distance to be considered guidance suggests the area should be both low-speed and very lightly-trafficked.

The agent considers that the previous appeal decision on the site (conversion of workshop into dwelling) outlines that the inspector considered the existing access to be 'safe' and that an 'x' distance of 2 metres would be acceptable.

It is not considered by the Highway Authority that the inspector found the access 'safe' nor did they agree that a reduced 'x' distance would be acceptable. The inspector's decision came down to the whether or not the development would be an intensified use of the access. The inspector stated - *'I am not convinced by the evidence that the number of vehicle movements associated with the occupation of a 2 bedroomed dwelling would have a material effect on the access onto Main Rd such as to harm highway safety.'*

On receipt of the previous speed survey advice was taken from both WCCs Transport Planning and Road Safety team to determine whether the location would quantify as a slow speed and very lightly trafficked area. The advice given from both was that this area was not considered to be either so a 2 metre 'x' distance should not be supported.

The Highway Authority had concerns with a 2-bed dwelling so would not support any commercial use on-site. Although lessons are not proposed every day the development would still result in a significant intensification of use.

Based on the above session times/amounts the development could result in a total of 154 two-way movements per week, with 68 on Monday, 22 on Wednesdays and 64 on Fridays. This level of trip generation is considered to be significant so as to have a severe impact on highway safety through the intensification of a sub-standard access.

It is also unclear if the numbers are robust. The Monday evening and Wednesday morning sessions are shown as 1 vehicle per 45 minutes, and these sessions are stated as Family Swim and plus size ladies with access/mobility needs respectively. Would these sessions therefore be 1:1 sessions with only a single family permitted or a single person allowed per session?

It is also unclear what could change in the future. Should the re-worded condition not be specific to the types of sessions proposed the Wednesday evening sessions could

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potentially be converted into mother and baby sessions for example potentially producing further vehicular trips.

Based on the appraisal of the development proposals and the supporting information in the planning application the Highway Authority submits a response of **OBJECTION**, for the following reasons;

1. It has not been shown that the variation of condition would not result in a significant increase in vehicular movements using a sub-standard access.
2. It has not been shown that the required visibility splays would be achievable.

Yours sincerely

*Chris Lancett*

Chris Lancett  
Development Group

**\*\*FOR INFORMATION ONLY\*\***  
**COUNCILLOR HUMPHREYS – POLESWORTH**

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5c/53

**Agenda Item No 6**

**Planning and Development Board**

**4 July 2022**

**Report of the  
Head of Development Control**

**Former Daw Mill Colliery**

**1 Summary**

- 1.1 The Board is brought up to date as a consequence of the issue of an Enforcement Notice by the Warwickshire County Council.

<p><b>Recommendation to the Board</b></p> <p><b>That the report be noted.</b></p>
---

**2 Consultation**

- 2.1 Consultation has taken place with the relevant Members and any comments received will be reported at the meeting.

**3 Background**

- 3.1 Members will recall the Planning Inquiry for the redevelopment of this former colliery that was heard several years ago now. The appeal by Harworth Estates Ltd was dismissed. One of the central issues dealt with at the Inquiry was the question of whether the site was “previously developed land” or not. The decision of the County Council in 1996 to approve a “green” restoration scheme in the event of the cessation of mining operations was referred to in this context. Following the dismissal of the appeal, the Borough Council and the local community were seeking implementation of the approved scheme.

**4 Observations**

- 4.1 That has not commenced and thus the County Council has now issued an Enforcement Notice requiring implementation of the approved restoration scheme within five years of the date of the Notice becoming extant. Members should be aware that there is the right of appeal against the service of the Notice.

4.2 The Notice is welcome, and officers will continue to keep the Board up to date.

## 5 Report Implications

### 5.1 Finance and Value for Money Implications

5.1.1 There are no implications presently but should the Borough Council wish to be involved in any appeal proceedings there may be costs associated with that work.

### 5.2 Legal Implications

5.2.1 Even though this Council has not issued the Enforcement Notice, regulations made under the Town and Country Planning Act 1990 allow this Council to serve a statement of case and appear in any inquiry held to determine an appeal against the notice. If an appeal is commenced by the officers will consider the grounds on which it is based and advise Members as to the merits of participating in the inquiry.

### 5.3 Environment, Climate Change and Health Implications

5.3.1 The “natural” restoration of the site would fully accord with the Development Plan and support the Council’s draft Climate Change Action Plan in the context of increasing biodiversity

### 5.4 Links to Council’s Priorities

5.4.1 This action if successful would accord with the Council’s priority of protecting the rural character of the Borough and the openness of the Green Belt.

The Contact Officer for this report is Jeff Brown (719310).

## Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date

## **Agenda Item No 7**

### **Planning and Development Board**

**4 July 2022**

#### **Report of the Head of Development Control**

#### **HS2 Subgroup**

### **1 Summary**

- 1.1 At the February 2022 meeting of the Planning and Development Board, the Board resolved to establish an HS2 Subgroup and that a group of Members be convened to review HS2 proposals.
- 1.2 This report seeks to establish the broad terms of reference and operating practices of the HS2 Subgroup, including arrangements for the delegation of HS2 Consents decisions. It further summarises the HS2 consenting regime and the obligations of North Warwickshire Borough Council in determining consents.

#### **Recommendation to the Board**

- a) **That the operational arrangements for the HS2 Subgroup set out in the report be agreed; and**
- b) **That the Planning and Development Board confer delegated authority for HS2 Related Consent Decisions to the Head of Development Control in consultation with the HS2 Subgroup.**

### **2 Background**

- 2.1 At the February 2022 meeting of the Planning and Development Board, the Board resolved to establish an HS2 Subgroup. The group of Members, supported by Officers, would be convened to review HS2 proposals.
- 2.2 The constitution of the Subgroup has since been agreed as three members from the leading group and two from the opposition group. The initial nominated members are:  
Councillor M Simpson – Chairman  
Councillor D Reilly  
Councillor D Humphreys  
Councillor H Phillips  
Councillor P Morson



- 2.3 An inaugural meeting of the Subgroup took place on 13 May 2022 to discuss issues concerning the determination of HS2 related applications and to discuss the role and operation of the Subgroup. This report is the output of that discussion.

### **3 The HS2 Consenting Regime**

- 3.1 North Warwickshire Borough Council, in signing the HS2 Planning Memorandum, is a 'Qualifying Authority', meaning it has a wider range of powers and is able to approve the detailed design of permanent structures such as viaducts.

- 3.2 The nominated undertaker (High Speed Two (HS2) Limited ('HS2 Ltd')) and the HS2 Phase One qualifying authorities have a responsibility to make the HS2 Phase One planning approval regime work and to take a proactive approach to resolve any concerns/issues that may arise. Parliament and the Act place great importance on the expeditious handling of requests for approval. It is intended that the operation of the HS2 Subgroup will play a pivotal role in facilitating such expeditious handling of requests for approval.

- 3.3 The Guide, attached as Appendix 1, offers Member's information about the background to the High Speed Rail (London - West Midlands) Act 2017. It sets out the provisions for the handling the planning related applications to the Council. It particularly sets out the arrangements for handling consents under Schedule 17, the relevant consent for built form such as viaducts, embankments, over bridges. Members are invited to refer to it and to keep the Guide as a future reference material.

### **4 HS2 in North Warwickshire Update**

- 4.1 To date, the majority of HS2 related applications received have been for 'early works', mostly minor matters such as the formation of replacement ecology habitats, however, the 'main works' elements of the scheme are now coming forward. Members will be aware of the recent Schedule 17 application proposing works incorporating a at tunnel portal at Water Orton, that is the subject of an appeal. There are two further current Schedule 17 applications for scheme elements in the vicinity of Water Orton.

- 4.2 It is anticipated, from the current Forward Plan, that up to 21 consents, involving substantial works, will be presented for either pre-application or formal determination in the current calander year. This will amount to a sharp rise in workload and the effective operation of an HS2 Subgroup will facilitate the robust and timely consideration of proposals and their implications for the Borough and its residents.

### **5 Schedule 17 Applications**

- 5.1 Members are reminded that Schedule 17 consents are not the same as applications for planning permission. The HS2 Act grants permission in principle for the construction of the railway (akin to an outline planning permission) and

the Schedule 17 consenting process seeks approval of detailed plans and specifications (akin to an Approval of Reserved Matters application). The range of grounds for possible refusal are limited and are set out in the appended Guide.

- 5.2 In the same manner as the grounds for consideration are limited, so too are the consultation requirements. There are a limited number of statutory consultees – Natural England, the Environment Agency and Historic England. Additionally, County Highways, Ecology, Archaeology and Public Rights of Way Teams are consulted. Local discretionary consultations will be carried out with the Special Management Zone Chairman and the affected Parish Council and Borough Councillors. Where appropriate, and on a case by case basis, directly affected local residents will be notified.
- 5.3 Prior to the formal submission of a Schedule 17 application, HS2 will submit the proposal in draft as a pre-application consultation. This is with the objective of identifying information requests and issues for resolution at an early stage so that the application, once submitted, can proceed swiftly, within the prescribed 8 week period. The HS2 Subgroup will be notified of the proposals at this pre-application stage and offered opportunity to identify issues, concerns and/or potential opportunities.

## **6 The HS2 Subgroup**

- 6.1 Given the obligation to handle HS2 consents expeditiously, it is important that pre-application feedback and formal consents decisions can be processed without undue delay. The monthly schedule for the Planning and Development Board would hinder timeliness. It is therefore proposed to schedule fortnightly Subgroup meetings.
- 6.2 The Subgroup will:
- Receive reports of new pre-application requests received and be afforded opportunity to comment on the proposed scheme(s).
  - Be consulted on the receipt of new HS2 related consents and be notified of any material representations received.
  - Be notified of any consultations received from neighbouring authorities and be afforded an opportunity to comment.
  - Be kept informed of HS2 Forward Plans for the anticipated submission of new consents.
  - Consider the potential for opportunities arising from HS2, both strategically and locally.
  - Liaison with HS2 representatives where appropriate and necessary
  - Consider issues in relation to Undertakings and Assurances.
- 6.3 The list at paragraph 6.2 above is not an exhaustive list, as the Subgroup will act appropriately to ensure that qualifying authority obligations are met and specific issues can be addressed in a collaborative manner with HS2.
- 6.4 To facilitate the timeliness of decision making, it is proposed that the authority for making HS2 consent related decisions be delegated to the Head of Development Control in consultation with the HS2 Subgroup.

## 7 Enforcement

7.1 Approvals under the planning regime in the Act are enforceable under the Town and Country Planning Act 1990. It is for the local planning authority to decide whether and to what extent it is expedient to take action to enforce planning control in relation to a breach of condition or approval which they consider has taken place within their area. Though the Subgroup will be consulted in respect of HS2 related enforcement matters, it is not proposed that the subgroup will have any delegated responsibility for authorising enforcement action. Given the national importance of the HS2 scheme, and the potential impacts of enforcement action, it is proposed that powers to authorise enforcement action shall remain with the full Planning and Development Board.

## 8 Report Implications

### 8.1 Finance and Value for Money Implications

8.1.1 The operation of the subgroup will reduce time taken to determine applications. The officer time required for the processing of HS2 consents is either funded by HS2 or reclaimable from HS2 under an agreed SLA.

### 8.2 Legal Implications

8.2.1 The report recommendations set out a properly constituted remit for the decision making subgroup. Specific legal advice will be given in relation to any matter which is considered by the Sub-group. Board members should note that the establishment of the Sub-group does not prevent the Board from continuing to make decisions on matters within its terms of reference and, should it wish to do so, the Board may sit as a whole to consider an application.

### 8.3 Environment, Climate Change and Health Implications

8.3.1 The Subgroup remit facilitates the effective scrutiny of HS2 proposals for environmental and sustainability impacts and seeks to achieve environmental improvements and realise opportunities.

The Contact Officer for this report is Erica Levy (719294).

## Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date



# High Speed Two (HS2)

## NWBC Schedule 17 Guide

### BACKGROUND

On 23rd February 2017 Royal Assent was granted to the HS2 Bill. The Bill is now an Act of Parliament and will provide HS2 Ltd with the powers to construct, operate and maintain Phase One of HS2. High Speed Two (HS2) Limited is the company responsible for developing and promoting the UK's new high speed rail network. The project is split into phases, with Phase One now underway between the West Midlands and London and Phase Two planned to extend the line further north towards Manchester and Leeds.

The HS2 Act of Parliament provides for construction on scheduled works to start within 10 years of the Act having passed.

The legislation includes amendments made as a result of petitions, the formal commitments called '**undertakings**' or '**assurances**' which must be delivered by the scheme. These are all included on the register of undertakings and assurances.

Following Royal Assent for the HS2 Act, HS2 Ltd appointed contractors to deliver early works and main works for the railway. In Warwickshire contractors **Laing Murphy JV (LM)** and **Fusion JV** are conducting early works and the main works contractors are **Eiffage Kier BAM Ferrovial (EKBF JV)** between Wormleighton and Long Itchington Wood **Tunnel Balfour Beatty Vinci (BBV JV)** continuing up the route to North Warwickshire.

Notice to Proceed was issued by the Government in April 2020 to the joint venture companies contracted to build Phase One of the railway. Notice to Proceed is the formal approval for the project to begin the construction phase and activate the main works civils contracts, held by specific joint-ventures.

### SCHEDULE 17

The High Speed Rail (London-West Midlands) Act 2017 provides powers for the construction and operation of Phase One of HS2. Schedule 1 of the Act describes the 'scheduled works' that the nominated undertakers will be authorities to carry out. Section 20 of the Act deems planning permission is granted for the development authorised by it, subject to the provisions of Section 20 and conditions set out in Schedule 17.

Schedule 17 includes conditions requiring various detailed matters to be approved by the relevant Local Planning Authority (LPA). This is therefore a different planning regime to that which usually applies in England (i.e. the Town and Country Planning Act 1990) and is very different in terms of the nature of submissions and issues that an LPA can have regard to in determining requests for approval.

## CONSENT TYPES

There are a number of different Consent types:

- Plans and specifications of certain works
  - Building Works (paragraph 2 of Schedule 17) The erection, construction or alteration of any building, other than a temporary building
  - Other Construction Works (paragraph 3 of Schedule 17) Road vehicle parks; Earthworks; Sight, noise or dust screens; Transformers, Telecommunication masts or pedestrian accesses to railway lines; Fences or walls, and Lighting equipment
  - Matters ancillary to development (paragraph 4 of Schedule 17) Handling of re-useable spoil or topsoil; storage sites for construction materials, spoil or topsoil; construction camps; works screening; artificial lighting; dust suppression; and road mud control measures
- Bringing into Use Requests
- Site Restoration Schemes
- Non- Material Changes
- Certificates of Appropriate Alternative Development (CAAD)
- Pre-submission advice request

## RELEVANT CRITERIA

Schedule 17 of the Act sets out the grounds on which the LPA may impose conditions on approval or refuse to approve the request for approval. The nominated undertaker is contractually bound to comply with the controls set out in the [Environmental Minimum Requirements](#) (EMR). The scope of the EMR encompasses the [High Speed 2 Code of Construction Practice](#) (CoCP).

Under Part 1, Section 2 of Schedule 17 the Authority may only refuse to approve [plans and specifications relating to Building Works](#) on the following grounds:

- the design or external appearance of the [building works](#) ought to be modified—
  - (i) to preserve the local environment or local amenity,
  - (ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or
  - (iii) to preserve a site of archaeological or historic interest or nature conservation value, and is reasonably capable of being so modified, or
- the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

Under Part 1, Section 3 of Schedule 17 the Authority may only refuse to approve plans and specifications relating to [Other Construction Works](#) on the following grounds:

### Road vehicle parks:

- That the design or external appearance of the works ought to, and could reasonably, be modified—

- (i) to preserve the local environment or local amenity,
  - (ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or
  - (iii) to preserve a site of archaeological or historic interest or nature conservation value.
- That the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

**Earthworks, sight, noise or dust screens:**

- That the design or external appearance of the works ought to, and could reasonably, be modified—
  - (i) to preserve the local environment or local amenity,
  - (ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or
  - (iii) to preserve a site of archaeological or historic interest or nature conservation value.
- If the development does not form part of a scheduled work that the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

**Transformers, telecommunications masts or pedestrian accesses to railway lines:**

- That the design or external appearance of the works ought to, and could reasonably, be modified to preserve the local environment or local amenity.
- That the development ought to, and could reasonably, be carried out on land elsewhere within the development's permitted limits.

**Fences and walls (except for sight, noise and dust screens):**

- That the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

**Artificial lighting equipment:**

- That the design of the equipment, with respect to the emission of light, ought to, and could reasonably, be modified to preserve the local environment or local amenity.
- If the development does not form part of a scheduled work that the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

Under Part 1, Section 4 of Schedule 17 the Authority may only refuse to approve arrangements about **Matters ancillary to development** on the following grounds:

- on the ground that the arrangements relate to development which, for the purposes of regulating the matter in question, ought to and can reasonably be

considered in conjunction with other development which has deemed planning permission under section 20(1) and which is to be carried out in the authority's area, or

- on a ground specified in relation to the matter as follows:

**Handling of re-useable spoil and topsoil:**

- That the arrangements ought to be modified to ensure that the spoil or topsoil remains in good condition, and are reasonably capable of being so modified.

**Storage sites for construction materials, spoil or topsoil, construction camps, works screening:**

- That the arrangements ought to be modified—
  - (i) to preserve the local environment, local amenity or a site of archaeological or historic interest or nature conservation value, or
  - (ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, and are reasonably capable of being so modified.

**Artificial lighting or dust suppression:**

- That the arrangements ought to be modified to preserve the local environment or local amenity, and are reasonably capable of being so modified.

**Road mud control measures:**

- That the arrangements ought to be modified—
  - (i) to preserve the local environment or local amenity, or
  - (ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, and are reasonably capable of being so modified.

## CONSULTATION and RESTRICTIONS

The consultation requirements in Schedule 17 of the HS2 Act are limited and only require formal consultation with [Natural England](#), the [Environment Agency](#) and [Historic England](#) on a limited range of matters as identified above.

Additionally external/internal consultations will normally be required from:

- WCC Highways and WCC Public Rights of Way
- WCC Ecology
- WCC Archaeology
- NWBC Environmental Health

NWBC have made a commitment to consult [Parish/Town Councils and Ward Members](#) for every Schedule 17 Submission. This information will be on the [NWBC website](#). The consultation



period will be **21 days**. Any comments received will be made available for public inspection and will be published on the Council's website.

The Special Management Zone Chair will be consulted on all submissions. Neighbours may be consulted on a limited basis and there are no press advertisements for HS2 submissions.

There are also a large number of pre-submission consultations (called 'Engagements') with the LPA. The LPA entered into a Service Level Agreement in 2019 with HS2 which has a confidentiality clause which restricts disclosure of this information in most cases (unless with HS2 Ltd's consent)

## DETERMINATION OF CONSENTS

Under normal circumstances the LPA are required to determine requests for consent under Schedule 17 within **8 weeks**. The Consents will be subject to the provisions of the **HS2 Planning Memorandum** which is one of a suite of documents forming the HS2 Environmental Minimum Requirements (EMR) – the over-arching commitments by the Secretary of State to afford appropriate management and protection of the environment. It sets out the arrangements for the processing of submissions, and details the responsibilities of the nominated undertaker and of those planning authorities which choose to sign up to this Memorandum – the qualifying authorities.

In July 2020 The Court of Appeal ruled that HS2 Ltd cannot rely upon the **Environmental Minimum Requirements** and that it has to provide sufficient information to the Council in support of its Submissions. This is referred to as the '**Hillingdon Ruling**'. The Council is under no obligation to determine the applications unless and until it receives such information.

Officers will consider comments received only where they are related to the relevant provisions within the appropriate parts of Schedule 17 (Conditions of Deemed Planning Permission) of the High Speed Rail (London – West Midlands) Act 2017 as listed above. Only then will they be able to weigh them in any determination.

Local Planning Authorities should not through the exercise of the Schedule seek to:

- revisit matters settled through the parliamentary process
- seek to extend or alter the scope of the project
- modify or replicate controls already in place, either specific to HS2 Phase One such as the Environmental Minimum Requirements, or existing legislation such as the Control of Pollution Act or the regulatory requirements that apply to railways.

Paragraph 22 of the Schedule provides that the nominated undertaker has the right of **appeal** to the Secretary of State for Transport and the Secretary of State for Communities and Local Government within **42 days** of the Decision Notice, against a planning authority's decision to refuse a request for approval, or against the conditions imposed in granting approval. The nominated undertaker may also appeal if no decision has been made by the relevant planning authority within the time period prescribed for making a decision (eight weeks from the receipt of the request) or within an extended period as may be agreed between the parties.



## HS2 ENGAGEMENT

HS2 undertake their own community consultation known as 'Engagement'. Their website, called [Commonplace](#), is intended to provide communities with relevant, local information. There is a Warwickshire Section which has information about what HS2 are doing in Warwickshire, including notifications of their upcoming works, how it's being constructed and what they're doing to make it less disruptive.

The [HS2 Community Engagement Strategy](#) explains all the ways that HS2 engage with people, businesses and communities along the route. It also includes 10 Community Commitments. You can find the Community Engagement Strategy on the Commonplace website.

The [HS2 Local Area Engagement Plans](#) are localised to a specific area and explain how HS2 deliver their Strategy at a local level. It sets out how they'll engage with communities. The most recent Local Area Engagement Plans are available on the Commonplace website.

## HS2 HELPDESK

The [HS2 Helpdesk](#) is your first point of contact should you need advice, information or wish to complain about HS2 or any of their contactors.

You can contact the [HS2 Helpdesk](#) on Freephone [08081 434 434](tel:08081434434), by Minicom on [08081 456 472](tel:08081456472) or by Email: [HS2enquiries@hs2.org.uk](mailto:HS2enquiries@hs2.org.uk)

HS2 Website <https://www.gov.uk/government/organisations/high-speed-two-limited>

**Agenda Item No 8**

**Planning and Development Board**

**4 July 2022**

**Report of the  
Chief Executive**

**Exclusion of the Public and Press**

**Recommendation to the Board**

**To consider whether, in accordance with Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following items of business, on the grounds that they involve the likely disclosure of exempt information as defined by Schedule 12A to the Act.**

**Agenda Item No 9**

**Enforcement Action** – Report of the Head of Development Control

Paragraph 6 – by reason of the need to consider the making of an order.

**Agenda Item No 10**

**Confidential Extract of the Minutes of the meeting of the Planning and Development Board held on 6 June 2022**

Paragraph 2 – information which is likely to reveal the identity of an individual;  
and

Paragraph 6 – by reason of the need to consider the making of an order.

In relation to the item listed above members should only exclude the public if the public interest in doing so outweighs the public interest in disclosing the information, giving their reasons as to why that is the case.

The Contact Officer for this report is Julie Holland (719237).