

**To: The Deputy Leader and Members of the Planning and Development Board  
(Councillors Sweet, Butcher, L Dirveiks, Humphreys, Lea, May, B Moss, Phillips, Sherratt, Simpson, A Stanley, Turley, Watkins, Winter and Wykes).**

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

This document can be made available in large print and electronic accessible formats if requested.

For general enquiries please contact David Harris, Democratic Services Manager, on 01827 719222 or via e-mail - [davidharris@northwarks.gov.uk](mailto:davidharris@northwarks.gov.uk).

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

## **PLANNING AND DEVELOPMENT BOARD AGENDA**

**16 DECEMBER 2013**

The Planning and Development Board will meet in the Council Chamber at The Council House, South Street, Atherstone, Warwickshire on Monday 16 December 2013 at 6.30 pm.

### **AGENDA**

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

- 4 **Minutes of the meetings of the Board held on 14 October and 11 November 2013 copies herewith to be approved as a correct record and signed by the Chairman.**

**PART A – ITEMS FOR DISCUSSION AND DECISION  
(WHITE PAPERS)**

- 5 **Budgetary Control Report 2013 / 2014 - Period Ended 30 November 2013 - Report of the Assistant Director (Finance and Human Resources)**

**Summary**

The report covers revenue expenditure and income for the period from 1 April 2013 to 30 November 2013. The 2013/2014 budget and the actual position for the period, compared with the estimate at that date, are given, together with an estimate of the out-turn position for services reporting to this Board.

The Contact Officer for this report is Nigel Lane (719371)

- 6 **Planning Applications – Report of the Head of Development Control**

**Summary**

Town and Country Planning Act 1990 – applications presented for determination

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

- 7 **Father Hudson's Society Redevelopment Scheme – Report of the Head of Development Control**

**Summary**

Following the grant of planning permission in this case, the Board requested further information on fire risk issues and the response of the Warwickshire Fire and Rescue Service has now been received.

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

- 8 **Neighbourhood Designation Area for Arley Neighbourhood Plan – Report of the Assistant Chief Executive and Solicitor to the Council**

**Summary**

This report informs Members of the progress of the formal consultation on the Arley Neighbourhood Plan Designation area.

The Contact Officer for this report is Sue Wilson (719499)

**PART C – EXEMPT INFORMATION  
(GOLD PAPERS)**

**9 Exclusion of the Public and Press**

**Recommendation:**

**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.**

**10 Breaches of Planning Control – Report of the Head of Development Control**

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

**11 Appeal by the Kler Group, Spon Lane, Grendon – Report of the Head of Development Control**

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

JERRY HUTCHINSON  
Chief Executive

## NORTH WARWICKSHIRE BOROUGH COUNCIL

### MINUTES OF THE PLANNING AND DEVELOPMENT BOARD

14 October 2013

Present: Councillor Sweet in the Chair.

Councillors Butcher, L Dirveiks, Humphreys, Lea, May, B Moss, Phillips, Sherratt, Simpson, A Stanley, Turley, Watkins, Winter and Wykes

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

Councillor Watkins declared a pecuniary interest in Minute No 30 Planning Applications (Applications No 2013/0425 and 2013/0426 - The Coleshill School, Coventry Road, Coleshill) left the meeting and took no part in the discussion or voting thereon.

Councillor Phillips declared a non-pecuniary interest in Minute No 30 Planning Applications (Applications No 2013/0425 and 2013/0426 - The Coleshill School, Coventry Road, Coleshill) by reason of being Chairman of the Council's Community and Environment Board, left the meeting and took no part in the discussion or voting thereon.

#### 29 **Minutes**

The minutes of the meetings of the Board held on 15 July, 12 August and 9 September 2013, copies having been previously circulated, were approved as a correct record and signed by the Chairman.

#### 30 **Budgetary Control Report 2013/2014 – Period Ended 30 September 2013**

The Assistant Director (Finance and Human Resources) reported on the revenue expenditure and income for the period from 1 April 2013 to 30 September 2013. The 2013/2014 budget and the actual position for the period, compared with the estimate at that date were detailed, together with an estimate of the out-turn position for services reporting to the Board.

#### **Resolved:**

**That the report be noted.**

#### 31 **Planning Applications**

The Head of Development Control submitted a report for the consideration of the Board. Details of correspondence received since the publication of the agenda is attached as a schedule to these minutes.

**Resolved:**

- a** That providing the applicant first enters into a Section 106 Agreement as set out in the report of the Head of Development Control, Application No 2013/0052 (Land Adjacent to, 1 Ivyleigh Villas, Church Lane, Shuttington, B79 0EB) be approved subject to the conditions set out in the report;

**[Speaker: Sara Jones]**

- b** That subject to the satisfactory resolution of the outstanding matters of detail pertaining to the Section 106 Agreement by the Head of Development Control, in consultation with the Chairman of the Board and the Opposition Spokesperson, Applications No 2013/0269 and 2013/0272 (Business Park, Hall End Farm, Watling Street, Dordon, B78 1SZ) be approved subject to the conditions set out in the report;

**[Speakers David Hodgetts and Huw Williams]**

- c** That providing the applicant first enters into a Section 106 Unilateral Undertaking as set out in the report of the Head of Development Control, Application No 2013/0338 (8 Shawbury Village, Shawbury Lane, Shustoke, Coleshill, B46 2RU) be approved subject to the conditions set out in the report;

- d** That in respect of Application No 2013/0357 (Hilltop House, Mill Lane, Fillongley, CV7 8EE)

**i** Under the provisions of Section 97 of the Town & Country Planning Act 1990 the planning permission referenced PAP/2013/0080 be revoked; and

**ii** Application No 2013/0357 be approved subject to the conditions set out in the report of the Head of Development Control;

- e** That Application No 2013/0380 (Abbey Green Park, Grendon Road, Polesworth, Warwickshire) be approved subject to the conditions set out in the report of the Head of Development Control; and

- f** That Applications No 2013/0425 and 2013/0426 (The Coleshill School, Coventry Road, Coleshill) be approved subject to the conditions set out in the report of the Head of Development Control.

**32 Statutory Consultees – Local Enterprise Partnership Protocol**

The Assistant Chief Executive and Solicitor to the Council reported on the Local Enterprise Partnership's recently agreed protocol on working with statutory consultees to planning applications and Members were asked to agree a suggested course of action.

**Resolved:**

**That the protocol be noted and that regard be had to the protocol in the determination of planning applications.**

**33 Planning Application PAP/2013/0224 Spon Lane, Grendon**

The Head of Development Control reported that an appeal had been lodged following the refusal of planning permission and Members were asked to approve the approach to be followed so as to best defend the Council's position. He then reminded the Board of the scope of the application and the nature of the planning issues raised by the application.

**Resolved:**

- a That, upon the receipt of legal advice it is considered that the Council also refuse planning permission in this case for the following reason;**

**"2. It is considered that the proposed development would be inappropriate in size and in this location as it would materially extend the settlement of Grendon onto green field land impacting on its local character and distinctiveness";**

- b That the Council engages planning consultants to represent the Council on this appeal working in association with planning officers; and**
- c That the use of some of the additional planning fee income to fund the appeal costs up to the value of £40,000 be approved.**

**34 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 in Schedule 12A to the Act.**

## 35 Breaches of Planning Control

The Head of Development Control reported on two alleged breaches of planning control and the Board was asked to agree suggested courses of action.

### **Resolved:**

- a That in the case of 61 Hillside, Hartshill, a Breach of Conditions Notice is issued requiring the south elevation of the conservatory to be glazed with obscure glass thus to comply with condition 4 of planning permission PAP/2012/0247 dated 27 June 2012, with a compliance period of two months, for the reasons set out in the report of the Head of Development Control;**
- b That in the case of Aldermore Farm, Middleton Lane, Middleton, two Enforcement Notices are issued, one for the removal of the wooden shed and the second for the removal of the caravan, both with compliance periods of two months, for the reasons set out in the report of the Head of Development Control; and**
- c That in respect of land adjacent to The Cedars, Coton Road, Nether Whitacre (former Buchan's site), the Solicitor to the Council be authorised to issue an Enforcement Notice relating to the unauthorised change of use of the land from agriculture to a heavy vehicle/plant driver training use together with the siting of a portable office building associated with that use. The Notice to require the cessation of the unauthorised use together with the removal of the vehicles/plant and portable building and that the compliance period be six months.**

R Sweet  
Chairman

**Planning and Development Board  
14 October 2013  
Additional Background Papers**

Agenda Item	Application Number	Author	Nature	Date
6/90	PAP/2013/0425 and PAP/2013/0426	Coleshill Town Council	Representation	27/9/13



## NORTH WARWICKSHIRE BOROUGH COUNCIL

### MINUTES OF THE PLANNING AND DEVELOPMENT BOARD

11 November 2013

Present: Councillor Butcher in the Chair.

Councillors L Dirveiks, Humphreys, Lea, Lewis, May, Moore, B Moss, Sherratt, Simpson, A Stanley, Turley, Watkins, Winter and Wykes

Apologies for absence were received from Councillors Phillips (substitute Councillor Lewis) and Sweet (substitute Councillor Moore).

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

None were declared at the meeting.

#### 37 **Planning Applications**

The Head of Development Control submitted a report for the consideration of the Board. Details of correspondence received since the publication of the agenda is attached as a schedule to these minutes.

##### **Resolved:**

- a **That Application No 2013/0231 (Land East of Fir Tree Cottage, Seckington Lane, Newton Regis) be refused for the following reason**

**“It is considered that the proposal would be inappropriate in this location as it would materially extend the settlement of Newton Regis impacting on its local character and distinctiveness. In particular the proposal would harm the character and appearance of the Conservation Area because it would materially reduce openness. As such it does not accord with saved policy ENV15 of the North Warwickshire Local Plan 2006 and the National Planning Policy Framework 2012.”**

**[Speaker Ray Evans]**

- b **That Application No 2013/0402 (Land South of Newton Farm, Main Road, Newton Regis) be refused for the reasons set out in the report of the Head of Development Control;**

**[Speaker Ray Evans]**

- c That Application No 2013/0435 (Whitacre Garden Centre, Tamworth Road, Nether Whitacre, Warwickshire) be approved subject to the conditions set out in the report of the Head of Development Control;
- d That subject to the signing of the Deed of Variation to the Section 106 Agreement previously agreed for planning permission ref: PAP/2012/0297, Application No 2013/0449 (Land at Rowland Way, Rowland Way, Atherstone, CV9 2SQ) be approved subject to the conditions set out in the report of the Head of Development Control; and
- e That the report of the Head of Development Control in respect of Application No 2013/0500 (Poultry Farm, Green End Road, Green End, Fillongley) be noted.

**38 Proposed Tree Preservation Order Land at Coventry Road, Fillongley**

The Board was invited to confirm or otherwise a Tree Preservation Order made in respect of one oak tree situated at Coventry Road, Fillongley.

**Resolved:**

**That the Tree Preservation Order made in respect of one oak tree situated at Coventry Road, Fillongley be confirmed.**

**39 Confirmation of Tree Preservation Order – Land at Mancetter Manor, The Green, Mancetter**

The Board was invited to confirm or otherwise a Tree Preservation Order made in respect of one horse chestnut and two lime trees on land at Mancetter Manor, The Green, Mancetter.

**Resolved:**

**That the Tree Preservation Order made in respect of one horse chestnut and two lime trees on land at Mancetter Manor, The Green, Mancetter be confirmed.**

**40 Progress Report on Achievement of Corporate Plan and Performance Indicator Targets April – September 2013**

The Board was informed of progress with the achievement of the Corporate Plan and Performance Indicator targets relevant to the Planning and Development Board for April – September 2013.

**Resolved:**

**That the report be noted.**

Chairman

**Planning and Development Board  
11 November 2013  
Additional Background Papers**

Agenda Item	Application Number	Author	Nature	Date
4/4	PAP/2013/0402	R Evans	Objection	7/11/13
		Note	Site Visit	4/11/13
		D Waithman	Objection	3/11/13
		M Abbott	Representation	3/11/13
		M Tallet	Objection	1/11/13

**Agenda Item No 5**

**Planning and Development Board**

**16 December 2013**

**Report of the Assistant Director  
(Finance and Human Resources)**

**Budgetary Control Report 2013 / 2014  
Period Ended 30 November 2013**

**1 Summary**

- 1.1 The report covers revenue expenditure and income for the period from 1 April 2013 to 30 November 2013. The 2013/2014 budget and the actual position for the period, compared with the estimate at that date, are given, together with an estimate of the out-turn position for services reporting to this Board.

**Recommendation to the Board**

**That the report be noted and that the Board requests any further information it feels would assist it in monitoring the budgets under the Board's control.**

**2 Consultation**

- 2.1 Councillors Butcher, N Dirveiks, Smith and Sweet have been sent an advanced copy of this report for comment. Any comments received will be reported verbally at the meeting.

**3 Introduction**

- 3.1 Under the Service Reporting Code of Practice (SeRCOP), services should be charged with the total cost of providing the service, which not only includes costs and income directly incurred, but also support costs relating to such areas as finance, office accommodation, telephone costs and IT services. The figures contained within this report are calculated on this basis.

**4 Overall Position**

- 4.1 Net controllable expenditure for those services that report to the Planning and Development Board as at 30 November 2013 is £154,397 compared with a profiled budgetary position of £328,884; an under spend of £174,487 for the period. Appendix A to this report provides details of the profiled and actual position for each service reporting to this Board, together with the variance for the period. Where possible, the year-to-date budget figures have been calculated with some allowance for seasonal variations, in order to give a better comparison with actual figures. Reasons for the variations are given, where appropriate, in more detail below.

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## 4.2 Planning Control

- 4.2.1 Income is currently ahead of forecast by £178,898, the bulk of which is attributable to a planning application of £150,108 from I M Properties for sites on Birch Coppice. An increase in other, smaller applications explains the remaining variance of £28,790. This has been partially offset by increased costs on professional fees and postage costs of £6,780.

## 4.3 Street Naming and Numbering

- 4.3.1 Income from the sale of street naming and numbering data is ahead of the forecast by £2,327 and in addition spending on replacement street nameplates is currently below the profiled forecast by £2,160.

## 5 Performance Indicators

- 5.1 In addition to the financial information provided to this Board, when the budgets were set in February, performance indicators were included as a means of putting the financial position into context. These are shown at Appendix B.
- 5.2 There has been an increase in the planning applications being handled. This increase in applications, alongside several large applications, has resulted in much higher income and has meant that the gross cost per application is below the profiled amount. Further, the net cost per application is significantly below the profiled position as a consequence of the single, large application from I M Properties.
- 5.3 Whilst the gross cost per Land Charge is lower than expected, the net cost is higher per search. Whilst, numbers of searches are higher than profile, there has been a change in the type of Land Charge applications received, resulting in lower income than anticipated.

## 6 Risks to the Budget

- 6.1 The key risks to the budgetary position of the Council from services under the control of this Board are:
- The need to hold Public Inquiries into Planning Developments. The Inquiry scheduled for the appeal against the decision relating to Spon Lane in Grendon could cost the Council around £50,000.
  - Reductions in income relating to planning applications.
  - Proposed plans by government to relax planning permission on certain extensions may affect the level of planning income received.
  - Risk to the mix of Local Land Charge applications not bringing in the expected level of fee income.

## 7 Estimated Out-turn

- 7.1 Members have requested that Budgetary Control Reports provide details on the likely out-turn position for each of the services reporting to this Board. The anticipated out-turn for this Board for 2013/14 is £393,230 as detailed in the table below: -

	£
<b>Approved budget 2013/2014</b>	<b>568,230</b>
Additional Planning Application Fee income	(175,000)
Costs of Public Inquiry at Grendon	50,000
<b>Expected Out-turn 2013/14</b>	<b>443,230</b>

- 7.2 The figures provided above are based on information available at this time of the year and are the best available estimates for this board, and may change as the financial year progresses. Members will be updated in future reports of any further changes to the forecast out turn.

## 8 Building Control

- 8.1 Figures provided by the Building Control Partnership indicate that this Council's share of the costs up to 30 September 2013 indicates a favourable variance.
- 8.2 The approved budget provision for Building Control is £60,330, which will be sufficient to cover the full year costs currently estimated by the Partnership. We will continue to monitor this over the course of the year.

## 9 Report Implications

### 9.1 Finance and Value for Money Implications

- 9.1.1 The Council's budgeted contribution from General Fund balances for the 2013/14 financial year is £458,470. As can be seen above, a decrease in net expenditure of around £125,000 from this Board is expected to date. The position will continue to be monitored closely and reported to Members at a future meeting of this Board.
- 9.1.2 Income and Expenditure will continue to be closely managed and any issues that arise will be reported to this Board for comment.

### 9.2 Environment and Sustainability Implications

- 9.2.1 The Council has to ensure that it adopts and implements robust and comprehensive budgetary monitoring and control, to ensure not only the availability of services within the current financial year, but in future years.

The Contact Officer for this report is Nigel Lane (719371).

APPENDIX A

North Warwickshire Borough Council

Planning and Development Board

Budgetary Control Report 2013/2014 as at 30 November 2013

Description	Approved Budget 2013/2014	Profiled Budget November 2013	Actual November 2013	Variance	Comments
Planning Control	424,820	271,453	99,338	(172,115)	Comment 4.2
Building Control Non fee-earning	77,500	11,464	11,464	-	
Conservation and Built Heritage	50,380	41,646	41,612	(34)	
Local Land Charges	1,980	(4,712)	(2,563)	2,149	Comment 4.3
Street Naming & Numbering	13,550	9,033	4,546	(4,487)	Comment 4.4
	<b>568,230</b>	<b>328,884</b>	<b>154,397</b>	<b>(174,487)</b>	

## Key Performance Indicators for Budgets Reporting to the Planning and Development Board

	Budgeted Performance	Profiled Budgeted Performance	Actual Performance to Date
<b>Planning Control</b>			
No of Planning Applications	740	493	508
Gross cost per Application	£997.84	£989.43	£974.22
Net cost per Application	£574.08	£550.24	£195.55
<b>Local Land Charges</b>			
No of Searches	450	300	372
Gross cost per Search	£103.09	£101.58	£81.67
Net cost per Search	£4.40	-£15.71	-£6.89
<b>Caseload per Officer</b>			
All applications	137	91.4	94.1



**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 13 January 2014 at 6.30pm in the Council Chamber at the Council House.

## 6 **Public Speaking**

- 6.1 Information relating to public speaking at Planning and Development Board meetings can be found at: [www.northwarks.gov.uk/downloads/file/4037/](http://www.northwarks.gov.uk/downloads/file/4037/).
- 6.2 If you wish to speak at a meeting of the Planning and Development Board, you may either:
  - e-mail [democraticservices@northwarks.gov.uk](mailto:democraticservices@northwarks.gov.uk);
  - telephone (01827) 719222; or
  - write to the Democratic Services Section, The Council House, South Street, Atherstone, Warwickshire, CV9 1DE enclosing a completed form.

**Planning Applications – Index**

Item No	Application No	Page No	Description	General / Significant
1	CON/2013/0023	4	<b>Hockley no 2 Quarry, Tamworth Road, Dosthill,</b> Details to discharge pre-commencement conditions of Planning Permission NW5/00/CM004 in respect of mineral extraction and deposit of imported inert waste	General
2	PAP/2013/0105	13	<b>Builders Yard Adjacent to, Old House Farm, Old Farm Lane, Hoggrills End, Nether Whitacre,</b> Removal of existing builders yard and provision of one detached dwelling with associated driveway, parking and amenity space	General
3	PAP/2013/0332	28	<b>62 Birmingham Road, Water Orton, Warwickshire,</b> Retrospective planning application for conversion of detached outbuilding (gym / office) to ancillary accommodation unit.	General
4	PAP/2013/0443	43	<b>2, Crowberry Lane, Middleton, Tamworth,</b> Retention of Attic/roof extension	General
5	PAP/2013/0493	57	<b>Aldi Stores Limited, 32 Station Street, Atherstone,</b> Variation of condition no: 2 of planning permission PAP/2012/0159 to allow an extension to trading hours - 08.00 hours to 22.00 hours on Mon-Sat and 10.00 hours to 16.00 hours on Sundays; in respect of the erection of an A1 food retail store and associated car parking.	General
6	PAP/2013/0500	63	<b>Poultry Farm, Green End Road, Green End, Fillongley,</b> Proposed development of a 50kW wind turbine	General

## **General Development Applications**

**(1) Application No: CON/2013/0023**

**Hockley no 2 Quarry, Tamworth Road, Dosthill,**

**Details to discharge pre-commencement conditions of Planning Permission NW5/00/CM004 in respect of mineral extraction and deposit of imported inert waste, for**

**Parkhill Estates Ltd**

### **Introduction**

This application is being determined by the Warwickshire County Council as the Minerals Authority and the Borough Council has been invited to make representations to the County as part of the determination process.

### **The Site**

The Hockley No.2 Quarry is one of three former mineral workings south of Dosthill and north of Kingsbury. The working the subject of this consultation is an extensive area on the east side of the Tamworth Road just north of Cliff and Kingsbury. Its location is shown at Appendix A. The other two former quarries are to the north and have been the subject of further extraction and waste deposit such that they are awaiting future development. The No. 2 Quarry is by far the largest of these three former workings and it has remained untouched for a significant number of years. It is partially restored but not fully. It appears very much as an extensive area of disused and derelict land.

### **Background**

Members will probably be aware that in 1995 legislation was passed which required all outstanding and uncompleted mineral planning permissions to be reviewed by County Planning Authorities such that more modern and appropriate conditions could be attached. This occurred in this case in 2004. However, the owner of the site lodged an appeal against some of the "new" conditions and that appeal was decided in 2006. A very full set of conditions now applies to the original 1953 planning permission for the extraction of minerals from this No.2 quarry and its restoration through the deposit of inert waste material.

This current application seeks approval from the County to discharge details required by those new conditions. It therefore does not deal with the principle of the use.

### **The Proposals**

Some of these conditions require very detailed matters to be agreed and it is considered that these are best left to the County to deal with through the statutory consultation process. There are however a number of conditions that are of more general interest to North Warwickshire. This report therefore concentrates on these.

As reported above, some of this site has already been restored. That remaining is the southern portion of the site. Details have been submitted showing the extraction of clay from this area and its subsequent infilling so as to align with the contours on the northern section. The restored site would be a grassed hill with a number of small woodlands. The three phases of this work are shown on the plans at Appendix B with the final restoration scheme at Appendix C. All vehicular access would use existing routes through the site to Rush Lane and then onto the A51.

The working of the three phases is over timescales of 6, 12 and 4 years respectively. In order to allow for variables such as the economy, markets and the availability of waste for restoration, completion of mineral extraction is conditioned to 2042 with final restoration completed by 2047. The extraction of clay is not tied to the adjoining brickworks as that is in separate ownership and there is no planning condition requiring this connection. Hours of working are proposed to be from 0700 to 1800 during the week; from 0700 to 1300 on Saturdays with no Sunday or Bank Holiday working. There is no planning condition on vehicle movements to and from the site.

Additionally the conditions require a Liaison Committee to be set up and the applicant has suggested that one North Warwickshire Member attend in order to represent the Borough's interests.

### **Observations**

This is one of the very few mineral sites remaining in North Warwickshire where work has not been completed. Whilst the planning permission for this was granted in 1953 and work commenced, this was only partially undertaken with about half of the site extracted and filled. The site has remained dormant in recent years. The land owners now wish to resurrect the old permission but under the new conditions agreed at appeal in 2006. As a consequence there is little scope here for looking again at the principle of the use and the approach taken by the new conditions, as the timescale outlined above has already been set. These works will therefore continue for many years to come. In these circumstances the phasing and restoration scheme as set out here in general terms is acceptable. It is fortunate that these are to be well to the south of the existing worked area and indeed well away from recent residential development in Dosthill. Additionally existing access points are to be used. It is accepted that the re-opening of this site will lead to more HGV traffic through Cliff, Kingsbury and Dosthill, but there are no alternative routes and there is an extant planning permission in place.

There is thus very little scope for this Council to comment on this application. However it is considered appropriate that the County Council be strongly recommended to look again at the opportunity, through a legal agreement, for the prospects of there being a connection made for the clay extracted here to be used at the adjoining brickworks site. This would be a sustainable solution potentially of benefit to both parties.

It is agreed that given the scale of this issue and the likely impacts – particularly highway ones – that the Borough Council is represented on the liaison committee as conditioned.

## **Recommendation**

- a) That the County Council be strongly recommended, in the interests of sustainable development, to seek a legal agreement connecting the extraction of clay here with its use at the adjoining brickworks.
- b) Members are requested to appoint a Member to sit on the Liaison Committee. It is suggested that this should be a Kingsbury Ward Member.

## BACKGROUND PAPERS

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

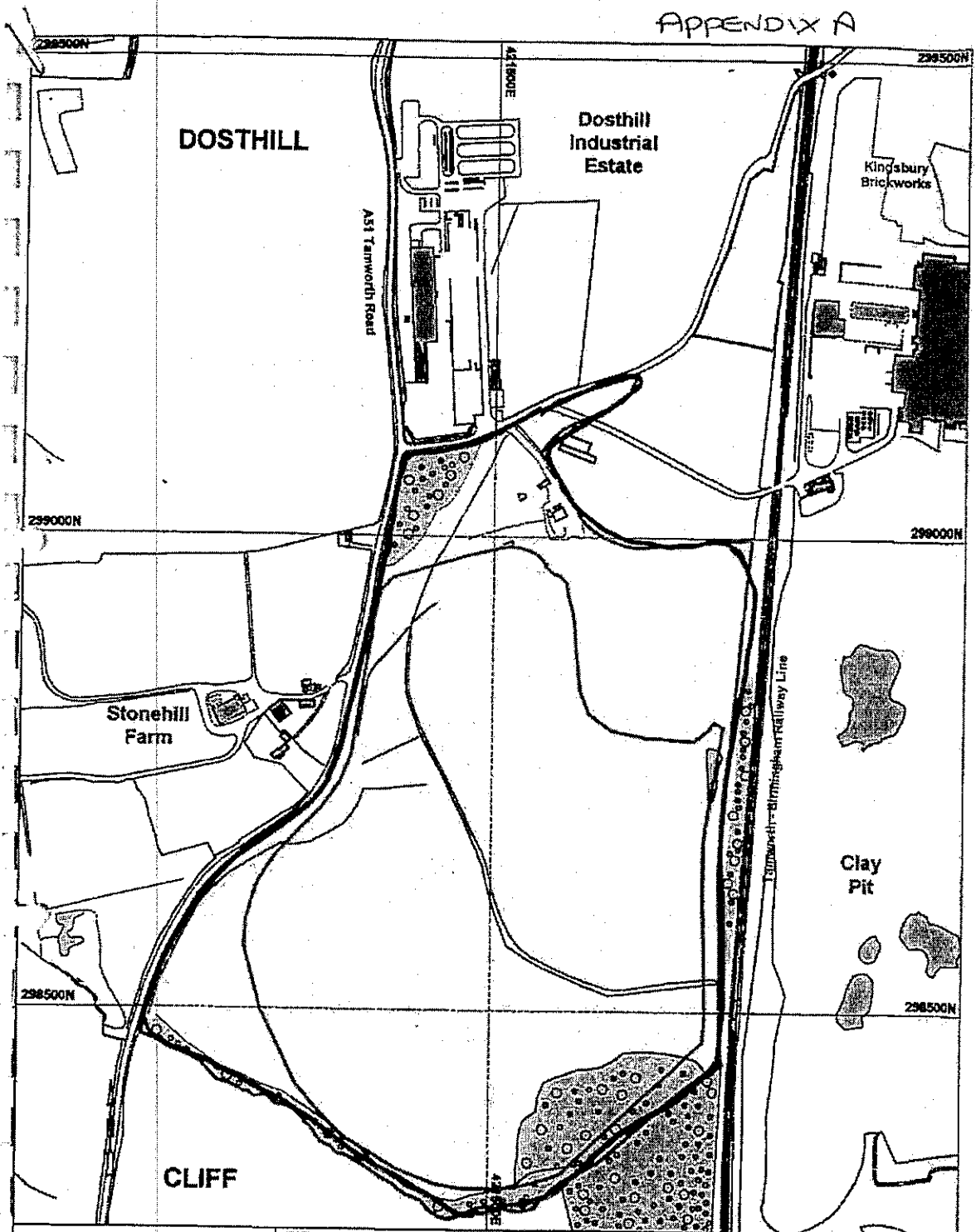
Planning Application No: CON/2013/0023

<b>Background Paper No</b>	<b>Author</b>	<b>Nature of Background Paper</b>	<b>Date</b>
1	Warwickshire County Council	Letter	14/11/13

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

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

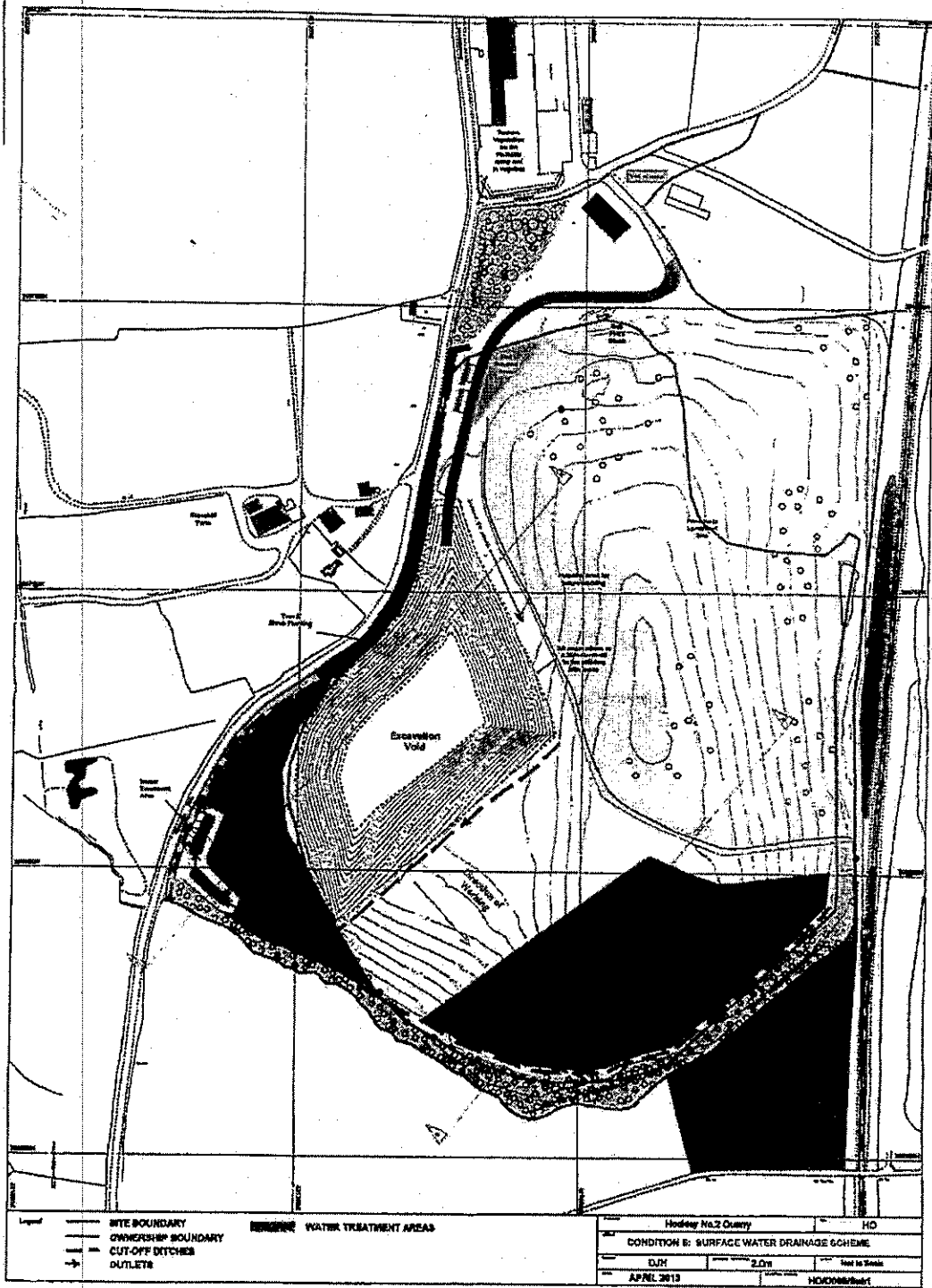
APPENDIX A

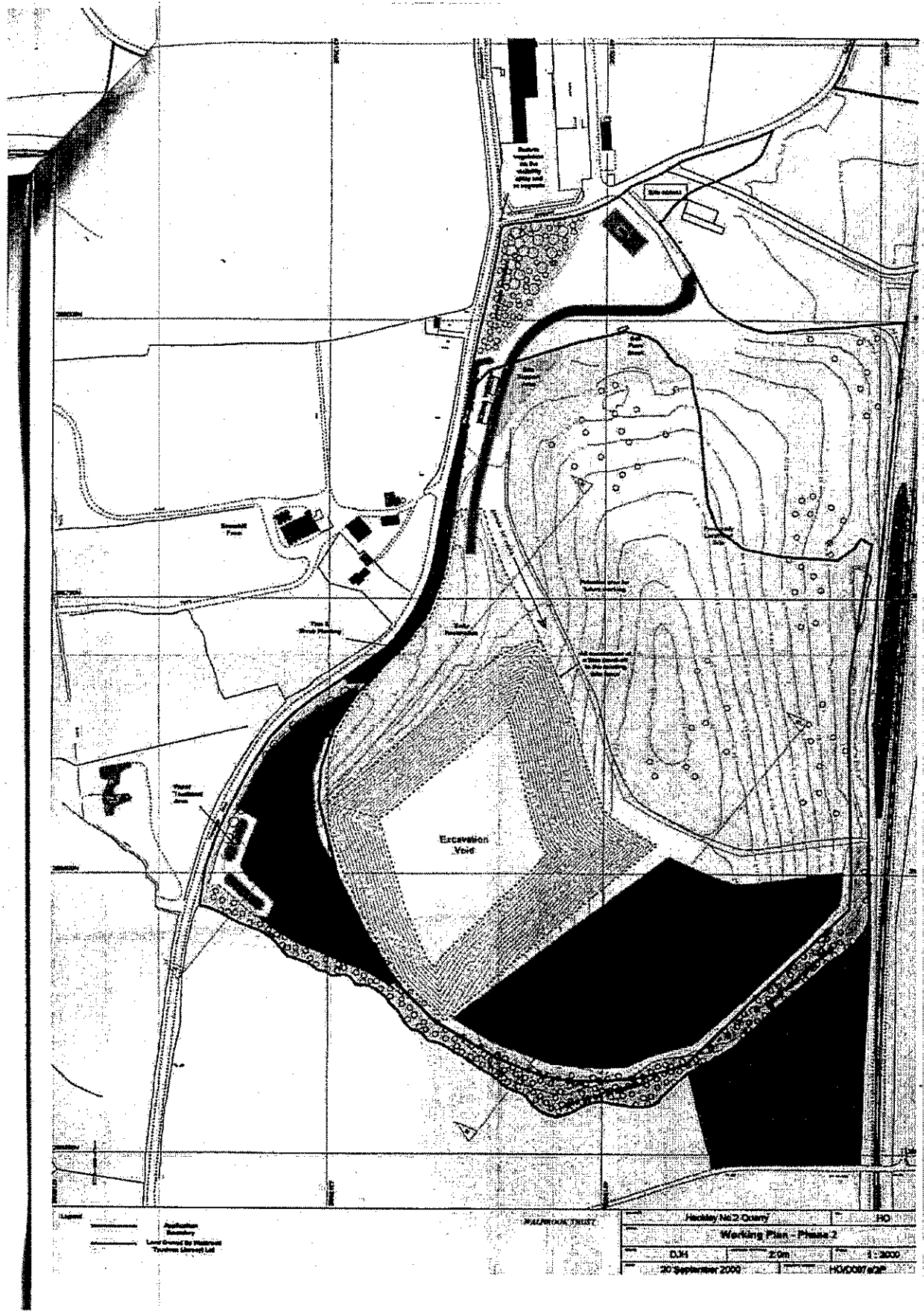


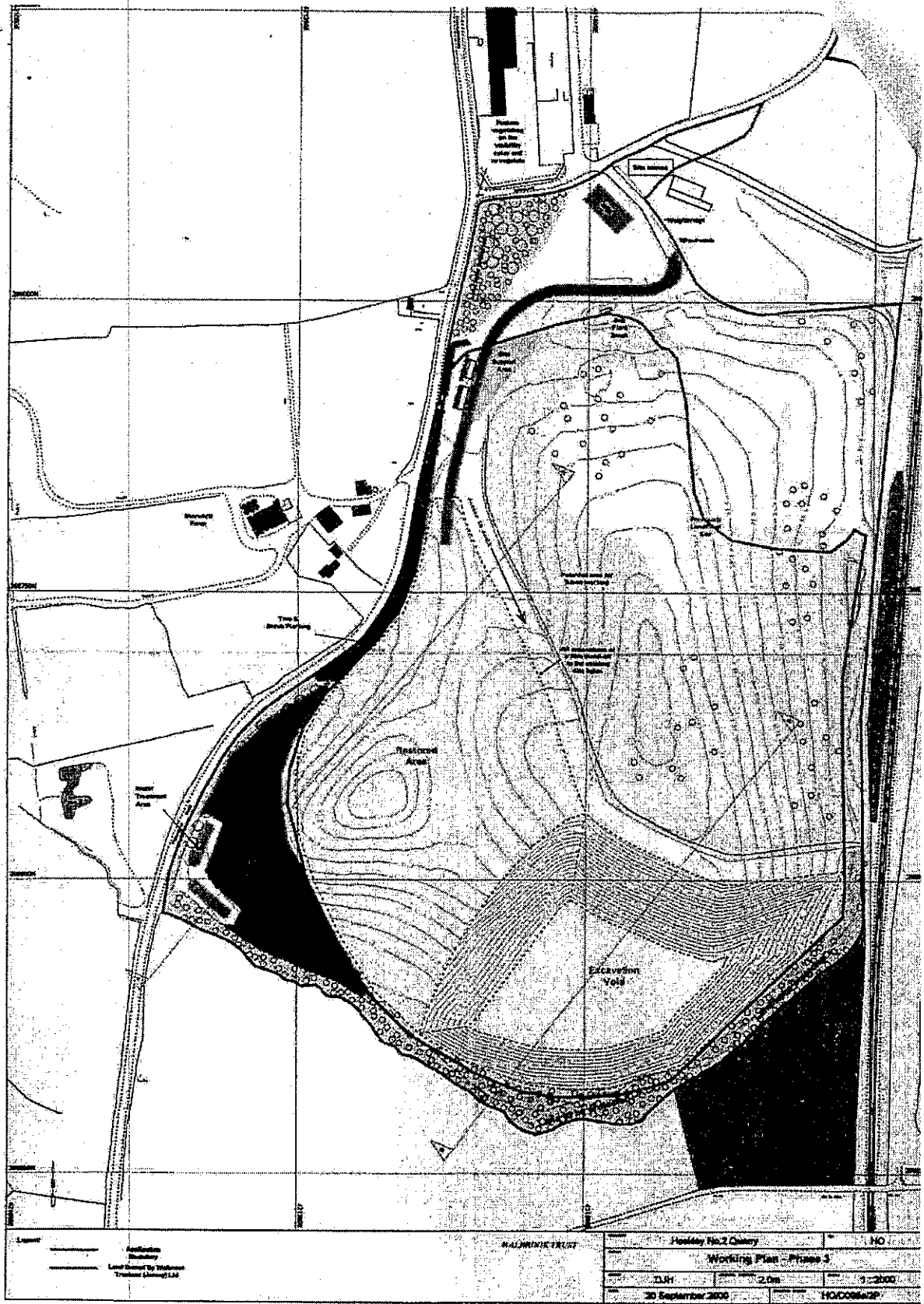
<b>WALBROOK TRUST</b>	<b>PROJECT</b> Hockley No.2 Quarry		<b>NO.</b> HO
	<b>TITLE</b> Location Plan - Local Setting		
	<b>DRAWN</b> DJH	<b>CONSULT ENGINEER</b>	<b>SCALE</b> 1 : 5000
	<b>DATE</b> 04 February 2000		<b>TRANSFORM NUMBER</b> HO/D002/4P

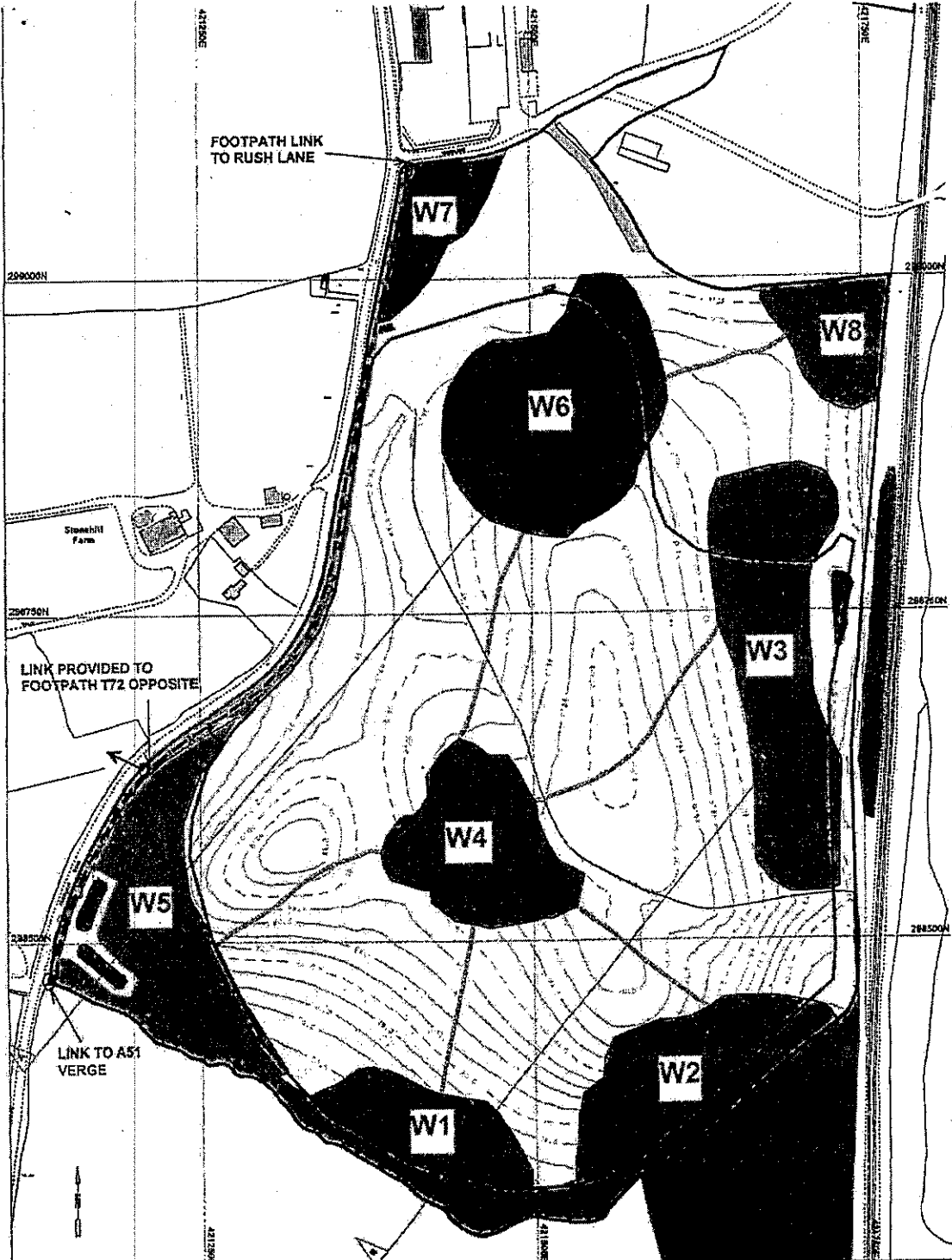


Appendix B









<b>Legend</b> — SITE BOUNDARY — OWNERSHIP BOUNDARY — FOOTPATH and STILE W3 PLANTING AREAS	<b>Hockley No.2 Quarry</b>		HO
	CONDITION 11: FOOTPATHS CONDITIONS 8 and 81: RESTORATION		
	JP	2.0m	Not to Scale
	APRIL 2013	HO/D008/Sub4	

**(2) Application No: PAP/2013/0105**

**Builders Yard Adjacent to, Old House Farm, Old Farm Lane, Hoggrills End, Nether Whitacre, B46 2DL**

**Removal of existing builders yard and provision of one detached dwelling with associated driveway, parking and amenity space, for**

**Mr Mark Stacey**

**Introduction**

The application is reported to the Board in view of the Section 106 issue raised in the report.

**The Site**

This is a former builders' yard at the junction of Old Farm Lane with Hoggrills End Lane in Nether Whitacre, about a kilometre south of the site of the former Whitacre Garden Centre. It is around 0.4 hectares in area. The site is wholly located in open countryside with scattered residential development surrounding its location. The highway network here is characterised by narrow country lanes. The site itself has two road frontages but these have substantial hedgerows fronting them. To the north and adjoining the site is a detached dwelling.

An aerial photograph of the site is attached at Appendix A.

**The Proposal**

It is proposed to remove the builders' yard completely and redevelop the site with one detached house using the existing access onto Old Farm Lane. The detail shows a four bedroom house, one and a half storeys high with an integral garage such that its footprint would align with outbuildings on the adjoining land to the north. The proposed layout and design are illustrated at Appendices B and C.

The application is accompanied by a ground conditions survey given the existing commercial use. There is also a statement setting out why the applicant considers this to be appropriate development in the Green Belt. This statement is attached in full at Appendix D.

The applicant has submitted a financial appraisal of the proposal and as a consequence is prepared to offer an off-site affordable housing contribution in lieu of on-site provision amounting to £7500. This would need to be the subject of a Section 106 Agreement.

**Background**

The site benefits from a lawful use as a builder's yard by virtue of the grant of a Certificate of Established Use in 1984.

## **Consultations**

Severn Trent Water Ltd – No objection

Environmental Health Officer – No objection subject to standard conditions requiring remediation of the site and validation of completion.

Highway Authority – No objection subject to standard conditions

Valuation Officer – The appraisal is a reasonable analysis

## **Representations**

None received

## **Development Plan**

Saved policies of the North Warwickshire Local Plan 2006 – Core Policy 2 (Development Distribution) and policies ENV2 (Green Belt), ENV6 (Land Resources), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), HSG3 (Housing outside Development Boundaries) and ECON

## **Other Material Planning Considerations**

The National Planning Policy Framework 2012 – the “NPPF”

The Council’s Submitted Core Strategy 2013 – Policies NW1 (Settlement Hierarchy), NW2 (Green Belt), NW4 (Split of Housing Numbers), NW5 (Affordable Housing) and NW8 (Sustainable Development)

## **Observations**

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

The site is in the Green Belt outside of any settlement boundary defined either by the Development Plan or the emerging replacement Core Strategy. As such the control of new development is to be determined in accordance with Government Guidance as set out by Development Plan policy ENV2. This used to be the Government’s former Planning Policy Guidance Note Number 2. However this has been superseded by the NPPF. This states that new buildings in the Green Belt are to be treated as inappropriate development, thus carrying a presumption of refusal. As such this current application should be refused planning permission. However, the NPPF defines a number of exceptions and one of these is quoted by the applicant as being relevant in this case.

The exception is that new buildings need not be inappropriate, if the development is for the, “limited infilling, or the partial or complete redevelopment of previously developed sites (brown field land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development”. In this case the land is previously developed land and the proposal is for its complete redevelopment. It would thus appear that the proposal could be treated as one of the

NPPF exceptions. However, there are two conditions attached to this. These need to be explored further.

The first is that the proposal should not have a greater impact on the openness of the green belt than the existing. Members will be aware that it is usual in the first instance here to compare the footprints and volumes of existing buildings with those proposed in order to gain a simple conclusion about openness. In this case the figures are 195 square metres for the existing buildings and 283 square metres for the proposed house. This would suggest that the proposal would have a worse impact on openness. However there are two significant other factors. The first is that whilst the advice of the NPPF is that temporary buildings should not be included in the assessment, the lawful use is that of a builders' yard and thus there will be associated storage of goods, materials, products and vehicles on the site. The scale and nature of these might vary but they are essential components of the lawful use. In this case the photograph at Appendix A is material. The point being made is therefore that comparison of footprints alone is not considered to be the sole criterion in this case. Secondly the site is large and the footprint to be taken up by the proposed dwelling would represent around 8% coverage of the site, compared with full coverage by the lawful use. These two factors are considered to be material in the overall comparison of impacts on openness here. It is concluded that there would be increased openness as a consequence of this proposal.

The second is that the development should have no worse impact on the purposes of including land within the green belt than the existing use. The first purpose is to check the unrestricted sprawl of large built up areas. This site is unconnected to any urban area and neither its present or proposed use would add to "sprawl" of those areas. The second and fourth are not relevant here – the prevention of town's merging, and preserving the special character of historic towns. The fifth is that the site would not assist in urban regeneration particularly of derelict land. This is not the case here given the site's small scale and very isolated location. The third purpose is the safeguarding of the country side from encroachment. However here as reported above, there is a lawful commercial use which is considered to have more of an impact on openness than the proposed, thus already reducing the perception of encroachment.

As a consequence therefore it is agreed that this proposal is not inappropriate development in the green belt and thus the presumption of refusal does not apply. This conclusion will carry substantial weight because it is based on both the Development Plan and the NPPF.

## **b) Residential Use**

Members will appreciate from the NPPF quotation above in respect of what is appropriate or not inappropriate development that the relevant exception in this case does not differentiate between alternative land uses. Thus a residential use here is not inappropriate development. There would need to be an equally substantial planning policy available to the Council if this conclusion is to be out weighed. The current Development Plan sets out that the distribution of new housing should be in named settlements, but this is now out of date. The emerging Core Strategy follows a similar spatial objective in its policies for the distribution of future housing developments, but this has not yet been examined and thus only carries limited weight. The NPPF is of significant weight here and carries greater weight than the emerging Core Strategy, but whilst it does generally look to existing settlements to be the location for new development, it does support new housing in rural areas. One such case is where there would be where "the development would re-use redundant or disused buildings and

lead to an enhancement to the immediate setting". It is considered that this could apply here. Members will be aware that this approach has already been followed in other green belt locations in the Borough, both before and after the publication of the NPPF – the former Skelton and White sites in Fillongley and Corley and more recently at the Whitacre Garden Centre. All of this suggests that a case for refusal of a residential redevelopment here would be difficult to defend. Additionally Members will appreciate that whilst this site is isolated and indeed in an unsustainable location, the vehicle generation associated with the one house compared to that generated by the lawful use and the type of vehicle used in connection with that use would be materially less and different. There would thus both be visual and traffic enhancement in the vicinity of the site as a consequence of this proposal. It is therefore not concluded that a refusal based on this being a residential redevelopment would carry weight in an appeal situation.

It is agreed that due to the isolated nature of the site and the clear lack of nearby accessible services and facilities, that this would not be an appropriate location for affordable housing. As a consequence, the applicant has been asked to contribute to off-site affordable provision in the locality – as was the case in the garden centre application. He has agreed to do so and this would be the subject of an Agreement should members support the grant of planning permission. The value of that contribution takes account of the costs involved in removing the existing use and the remediation of the site.

The proposal also would lead to the loss of an employment site. The lawful use here is as a builders' yard and the site has not been used as such for a little time. It was on the market but there was no interest from the local construction industry. This was put down to the small size of the site; its isolation, security issues and very poor accessibility. There is substance to these reasons. Moreover the use is not one that usually generates significant employment potential. Given its location and the nature of the surrounding highway network then it is considered that it would not be appropriate to continue that use. Indeed there would be visual, highway and openness reasons for not doing so. Moreover any commercial redevelopment, for instance to offices, would almost certainly lead to more traffic albeit of a different nature. In all of these circumstances it is considered that there is not a case for refusal here based on safeguarding an employment site.

### **c) Design**

The building proposed here is low in height and aligns with the existing out buildings on the adjoining property to the north. Give the variety of design in the nearby detached and semi-detached properties in the surrounding lanes it is not considered that the design put forward here is out of keeping. A condition restricting further extension would retain control over the openness issue.



## **Recommendation**

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

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.

### **REASON**

To comply with Section 91 of the Town and country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and to prevent an accumulation of unimplemented planning permissions.

2. Standard plan numbers condition – the location and block plan received on 1/3/13; plan 979/6C received on 31/10/13 and the final paragraph of the Wardell Armstrong letter dated 6/8/12.

### **REASON**

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

## **Pre-Commencement Conditions**

3. No development shall commence on site until details of the facing materials and roofing tiles to be used have first been submitted to and approved in writing by the Local Planning Authority. Only the approved materials shall then be used on site.

### **REASON**

In the interests of the visual amenities of the area.

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

### **REASON**

In order to reduce the risks of pollution and flooding.

5. No development shall commence on site until such time as the site investigation measures described in the report set out in condition (2) above have first been fully completed and the findings submitted in writing to the Local Planning Authority together with a remediation strategy based on those findings. For the avoidance of doubt no work shall commence on the construction of the development hereby approved until such time as a remediation strategy has first been agreed in writing by the Local Planning Authority.

**REASON**

In the interests of reducing the risk of pollution.

6. No development shall commence on the construction of the house hereby approved until such time as a Verification Report has first been submitted to and agreed in writing by the Local Planning Authority, showing that the remediation strategy agreed under condition (5) has been fully and satisfactorily undertaken.

**REASON**

In the interests of reducing the risk of pollution.

**Pre-Occupancy Conditions**

7. The development hereby approved shall not be occupied for residential purposes until such time as the following have been undertaken:

- a. the access into the site being not less than 3 metres wide for a distance of 7.5 metres into the site
- b. the gradient of that access being no greater than 1 in 10 over that 7.5 metres
- c. the access surfaced with bound macadam over that 7.5 metres, and
- d. the access crossing completed in accordance with the highway authority's specification

**REASON**

In the interests of highway safety

**On-Going Conditions**

8. No gates or barriers erected at the entrance to the site shall be hung so as to open within 7.5 metres of the near edge of the public highway carriageway.

**REASON**

In the interests of highway safety

9. Notwithstanding the provisions of Part 1 of the Town and Country Planning (General Permitted Development) Order as amended or as may be subsequently amended, no development under Classes A, B, C, D and E of that Part shall be commenced on site until such time as full details have first been submitted to and approved in writing by the Local Planning Authority.

## REASON

In the interests of retaining the openness of the Green Belt.

## Notes

1. Attention is drawn to Sections 163 and 184 of the Highways Act 1980; the Traffic Management Act 2004, the New Roads and Street Works Act 1991 and all relevant Codes of Practice. Contact should be made with the Highway Authority at 01926 412515.
2. The Council has worked positively with the applicant in this case to address the planning issues arising from this application through negotiation and requesting the submission of further relevant evidence thus meeting the requirements of the NPPF.

## BACKGROUND PAPERS

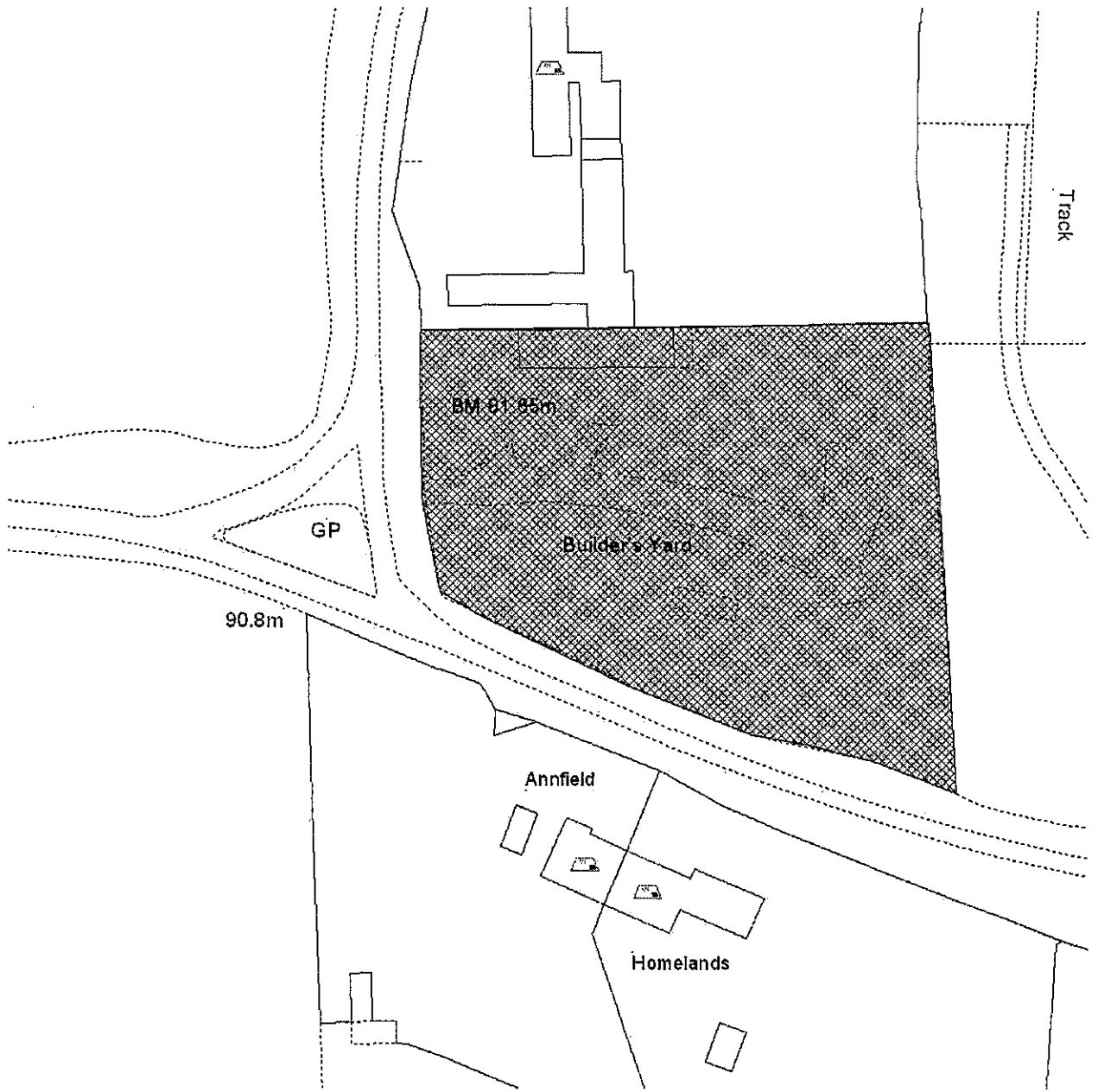
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2013/0105

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	18/4/13
2	Head of Development Control	Letter	30/4/13
3	Severn Trent Water	Consultation	29/4/13
4	Environmental Health Officer	Consultation	9/5/13
5	Highway Authority	Consultation	10/5/13
6	Applicant	Letter	10/5/13
7	Head of Development Control	Letter	17/5/13
8	Head of Development Control	E-mail	24/5/13
9	Applicant	Letter	27/6/13
10	Head of Development Control	Letter	9/8/13
11	Head of Development Control	Letter	16/9/13
12	Applicant	Letter	12/9/13
13	Head of Development Control	Letter	26/9/13
14	Applicant	Letter	4/10/13
15	Applicant	E-mail	31/10/13

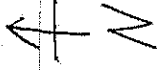
*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

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



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APPENDIX A



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Nearest transport link

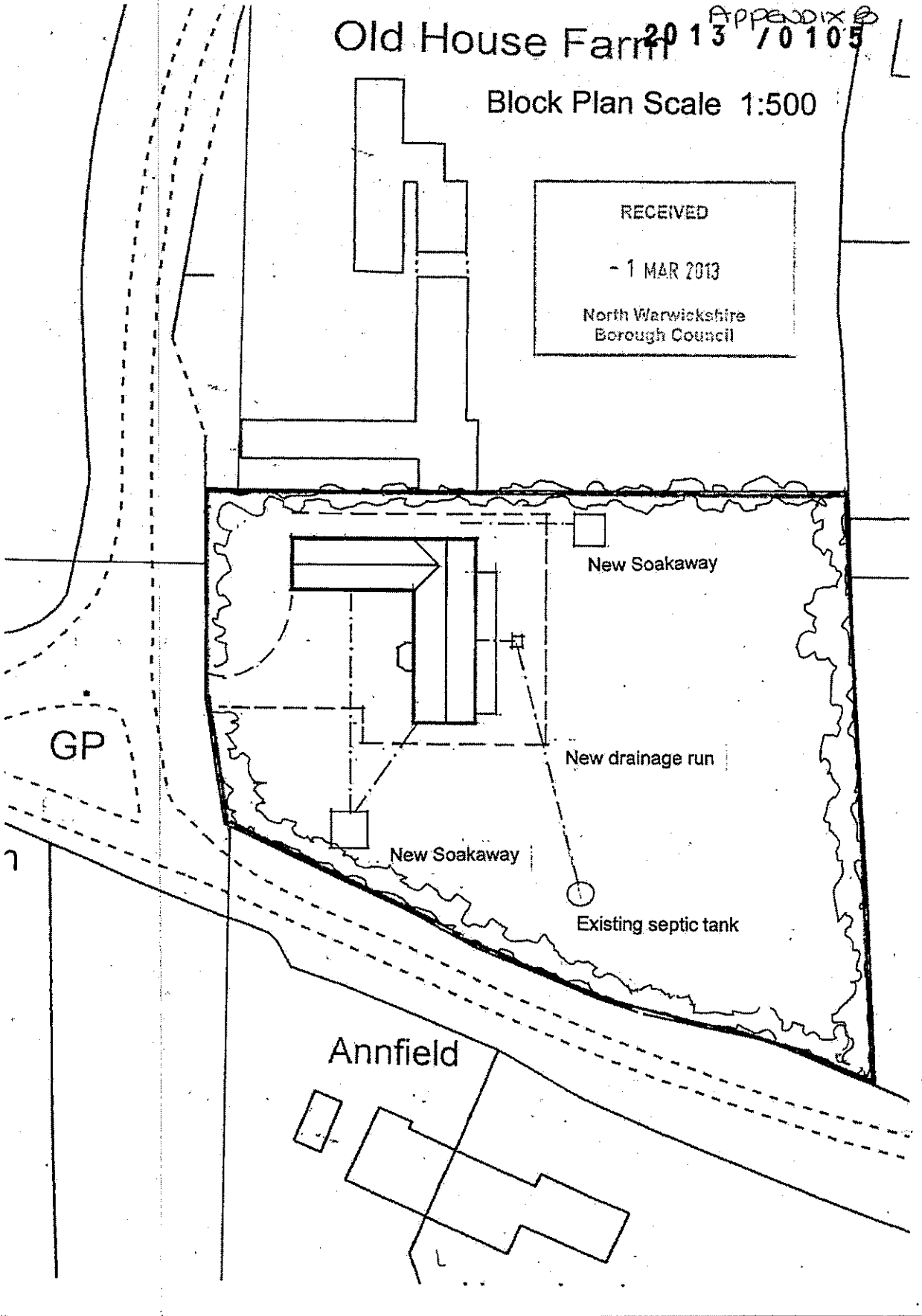
Tube:

Railway:

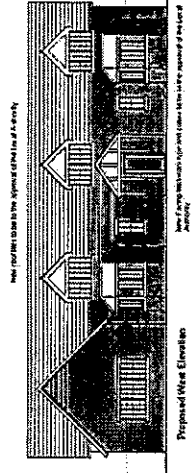
Old House Farm <sup>APPENDIX B</sup> 2013/0105

Block Plan Scale 1:500

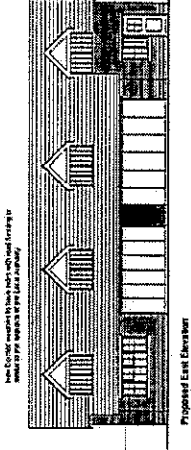
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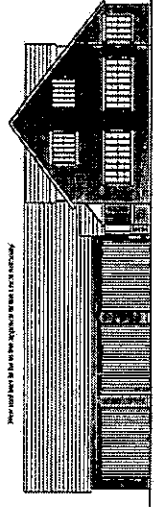
# Appendix C



Proposed West Elevation



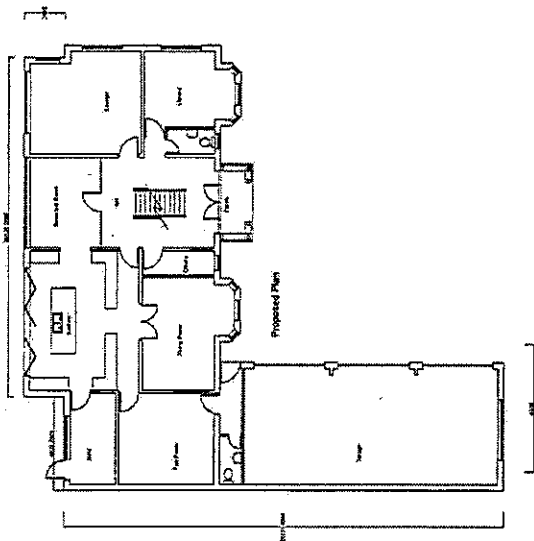
Proposed East Elevation



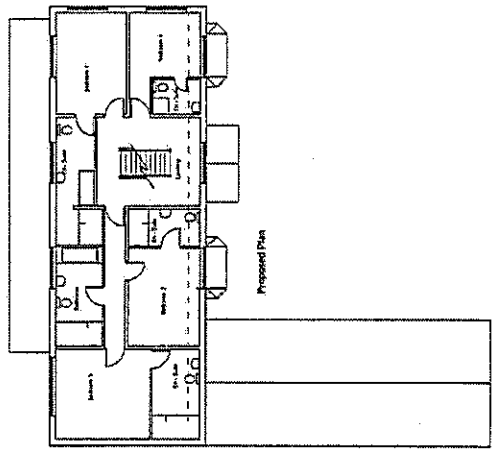
Proposed South Elevation



Proposed North Elevation



Proposed Plan



Proposed Plan

**NOTE**  
 The drawings are prepared for the purpose of illustrating the proposed construction and are not to be used for any other purpose. The contractor is responsible for obtaining all necessary permits and for complying with all applicable codes and regulations. The drawings are not to be used for any other purpose without the written consent of the architect.

**Upson & Co.**



A MEMBER OF  
 THE COLLEGE OF ARCHITECTS

UPSON & CO.  
 ARCHITECTS  
 1000 N. 10th St.  
 Washington, D.C. 20004

DATE: 2/20/13  
 PROJECT: Old House Farm  
 CLIENT: Old House Farm  
 ADDRESS: 1000 N. 10th St.  
 WASHINGTON, D.C. 20004  
 PROJECT: Proposed New Dwelling  
 CLIENT: Old House Farm  
 ADDRESS: 1000 N. 10th St.  
 WASHINGTON, D.C. 20004  
 PROJECT: Proposed Plans and Elevations

February 2013  
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 DEC



2013 / 0105

APPENDIX D

## GREEN BELT JUSTIFICATION STATEMENT

Removal of existing builders yard and provision of one detached dwelling with associated driveway, parking and amenity space.

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On behalf of:  
Mr Mark Stacey

March 2013

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18 APR 2013

North Warwickshire  
Borough Council

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## **1.0 Introduction**

- 1.1 This Planning and Green belt Justification Statement has been produced to support an application for planning permission to erect a detached house and amenity area on an existing builders yard (the Application Proposals) for Mr Mark Stacey who lives in the adjacent farm house.
- 1.2 This statement has been prepared by Andrew Upson M.C.S.D Managing Director of Upson & Co Ltd Design Consultants who is a member of the Chartered Society of Designers and who has a wealth of experience in the design and construction industry.

## **2.0 The Site**

- 2.1 The site is situated on Old Farm Lane and is in a green belt designated area. The site has been used as a builders yard for over 30 years and was granted an Established Use Certificate in January 1984 . It was owned by R J Whitehead and Co Ltd and an application to retain a storage and joinery workshop together with diesel tanks on the site was refused in August 1982 and granted on appeal in August 1985. It was sold to AW Construction Ltd. Who went into liquidation around 2003 when it was purchased by the current owner Mr Mark Stacey.  
(A copy of the Established Use Certificate is enclosed)

## **3.0 The Application Proposal**

- 3.1 The application proposals comprise of the removal of an existing builders yard and the provision of one detached dwelling with associated parking and amenity area.

## **4.00 National Planning Policy Framework**

- 4.1 The relevant national policies are PPG3 Housing and PPG2 Green Belts together with NPPF Section 9 Protecting the Green Belt paragraph 89. The North Warwickshire Local Plan makes reference to PPG3 under section 4.3.
- 4.2 PPG2 sets out government policy on green belts. Paragraph 80 of the NPPF advises that the fundamental aim of green belt policy is to prevent urban sprawl and advises that there are five purposes of green belt:
  - 4.2.1 to check the unrestricted sprawl of large built up areas
  - 4.2.2 to prevent neighbouring towns from merging into one another

3.

Cont'd

## **6.0 Summary and Conclusion**

6.1 The Application Proposals respect the relevant national and local planning policies. In terms of design and content they reflect the local environment and are in no way detrimental to the surrounding area.

6.2 Planning permission should therefore be granted, subject to appropriate conditions.

**Andrew Upson**  
**UPSON & CO LTD**

**(3) Application No: PAP/2013/0332**

**62 Birmingham Road, Water Orton, Warwickshire, B46 1TH**

**Retrospective planning application for conversion of detached outbuilding (gym/office) to ancillary residential living accommodation, for**

**Mr David Allison**

### **Introduction**

The application is brought before the Planning and Development Board as a Legal Agreement has been provided as part of the application.

### **The Site**

The site lies wholly within the development boundary of Water Orton, with residential buildings surrounding the site. The land on which the application building is sited is elevated from the main dwelling house and is partly screened from the highway by the existing house however it is visible by the side passageway. The outbuilding is within an existing established garden. To the east and north are residential dwellings, with a nursing home to the west of the site.

The application building is established within the garden and has been used as a gym/office incidental to the main house.

### **The Proposal**

It is proposed is to retain the outbuilding but to convert it to ancillary living accommodation. This includes a bedroom, bathroom, living spaces/kitchen area, in order to provide living space for a family member.

The plans for the proposal can be viewed in Appendix 1, and relevant photographs can be viewed in Appendix 2.

The outbuilding's dimensions are 10.69 metres long, 4.37 metres in depth, 2.58 metres to the eaves and 4.1 metres high to the roof ridge. There are no proposals to change its appearance.

The proposed attached legal agreement is to control the use of the building so it remains ancillary to the main dwelling house; not to provide separate facilities and not to sell the building separately from the main dwelling house. The draft legal agreement can be viewed in Appendix 3.

### **Background**

In 2009 planning permission was granted to convert a garage and store into the current building. It was then used as a gym/office, incidental to the main house. As the proposed accommodation is more than "incidental", an application is required.

## **Development Plan**

North Warwickshire Local Plan 2006 (Saved Policies) – Core Policy 2 (Development Distribution), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design) and ENV14 (Access Design)

## **Other Relevant Material Considerations**

NWBC Core Strategy Submission Version 2013

National Planning Policy Framework (NPPF).

The Council's Supplementary Planning Guidance: A Guide for the Design of Householder Developments (2003).

## **Observations**

The application has generated a number of issues which will be covered in this report.

### **a) Permitted Development and the Fall Back Position**

As members are aware, in 2008 the Town and Country Planning (General Permitted Development) Order 1995 was amended, and this changed the criteria for outbuildings within a residential curtilage in respect of when a planning application would be required. In this case it is considered that the building is indeed within a residential curtilage.

The dimensions of the building are such that they fall outside the thresholds for permitted development in respect of outbuildings – it's too tall basically. However revisions could mean that a building of the same footprint could fall within the thresholds for permitted development. There is therefore a fall-back position here. Moreover, the existing property benefits from class E outbuilding development rights. This means that additional sizeable outbuildings could be constructed without the need for the submission of planning applications. They would be subject to limitations such as height, size and siting, but in general terms, because of the orientation of the existing house, these could be extensive.

The issue is the use of the building. The proposed use of the building is ancillary to the main dwelling house, rather than being just incidental to the main dwelling house. As a consequence a planning permission is required, given that Class E outbuildings can only be incidental. Incidental uses are those such as for storage, a garage or a hobby use – in other words uses that can not exist without the use of the main house, whereas ancillary uses cover anything you can normally do in a standard house, such as using it as a lounge or a spare bedroom.

This decision by the applicant to submit this planning application allows the Council to control the use of the building and future one, through conditions as recommended below and through a legal agreement as set out later.

## **b) Legal Agreement**

The applicant has provided a draft Unilateral Undertaking under Section 106 of the 1990 Act. This effectively says that if permission is granted for the current outbuilding, then it would not:

(a) be occupied as independent or separate residential accommodation from the main dwelling at any time.

(b) be used for any purpose, other than ancillary to the residential occupation of the main dwelling, and

(c) be sold or otherwise disposed of separately from the rest of the land.

## **c) Scale and design**

The current appearance and design of the outbuilding is not proposed to be revised - it is presently rendered with a tile roof. The building is partly visible from the public realm, but it is sited to the rear of the main house. The proposal is considered to comply with the relevant saved Local Plan policies.

## **d) Neighbour amenity**

The outbuilding already has openings which will be used to light the rooms. To the east elevation is a patio door and bathroom window; to the north elevation is a window to a bedroom and to the south elevation there is a window to a kitchen area. The dwelling house to the rear of the site is approximately 13 metres from the outbuilding and given the rear bedroom window, the separation distance and that there is a boundary fence in between the properties, it is considered to be acceptable. The front of the outbuilding will have windows facing towards the garden of No.60 Birmingham Road. However this is considered to be acceptable given the proposal is sited some 15 metres from the nearest part of No.60. There are no windows in the rear elevation which faces the care home. Overall the proposal is considered to be acceptable with regards to amenity, privacy and light.

## **e) Other Issues**

Planning conditions are proposed covering the use and that no additional openings are installed. The front of the site contains parking for a number of vehicles with direct access on the Birmingham Road.

## **f) Conclusions**

In order to bring some degree of certainty to the proposal and to control the use of the building, a draft Unilateral Undertaking has been put forward by the applicant as viewed in Appendix 3. It would enable the applicant to retain the outbuilding and lead to control of the future use of the outbuilding.

## Recommendation

That subject to the Section 106 Agreement being signed as outlined above, planning permission be **GRANTED** subject to the following conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.

### REASON

To comply with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and to prevent an accumulation of unimplemented planning permissions.

2. The development hereby approved shall not be carried out otherwise than in accordance with the plan numbered 0610-locplan01; 0610-siteplan01; 0610-01; 0610-05; 0610-02; 0610-04; and 0610-032 received by the Local Planning Authority on 5 July 2013.

### REASON

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

3. The accommodation hereby approved shall be occupied solely in connection with, and ancillary to the main dwelling at 62 Birmingham Road, Water Orton, B46 1TH; and shall not be sold off, sub-let or used as a separate unit of accommodation.

### REASON

To prevent unauthorised use of the property and so to reflect Development Plan policy.

4. No additional opening shall be made other than shown on the plan hereby approved, nor any approved opening altered or modified in any manner.

### REASON

To protect the privacy of the occupiers of adjoining properties.

## Notes

1. The submitted plans indicate that the proposed works come very close to, or abut neighbouring property. This permission does not convey any legal or civil right to undertake works that affect land or premises outside of the applicant's control. Care should be taken upon commencement and during the course of building operations to ensure that no part of the development, including the foundations, eaves and roof overhang will encroach on, under or over adjoining land without the consent of the adjoining land owner. This planning permission does not authorise the carrying out of any works on neighbouring land, or access onto it, without the consent of the owners of that land. You would be advised to contact them prior to the commencement of work.

2. You are recommended to seek independent advice on the provisions of the Party Wall Act 1996, which is separate from planning or building regulation controls and concerns giving notice of your proposals to a neighbour in relation to party walls, boundary walls and excavations near neighbouring buildings. An explanatory booklet can be downloaded at [www.communities.gov.uk/publications/planningandbuilding/partywall..](http://www.communities.gov.uk/publications/planningandbuilding/partywall..)

3. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to determine the application quickly given the related legal agreement. As such it is considered that the Council has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.



## BACKGROUND PAPERS

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

Planning Application No: PAP/2013/0332

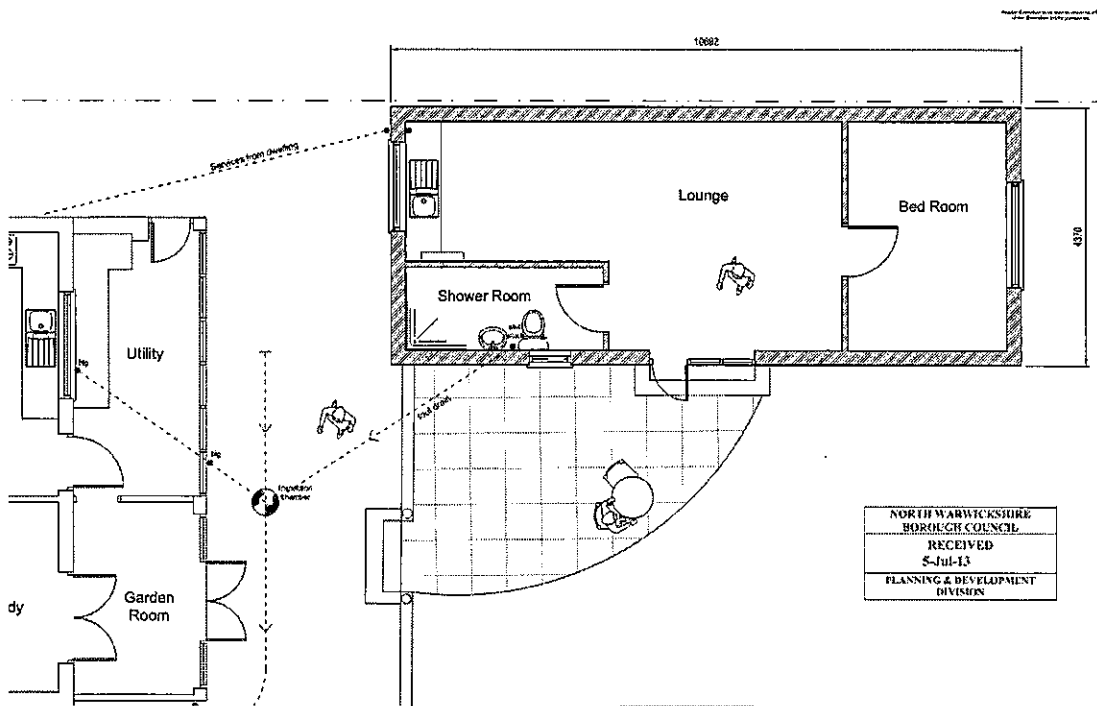
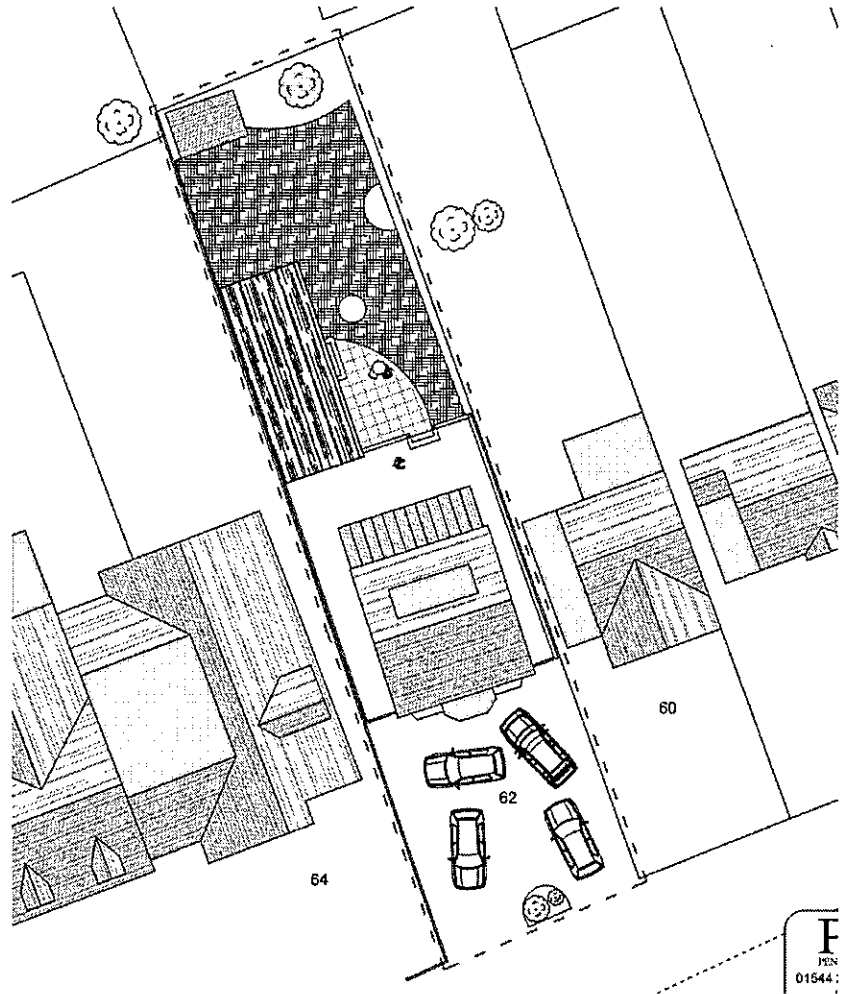
<b>Background Paper No</b>	<b>Author</b>	<b>Nature of Background Paper</b>	<b>Date</b>
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	5/7/2013
2	Councils Solicitor	Email to agent	04/11/2013

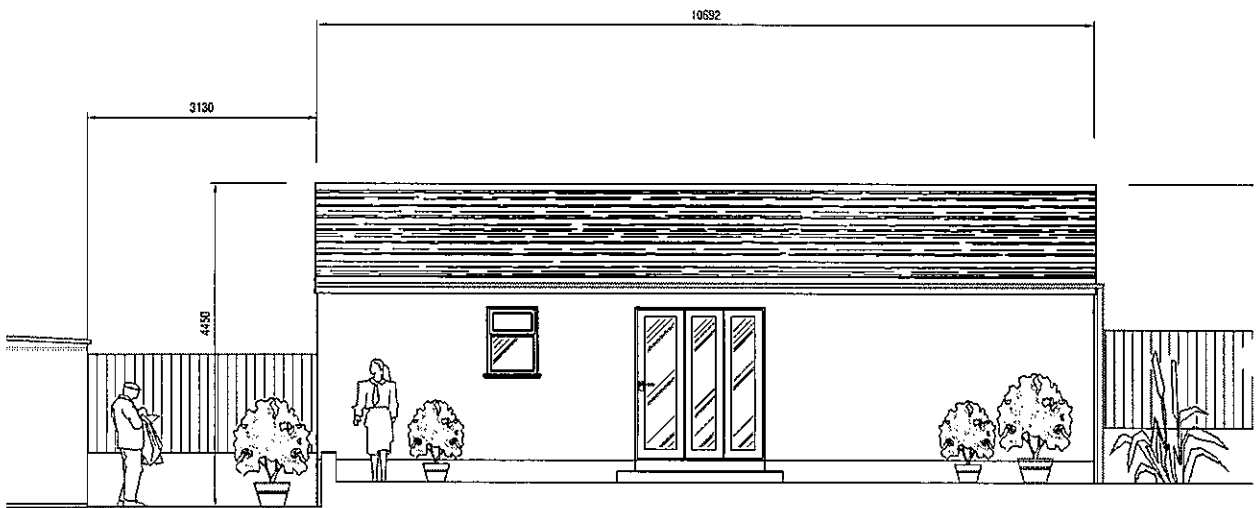
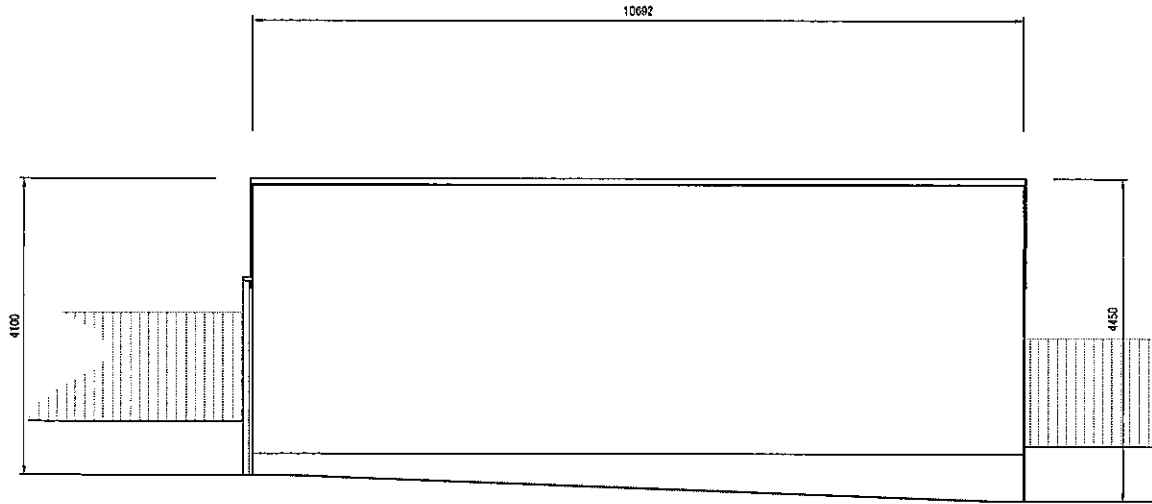
*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

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

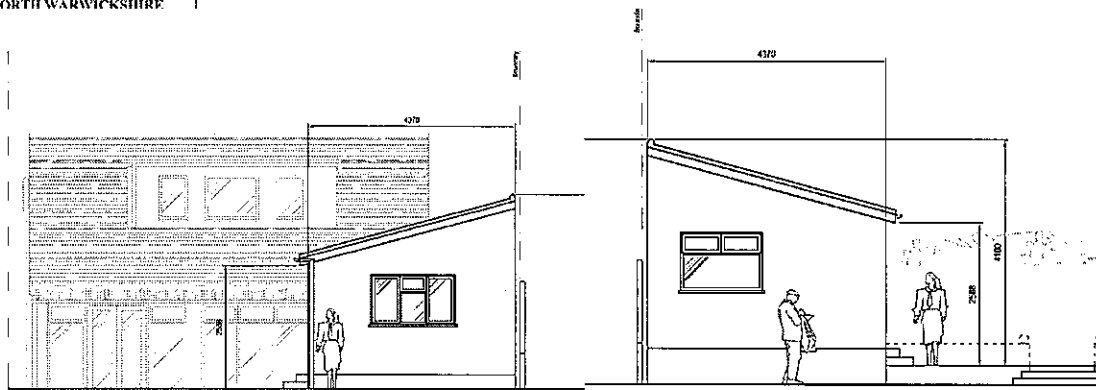


Appendix 1 – proposed plans





NORTH WARWICKSHIRE



Appendix 2 – photographs



DATED

2013

**NORTH WARWICKSHIRE BOROUGH COUNCIL (1)**

and

**JOHN ALLISON and CHRISTINE ALLISON (2)**

and

**LLOYDS TSB BANK LIMITED (3)**

---

**PLANNING OBLIGATION BY DEED**

Made pursuant to Section 106 of the Town and Country  
Planning Act 1990, Section 111 of the Local Government  
Act 1972

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Relating to

Land at 62 Birmingham Road, Water Orton Warwickshire

**THIS DEED** is dated 2013 and made between:-

1. **NORTH WARWICKSHIRE BOROUGH COUNCIL** of The Council House South Street Atherstone Warwickshire CV9 1DE (the "Council")
2. **JOHN ALLISON and CHRISTINE ALLISON** of 62 Birmingham Road, Water Orton, Warwickshire ("the Owner") and
3. **LLOYDS TSB BANK LIMITED** (Company Registration Number 2065) of Barnett Way, Gloucester, GL4 3RL

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**WHEREAS**

**RECITALS**

- 1 The Borough Council is the Local Planning Authority for the purposes of section 106 of the 1990 Act and for the purposes of this Deed for the area within which the Site is situated and by whom the obligations contained in this Deed are enforceable
- 2 The Owner is the freehold owner of the Site
- 3 The Owner has by the Application applied to the Borough Council for permission to develop the Site in the manner and for the uses set out in the Application and in the plans specifications and particulars deposited with the Borough Council and forming part of the Application

4 The Council has not yet determined the application and the parties hereto enter into this Undertaking in the knowledge that the Planning Permission may not be granted.

THIS UNDERTAKING WITNESSES AS FOLLOWS: -

## **1. DEFINITIONS AND INTERPRETATION**

1.1 For the purposes of the recitals and this Undertaking, the following expressions shall have the following meaning:

"Act" means the Town and Country Planning Act 1990;

"Annexe Building" means the building the subject of the Planning Application and marked "Building A" on Plan A at Schedule 2 to this Undertaking;

"Main Dwelling" means the dwelling house situate on the Land;

"Land" means the land against which this Undertaking may be enforced at 62 Birmingham Road, Water Orton, Warwickshire, which is in the freehold ownership of the Owners [subject to a charge held by the Mortgagee] and is shown for identification purposes edged in red on Plan A at Schedule 2 to this Undertaking;

"Planning Application" means the application for planning permission for retention of the conversion of the Annexe Building to ancillary accommodation unit under reference PAP/2013/0332;

"Planning Permission" means the planning permission and plans to be granted pursuant to the Planning Application.

1.2 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated associations and partnerships.

1.3 References in this Undertaking to any statute or statutory provision shall be construed as a reference to the same as it may from time to time be amended, extended, modified, consolidated or re-enacted whether before or at the date of this Undertaking.

1.4 Unless the context otherwise requires, reference to any clause, paragraph, subclause or schedule or appendix is a reference to a clause, paragraph, subclause, schedule or appendix of or to this Undertaking.

1.5 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Undertaking.

1.6 Where a party includes more than one person named as a party any obligations of that party shall be joint and several unless there is an express provision otherwise.

1.7 References to any party to this Undertaking shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to the Council's respective functions.

## **2. STATUTORY PROVISIONS**

2.1 This Undertaking is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 to the intent that it will bind the Owners.

2.2 The covenants, restrictions and requirements imposed upon the Owners under this Undertaking create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owners without limit of time.

## **3. CONDITIONALITY**

3.1 Save where otherwise provided, the obligations in this Undertaking are subject to and conditional upon the grant of the Planning Permission.

## **4. MISCELLANEOUS**

4.1 Nothing contained or implied in this Undertaking shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of their functions as local planning authority and their rights, powers, duties and obligations under all public and private statutes, bylaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Undertaking.

4.2 If any provision in this Undertaking shall be held to be invalid, illegal or unenforceable then the validity, legality and enforceability shall not affect the validity or enforceability of the remaining provisions of this Undertaking.

4.3 No waiver (whether express or implied) by the Council of any breach or default by the Owners in performing or observing any of the covenants undertakings obligations or restrictions contained in this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertaking or obligation from acting upon any subsequent breach or default in respect thereof by the Owners.

4.4 Nothing in this Undertaking shall be construed as a grant of planning permission.

4.5 Unless expressly agreed otherwise in this Undertaking, the covenants in this Undertaking shall be enforceable without any limit of time against the Owners.

4.6 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission granted (whether or not on appeal) after the date of this Undertaking.

4.7 This Undertaking cannot be amended or discharged without the prior consent in writing of the Owners and the Council.



4.8 In the event of the planning obligations contained in this Undertaking being modified a note or memorandum thereof shall be endorsed upon this Undertaking.

## **5. THE OWNERS' PLANNING OBLIGATIONS**

The Owners covenant with the Council so as to bind the Land to observe and perform the obligations contained in Schedule 1.

## **6. MORTGAGEE'S CONSENT**

*6.1 The Mortgagee's consent to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Owner's Land.*

6.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Owner's Land.

6.3 The Owners hereby agrees to indemnify and keep indemnified the mortgagee from and against all action, costs, claims and demands of whatsoever nature arising out of any breach or non-observance of the terms of this agreement.

6.4 The Mortgagee consents to this agreement and acknowledges that the agreement binds the Property. The Mortgagee shall only be liable for a breach of the agreement that it has itself caused whilst mortgagee in possession but shall not be liable for any pre-existing breach.

## **7. ARBITRATION**

7.1 All disputes, differences or questions arising out of this Undertaking or as to the rights or obligations of the parties under it or in connection with its construction shall be referred to arbitration by a single arbitrator to be agreed between the parties or, failing agreement, within 21 days by an arbitrator to be appointed at the request of any party by the President of The Royal Institute of Chartered Surveyors as the case may be having due regard to any representations made to him as to the appropriate qualifications of such arbitrator.

7.2 The arbitration shall take place in Warwickshire and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force, unless otherwise agreed in writing by the Council.

## **8. THIRD PARTIES**

A person who is not named in this Undertaking does not have any right to enforce any term of this Undertaking under the Contracts (Rights of Third Parties) Act 1999.

## **9. JURISDICTION**

This Undertaking is governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS of which this Undertaking has been duly executed as a Deed and has been delivered once dated.

EXECUTED as a DEED by  
affixing THE COMMON SEAL of  
**THE COUNCIL OF THE  
BOROUGH OF NORTH WARWICKSHIRE** in  
the presence of :-

Authorised Signatory

**EXECUTED as a DEED by**

**JOHN ALLISON**

in the presence of:

Witness:

**EXECUTED as a DEED by**

**CHRISTINE ALLISON**

in the presence of:

Witness:

**EXECUTED as a deed by LLOYDS TSB BANK LIMITED**  
acting by two directors or one director and the secretary

.....

Director

.....

Director / Secretary

## **SCHEDULE 1**

The Owners covenant with the Council as follows:

1. The Annexe Building shall not
  - (a) be occupied as independent or separate residential accommodation from the Main Dwelling at any time.
  - (b) be used for any purpose other than ancillary purposes in relation to the residential occupation of the Main Dwelling.
  - (c) be sold or otherwise disposed of separately from the rest of the Land.
2. to pay a contribution towards the Council's reasonable legal costs on completion of this Deed, that contribution being limited to £500

**(4) Application No: PAP/2013/0443**

**2, Crowberry Lane, Middleton, Tamworth, B78 2AJ**

**Retention of Attic/roof extension, for**

**Mr Jack Everill**

### **Introduction**

The application is referred to the Board for determination in view of the recommendation involving the possibility of enforcement action.

### **The Site**

This is a detached residential property to the west of Crowberry Lane at the eastern end of Middleton. The site is outside of the village in open countryside and a little south of the junction with Church Lane and opposite a range of stables. It is in the Green Belt.

### **The Proposals**

The proposal is to retain a replacement mansard roof structure which provides first floor accommodation in the form of a bedroom and bathroom with two dormer windows, two roof lanterns and an access stair. The previous structure was single storey having a roof height of 2.6 metres. The present structure as described above is 4.5 metres tall. Plans illustrating the present position together with photographs are at Appendices A and B.

### **Background**

A Certificate of Lawfulness was issued in 2005 for a "single storey prefabricated building standing on a brick plinth with concrete roofing tiles and an attached lean to garage". The Certificate explicitly includes a photograph of the lawful building, and this was appended to the Certificate – see Appendix C. In 2006 a further Certificate was granted which defined a residential curtilage for this pre-fabricated building. In 2007 a Certificate was granted for a new conservatory, summer house, decking and the re-cladding of the structure with a brick face. This work was all undertaken. It can be seen as part of the existing structure illustrated in the photographs in Appendix B.

In 2011, the applicant was refused planning permission for a replacement two storey house on the grounds of adverse impact on the openness of the Green Belt. A copy is attached as Appendix D.

Earlier this year, the office was asked to investigate building works at the site and these are illustrated in the photographs and are now the subject of this retrospective application.

## **Representations**

A letter of objection has been received from a local resident referring to the development being inappropriate development and that this is now "contrary" to the original single storey mobile home dwelling. It is also considered to be "ugly", disproportionate" and it is said that it gives rise to excessive light pollution.

Twelve letters of support have been received from other residents saying that the design is well constructed, in keeping and that the works are not readily visible and are a visual improvement.

At the time of writing the Parish Council had not submitted any representations.

## **Development Plan**

Saved policies of the North Warwickshire Local Plan 2006 – ENV2 (Green Belt), ENV11 (Neighbour Amenities) and ENV13 (Building Design).

## **Other Material Planning Considerations**

The National Planning Policy Framework 2012 – (NPPF)

The Submitted Version of the North Warwickshire Core Strategy 2013.

The Council's Supplementary Planning Guidance – A Guide to the Design of Householder Development – 2003 (SPG)

## **Observations**

### **a) Introduction**

There are a couple of matters which need to be set out from the beginning.

Firstly, the Board is requested to deal with this application as any other application – by assessing its planning merits. The fact that this is a retrospective application is only relevant in that Members can appreciate the extent and impact of the building operations under consideration as they have been completed.

Secondly, the lawful use of the planning unit here is that described in the three Certificates as set out above. That is to say a single storey pre-fabricated building with alterations, including brick cladding decking and a conservatory set in its own residential curtilage.

## **b) Green Belt**

The site is in the green Belt land and the control of new development here is governed by saved policy ENV2 of the Local Plan. That requires the control to be exercised in line with the Government's former Planning Policy Guidance Note Number Two. This has been superseded by the NPPF and that therefore becomes the formative guidance. The advice therein in respect of extensions to houses says that the extension or alteration of building is not inappropriate "provided that it does not result in disproportionate additions over and above the original building". It is accepted that the previous structure here constituted the "original" building in terms of the NPPF advice. That was the extent of the lawful development by virtue of the Certificates. Hence that the first issue for the Board is to decide whether the proposed works- now undertaken - resulting a "disproportionate" additions to the original position. It is considered that they do. The quantitative increase is a 173% addition in volume – much greater than the guidance set out in the Council's SPG or indeed in saved policy ENV13 which is 30%. Moreover the visual difference too is by fact and degree a material difference in scale, mass and appearance – see Appendices B and C. In addition the appeal decision dismissing the proposed replacement two storey house here, focuses on the impact of the openness – paragraphs 10 to 12 of Appendix D. The same conclusions arise here. The present house is larger than the original and is more noticeable from outside of the site. As a consequence this proposal constitutes inappropriate development in the Green Belt and thus carries the presumption of refusal.

The applicant has not submitted the considerations which he feels amount to the very special circumstances necessary to outweigh this presumption other than to refer to the letters of support. These are not the unique considerations which would give the Council cause to re-consider the presumption. The proposals thus remain as inappropriate development and therefore will be recommended for refusal.

## **c) Other Issues**

There are no adjoining properties and thus there is limited visual impact. There is not considered to be a loss of amenity, privacy or loss of light that would result in an unacceptable impact upon the neighbouring properties. The design of the works is unusual and leads to a somewhat "top heavy" appearance which gives weight to the adverse impact on openness.

## **d) Enforcement**

It is clear from the above assessment that planning permission is to be recommended for refusal. The matter of enforcement thus arises given that the whole of these works has been completed and the application is retrospective seeking to retain them. It is considered that an Enforcement Notice is expedient here. The refusal is based on a matter of principle and perhaps the most significant of the planning policies which the council operates both at national and local level. Moreover in this case the planning history of the site is materials, as there is a well defined lawful use here and recent appeal decision which together set out a base-line. Upholding Green Belt policy is important to the Borough Council

Any notice here would require removal of the first floor accommodation and the re-instatement of the single storey building with its ridge height of 2.6 metres. This would carry a dis-benefit to the applicant and owner as there would not only be a financial cost but he would also lose residential accommodation. To some extent of course he undertook a risk when he constructed these works and thus accepted the possibility of such enforcement action. He can of course appeal a refusal and the notice, if issued, and thus has the ability to argue his case and defend his actions in other places – both before the Planning Inspectorate and the Courts.

### **Recommendation**

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

“The extension when considering previous works is considered by virtue of its size and scale to materially and detrimentally affect the openness of the Green Belt in which the host building is located. The proposal is thus inappropriate development as it amounts to a disproportionate addition to the additional building. The proposal does not accord with saved policies ENV2 and ENV13 of the north Warwickshire Local Plan 2006, nor with paragraph 89 of the NPPF. There are no mitigating planning considerations of sufficient weight to override the presumption of refusal”.

**b)** That an Enforcement Notice be issued for the reasons set out in this report, requiring the removal of the first floor roof and accommodation so as to re-instate the single storey building with a ridge height of 2.6 metres as illustrated in the 2005 Certificate. A compliance period of six months is considered to be appropriate.

## BACKGROUND PAPERS

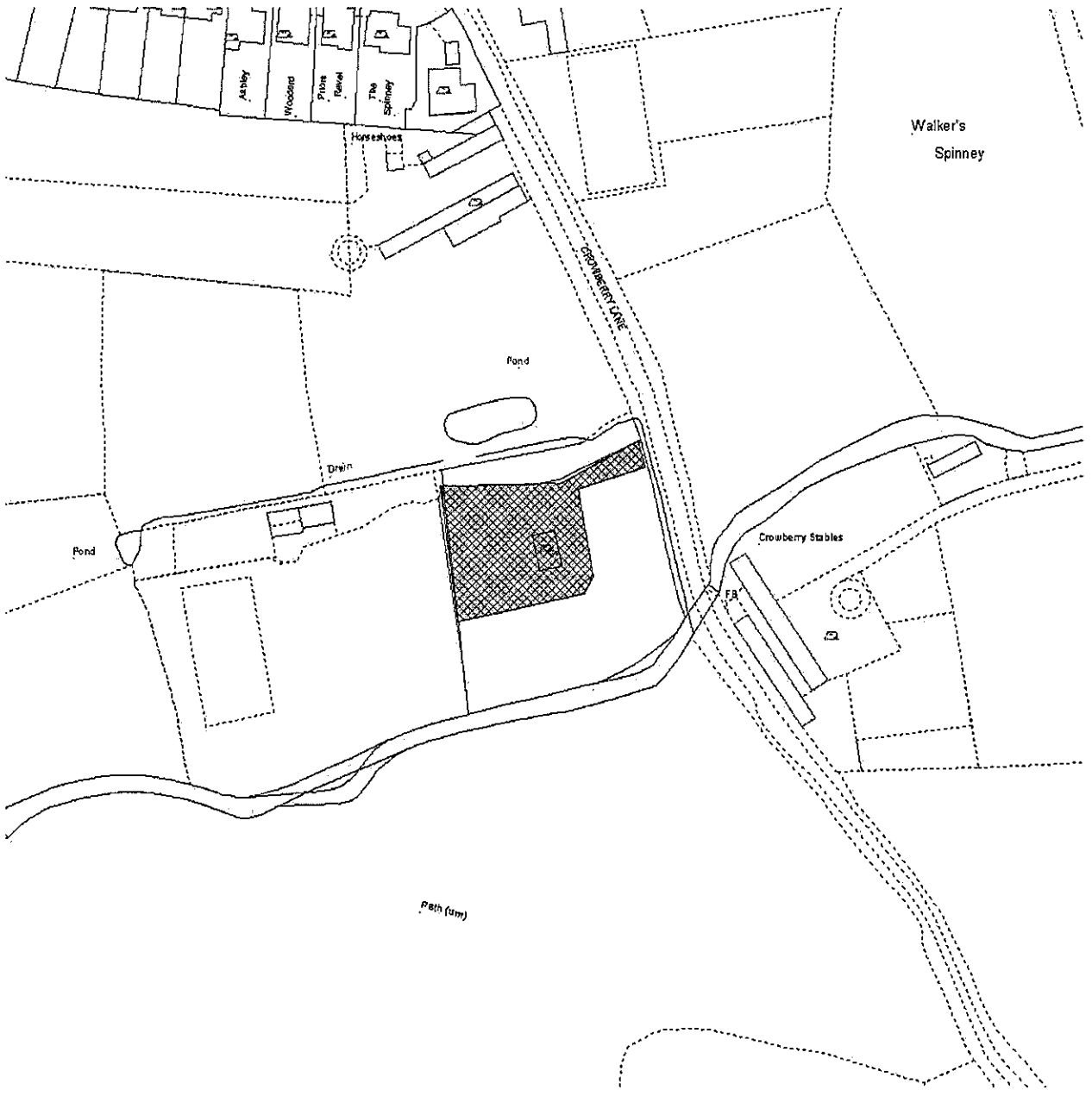
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2013/0443

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	7/10/13
2	V Lewis	Objection	31/10/13
3	R Webb	Support	31/7/13
4	E Fowler	Support	26/7/13
5	T Cole	Support	27/7/13
6	A O'Neil	Support	29/7/13
7	M Croshaw	Support	29/7/13
8	T Harris	Support	29/7/13
9	Mr & Mrs Hollis	Support	28/7/13
10	Mr & Mrs Ryan	Support	26/7/13
11	I Nightingale	Support	25/7/13
12	J Rowland	Support	28/7/13
13	S Beale	Support	29/7/13
14	M Suurbier	Support	24/7/13

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

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







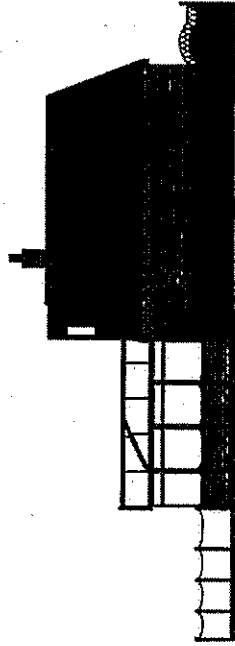
Mr. Everill-Crowberry Lane  
Sales 01827 880595

2013/0443

Front View (West Facing)



Side View (South Facing)

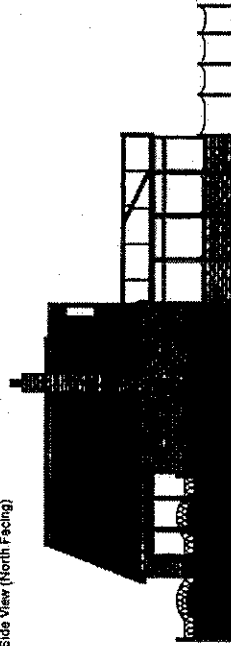


NORTH WARWICKSHIRE BOROUGH COUNCIL
RECEIVED
9-Sep-13
PLANNING & DEVELOPMENT DIVISION

Rear View (East Facing)



Side View (North Facing)



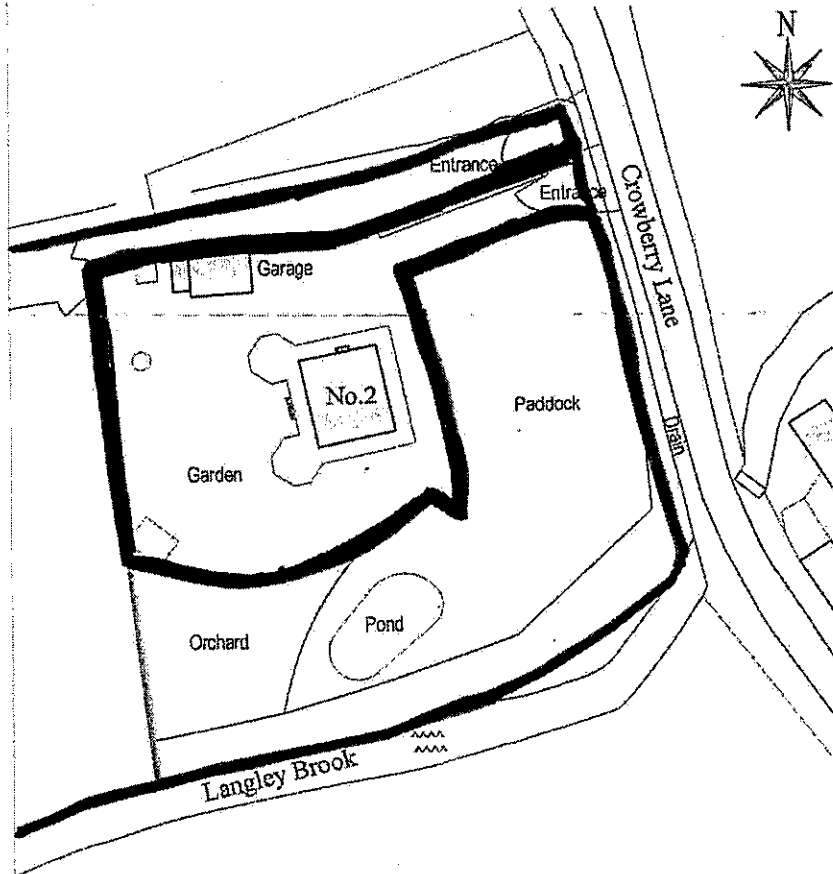
# Appendix A.

www.rural-log-cabins.co.uk Telephone : 01827 880597 Fax : 01827 880895 E-Mail : sales@rural-log-cabins.co.uk

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2013 / 0443

Proposed Roof Extension and Balcony.  
2 Crowberry Lane, Middleton, Tamworth  
For Mr J Everill  
Block Plan at 1/500 Scale



RECEIVED  
09 SEP 2013  
North Warwickshire  
Borough Council





APPENDIX C  
K40/2005  
dsc



356

PHOTOGRAPH 1 30/6/05

Jaw 18/6/05



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## Appeal Decision

Site visit made on 19 April 2012.

by **G Powys Jones MSc FRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 May 2012

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**Appeal Ref: APP/R3705/A/11/2164959**

**2 Crowberry Lane, Middleton, Tamworth, Warwickshire, B78 2AJ**

- 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 J Everill against the decision of North Warwickshire Borough Council.
  - The application Ref PAP/2011/0277, dated 15 May 2011, was refused by notice dated 9 August 2011.
  - The development proposed is a new dwelling.
- 

### Decision

1. The appeal is dismissed.

### Preliminary matters

2. Reference is made to *Planning Policy Guidance 2: Green Belts* (PPG2) in the representations, and other aspects of national planning policy. These documents have been replaced by the provisions of the *National Planning Policy Framework* (NPPF), which was published during the course of the appeal. The main parties were given the opportunity to comment on the implications of the NPPF for their respective cases, and those made have been taken into account.
3. The thrust of policy ENV2 of the North Warwickshire Local Plan (LP) is consistent with the provisions of the NPPF in that it provides that within the Green Belt (GB) national policies apply. LP policy HSG3 (2) is directed to the rebuilding of existing dwellings outside development boundaries, which by implication includes land within the GB. The policy provides guidance as to how national planning policy as to replacement buildings should be interpreted at local level. The content of the policy is not inconsistent with national GB policy contained in the NPPF.
4. Accordingly, both LP policies referred to above attract full weight.

### Main Issues

5. The main issues are:
    - whether the proposed development is inappropriate development for the purposes of the NPPF, and local development plan policy;
- 

<http://www.planningportal.gov.uk/planninginspectorate>

- the effect on the openness of the GB and the character and appearance of the surrounding area;
- if it is inappropriate development, whether the harm caused by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development

### **Reasons**

#### *Appropriate or Inappropriate Development*

6. In the terms of paragraph 89 of the NPPF the replacement of a building in the GB is not inappropriate development provided that the new building is in the same use and is not materially larger than the one it replaces. The appeal proposal involves replacing a building of the same use, but the term 'materially larger' is not empirically defined in national policy. LP policy HSG3 (2), however, provides that whilst replacement dwellings may be larger than the original, enlargement will be limited to no more than 30% of the volume of the original dwelling.
7. The appellant, who acknowledges that the proposed new dwelling would be materially larger than the existing dwelling, does not dispute the Council's calculations as to the proposed increase in volume. I have no reason to dispute the Council's calculations, which indicate that the increase in volume would be in excess of 300%.
8. The proposed dwelling would be materially larger, in the ordinary meaning of the term, than that to be replaced in the terms of national policy, and significantly larger than the limit set out in LP policy HSG3 (2).
9. I therefore conclude that the proposal comprises inappropriate development in the GB, which, by definition, is harmful, and this carries substantial weight against the development.

#### *Effect on Openness, Character and Appearance*

10. One of the essential characteristics of the GB is its openness, and one of its purposes is to assist in safeguarding the countryside from encroachment. The existing site is partly developed, but because of the relatively low height of the existing modest dwelling, and other development, its visual impact is limited from outside the site.
11. The replacement dwelling, in view of its increased bulk, mass and height in comparison with that to be replaced, would be very noticeable from the lane outside the site, and particularly intrusive during the winter, irrespective of the proposed design, repositioning and the recently planted hedge at the front of the site. Consequently, I consider that the openness of this part of the GB would be materially and detrimentally affected by the development, and the character and appearance of this attractive verdant part of rural Warwickshire would be harmed.
12. The harm that would be caused to the openness of the GB, local character and the appearance of the surrounding rural area as a result of the development attracts substantial weight against the proposal.

*Other considerations*

13. The modest size of the existing dwelling is such that it is too small to accommodate his partner, her son and daughter, and the appellant's granddaughter. Little information has been provided as to the circumstances surrounding the younger generation's existing circumstances. The appellant also considers that he may require a resident carer in the future. Whilst I fully understand the nature of the appellant's difficulties and concerns, personal arguments will seldom outweigh the more general planning considerations, particularly in the light of the government's continued commitment to protecting the GB from inappropriate development. Since the construction would be permanent and the perceived benefits transient, I attach little weight to this aspect.
14. The appellant suggests that by using permitted development rights additional accommodation could be provided in a piecemeal fashion, and that a well-designed replacement dwelling would be preferable in environmental terms. I do not find this argument compelling, and no Lawful Development Certificate has been produced to possibly better demonstrate the appellant's point. In the circumstances, the argument based on permitted development rights attracts very little weight in favour of the development.
15. I note the appellant's points as to flooding and highway issues, and appreciate that no objection was raised in these respects. They attract minimal weight in favour of the development.
16. The line of the HS2 rail link has been cited as a reason why the local property market has suffered, and that consequently the appellant is faced with redeveloping his property rather than moving to a larger property to meet his future needs. I find the evidence on this aspect to be unconvincing, since it appears to be based on assertion rather than on compelling evidence and/or a marketing exercise, and it attracts minimal weight in favour.
17. The harm I have identified as a consequence of the inappropriateness of the development and its effect on openness, local character and appearance carry substantial weight against the development. The other considerations I have identified carry little, very little or minimal weight in its favour, and I conclude they are insufficient to clearly outweigh the harm to the Green Belt. The very special circumstances necessary to justify the development therefore do not exist.

*G Powys Jones*

INSPECTOR



**(5) Application No: PAP/2013/0493**

**Aldi Stores Limited, 32 Station Street, Atherstone, CV9 1BU**

**Variation of condition no: 2 of planning permission PAP/2012/0159 to allow an extension to trading hours - 08.00 hours to 22.00 hours on Mon-Sat and 10.00 hours to 16.00 hours on Sundays; in respect of the erection of an A1 food retail store and associated car parking, for Aldi Stores Limited**

**Introduction**

The application is reported to the Board because it is accompanied by a revised Section 106 Agreement.

**The Site**

An existing retail premises situated on the north side of Station Street on the opposite side of the road to the Co-op petrol filling station and the Co-op food retailing store. A row of terraced dwellings lie on the opposite side of Station Street opposite the vehicular entrance to the site. Other buildings in mixed commercial and residential use lie in the near vicinity.

**The Proposal**

It is proposed to vary condition no: 2 of planning permission PAP/2012/0159 to allow an extension to trading hours. The store is presently allowed to open until 9pm. This variation of condition would allow opening until 10pm, the opening hours would therefore be - 08.00 hours to 22.00 hours on Mon-Sat and 10.00 hours to 16.00 hours on Sundays.

**Background**

The original planning permission for the erection of the retail store was granted subject to a condition which limited the retail trading to finish at 8pm (Mon-Sat) and condition 3 limited deliveries to the following two hours. This was intentional to ensure that there was no conflict between customer vehicles and delivery vehicles, given the access layout.

An application to vary these opening hours was granted in 2012. This consented the extension of retail trading to 9pm. The delivery hours remained between 8pm and 10pm. This was considered acceptable given that anticipated customer numbers between 8pm and 9pm were likely to be relatively low. The Planning Department has not received any reports of difficulties being encountered as a result of the 9pm closing time.

**Development Plan**

Saved Policies of the North Warwickshire Local Plan 2006 - ENV11 (Neighbour Amenities) and ENV14 (Access Design)

## **Other Relevant Material Considerations**

The National Planning Policy Framework 2012 - ("the NPPF").

## **Consultations**

Environmental Health Officer – No objection.

## **Representations**

Atherstone Town Council confirms that it has no objection to the extension of retailing until 10pm. It queried whether the time allowed for car parking could be increased to 2 hours.

## **Observations**

The application seeks to allow for an extra hour of evening trading, Monday to Saturday. There is no objection in principle to this in a town centre location. The main considerations are whether this would result in any adverse consequences for the amenity of people who live in the vicinity of the store or to highway safety.

No objections have been received from people who live in the locality and the Town Council do not object. There are no reported issues arising from the recent increase in trading hours to 9pm.

When extended opening was considered previously the potential conflict with delivery vehicles was an issue. It was considered that the level of trade at that hour would be unlikely to be high and thus the risks were relatively low. The same applies in respect of 9pm to 10pm trading. It is not anticipated that shopper numbers will be so high as to constitute a high risk of conflict.

In respect of the Town Council's query then Aldi has confirmed the two hour period.

The application is accompanied by a revised Section 106 Unilateral Obligation which updates the obligation associated with the original grant of planning permission such that it now references this new revised application. The revisions to the Planning Obligation ensure that there is continuing public access to the store car park.

## Recommendation

That, subject to the completion of a satisfactory Unilateral Obligation, planning permission be **GRANTED** subject to the following conditions:

1. No deliveries shall be taken at or despatched from the site (including refuse collection vehicles) outside the hours of 0600-0800 hours and 2000-2200 hours on Mondays-Saturdays and 0800-1000 hours and 1600-1800 hours on Sundays. Deliveries to and collections from the store (including refuse collection vehicles) shall be made only by rigid chassis vehicles or by a tractor (truck) unit with a trailer measuring 11.3 metres in body length, 2.6 metres in overall width and having a wheelbase of 7.2 metres.

### REASON

In the interests of safety on the public highway.

2. The retail store hereby permitted shall not be open to customers outside the following times: 0800-2200 hours Monday to Saturday and 1000-1600 hours on Sundays.

### REASON

In the interests of the amenities of the area.

3. The use of any refuse compactor shall be limited to 0800-1900 on any day.

### REASON

In the interests of the amenities of the area.

4. The car and cycle parking facilities shown on the drawing number Z12A20-002 received by the Local Planning Authority on 2 October 2013 shall be available for use by customers of the store at all times that it is open for business.

### REASON

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

5. The vehicular access to the site shall be made and maintained only in accordance with the details shown on on drawing number Z12A20-002 received by the Local Planning Authority on 2 October 2013.

### REASON

In the interests of safety on the public highway.

## **INFORMATIVES**

1. The Development Plan policies which are relevant to this Decision are as follows:  
North Warwickshire Local Plan 2006 (Saved Policies) : ENV11 – Neighbour Amenities, ENV14 – Access Design
2. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning issues through negotiations in a timely fashion. As such it is considered that the Council has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

## BACKGROUND PAPERS

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

Planning Application No: PAP/2013/0493

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	2/10/13
2	Atherstone Town Council	Representation	7/11/13
3	The Case Officer and the applicant	Exchange of correspondence	13/11/13 18/11/13 21/11/13

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

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



**(6) Application no: PAP/2013/0500**

**Poultry Farm, Green End Road, Fillongley**

**Proposed Development of a 34.5 metre tall 50kW wind turbine for**

**Mr J Potter**

### **Introduction**

The receipt of this application was referred to the Board's November meeting and that report is attached as Appendix A for easy reference.

### **Additional Information**

The applicant has provided some further information since the submission of the application. He estimates that the lower turbine height (by some 11 metres) would produce less electricity – 190,000kW per annum rather than 200,000kW. Based on the average consumption of electricity for domestic use, he estimates that the surplus generation here available for the National Grid would be sufficient for 31 homes per year as opposed to the 34 from the refused scheme.

### **Consultations**

**Environmental Health Officer** – No objection

**Warwickshire County Council as Highway Authority** – No objection subject to standard conditions requiring the improvement of the access onto Green End Lane.

**Highways Agency** – No objection subject to a condition requiring details to be agreed of the routes to be used for construction traffic.

**Birmingham Airport** - No objection

**Ministry of Defence** – No objection

### **Representations**

Fillongley Parish Council objects to the proposal on the grounds of visual intrusion in the Green Belt, loss of amenity and potential noise impacts.

Maxstoke Parish Council objects to the proposal on the grounds that the turbine is inappropriate development in the narrow Green Belt area surrounding the parish. The height will be very visible and have a hostile impact on surrounding residents and landscape.

The Council for the Protection of Rural England objects to the proposal as it would adversely affect the openness of adjacent land and will have an adverse impact on the character and appearance of the surrounding rural landscape. It is not considered that the benefits to the business and to the delivery of renewable energy outweigh the harm done here.

Seventeen letters of objection have been received from local residents. The matters referred to include:

- It is too close to residential property
- It would visually impair the surrounding area
- It would act as a precedent
- The output is small compared with its dis-benefits
- It is not very efficient
- There will be no local benefit
- There will be noise and shadow flicker
- The access is very poor.
- It's not appropriate in the Green Belt.
- Impact on local wildlife particularly birds
- Impacts on heritage assets in the locality

## **Observations**

### **a) The Green Belt – Inappropriate Development**

The site is in the Green Belt. The North Warwickshire Local Plan 2006 requires new development here to be in accordance with Government Guidance – namely its Planning Policy Guidance Note Number 2, now superseded by the National Planning Policy Framework 2012 (“the NPPF”). It is considered that a wind turbine does fall within the definition of a building under the Planning Act and thus as new buildings are inappropriate developments in the Green Belt as defined by the NPPF, there is a presumption of refusal in this case. That is because inappropriate development is by definition harmful to the Green Belt. The NPPF however does include a number of exceptions to this and it is necessary to explore these. There are two areas to look at. The first will examine the definitions of the exceptions themselves and the second will look specifically at what the NPPF says about renewable energy projects in the Green Belt.

Taking the definition matter first, then the only exception that could apply here is if the building is a “building for agriculture”. The applicant suggests that this could be the case. Clearly the turbine is to be located on an agricultural holding and would generate electricity for its agricultural needs. There is thus some weight to this argument. However it is not considered that this should carry much weight. He is not helped by appeal decisions which have been included in the supporting documentation, as in both cases the Inspector did not take this view. Also this approach was not taken by the Inspector dealing with an appeal at Arley in North Warwickshire. It is considered that the turbine is a building designed and operated in order to generate electricity – that is its purpose. There is no operational or technological reason why it should not be located elsewhere in order to provide electricity for other non-agricultural purposes. Hence there are turbines approved solely to generate power for the grid and others to power industrial concerns. Given all of this, it is concluded that the turbine should not be treated as one of these exceptions.

In that case, the building is thus one designed to produce renewable energy. The NPPF says that “elements of many renewable projects will compromise inappropriate development”. This is the case here, because building operations would be undertaken, and thus it is concluded that the turbine as a whole comprises inappropriate development and that it does carry the presumption of refusal.



However in these circumstances, the NPPF does then go on to say that “developers will need to demonstrate very special circumstances if projects are to proceed. Such circumstances may include, “the wider environmental benefits associated with increased production of energy from renewable sources”. The onus is on the applicant to identify those planning considerations which either singly or cumulatively would amount to the very special circumstances of such weight necessary to warrant overriding the presumption of refusal. The applicant’s case will be identified below, but it is first necessary to identify the scale of harm done to the Green Belt as a consequence of the proposal. Whilst there is “de facto” harm because of its inappropriateness, there is also the “real life” harm caused in this particular case. This is because if the harm is limited or minor, then the weight given to the circumstances needed to tip the balance in favour of the applicant is less than it would be if the harm is significant or substantial.

## **b) Green Belt – Harm**

The NPPF says that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and their permanence. Hence the identification of harm to the Green Belt as a consequence of this proposal needs to be addressed in these terms.

Whilst there is no definition of openness in the NPPF, it is generally taken to mean the absence of development. In other words, one’s perception of space is not constrained, contained or limited because of new development. It is agreed here that the ground works and other surface development would be negligible in terms of their impact on openness. The column would be slender and the swept radius of the blades would also take up a small area of ground. Hence it would appear that openness is not too much affected. However this quantitative approach should not be the sole measure. The turbine will be additional development and it will have a “presence” and thus one’s perception of space will be changed. It is therefore appropriate to approach the issue by establishing the existing level of openness and then addressing the degree of change through the introduction of the turbine. The location of the turbine here is on sloping land running southwards to the M6 Motorway. The land is presently an area of open fields with surrounding woodland and hedgerows and trees bordering other highways. Higher land is to the north and the contours show that land to the west and east is also higher than the application site, such that setting of the site is within a small valley facing southwards. The turbine is a tall structure of 34.5 metres, but at this height only the very top part of the rotating blades would be visible from the surrounding higher land, but it would be visible from the south beyond the Motorway with the blades visible above the horizon. It is accepted that there would be a cumulative impact on openness when the nearby taller radio mast is added in to the consideration. As a consequence it is considered that the turbine would have an impact on the openness of the Green Belt here, but given its height, the surrounding topography, tree cover and general setting, that that harm would be a limited impact rather than a significant impact.

## **c) Green Belt – Purposes**

The NPPF defines five purposes for including land within the Green Belt. It is considered that given the wholly rural character of the area surrounding the site that the one purpose affected here is whether the development would prejudice the “safeguarding the countryside from encroachment”. Given the conclusion reached above it is considered that this development would not assist in this purpose because there would be encroachment through the new development, but only to a limited degree.

#### **d) Green Belt – The Degree of Harm**

It is thus concluded that the degree of harm here to the Green Belt would be limited.

#### **e) The Applicant's Case**

The applicant's case is very largely based on the NPPF's policies on renewable energy projects. He draws attention to the statements here where it says that Local Planning Authorities should "support the delivery of renewable and low carbon energy infrastructure"; adopt "proactive strategies to mitigate and adapt to climate change", "recognise the responsibility on all communities to contribute to energy generation from renewable sources", and "not require applicants to demonstrate the overall need for low carbon energy and also to recognise that even small scale projects provide a valuable contribution to cutting green house gas emissions". He also refers to Local Plan policy ENV10 supporting renewable energy schemes. In this case the applicant specifically connects the application to its agricultural purpose by providing a sustainable source of power for an operation that requires higher power levels because of environmental controls. He refers to the NPPF which says that Local Planning Authorities should take "positive steps to sustainable new development in rural areas", and "promote the development and diversification of agriculture". He also refers to Local Plan policies ECON7 and ECON8 which in general support new agricultural buildings and structures as well as farm diversification. As farming is the primary land use in Green Belts he considers that it is important that matters that directly impact on and improve agricultural production are supported. He amplifies this by pointing out that the applicant company has a requirement to increase its overall energy efficiency in line with the Climate Change Levy. The Company faces fines if targets are not met. Finally he draws attention to recent appeal decisions which support this approach in the Green Belt.

His second argument is that this proposal would not cause material harm to the visual amenity of the area or to the openness of the Green Belt. He says that this proposal is kept away from local residents and is in a location set well below the brow of the higher land to the north with the turbine being "contained". Whilst it would be visible its impact on the openness of the Green Belt would be low. He says that he has deliberately selected this site because of this, rather than submitting an application for his preferred location on the higher ground to the north. He considers that this argument is given greater weight now that he has revised the proposal from that recently refused, with a significantly less tall turbine.

His third argument is that this revised proposal would have little or limited other impacts. Because of distances of the turbine from residential property, noise emissions would satisfy recommended levels. Moreover there are no other adverse impacts arising from this proposal. There were none arising from the consultation responses to the previous larger proposal, and thus none are expected here.

It is now proposed to examine these particular arguments commencing with those relating to potential impacts.

## **f) Landscape Impact**

The proposed turbine is located in a wider area described in the Warwickshire Landscape Guidelines as being "Arden River Valleys" and the key characteristics are "river corridors", "natural alluvial floodplains, grazing meadows and hedgerows". However at local District level the site locality has slightly different characteristics being in the "Church End to Corley – Arden Hills and Valleys" designation. The key characteristics are, "a broad elevated basin with numerous rolling hills and valleys; a mixed agricultural landscape with an ancient pattern of small fields, winding lanes and dispersed isolated hamlets and farmsteads, a heavily wooded character with large woodland blocks on hill tops and former wood pastures and escarpments, the M6 and pylons are visible from southern slopes and there are long views across the Blythe valley to Birmingham". The immediate setting is open farmland comprising medium sized fields enclosed by hedgerows with many hedgerow trees and sunken lanes. There are larger woods to the west and the land slopes noticeably southwards with wide views. The motorway is visible but only in part, unlike the radio mast. Other masts at Kinwalsey to the south are visible. There are no settlements, rather a number of dispersed farms and houses scattered throughout the landscape.

The turbine will alter this rural landscape, but only locally. It will be visible from the nearby footpath and from some points along Gorse Green Lane noticeably at its southern end, from footpaths beyond the Motorway and from some points along Green End Lane. However this visibility will be limited and would not be significant. The reduction in height means that the turbine will be materially less visible in the landscape as a whole and from some of the points where the former turbine would have been visible. This reduction in height, the topography, intervening hedgerows, trees and sunken lanes all assist in reducing its impact on the landscape. The reduction reduces its prominence, its visibility and thus too its impact on the landscape. It can thus be better "absorbed" or "contained" within the landscape. Its overall impact is thus limited more to the actual vicinity of the site itself.

Saved policy ENV1 of the Local Plan states that development which would not protect nor enhance the intrinsic qualities of the existing landscape as defined by the Landscape Character Assessments will not be permitted. This policy reflects the content of the NPPF and thus carries weight. Whilst the proposal would not accord with it, it is necessary to point out that the harm to that landscape character would be limited.

## **g) Highway Impact**

All construction traffic would use Green End Lane and all future service and maintenance traffic would use the same route. As a consequence the Highway Authority has raised no objection due to the limited construction period – seven to ten days. Standard conditions are recommended in order to improve the existing access to that Lane.

## **h) Noise Impacts**

Government guidance suggests that noise levels from wind turbines should be assessed against a Good Practice Note published by the Institute of Acoustics. It recommends an acceptable level of the noise limit to be 43dBA at night time. The applicant advises that in this case that limit would be reached at a distance of 75 metres from the turbine. This he says takes account of varying wind speeds. As the closest residential property is over 350 metres away, he does not consider that there would be