

**To: The Deputy Leader and Members of the
Planning and Development Board**

For the information of other Members of the Council

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

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

PLANNING AND DEVELOPMENT BOARD AGENDA

17 MAY 2010

The Planning and Development Board will meet in the Council Chamber at The Council House, South Street, Atherstone, Warwickshire on Monday 17 May 2010 at 6.30 pm.

AGENDA

- 1 **Evacuation Procedure.**
- 2 **Apologies for Absence / Members away on official Council business.**
- 3 **Declarations of Personal or Prejudicial Interests.**
(Any personal interests arising from the membership of Warwickshire County Council and membership of the various Town/Parish Councils are deemed to be declared at this meeting.)

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

- 4 **Planning Applications** – Report of the Head of Development Control.

Summary

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

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

- 5 **The Community Infrastructure Levy and Section 106 Obligations -**
Report of the Head of Development Control.

Summary

The report describes the newly introduced Community Infrastructure Levy (CIL) and its impact on the future use of Agreements under Section 106 of the 1990 Planning Act.

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

PART C - EXEMPT INFORMATION (GOLD PAPERS)

- 6 **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.

- 7 **Breaches of Planning Control** – Report of the Head of Development Control

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

JERRY HUTCHINSON
Chief Executive

Agenda Item No 4

Planning and Development Board

17 May 2010

Planning Applications

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

5.2 The next meeting at which planning applications will be considered following this meeting, is due to be held on Monday, 14 June 2010 at 6.30pm in the Council Chamber at the Council House.

Planning Applications – Index

Item No	Application No	Page No	Description	General / Significant
1	MIA/2010/0007	4	Garage Site, Eastlang Road, Fillongley Non material amendment to PAP/2009/0409 dated 20 October 2009 for repositioning of the 4 houses within the site to be parallel to the rear boundary and reconfiguration of car parking spaces within the site incorporating space for turning.	General
2	PAP/2009/0385	16	Manor House Farm, Coleshill Road, Ansley Formation of two fishing pools for private use	General
3	PAP/2010/0099 PAP/2010/0100 PAP/2009/0580 PAP/2009/0585	27	The Three Tuns, Long Street, Atherstone Variation of condition no: 5 of planning application PAP/2006/0535 to use flowplast cast iron look a like upvc guttering	General
4	PAP/2010/0102	39	Land to south east of Birch Coppice Business Park, Dordon Outline planning application for the development of 49.9 hectares of land to south east of Birch Coppice Business Park to create 186,000 square metres of built floorspace for storage & distribution uses within Use Class B8 as an extension to Birch Coppice Business Park (Phase II). Details relevant to Access, Layout and Landscaping are submitted for consideration now with matters of Scale and Appearance of buildings reserved for consideration in a subsequent planning application. Details submitted for consideration now include the layout of proposed site roads and vehicle accesses, site drainage infrastructure works, construction of site roads, site levels for building development plateau and proposed site boundary landscaping. Details of the layout, scale and appearance of buildings are included now for illustrative purposes only.	General
5	PAP/2010/0165 PAP/2010/0166 PAP/2010/0167	52	Corley Nurseries, Church Lane, Corley Re-furbishment and re-use of existing steel frame buildings for Class B1 (light industrial/offices) use, including craft workshop/s with ancillary parking & storage areas; demolition of remainder of structures; erection of replacement B1 (offices) building, car parking, driveway/s and landscaping	General

General Development Applications

(1) Application No: MIA/2010/0007

Garage Site, Eastlang Road, Fillongley

Non-material amendment to PAP/2009/0409 dated 20 October 2009 for repositioning of the 4 houses within the site to be parallel to the rear boundary and reconfiguration of car parking spaces within the site incorporating space for turning, for Angela Coates (Housing) of North Warwickshire Borough Council.

Introduction

This application is being reported to Board due to the Council's ownership of the land concerned.

The Site

The site lies at the end of Eastlang Road where presently 15 Council owned garages exist. This road also provides vehicular access. Other than the garages, the majority of the site is hard standing, with a public footpath bordering the north of the site. To the east, open countryside exists, with existing residential properties to other boundaries. The surrounding properties exhibit a range of 1960s and 1970s housing. There is no planting on the site, although there is a significant oak tree immediately adjacent. The annual lease to grant access via this land to the rear of 32 Holbeche Crescent expires on 9 May 2010.

Background

The site lies within the Fillongley development boundary as defined by the North Warwickshire Local Plan 2006. The principle of development was granted at Planning Board in October 2009, with that Agenda attached at Appendix A. The main consideration therefore relates solely to whether the proposed amendment would have an unacceptable impact on neighbouring and visual amenity, and parking provision.

The Proposal

It is proposed to slightly reposition the houses so as to site them parallel with the rear boundary in order to allow for the necessary sewer diversion and associated easement around the dwellings. This in turn affects the parking configuration such that amendments are required here too.

Development Plan

Saved policies of the North Warwickshire Local Plan 2006: ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV14 (Access Design) and TPT6 (Vehicle Parking).

Representations

At the time of writing, these amendments are open for consultation. Fillongley Parish Council have been advised that any comments should relate this amendment, and not to the principle of development. Any comments made will be communicated verbally at Planning Board.

Consultations

NWBC's Tree Officer – seeks further detail regarding the construction methods for the dwellings as part of ongoing negotiations to address the impact on the neighbouring oak tree.

County Highways – no comment at the time of writing.

Observations

The principle of developing the site for housing is established by way of planning permission PAP/2009/0409. The proposal to amend the footprint and parking configuration is considered in relation to neighbouring amenity, design and parking and turning room.

The slight movement of the footprint would actually move the majority of openings further from any existing properties on Church Lane. The southern-most dwelling would move only 0.5m closer, which is considered not to cause harm to neighbouring amenity. The appearance, scale, height and detailing of the dwellings remains the same, with the amended footprint acceptable.

8 spaces are still provided to directly serve the new dwellings, whilst the additional 3 lay-by spaces are also maintained. The amended layout still allows turning and manoeuvring space for vehicles to leave and enter the highway in a forward gear, which is the normal objective of County Highways.

Further consideration is given to the Council's Tree Officer comments. It is not considered that the amendment can be refused on this request, especially where the principle of development has already been granted. In addition, as the developer is North Warwickshire Borough Council, there is no reason to expect that good practice will not be applied.

Recommendation

That the amendment be Granted, and the relevant condition now read:

2. The development hereby approved shall not be carried out otherwise than in accordance with the plans numbered NWBC.ERF_HTA Rev A, NWBC.ERF_HTC Rev A and NWBC.ERF_SS Rev A received by the Local Planning Authority on 22 September 2009, and the plan numbered 52005 SK 02 received by the Local Planning Authority on 19 April 2010.

REASON

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

All other conditions on decision notice PAP/2009/0409 will continue to apply.

BACKGROUND PAPERS

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

Planning Application No: MIA/2010/0007

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	19/4/2010
2	Planning Officer	Email to Parish Council regarding timescale for reply	22/4/2010
3	NWBC Tree Officer	Email to Planning Officer	26/4/2010
4	Planning Officer	Email to NWBC Tree Officer	28/4/2010

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.

(2) Application No: PAP/2009/0409

Garage Site, Eastlang Road, Fillongley

The erection of 4 family houses to replace 15 existing garages, for Angela Coates (Housing) of North Warwickshire Borough Council

Introduction

This application is being reported to Board due to the Council's ownership of the land concerned.

The Site

The site lies at the end of Eastlang Road where presently 15 Council owned garages exist. This road also provides vehicular access. Other than the garages, the majority of the site is hard standing, with a public footpath bordering the north of the site. To the east, open countryside exists, with existing residential properties to other boundaries. The surrounding properties exhibit a range of 1960s and 1970s housing. There is no planting on the site, although there is a significant oak tree immediately adjacent. There is an existing access via this land to the rear of 32 Holbeche Crescent, granted through annual leases.

The Proposal

It is proposed to demolish the existing garages and erect 4 family houses to compliment the Council's affordable housing stock. There will be additional planting around the site to soften the transition from the countryside to the urban environment, with additional parking to help offset the loss of existing provision.

Background

The site lies within the Fillongley development boundary as defined by the North Warwickshire Local Plan 2006. The main considerations relate to the impact on neighbouring and visual amenity, and sustainable transport provision and parking.

Development Plan

Saved policies of the North Warwickshire Local Plan 2006: CORE POLICY 2 (Development Distribution), ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV8 (Water Resources), ENV10 (Energy Generation and Energy Conservation), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), HSG2 (Affordable Housing), HSG4 (Densities), TPT1 (Transport Considerations In New Development), TPT3 (Access and Sustainable Travel and Transport) and TPT6 (Vehicle Parking)

Other Relevant Material Considerations

Supplementary Planning Guidance: Affordable Housing SPD (Adopted June 2008)

Representations

A number of neighbour representations have been received. Generally, these query the impact that the removal of the garages will have on nearby on-street parking, on site parking provision (since increased through amended plans) and transport links to the site, loss of privacy, as well as highlighting the presence of the adjacent oak tree. One representation challenges the need, the density, perpetuity of affordable provision and sustainability of the development, as well as querying turning space for refuse vehicles and requesting removal of permitted development rights.

Consultations

NWBC Streetscape – no objection subject to conditions

Fillongley Parish Council has registered strong objections, including the site does not fall within a strategic designation, there is not an identified need for the housing, that the housing does not appear to be affordable family homes for local people, and shared concerns over on-street parking.

WCC Highways – no objection subject to the inclusion of conditions and informatives.

At the time of writing, comments from Environmental Health are anticipated. Any comments made will be communicated verbally at Planning Board.

Observations

The principle of developing the site for housing is established through its inclusion within the Fillongley development boundary. Due to the settlement category, any new housing must be affordable and only permitted where a need has been identified. The Council's Affordable Housing SPD supports this need, with a particular need in Fillongley for family houses. The provision of 4 houses gives a density of 43.8 dwellings per hectare, well above the minimum requirement, but without compromising the pattern of development in the area.

Concern has been raised over the loss of garages, and the resultant exacerbation of on-street parking. However, it must be considered that the site is not a publicly available parking provision; the use of the garages is permitted via leases only, and the Council reserves the right to withdraw this provision at any time – no different than if the land was privately owned. The provision of 8 spaces to serve the new dwellings accords to the maximum standards, and an additional 3 lay-by spaces is considered to assist towards alleviating pressure on neighbouring roads. There are both vehicular and pedestrian accesses to the site, allowing use of sustainable transport methods, with frequent bus services to Coventry, Coleshill and Nuneaton, and further services to Meriden and Bedworth.

Neighbouring amenity is not harmed by the proposals, with no significant overlooking or overshadowing to existing dwellings, and the design exhibits a contemporary design to not only bring forward the surrounding characteristics, but to also bring about an exemplar design of appropriate scale and mass. Proposed materials and detailing positively enhances the overall design. The development is also considered to demonstrate the opportunity to minimise the impact on the environment with the design making use of passive solar gain, whilst also meeting level 4 of the Code for Sustainable Homes, which reduces regulated CO₂ emissions by at least 44%.

Boundary treatments and additional landscaping can be controlled by way of conditions. Consideration is given to the neighbouring oak tree, but it is considered that subject to condition, it will not be threatened by the development. A ground investigation has not raised any concern over land contamination, and subject to a condition to control discharge rates from the site, drainage is also acceptable.

Recommendation

That the application be GRANTED Subject to 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 plans numbered NWBC.ERF_PS Rev A, NWBC.ERF_HTA Rev A, NWBC.ERF_HTC Rev A and NWBC.ERF_SS Rev A received by the Local Planning Authority on 22 September 2009.

REASON

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

3. No development shall be commenced before details of the facing materials and roof tiles to be used have been submitted to and approved by the Local Planning Authority in writing. The approved materials shall then be used.

REASON

In the interests of the amenities of the area.

4. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of screen walls/fences/hedges to be erected. The approved screen walls/fences shall be erected before the dwellings hereby approved are first occupied and shall subsequently be maintained. Any trees or plants which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

REASON

In the interests of the amenities of the area.

5. Before the development commences a scheme for the construction of the surface and foul water drainage system shall be submitted to and

approved in writing by the Local Planning Authority. Where possible sustainable means of surface water drainage shall be used. The development shall be carried out in accordance with the approved details.

REASON

To prevent pollution of the water environment and to minimise the risk of flooding.

6. No development or site works whatsoever shall commence on site until details of measures for the protection of retained and neighbouring trees have been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of the amenities of the area.

7. Before the commencement of the development, a landscaping scheme shall be submitted to the Local Planning Authority for approval.

REASON

In the interests of the amenities of the area.

8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which, within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

REASON

In the interests of the amenities of the area.

9. No development shall take place on site until a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately-owned, domestic gardens, has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved.

REASON

To ensure that due regard is paid to the continuing enhancement and maintenance of amenity afforded by landscape features of communal public, nature conservation or historical significance.

10. The development shall not be commenced until a turning area has been provided within the site so as to enable the largest vehicle anticipated on site to leave and re-enter the public highway in a forward gear.

REASON

In the interests of safety on the public highway.

11. The construction of a new lay-by within the public highway as illustrated on the approved drawings shall not be commenced until detailed plans have been submitted and approved in writing by the Local Planning Authority, in consultation with the Highway Authority.

REASON

In the interests of safety on the public highway.

Notes

1. The applicant is encouraged to incorporate and utilise higher than minimum requirements for efficiency measures and incorporate appropriate on-site renewable energy technologies to further off-set the carbon footprint of the development. Planning consent may be required for the installation of some on-site renewables, and the Local Planning Authority will be pleased to advise you on all associated aspects prior to the erection of any such technologies, and provide you with application forms.
2. Public footpath number M349 passes close to the site. Care should be taken, particularly during construction works, to ensure that this route is kept open at all times.
3. Condition number 11 requires works to be carried out within the limits of the public highway. Before commencing such works the applicant must serve at least 28 days notice under the provisions of Section 184 of the Highways Act 1980 on the Highway Authority's Area Team. This process will inform the applicant of the procedures and requirements necessary to carry out works within the Highway and, when agreed, give consent for such works to be carried out under the provisions of S184. In addition, it should be noted that the costs incurred by the County Council in the undertaking of its duties in relation to the construction of the works will be recoverable from the applicant. The Area Team at Coleshill may be contacted by telephone: (01926) 412515. In accordance with Traffic Management Act 2004 it is necessary for all works in the Highway to be noticed and carried out in accordance with the requirements of the New Roads and Streetworks Act 1991 and all relevant Codes of Practice. Before commencing any Highway works the applicant must familiarise themselves with the notice requirements, failure to do so could lead to prosecution. Application should be made to the Street Works Manager, Budbrooke Depot, Old Budbrooke Road, Warwick, CV35 7DP. For works lasting ten days or less, ten days notice will be required. For works lasting longer than 10 days, three months notice will be required.
4. The parking that will be provided by the new lay-by cannot be exclusive to the proposed new development as it is to be constructed within the extents of the public highway. Accordingly it will be available to all.

- 5 The Development Plan policies which are relevant to this Decision are as follows: North Warwickshire Local Plan 2006 (Saved Policies): CORE POLICY 2 (Development Distribution), ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV8 (Water Resources), ENV10 (Energy Generation and Energy Conservation), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), HSG2 (Affordable Housing), HSG4 (Densities), TPT1 (Transport Considerations In New Development), TPT3 (Access and Sustainable Travel and Transport) and TPT6 (Vehicle Parking).

Justification

The proposal is considered to be of innovative and high design quality without detriment to surrounding character, nor neighbouring amenity. There is no concern over land contamination, and drainage provision can be controlled through condition. The parking provision for the site is adequate, with sustainable transport links within easy reach. The sustainability credentials of the development are enhanced further through compliance with level 4 of the Code for Sustainable Homes. Furthermore, subject to conditions, the public realm will be enhanced through retention of and complimenting existing planting. The proposal is therefore in accordance with saved policies CORE POLICY 2, ENV4, ENV6, ENV8, ENV10, ENV11, ENV12, ENV13, ENV14, HSG2, HSG4, TPT1, TPT3 and TPT6 of the North Warwickshire Local Plan 2006. In response to the objections received, it is considered that the provision of affordable housing outweighs the concerns raised given the comments made above.

BACKGROUND PAPERS

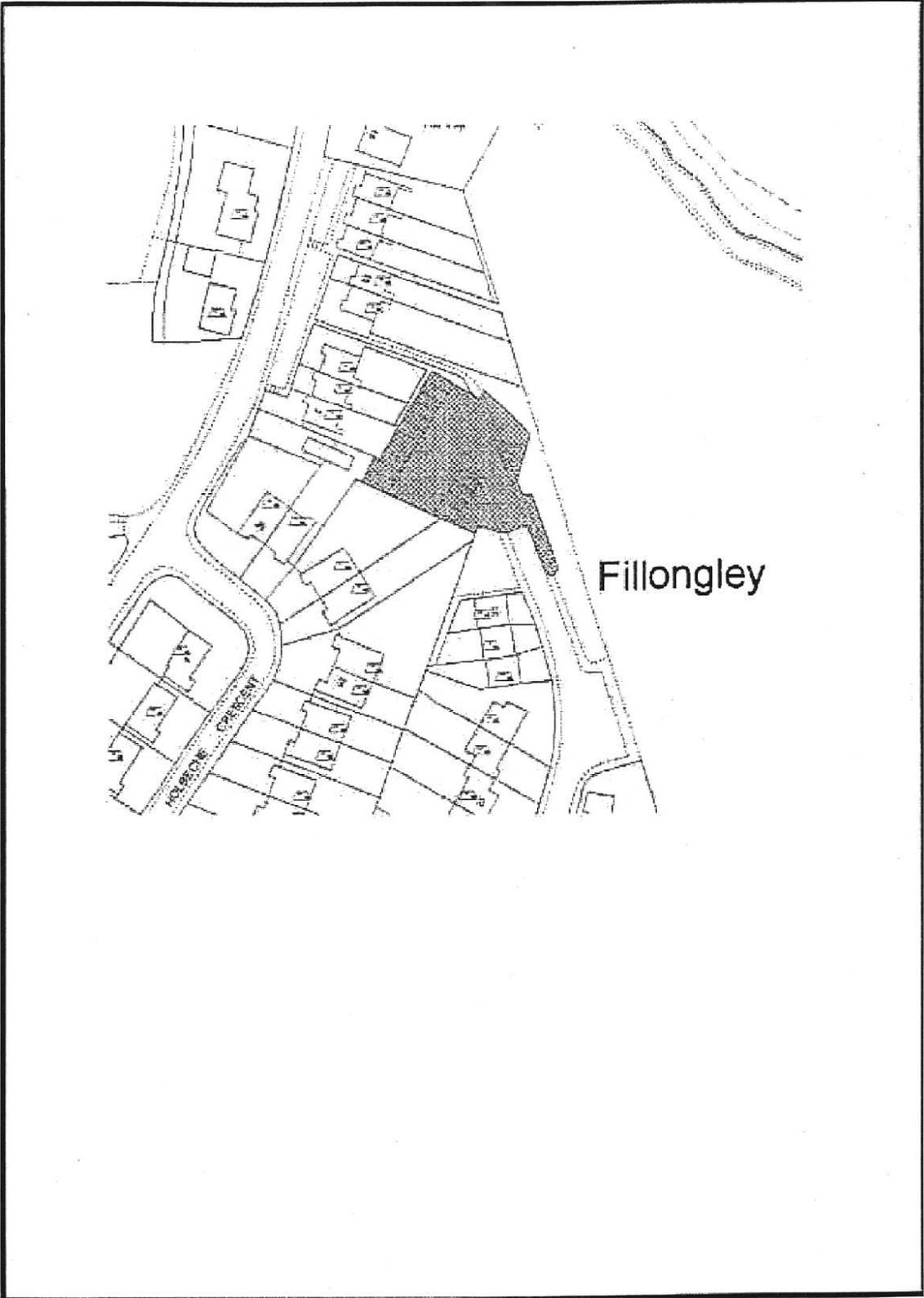
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2009/0409

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	4/9/2009
2	Alex Smith	Neighbour representation	12/9/2009
3	Planning Officer	Email correspondence	14/9/2009
4	Councillor Simpson	Email correspondence	14/9/2009
5	Housing Officer	Minutes of meeting	15/9/2009
6	Planning Officer and Architects	Correspondence on amended plans	17, 18 & 21/9/2009
7	Fillongley Parish Council	Consultation reply	18/9/2009
8	NWBC Environmental Health	Consultation reply	21/9/2009
9	Architects	Certificate B & Notice No 1	21/9/2009
10	Planning Officer	Correspondence to WCC Highways	21/9/2009
11	Mr & Mrs Cadman	Neighbour representation	28/9/2009
12	D & M Hughes	Neighbour representation	29/9/2009
13	Mrs Bracken & Mr McCann	Neighbour representation	30/9/2009
14	Fillongley Parish Council	Consultation reply	30/9/2009
15	Chris Gardener	Neighbour representation	1/10/2009
16	Alexander Smith	Neighbour representation	6/10/2009
17	WCC Highways	Consultation reply	7/10/2009

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.



(2) Application No PAP/2009/0385

Manor House Farm, Coleshill Road, Ansley

Formation of two fishing pools for private use, For Mr Marcus Sutton

Introduction

The application is referred to Board because of Member's concerns about the impact of the development.

The Site

This comprises agricultural land, partly used for grazing of horses, within open countryside outside of the designated Green Belt. It forms part of Manor House Farm, about a kilometre east of Church End, and two kilometres west of Ansley Common on the south side of the B4114. The pools would be to the east of the main farm complex and set back about 200 metres from the road. There are two residential properties on the road – some 200 metres away, and some 200 metres to the east is Wood Barn Farm.

The Proposal

In summary the proposal is to form two fishing pools for private use. The ground levels here fall away from the road, but there is natural "dip" in the contours forming a shallow valley. The lakes would be sited in this dip, necessitating embankments to enclose the two joined pools. They are to be formed from cut and fill, but there will be a need for the importation of the clay liner and some approved materials for the embankments. Site access during the construction period will be from an improved existing field gate access onto the B4114. Following completion the original access would be reinstated.

The applicant has submitted a Landscape Analysis; an Ecological Study, a Hyrdological Assessment and a draft Construction Management Plan with the application.

The land is classed as Grade Three agricultural land – that is to say not the best and most versatile.

Development Plan

North Warwickshire Local Plan 2006 Saved Policies: Core Policy 3 – Natural Historic Environment, and Policies ENV1 – Protection and Enhancement of Natural Landscape, ENV3 – Nature Conservation; ENV4 Trees and Hedgerows; ENV6 – Land Resources; ENV8 – Water Resources; ENV11- Neighbour Amenities; ENV14 - Access

Consultations

Birmingham International Airport – No objection, subject to conditions to reduce risk to overflying aircraft from bird-strike.

Severn Trent Water – No objection.

Warwickshire County Council Highways – No objection subject to conditions.

Warwickshire Wildlife Trust – The proposal is likely to enhance local biodiversity due to the creation of the reed beds, the wetland areas around the pool edges and additional woodland planting. It is noted that existing features most important to biodiversity, i.e. the surrounding hedgerows and woodland, will all be retained.

Environment Agency – No comments.

Representations

Ansley Parish Council - An objection is lodged. It considers that there will be a loss of amenity for neighbours and an adverse impact on road safety due to lorries turning into the site, and from deposits of mud on the road. There is also concern about the content of imported material.

Three representations from local residents object to the proposal. One raises concerns over highway safety arising from lorry movements on this stretch of highway, subject to the national speed limit, with visibility limited by bends; also from mud deposited on the carriageway from lorries; loss of amenity during the construction period due to pollution from dust and noise and noise pollution from the completed project; details of existing lakes and ponds within a 5 km radius of the site are submitted to support the contention the area is saturated with similar facilities.

The second considers the development to be inappropriate within the green belt, to result in an irreversible change of use from agriculture and loss of attractive landscape and the proposed recreational benefit will not outweigh these adverse impacts; also the proposal will affect an existing drainage arrangement.

The third requests that the importation or exportation of materials to or from the site is prevented.

Observations

The proposal is to create two fishing pools by using the existing sloping topography of the application site. The pools will sit within an existing shallow valley and will be formed by depositing imported earth material across the valley to form an earth embankment which will retain water above.

The pools will fill through natural overland drainage. No abstraction of water from existing watercourses or from ground water is proposed. The pools will have a total surface water area of some 3950 square metres- the upper pool being the larger at 2300 square metres. Overspill drainage is provided by a channel from the upper pool to the lower pool and then from the lower pool to a reed bed prior to discharge into a nearby existing field drainage ditch. The discharge outlet is designed to attenuate outflow to ensure no enhanced flooding risk downstream. A Hydrological Assessment is submitted with the application and the storage capacity and outflow is designed to cope with a 1 in 100 year flood event plus 30% increase in rainfall due to climate change.

Due to the valley topography the earth embankment will be some 60 metres across the base and some 90 metres across the top. It will be contoured to merge with the sloping ground on each side; the overall height will be 4.5 metres and the gradient of

the outward face will be 1 in 15, or 6%. The embankment will require the importation of material. Construction will be over a period of nine months and will involve at its peak, up to 50 lorries visiting the site per day, a total of 100 separate lorry movements, (i.e. in + out). The proposed hours of working are 0730 to 1700 on week days and 0730 to 1300 on Saturdays.

The water level surface of the two pools will be at 42.5 metres above ordnance datum for the lower pool and 43.75 for the higher pool, which will be formed by formation of a small embankment, some 1.5m high to retain water.

The resulting pools will sit within the existing contours, however the embankment will be visible from a south westerly aspect and will present the appearance of a slightly steeper slope. This will be steeper than the existing slope of the land, however land to the south east of the application site also has a similar steeper gradient. The visual appearance will be mitigated by extensive tree planting to the south to create a wooded area, and the creation of meadow grassland areas immediately adjacent to the pools.

The landscape character of this area is classified within the Warwickshire Landscape Guidelines as Ancient Arden; the characteristic features of which are varied undulating topography with irregular pattern of small to medium sized fields, field ponds associated with permanent pasture, hedgerows, roadside oaks and narrow winding lanes. The Guidelines seek to conserve this pastoral character and to convert less valued arable land back to permanent pasture and to retain and manage field ponds. The proposal includes elements that further this conservation management strategy with the change from arable to grassland and the introduction of pools, although these are larger than the traditional field pond.

A Landscape Assessment has been undertaken and the details submitted. This concludes the long term impact of the development is largely neutral in that, although the construction phase will produce some adverse visual impacts for nearby residential properties and users of public rights of way, once the development has matured there will be no significant adverse landscape or visual effects. This is considered to be a reasonable assessment for this proposal. Details of the proposed landscaping and woodland, grassland, reed bed and pool planting are submitted. These are appropriate for the proposed development in this location.

An Ecological Assessment submitted looks at the impact on ecology and biodiversity. This concludes the existing habitats are not ecologically significant, the most significant being the existing hedgerows which will be retained. It does recommend a badger survey be undertaken prior to commencement of any development; the establishment of exclusion zones alongside existing hedges and ditches to protect great crested newts, and a briefing for all workers on protected species; these recommendations can be secured through conditions.

The proposal is thus considered to accord with the Development Plan saved Policies CP3, ENV1, ENV3, ENV4, ENV6 and ENV8

A temporary vehicle access will be provided by adapting an existing field gate access to the B4114. The required visibility splays of 215 metres exist at this access which will be widened and adapted to ensure lorries can safely use the access. Adaptations will include widening the access to 7.5 metres to allow two-way traffic; the installation of 12 metre radii kerbed turn outs; moving the gates 20 metres into the site to allow lorries to clear the highway before coming to a halt if gates are closed; hard surfacing of the access road for 20 metres to the position where wheel

cleaning equipment will be installed to minimise mud deposits on the carriageway and the formation of a turning area within the site to allow lorries to exit in a forward gear. The access will be re-instated to a simple field gate access on completion of the construction works; the temporary alterations and re-instatement can be secured by conditions.

The Highway Authority has no objection to the proposed access subject to conditions to ensure the formation of the proposed temporary access and subsequent re-instatement; the installation of wheel cleaning equipment and the provision of a suitable road signing scheme on the public highway. Given these remarks, the proposed temporary access is considered to provide a safe vehicle access to the site in accord with Saved Policy ENV14.

A Construction Phase Management Plan is provided which details a construction period of nine months; the overall programme of construction works; earthworks specifications, volumes and types of materials required to be deposited; working methods, including hours of working, 0730 to 1700 hours on weekdays and 0730 to 1300 on Saturdays with no working on Sundays or public holidays, a public highway inspection and cleaning programme and the implementation of recommended measures to protect endangered species. The implementation of this plan would be required by condition.

The resulting feature will not result in any significant loss of amenity for occupiers of nearby properties. Whilst there may be some disturbance during the construction period, this will be time limited and will be mitigated through the construction management plan which will be required to be implemented. Moreover the road here itself does carry significant volumes of traffic, including many HGV's. Given the comments of the County Council; the temporary nature of the construction phase and the context here, the proposal is considered to be in accord with Saved Policy ENV11.

Representations received raise concern over saturation due to the number of other existing fishing and conservation pools within the locality or extant planning permission to create other similar pools. This would be a material consideration in this application only if a relevant cumulative impact can be identified that arises from the number of pools. No such cumulative impacts can be identified in this case. The pools are proposed for personal use, no commercial activities are thus associated with this proposal. The site is sufficiently remote from other similar developments to limit any cumulative visual impact on the landscape.

The representations received are well understood and align with comments that have been received on similar applications. One of the main concerns has been that the levels shown on approved plans are sometimes varied through the import of additional material for whatever reason. A condition is proposed here in order to control this potential "abuse". A further concern is about the content of the material. In this respect the Environment Agency is the appropriate Licensing Authority and controls will be administered by that Authority. However a condition can be attached to ensure greater control on the deposits and this is included in the recommendation below.

Members will be interested to hear that the Exemption Regulations governing the deposit and control of waste have been substantially tightened from 6 April this year. The Environment Agency now has far greater control over the deposit of waste through its Licensing system than previously. As a consequence there may be less applications of the kind we see presently, being submitted in the future.

Recommendation

That the application 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 OS Sitemap plan received on 27/08/2009; the site plan showing the extent of the working area and plan numbers J8435 and J8435 pro, received on 25/08/2009.

REASON

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

3. No development shall commence until a comprehensive survey to establish whether any protected species are present which could be affected by the proposed works has been undertaken and the results submitted in writing to the Local Planning Authority. All recommendations arising from the surveys shall be agreed in writing by the Local Planning Authority and implemented in full prior to work commencing.

REASON

In the interests of the conservation of protected species.

4. No development shall commence before details of the protection measures proposed for existing trees and hedges on the site have been submitted to, and approved in writing by the Local Planning Authority. The approved measures shall then be in place prior to work commencing.

REASON

In the interests of the protecting the visual amenity of the landscape and the conservation of protected species.

5. No development shall commence until the temporary vehicle access to be provided to the B4114 Birmingham Road for construction purposes, as shown on plan J8435 has been laid out, surfaced in accordance with the Temporary Construction Access details received on 25/08/2009, and a turning area has been provided within the site so as to enable all vehicle types to leave and re-enter the public highway in a forward gear. Access to the site for construction traffic shall be via the temporary new vehicle access at all times.

REASON

In the interests of safety on the public highway

6. No development shall commence until a plan showing details of the re-instated vehicle access on completion of the development has been submitted to and agreed in writing by the Local Planning Authority.

REASON

In the interests of safety on the public highway

7. The access to the site for construction traffic shall not be used until it has been surfaced with a bound material between the position of the wheel cleaning equipment and the junction with the B4114 in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of safety on the public highway.

8. No lorries shall access the site and no material shall be imported or exported from the site unless measures are in place to minimise the deposit of extraneous material onto the public highway by wheels of vehicles accessing the site in accordance with details submitted to and agreed in writing by the Local Planning Authority. The details shall include arrangements for the sweeping of the public highway. The agreed measures shall be implemented and maintained in good working order at all times.

REASON

In the interests of safety on the public highway.

9. Within three calendar months of completion of the works detailed within this application all site access roads shall be removed and the land reinstated to its original condition and the temporary vehicle access shall be removed and the highway verge and hedgerows re-instated in accordance with the details to be submitted to and approved in writing by Local Planning Authority.

REASON

In the interests of amenity and safety on the public highway.

10. No development shall commence until written notice has been given to the Local Planning Authority of the date the approved works will commence and a period of 14 days has elapsed since the giving of notice.

REASON

To limit the duration of the operation in the interest of amenity.

11. The measures within Construction Phase Management Plan submitted with the application shall be implemented in full except where these are varied by other conditions of this notice.

REASON

In the interests of amenity, safety, prevention of pollution and to protect ecology.

12. No waste soils, including subsoils or other fill shall be imported to the site until a scheme of sampling of imported waste material and a means of importation control has been submitted to, and agreed in writing by the Local Planning Authority. This scheme shall ensure that a written record is maintained of all of the material deposited at the site so as to identify the quantity, source and type of material. The scheme shall also ensure material deposited at the site is sampled and a written record of the sampling and the results is maintained. The written records shall be available for inspection at the site at all times.

REASON

In the interests of avoiding contamination and pollution of the ground water environment.

13. No material shall be imported, deposited or exported from the site after the expiry of a period of 10 months from the date works commenced.

REASON

In the interests of amenity.

14. No materials shall be delivered to or exported from the site; other than between 0800 hours and 1700 hours on Monday to Friday and 0800 hours and 13:00 hours on Saturday There shall be no such activity on Sundays, Bank Holidays or other public holidays.

REASON

In the interests of amenity.

15. All vehicles carrying fill material into or from the site shall be sheeted or covered at all times.

REASON

In the interests of highway safety.

16. There shall be no chemical dosing of the ponds at any time.

REASON

To prevent pollution of the water environment.

17. Any facilities for the storage of oils; fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage; the compound shall be at least equivalent to the capacity of the largest tank; vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points; associated pipework; vents; gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse; land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels overflow pipe outlets shall be detailed to discharge downwards into the bund.

REASON

To prevent pollution of the water environment.

18. The recommendations made in the Ecological Assessment Report received on 21/08/2009 and the landscaping scheme and management regime detailed in the Revised Landscape Scheme Report received on 24/09/2009 shall be implemented in full and managed in accordance with the measures set out therein, including the provision of appropriate signing requesting no feeding of birds and measures to ensure Canada and Greylag geese do not become established on the site.

REASON

In the interest of the amenity and to avoid endangering the safe operation of aircraft through the attraction of birds.

19. The development shall be carried out in accordance with the section details as shown on the approved plan reference J8435 pro. No more than 14703m³ of material shall be imported to the site, as stated to be required in the statement submitted by the applicant on 24/9/2009. A survey of the final ground levels on the site shall be undertaken by the developer and the results submitted in writing to the Local Planning Authority.

REASON

To ensure that the development is undertaken in accordance with the approved plans.

20. The pools hereby approved shall be used solely for conservation purposes and solely for private fishing use by the occupiers of Manor House Farm and shall not be used as a fishery operated for commercial gain.

REASON

In the interests of amenity and highway safety.

Justification

The proposed development is in line with the conservation and management strategies within the Warwickshire Landscape Guidelines; it includes features broadly characteristic of the Ancient Arden landscape which, when mature, will not have any significant adverse visual effect on the landscape. The proposal will retain existing tree and hedgerows, will not have harmful effects for any protected species and will create new habitats that will enhance local biodiversity. The proposal will not result in the loss of best or most versatile agricultural land and will not have any adverse impact for existing water resources or on risk of flooding. The resulting feature will not result in any significant loss of amenity for occupiers of nearby properties; any disturbance during the construction period will be time limited and will be mitigate through the construction management plan.

The proposal is thus considered to accord with Saved Policies CP3, ENV1, ENV3, ENV4, ENV6, ENV8, ENV11 and ENV14 of the North Warwickshire Local Plan 2006.

BACKGROUND PAPERS

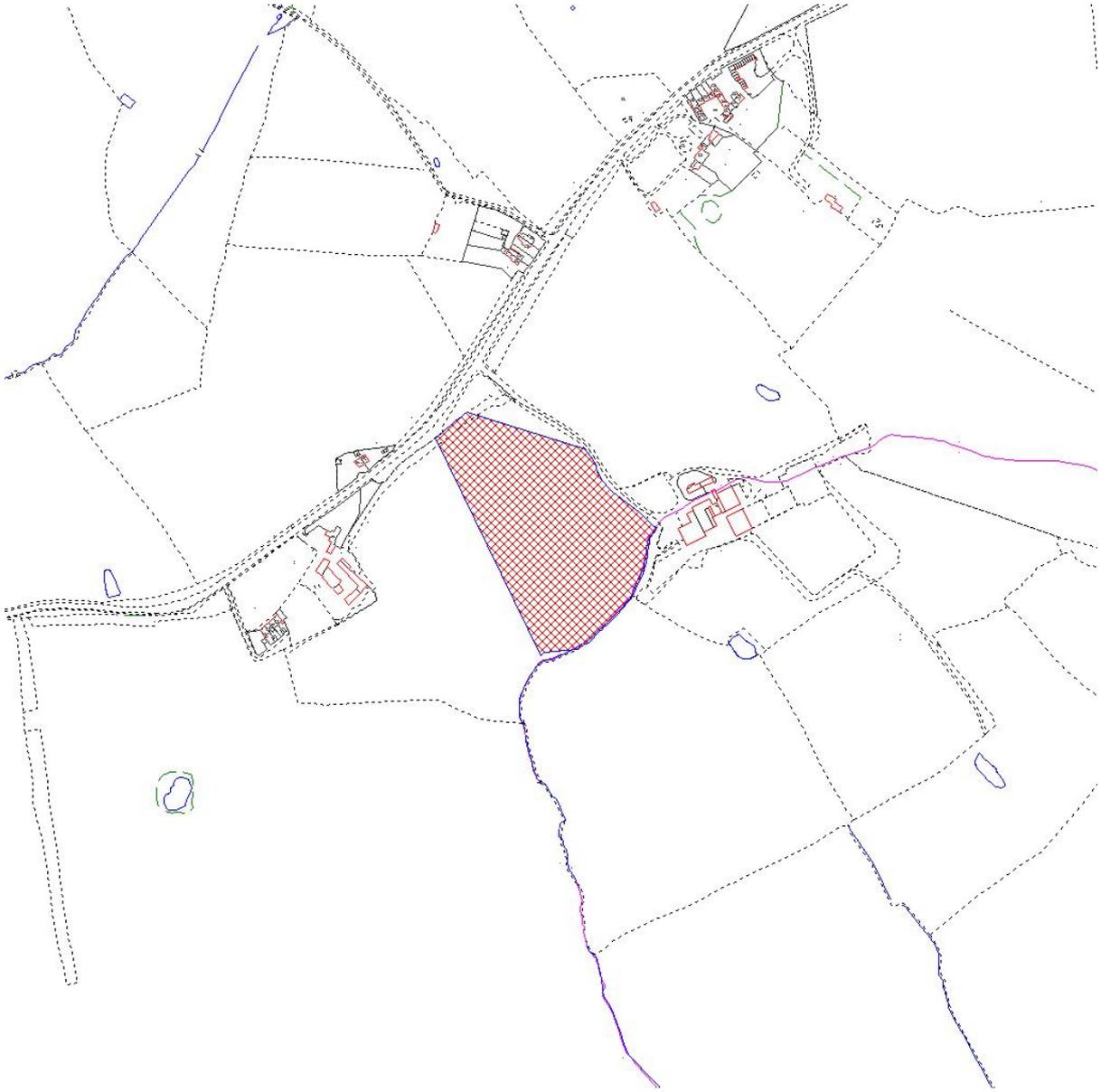
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2009/0385

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	21/08/2009, 25/08/2009, 27/08/2009, 24/09/2009
2	D& G Flemans	Representation	09/10/2009
3	B Walton - ST Water	Consultation Response	12/10/2009
4	D Hothi - BIA	Consultation Response	21/10/2009
5	Mr & Mrs B Farmer	Representation	18/10/2009
6	Clerk - Fillongley PC	Consultation Response	19/10/2009
7	R Hancocks	Representation	23/10/2009
8	R Wheat - WWT	Consultation Response	29/10/2009
9	K Watkins – WCC Highways	Consultation Response	30/10/2009

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.



(3) Application No PAP/2010/0099

Variation of condition no: 5 of planning application PAP/2006/0535 to use flowplast cast iron look a like upvc guttering,

Application No PAP/2010/0100

Variation of condition no: 5 of listed building consent PAP/2006/0536 to use flowplast cast iron look a like upvc guttering,

Application No PAP/2009/0580

Variation of condition nos: 2 (revised design - variation from approved plans) and 6 (revised rooflight design) of planning application PAP/2006/0535,

Application No PAP/2009/0585

Listed Building Consent for variation of condition nos: 2 (revised design - variation from approved plans) and 6 (revised rooflight design) of planning application PAP/2006/0536,

The Three Tuns, Long Street, Atherstone

For Arragon Construction

Introduction

This application is reported to the Board as two of the applications are retrospective and, if refused, would require consideration of the expediency of enforcement action; in light of the receipt of objections to the proposals and to enable members to view samples of the materials proposed to be used in respect of applications 2010/0099 and 2010/0100.

The Site

A Grade II listed building situated on the south side of Long Street, approximately 30 metres from the junction with Station Street. The listed building fronts Long Street but its plot runs back through to Station Street. The development which is the subject of these applications adjoins the listed building to its rear.

Background

Planning and Listed Building Consent was given for the erection of extensions to The Three Tuns, Long Street in 2006. Amendments to the approved design were granted in January 2008. Work commenced on the construction of the building in 2009. When visiting the premises Officer's noted that the construction was not in accordance with the approved plans – though the overall dimensions of the built form (footprint, height, roof pitch) conformed with the approved scheme, the size and number of window and rooflight openings had increased. Applications 2010/0580 and 2010/0585 seek retrospective permission to retain the building as constructed.

The Proposals

1) Variation of condition no: 5 of planning application PAP/2006/0535 to use flowplast cast iron look a like upvc guttering and variation of condition no: 5 of listed building consent PAP/2006/0536 to use flowplast cast iron look a like upvc guttering.

The conditions numbered 5 in each of the planning and listed building consents required the following:

5. All the rainwater goods shall be constructed out of cast iron and painted black.

REASON

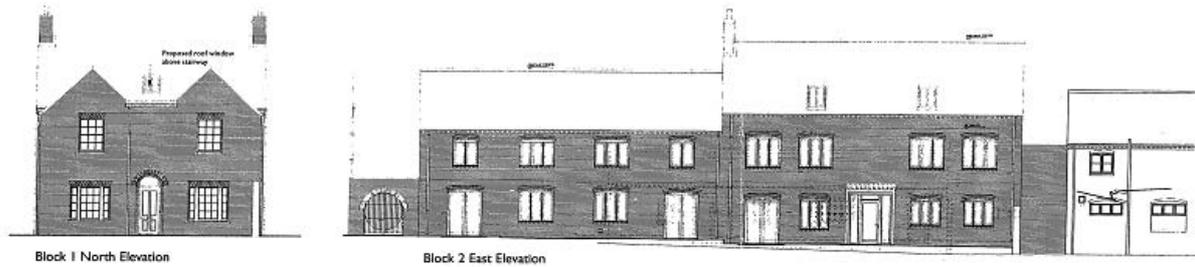
In the interests of preserving the architectural/historic interest of the listed building.

The applicant argues that it is cost prohibitive to use cast iron materials and instead proposes the use of a plastic alternative designed to replicate the look of cast iron.

2) Variation of condition nos: 2 (revised design - variation from approved plans) and 6 (revised rooflight design) of planning application PAP/2006/0535 and Listed Building Consent for variation of condition nos: 2 (revised design - variation from approved plans) and 6 (revised rooflight design) of planning application PAP/2006/0536.

The illustrations below detail the differences between the approved scheme and the proposed scheme (as built)





APPROVED (ELEVATION FACING INTERNAL COURTYARD)



PROPOSED (ELEVATION FACING INTERNAL COURTYARD)

Development Plan

North Warwickshire Local Plan 2006:

Core Policy 11 – Quality of Development

ENV11 – Neighbour Amenities

ENV12 – Urban Design

ENV13 – Building Design

ENV15 – Heritage Conservation, Enhancement and Interpretation

ENV16 – Listed Buildings, Non-Listed Buildings of Historic Value and Sites of Archaeological Importance (including Scheduled Ancient Monuments)

Other Relevant Material Considerations

Government Advice: Planning Policy Statement 5 - Planning for the Historic Environment

Representations

Application Nos PAP/2010/0099 and PAP/2010/0100

Atherstone Town Council – No objection, but it queries the durability of the proposed material.

The Atherstone Civic Society - We object to this proposal. The Three Tuns is a Grade II Listed Building in the heart of the Atherstone Conservation Area. Although the upvc guttering might look genuine from a distance it would not be authentic or have the same durable qualities as cast iron. It would also be more susceptible to damage. In our view it would degrade the development.

The developer's claim that 'it cannot be afforded in the current economic climate,' is not a planning matter and is irrelevant. This is an important Listed Building and the applicant has already obtained a major concession in achieving such an intensive scheme in a sensitive area. To allow this proposal would be to set a precedent for similar developments elsewhere.

Atherstone Town Council – No objection.

The Atherstone Civic Society - The Three Tuns has an unfortunate history in which Listed Buildings were demolished without Listed Building Consent. Therefore we expect the replacement buildings to be of a very high standard of design, along the lines of the successful English Heritage/AWM/NWBC Atherstone Partnership Scheme. It is therefore very worrying to see that not only has the development not proceeded according to the approved plan, but the plan submitted with this application and claimed to be the development 'as built' (9.12.09 07-091 034B) is also inaccurate.

However, measuring the development as it now stands against the Approved Amended Plans 07/091/34B & 35B & Plan Typical Eaves Detail, there are a number of unauthorised alterations which have degraded the development to such an extent that it now detracts from the Listed Buildings at the Long Street end of the site. They are as follows:

1. The chimney stacks have been omitted.
2. There are more roof lights than on the approved plan.
3. The projecting stretcher course and dentil detail is weak and not exactly according to the approved Typical Eaves Detail (3 Jan 08).
4. The gap between the eaves and the window is so large as to be out of character with the townscape. Some should be immediately under the eaves, but are not.
5. The windows are larger than the approved plan, some with three instead of two casement/panes.

We would also draw your attention to the 'Extent of 3 Tuns West Elevation' (part of plan 07-091 034B, as built 9.12.09). Although not part of this application the drawing does not accord with what is now on site.

The Three Tuns is too important and too prominent for these irregularities to be accepted. The plans were amended to obtain approval but the developers have now returned to something similar to their original, unaccepted, plans. This procedure must not be allowed to set a precedent. We would therefore urge the Council to refuse this application.

Consultation Responses

Application Nos PAP/2010/0099 and PAP/2010/0100

Heritage and Conservation Officer – Objects to the use of Flowplast UPVC guttering in place of cast iron. He regards the product to be inappropriate because it would be less durable than cast iron, being more susceptible to damage and to weathering in a manner dissimilar to cast iron. Given the siting within the Atherstone Conservation Area and that the development forms an extension to a Grade II Listed Building he regards the use of UPVC an unacceptable substitute.

Application Nos PAP/2010/0580 and PAP/2010/0585

Heritage and Conservation Officer – I agree with the Civic Society that the alterations made to the approved scheme detract from, rather than add to, the attractiveness of the development, which is a pity in view of the officer time spent in negotiating and advising on the original design with the original owner and his agent. However with the exception of the roof-lights on the west elevation I do not feel that these changes are sufficiently material to enable them to be successfully upheld at any appeal against refusal.

While less than desirable, the changes to the west (passage-side) elevations are mitigated by the fact that they can only be viewed obliquely such that their visual impact particularly of the additional rooflights is less than the elevation drawings suggest. Views of these elevations from without the site from bus station square are also obscured by other buildings such that the repetitive and regular nature of the fenestration and large number of rooflights is not obviously apparent from public vantage points.

This is not the case on the west side where the slope of the prominent taller two – and a – half storey block is very apparent to views from South Street in the vicinity of the junction with Coleshill Road. The large number of lights on this slope contrasts with the unbroken slopes a building to north and south. The approved scheme showing two larger lights (which should be flush with the roof slope) are considered much superior aesthetically.

I would have no objection to the addition of a roof light on the rear (north) elevation of the proposed building fronting South Street subject to approval of size and that it too should be flush fitting and not projecting above the plane of the roof.

Environmental Health Officer - No Comments.

Observations

Application Nos PAP/2010/0099 and PAP/2010/0100

These applications propose alterations to rainwater goods for use on the listed building extension. A sample of the proposed material, as well as a comparison sample of cast iron, will be available at the Board meeting for Members consideration.

The Heritage and Conservation Officer and the Atherstone Civic Society both oppose the use of UPVC rainwater goods on this building.

It is common practice that on Listed Buildings and historic buildings in Conservation Area locations consent will not be given for modern substitute materials such as plastic or pressed or extruded aluminium. These materials have a smooth, shiny surface compared to the subtly textured finish of cast iron, and employ a different method of jointing which alters the line of the guttering. It is commonly considered that they are not suitable because they detract from the traditional character of the building and have shorter life spans. They can be liable to buckling and distortion in prolonged exposure to sunlight and may discolour unattractively.

Though the rainwater goods are to be attached to new build attached to the listed building and within its curtilage, rather than to the Listed Building itself, it remains important that materials of appropriate quality are employed in the construction. Whilst the UPVC may have an attractive appearance when new it would not have the longevity of the traditionally used cast iron.

Policy ENV16 of the North Warwickshire Local Plan 2006 (saved policies) relates to Listed Buildings and indicates that:

Development that would detract from the character, appearance or historic value of a Listed Building (including any building within its curtilage) in terms of historic form and layout or its setting, will not be permitted.

Policy ENV15 relates to Conservation Areas and indicates that:

New buildings within and adjoining a Conservation Area will be required to harmonise with their settings, reflecting the scale, form and fenestration of traditional buildings in the area, and using materials characteristic of the area.

Alterations and extensions to buildings will be required to harmonise with their character and that of the Conservation Area, by retaining and where necessary restoring traditional features, including boundary walls, paved surfaces and street furniture.

The use of the proposed materials would be contrary to the objectives of these policies for the reasons given above.

Though the applicant suggests that the alternative material is sought because of the need to make cost savings the applicant has not put forward a case to suggest that the use of cast iron would jeopardize the overall viability of the scheme. Indeed, there is an argument to suggest that money saved in the short term would be cancelled by the need for future expenditure to the rainwater goods when they reach the end of their relatively short life, when compared to cast iron. To compromise on the quality of material here on the grounds of cost reduction alone would set an undesirable precedent for other historic buildings and Conservation Areas elsewhere.

The applications may not be supported.

Application Nos PAP/2010/0580 and PAP/2010/0585

In essence these applications seek retrospective permission for alterations to the approved extension comprising alterations to window openings, in terms of their overall number, the opening sizes and their positioning within the building, and to the rooflights, also in terms of their overall number, the opening sizes and their positioning within the building.

The comparison elevations above show that the rooflights would be increased in number from 6 to 12 and the windows increased in number by 4 (on the passageway facing elevation).

The Atherstone Civic Society argues that the number of unauthorised alterations made to this development have degraded it to such an extent that it now detracts from the listed buildings at the Long Street end of the site. It regards the Three Tuns is too important and too prominent for these irregularities to be accepted. The plans were amended to obtain approval but the developers have now returned to something similar to their original, unaccepted plans. The Society argues that this procedure must not be allowed to set a precedent and urges the Council to refuse this application.

Heritage and Conservation Officer agrees with the Civic Society that the alterations made to the approved scheme detract from, rather than add to, the attractiveness of the development, which is a pity in view of the officer time spent in negotiating and advising on the original design with the original owner and his agent. However, with the exception of the roof-lights on the west elevation, he does not regard the changes to be sufficiently material to enable them to be successfully upheld at any appeal against refusal.

While less than desirable, the changes to the west (passage-side) elevations are mitigated by the fact that they can only be viewed obliquely such that their visual impact particularly of the additional rooflights is less than the elevation drawings suggest. Views of these elevations from without the site from bus station square are also obscured by other buildings such that the repetitive and regular nature of the fenestration and large number of rooflights is not obviously apparent from public vantage points. The following photographs illustrate this point.



VIEW OF THE DEVELOPMENT (PASSAGE SIDE)

The Heritage and Conservation Officer suggests that this is not the case on the west side where the slope of the prominent taller two –and a – half storey block is very apparent to views from South Street in the vicinity of the junction with Coleshill Road. He argues that the large number of lights (4 no.) on this slope contrasts with the unbroken slopes of the building to the north and south. He argues that the approved scheme showing two larger lights flush with the roof slope would be much superior aesthetically.

The photograph below shows the four rooflights in question (viewed across the Red Lion Car Park from Coleshill Street):



The applicant is reluctant to voluntarily revert to the two larger rooflights, arguing that their size would be more visually jarring than the four installed smaller units. It is therefore necessary to assess whether the inclusion of these four rooflights alone would justify the refusal of planning and listed building consents.

It is necessary to give some consideration to the wider context of the site.

The building which faces the roof slope containing the 4 rooflights is the extended Red Lion. The Red Lion extension, though lower in height, contains a similar array of rooflights, which are of the same proportion and which have a similar degree of visibility from Station Street (see photographic illustration below). The two roofs, being situated close together would be seen in the context of each other.



VIEW OF ROOFLIGHTS ON THE ADJACENT PROPERTY (RED LION)

Though the Heritage and Conservation Officer correctly identifies that the 4 rooflights would be most visible from the Station Street/Coleshill Street/Coleshill Road junction, it needs to be acknowledged that the visual prominence of the building is lessened on a seasonal basis as a result of the screening afforded by existing trees.



There are other examples of the use of large rooflights in the vicinity (see example below). The applicant argues that the use of larger rooflights would be more conspicuous and out of keeping. This opinion is credible. The large rooflights are atypical of the scale of rooflights commonly used in properties in the near vicinity and there is sound reasoning to suggest that four smaller openings would be less harmful than two larger ones.



EXAMPLE OF INAPPROPRIATELY LARGE ROOFLIGHTS (REAR OF LONG STREET)

Given that the use of rooflights is not uncommon on the rear roofs of other properties in the near vicinity and that the development would be read in the context of neighbouring development it is not considered that a refusal of the changes based on the impact of the four rooflights alone could be substantiated.

Though it is acknowledged that the revisions made to the building do not improve the design of the new building, neither are they so harmful to the Listed Building or to the character or appearance of the Conservation Area that the refusal of planning or Listed Building Consent could be substantiated. This decision would not set an undesirable precedent as each individual development is judged on its own merits.

Recommendation:

(A) Application Nos PAP/2010/0099 and PAP/2010/0100

That the applications each be **Refused** for the following reason:

The use of flowplast cast iron look a like UPVC rain water goods would be inappropriate at this listed building, situated in the Atherstone Conservation Area. The appearance, quality and durability of the material would detract from the traditional character of the Listed Building and its Conservation Area setting, contrary to the provisions of Policies ENV15 and ENV16 of the North Warwickshire Local Plan 2006 (saved policies). A desire to make cost savings does not outweigh the provisions of these policies.

Application Nos PAP/2010/0580 and PAP/2010/0585

(B) That condition 2 of both applications be **Varied** to read:

The development hereby approved shall not be carried out otherwise than in accordance with the plan numbered 07_091 034B received by LPA on 17 December 2009 and the site location 05_124 17 received by LPA on 26 July 2006.

REASON

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

(C) That consent be granted for partial non-compliance with condition 6 of each application

REASON

In the interests of preserving the architectural/historic interest of the Listed Building.

BACKGROUND PAPERS

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

Planning Application Nos: PAP/2010/0099, PAP/2010/0100, PAP/2010/0580 and PAP/2010/0585

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	
2	Atherstone Civic Society	Representation	25 March 10
3	Atherstone Civic Society	Representation	
4	Atherstone Town Council	Representations	25 March 10
5	Heritage and Conservation Officer		
6	Environmental Health Officer	Consultation Reply	26 March 10

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.

(4) Application No PAP/2010/0102

Birch Coppice – Phase Two Proposals For I M Properties (Dordon) Ltd

Introduction

The receipt of this application was reported to the Board's last meeting. It resolved to visit the site and arrangements for this are now in hand. Additionally, officers indicated that a further report would be brought to this meeting in order to explore the issues raised by the draft Section 106 Agreement accompanying the application. This report now deals with this matter.

A) The Submitted Draft Section 106 Agreement

The original draft Agreement submitted with the application was amended soon after that submission, and it currently contains three Obligations suggested by the applicant. These are:

- i) An agreement that if the re-location of the County Council's proposals at Lower House Farm for a Waste Transfer Station is agreed, then the applicant will provide access to that site for HGV's, over its land to that site, from the A5.
- ii) To implement a Green Travel Plan.
- iii) An agreement that any remaining money from the financial contributions that have already been made specifically for off-site landscaping arising from the existing 106 Agreements in respect of the "Phase One" development, if not expended, be "varied", so that it can be used instead, for public transport and training purposes.

For information, the original draft submitted with the application, contained a fourth draft Obligation, such that the applicants would provide a contribution of £50,000 for a Miners Memorial to be placed on their land, and that this would be leased to the Council for maintenance purposes. This was withdrawn following planning and legal advice from Council officers; as such a draft Obligation would certainly not meet the new Statutory tests for 106 Agreements, as outlined elsewhere in this Agenda.

Each of the current three draft Obligations, will now be looked at, beginning with the third, as this involves wider issues, and will take up the bulk of this report.

B) Linking the Phase Two Draft Obligations to Existing Obligations

a) Introduction

There are two significant factors here that need stressing immediately. Firstly, the impacts arising from the Phase One development were dealt with in the existing 106 Agreements (notably those of 2000 and 2004). Impacts arising from Phase Two proposals need to be identified and dealt with separately. Secondly, it can not be assumed that the Phase One impacts have already been dealt with, and therefore that there is a remaining unspent balance. These are now looked at in more detail, beginning with the second.

The two primary existing Agreements are from 2000 and 2004. The financial contributions arising from these focus on several matters. It is agreed between IM Properties and the Council, that the contribution that went towards traffic calming and HGV signage has been fully expended. The contribution for public transport has fully gone to the County Council to support the Bus-to-Work project that has secured regular patronage for around 90 employees at Birch Coppice. This funding will enable this project to continue to April 2011. The contribution for enhancing training opportunities for local people has partly been expended on the Recruitment Now project run by the County Council during 2004. There is a balance of £95,000 to be spent from this contribution. The final contribution is for off-site landscaping and environmental improvements. This remains unspent and amounts to £405,000. Work on the Core Strategy is continuing well and colleagues in the Forward Planning Section are optimistic that options for the expenditure of this contribution are coming forward, and that these will be identified in the Preferred Option.

IM Properties is satisfied that the unspent balance under the training contribution can continue to be used for such purposes for both Phase One and Phase Two. It is the unspent "landscaping" balance that they are saying can pay for other Phase Two impacts, thus not requiring new contributions specifically arising from Phase Two. This is an understandable position, but it is based on two unknown factors – firstly the impacts from Phase Two have not been identified or scaled, and secondly, the cost of providing the landscaping has not yet been determined. Until these are made explicit, the Phase One landscaping contribution should remain in full for its agreed purpose. It may be frustrating to IM to have this money unspent, but the Agreements themselves do allow this to remain with the Council until 2019, and it is only recently with the much more detailed work being undertaken on the Preferred Option, that the options for the expenditure of this contribution are becoming available.

As a consequence of all of these factors, it is not recommended that the two Agreements be linked.

b) Phase Two Contributions - General

The Bus-to-Work project is being successful in enabling employees to 'bus to work rather than drive. It is a bespoke service that fits in with the shift patterns at Birch Coppice. The needs from Phase Two will be the same; the existing service directly meets a site based requirement and need, it has to be sustained beyond 2011 if it is to serve Phase Two, and its continuation will directly meet Development Plan and Government Policy requirements. As such, a contribution in association with the Phase Two proposals is recommended to sustain this service as it would fully meet the statutory tests for Section 106 Agreements. The County Council consider that £150,000 will enable the service to continue for a further two years. If planning permission was granted for Phase Two and development commenced immediately then that funding could retain the service to April 2013. If development were delayed then there would be a gap in the funding. This is addressed separately below. Additionally, the continuation of the service once funding from Section 106 contributions end, is also an issue, but a suggestion is made below, in connection with the discussion on the draft Green Travel Plan.

The Recruitment Now project enabled training and employment opportunities to become far more available for local people, so that they had a far better chance to find employment at Birch Coppice. Since then the economic downturn has directly impacted on North Warwickshire and on specific areas within the Borough including the communities around Birch Coppice. The County Council can evidence increased unemployment; high levels of younger people who are NEETS, low skill levels and

low educational attainment in the area. The provision of training and employment opportunities with particular reference to the existing occupiers at Birch and future ones on Phase Two if permission is granted, would also meet Development Plan, Government Policy and Community Strategy requirements. As such they too would meet the statutory tests for Section 106 Agreements. The County Council has prepared a package of measures that would run through the Phase Two development. This is attached at Appendix A. The cost of delivery of such a package would amount to £150,000. As there remains a balance of £95,000 unspent, a contribution of £55,000 is recommended in association with a Phase Two Agreement.

No off-site landscaping contribution is recommended. This is because the land, on which this could be undertaken, is already included within the area defined by the earlier Agreements. They include substantial areas of land around the proposed Phase Two site. The current application too includes substantive peripheral landscaping. The current Phase One contribution can thus, if necessary, be used in connection with the Phase Two proposals, if there is a balance remaining after completion of Phase One planting.

No additional traffic calming measures are recommended. This is because all traffic would use existing access arrangements, and existing traffic calming has already been added as a direct result of the Phase One proposals. The County Council would require no additional measures. New arrangements for Lower House Lane, as a consequence of non HGV traffic potentially using the new proposed Waste Transfer Site, would be paid for by the County Council itself.

As a consequence of these factors, it is recommended that a total contribution of £205,000 is sought through a Phase Two Section 106 Agreement - £150k for continuation of the Bus-to-Work project, and £55k for assistance on the package of training measures. All of this contribution is required to be paid to the County Council, once development commences on the Phase Two proposals.

c) Phase Two – Some Detail

The 'bus contribution will provide a two year extension of the existing project, but it can only be linked to the Phase Two proposals. In essence, if Phase Two does not commence for whatever reason within the life of any permission granted, it should be refunded. If the occupation of the Phase Two units commences around April 2011, then it can be used at once. If not, then clearly there will be a funding gap. It is thus recommended that, in these circumstances, if a funding gap is likely because of timing, then the interest that has accrued on the existing Section 106 Agreements should be forwarded to the County Council to fund any gap that arises from April 2011. There is sufficient interest accumulated to enable continuation for at least a further twelve months. The expenditure of the interest in this way is in line with the existing Agreements. In this way, the existing service can be maintained after April 2011 for at least a further twelve months, and that would enable the Phase Two contribution to start at the first occupation of the Phase Two units.

The training contribution essentially is targeted at providing opportunities prior to occupation of the Phase Two Units. It should thus be fully expended before the expiry of six months after the final occupation of the last Phase Two unit; otherwise the unspent balance should be refunded.

d) Clarification

So, on the basis of retaining separate Section 106 Agreements, the position would be that, the outstanding training and landscaping contributions from the existing Agreements remain to be expended on training measures and on off-site landscaping options, for both Phases. The new Phase Two Agreement would contribute a further £205k for continuation of the Bus-to-Work project, and to assist in the training package. This total contribution is tied to specific requirements, and these are time limited. Interest accrued from the existing Section 106 Agreements can assist in overcoming funding gaps should the timing of the commencement of the Phase Two proposals be delayed.

C) The Draft Green Travel Plan

The draft Green Travel Plan submitted with the current Phase Two proposals is the same as that already agreed under the existing Agreements. As such there are no issues with it. In particular it encourages car sharing as the main measure to reduce reliance on car transport amongst employees.

As indicated above, the existing Bus-to-Work service is having an influence here and that needs to be encouraged. If funding comes from a Phase Two Section 106, then it should be heavily promoted by IM Properties and occupiers. Funding the service is the critical issue. Existing and hopefully the Phase Two Agreement, will provide this directly, and indirectly through the use of the interest accrued. However this will end at some stage. Whilst the County Council is assisting the service too, it is debateable as to whether it could continue to fund the service in full and permanently. A partnership is still considered to be the best way forward. It is therefore suggested that the draft Green Travel Plan be amended such that each occupier, once in operation at the site, pay a “service charge” to IM Properties, and that the accumulation of these be paid by IM Properties to the County Council, in lieu of the Section 106 contribution. In this way the service can continue and be paid for by the occupiers themselves. It is thus recommended that this be put to IM Properties for consideration.

D) Access through Phase One

There is no issue with this clause in the draft Agreement. The County Council is satisfied with its content.

E) The Response from IM Properties Ltd

The content of this report has been discussed with IM Properties for some time now since the submission of the application for Phase Two. A letter has been received that agrees to the suggestions put forward in this report, except for that relating to the Green Travel Plan. Appendix B is a copy of this letter.

This agreement by IM Properties is fully welcomed and as a consequence a new draft Agreement is being drawn up.

It is considered that the matter of the continuation of the Bus- to-Work project, and the end of the Section 106 funding periods is a matter that does need further investigation, and it is recommended below that discussions continue between the parties and with the County Council. It does not however delay the planning process on the Phase Two application as this is a matter that is outside of the remit of Section 106.

Recommendations

A) That IM Properties (Dordon) Ltd's agreement to re-draft the Phase Two Section 106 Agreement so as to contain the following matters be welcomed.

- i) A total contribution of £205,000 to be directed towards maintenance of the existing Bus-to-Work service, and for a package of measures, as set out in this report, designed to improve employment and training opportunities for access to new jobs at Phase Two specifically for local people.
- ii) That the Clause relating to HGV access remains.
- iii) That a Green Travel Plan be included

B) That the interest accrued under the existing 106 Agreements be transferred to the County Council in order to fund any gap in the continuation of the Bus-to-Work service, and that any further interest arising from the existing Agreements and from any new Agreement related to the Phase Two proposals be similarly used.

C) That officers continue to work with IM Properties (Dordon) Ltd and the County Council to resolve the continuation of the Bus-to-Work project following expiry of the Section 106 funding.

D) That a report is brought to the Board when appropriate, outlining the outcome of the continuing discussions on the expenditure of the existing contribution for off-site landscaping measures.

BACKGROUND PAPERS

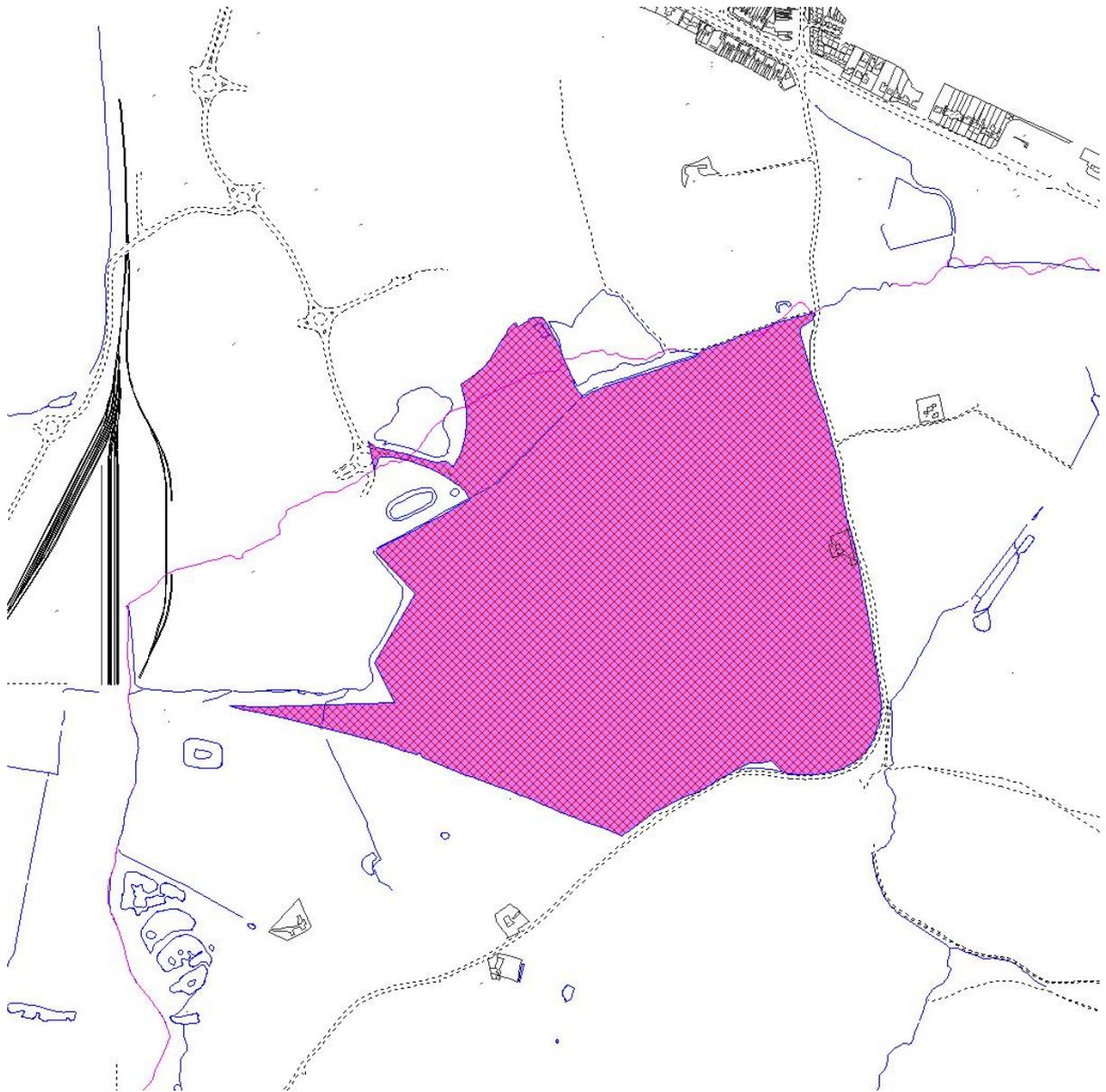
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2010/0102

Background Paper No	Author	Nature of Background Paper	Date
1	Head of Development Control	Letter	19/4/10
2	Head of Development Control	Letter	21/4/10
3	Tweedale	Letter	27/4/10

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.



S106 Proposals – North Warwickshire

Introduction

North Warwickshire is potentially one of the most at risk areas in the West Midlands following the recession, with relative significant rises in unemployment, proportionally high levels of NEETS, a low skills base and low education attainment levels. The borough also has a reliance on a number of large employers with relatively few SME's makes the economy sectorally vulnerable to future structural change.

The Section 106 between IM Properties and North Warwickshire Borough Council presents an opportunity for money to be spent on up-skilling the residents of North Warwickshire to improve their opportunities and access to employment. Below details some possible uses for the resources to be invested and identifies key partners for the delivery of each proposal.

Proposals

Warwickshire Connections – Connections to Opportunities (Appendix One)

Key Contacts – Warwickshire County Council - Jacqui Crisp, Teresa Carter

The project will increase engagement and improve "pre-pre" enterprise and employment support for hard-to-reach, workless individuals living in priority wards in order to increase the successful take-up of mainstream (or ERDF/ESF) enterprise and employment support by these groups. Long term hard to reach need help and incentives to break down multiple barriers to work that prevent them sustaining employment or getting suitable jobs in the first place. Funding will be used to:

- Matched funding for targeted rural areas in North Warwickshire
- Aimed at engaging with hard to reach individuals.
- Aims to assist 26 individuals find employment through in priority rural areas
- Work with third sector organisations to promote grass roots and innovative schemes (e.g. CAVA)
- Door Step Engagement (possibly in targeted communities e.g. Dorden)
- Outreach workers could undertake the resource intensive, time-consuming roles of engaging hard-to-reach, workless individuals and carrying out initial "pre-pre" support.

Outreach workers will pro-actively reach out into the local community; raise awareness and understanding of the support available; help build confidence and aspiration; carry out an assessment and provide initial information, advice and guidance; produce an individual action plan; secure suitable support for any barriers that need addressing; provide effective referrals into mainstream or ERDF/ESF enterprise and employment support programmes; and provide ongoing support and mentoring.

CSWP/Coventry and Warwickshire Connexions (Cool –IT) (Contact: Linda Gilleard)

To build on the success of the existing project delivered in Central & East Warwickshire by targeting a minimum of 50 of the remaining 98 registered NEETS in North Warwickshire through informal learning opportunities.

Objectives:

- Utilise a variety of delivery venues including Camp Hill Opportunity Centre alongside outreach methodologies including home visits to offer increased access for all young people in venues familiar and acceptable to them.
- Deliver accredited /non-accredited training programmes to upskill the target group
- Utilise handheld technology, community IT centres and secure social networking sites to allow young people to undertake learning at times and places suited to them.
- Deploy a range of support packages that address multiple barriers faced by the target group including motivation, educational and employability skills, putting learning into life practice, enhancing self esteem and communication.
- Engage with parents and carers
- Link to existing provision e.g. Wheels to Work, nextstep, community centres
- Establish referral networks within locality provision
- Support individuals to access Education Maintenance Allowance as appropriate

Outputs

- 50 NEETS engaged
- 50 Learning outcomes achieved
- Improved referral network established

Taster Courses (Nuneaton Opportunities Centre) (Appendix 2)

Key Contacts –Warwickshire County Council Lynne Wilson, Nigel Bond

The programme is designed to give a taster of the training offered at the Nuneaton Opportunities Centre and covers Construction/Landscaping, Motorcycles and Car Valeting.

- The target demographic are NEETs. (14 in total with 60% Progression)
- Two 6 hour sessions a week (run over a course of 10 weeks)
- Outreach transport provision will be given from Atherstone, Coleshill and Hurley & Arley
- Prior to the student starting the course staff will carryout an advice & guidance session where key issues and barriers will be identified. The individual learning plan will be written and agreed with the student and an action plan devised.
- Will be offered opportunity to take *Introduction to skills for employability – Entry level 3 qualification NOCN*
- The opportunities centre will work closely with the college to prepare succession programme of training for the student if that is suitable based on their experience and competencies acquired on the taster programme.

College Programmes already run within Area (Appendix 3 & 4)

Key Contacts – North Warwickshire and Hinckley College - John Black, Ashleigh Rinchey

The college currently run many programmes for upskilling in the Coventry and Warwickshire. Below is a list detailing the types of fundable programmes already running (For more details – Appendix 3):

- Train to Gain
- ESF Warwickshire
- Apprenticeships
- Response to Redundancy
- 6 month offer
- Skills for Jobs
- Young Persons Guarantee

- Move Forward (Appendix 4)

Industry Specific Training – Working with IM and Current Employers

Below are some of the typical jobs provided at Birch Coppice and other distribution sites across the Borough. The aim would be to provide people with the skills relevant to the potential employment opportunities. NWHC already provide a number of these courses so the issue to be addressed is probably one of access to enable people to attend existing courses.

- Fork Lift truck - could be tailored to meet the needs of existing or prospective employers
- Office Skills – IT, business administration, could be tailored to meet the needs of existing or prospective employers
- LGV training
- Vehicle maintenance & repair
- Cleaning
- Security
- Logistics
- Construction – clarification of opportunities could include construction related apprenticeships, up-skilling, construction skills, CSCS etc
- Food - Could include food preparation, basic hygiene etc

Working with NWHC, Phase One users and IM Properties to establish what need there is for this training and how beneficial it would be in local jobs take up.

Demand led training

Demand led training to up-skill existing workforces and offer provide bespoke training to companies based at, or locating to, Birch Coppice. Many training needs are met by the employers as part of their general workforce development programmes.

However there is a need to talk to existing employers at Birch Coppice to establish their needs re employee skills to ensure that wherever possible those applying for employment have the skills demanded by prospective employers. This would be led initially by the Chamber and then picked up, if interest exists, by staff in North Warwickshire. It would be beneficial if this discussion is held sooner rather than later.

Also if possible establish who the new users are likely to be for Phase II and establish their skills needs both general and specific.

This could be achieved by working with NWHC and using the S106 funding to fill gaps they are unable address as a result of a lack of funding. NWHC already:

- Identifying skills gaps and suggesting training solutions
- Delivering nationally recognised qualifications
- Delivering bespoke training programmes
- Delivering delivery plans to meet the business and operational needs

Example of this type of training could be training in the use of the different data terminals used by the various companies on the site.

Some of the training identified above is already provided at North Warwickshire & Hinckley College (possibly at South Staffs College which might be easier for some local people to access). The S106 funds should not be used to duplicate those already funded training opportunities available through the colleges. However it could be used to help people access the training.

Issues

Some issues that have been identified which will need to be addressed as the projects develop to ensure effectiveness of the projects. A project group or similar needs to be established to ensure continued strategic fit to local needs, effective co-ordination of the investment and a robust monitoring and evaluation framework

Access

As North Warwickshire is a sparsely populated access to training centres and services is an issue. In order to address this, the following needs to be considered/addressed with the S106 money

- Transport
- Links to existing training centres
- Location of training

Identification of Participants

- Unemployed
- Low skilled employed

Identification of Partners

- WCC
- NWBC
- NWHC
- Job Centre Plus
- Connexions

Other Issues

- Targeting of training
- Links to existing training opportunities
- Signposting
- Duplication of existing provision

Comp Ref: F:/Projects/TP/PL635/OL/NWBC 27.04.2010
File Ref: PL635
Your Ref: jgb2010/0102
Date: 27th April 2010

RECEIVED

28 APR 2010

North Warwickshire
Borough Council

North Warwickshire Borough Council,
Head of Development Control Service
The Council House
South Street
Atherstone
Warwickshire
CV9 1DE

For the attention of Mr. Jeff Brown BA.Dip.TP.MRTPI

Dear Sirs

Town and Country Planning Act 1990 (as amended)
Birch Coppice – Phase II Proposals
Draft Section 106 Agreement
For I.M. Properties (Dordon) Ltd.

Thank you for your letters dated 19th and 21st April 2010 concerning the above.

My Client has now considered your proposals in detail and has now instructed me to write to you in response to your letters.

My Client is agreeable to the contribution of £205,000 (two hundred and five thousand pounds) within the Section 106 Agreement to accompany the Phase II proposals, as the only contribution sought to address the two elements referred to (i.e. Public Transport - £150,000 (one hundred and fifty thousand pounds); and training - £55,000 (fifty five thousand pounds). Your suggestion that these contributions are time limited along the lines proposed, and returnable if unspent at a specific date in time in relation to development or a date, is also agreed.

I note your comments that recently interest earned (and unspent) was £122,000 (one hundred and twenty two thousand pounds) and wish to confirm that, in principle, and subject to detailed agreement at the appropriate stage, my Client accepts that interest from the Phase I and Phase II monies contribution could be made available for funding any shortfalls that may become apparent within the individual areas of Public Transport, Training or Landscaping. Each such would need to be related to the particular phase of the development as you suggest. I believe that in relation to Phase I and public transport funding, this would resolve your expressed concerns either during 2011 or subsequent to 2013.

Cont...

Tweedale Limited. Company Registered in England and Wales No. 3225960. Registered Office: 265 Tettenhall Road Wolverhampton WV6 0DE

APPENDIX B



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Web: www.tweedale.co.uk



Cont...



Additionally your comments in the two letters concerning the £405,000 (four hundred and five thousand pounds) landscaping fund (as yet unspent) are noted and accepted.

For your information, I can confirm that my Client intends to contribute to/to fund the proposed Miners Memorial Wall within Birch Coppice separately from the Section 106 Agreement.

I am requesting Martin Damms of Pinsents to contact Steve Maxey to revise the earlier Draft Section 106 document submitted with the Planning Application for Phase II in the light of the foregoing. It is not, however, considered that any amendment is needed to the draft Green Travel Plan, which fully covers arrangements for the development of Phase II.

I would be grateful if you could include my Clients agreement to the £205,000 (two hundred and five thousand pounds) contribution, as referred to above in your report to the Planning and Development Board in May.

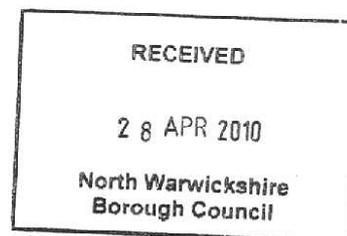
Thank you for your assistance in progressing this matter and I look forward to the next stage. Should you have any queries, please do not hesitate to contact me.

Yours faithfully,

Mike Pearson

**Mike Pearson
For and on behalf of
Tweedale Limited**

M. Jones Esq	-	IM Properties (Dordon) Ltd
K. Ashfield Esq	-	IM Properties (Dordon) Ltd
M. Damms Esq	-	Pinsent Mason Solicitors
M. Eagleton Esq	-	Eagleton & Co.



(5) Planning Applications : 2010/0165, 166 and 167

Corley Nurseries, Church Lane, Corley, CV7 8EW

2010/0166

Change of use of part of former nursery to residential curtilage (garden) of dwelling known as Corley Nursery.

2010/0165

Refurbishment and re-use of existing steel frame buildings for Class B1 (light industrial/offices) use, including craft workshops with ancillary parking and storage areas; demolition of remainder of structures, erection of replacement B1 (offices) building, car parking, driveways and landscaping.

2010/0167

Removal of condition number 5 of planning permission 1605/89 and condition 10 of planning permission 586/92 relating to the occupation of a dwelling,

all for The Tyler-Parkes Partnership / Mr T White

Introduction

These three applications all refer to the site currently known as Corley Nurseries and represent a package of comprehensive proposals for the redevelopment of that site. There are extant planning permissions that cover the whole site and this is currently the planning unit here. Because of the linkages between parts of the site through these extant permissions, and for highway and environmental reasons, the applications should be treated together.

The cases are reported to Board because of the matter of the proposals – essentially being for the redevelopment of a site with existing lawful uses within in the Green Belt.

The Board has taken the opportunity to visit the site prior to the publication of this report – see Appendix A.

The Site

Corley Nurseries comprises a rectangular shaped site of around 0.88 hectares in area, situated on the north side of Church Lane in Corley about 350 metres west of its junction with the Tamworth/Coventry Road, and 200 metres east of its junction with the lane running to Marsland Farm. There is a detached house to the east, and then an open frontage before the village hall is reached. Opposite the site is open land, comprising a covered reservoir and the premises of Corley School – a Special School managed by the Coventry City Council. There are scattered residential properties along the lane. The whole area is rural in character and this part of Church Lane stands on high ground with levels falling to both the north and south.

The site itself comprises a detached house and its associated rear garden at the eastern end of the frontage, with its own access on to Church Lane. There is a strong hedgerow fronting the Lane. A second access at the western end of the site leads to a car park that used to serve the Nursery. This comprises a collection of single storey, mainly timber buildings together with a range of poly-tunnels, sheds,

enclosures and raised beds that comprise the central portion of the site. The western end comprises a number of single storey porta-cabins and containers, including a more substantial steel clad structure on the western boundary. There is also a much larger steel clad building at the rear together with an area that contains poly-tunnels and buildings associated with the aquatic products that were sold from the nursery.

These features are illustrated at Appendix B.

Planning Background

The site was used historically as a nursery, but had become vacant when, in 1987, the previous owner, acquired the site. He received a planning permission in that same year for the construction of buildings for the mixing of potting compost for use on the nursery together with its retail and wholesale sale. This was implemented and two of these remain on site – one of which is the large building at the rear of the site as referred to above. He commenced this business and re-instated the nursery use with retail sales. In 1997 permission was granted for additional poly-tunnels, and further development in connection with the nursery took place under permitted development rights during the 1990's. The nursery and the composting business continued through this period.

In 1989, outline permission was granted for the house on the site, and details were subsequently approved in 1992, and the house then constructed. The occupancy of the dwelling was restricted by condition to someone operationally connected to the nursery.

In the late 1990's the nursery appeared not to be viable, and different unauthorised uses appeared on the site. The associated investigations led to the submission of further applications, and in 1997 two permissions were granted. The first related to the whole site and this was for the change of use of the site to a mixed use comprising, the nursery, the manufacture and sale of compost, the sale of aquatic products and the sale of classic cars. This was taken up. The second permission revised the occupancy restriction on the house, such that the then owner could remain resident, but if he then left, the occupation would be then restricted to someone employed operationally in the management of the site as set out in the other permission described above. An attempt to remove this condition failed in 2003 following an appeal against the Council's refusal.

Enforcement action, including the issue of an Enforcement Notice requiring the removal of some unauthorised buildings was successful at appeal in 2002/3 and these buildings have now been removed.

The nursery use continued to decline. In 2006, the site was sold and the present owner has subsequently tidied the site, and attempted to continue with the nursery use. However this failed in late 2008. He is now seeking to redevelop the site as set out in these three applications.

The Proposals

a) Introduction

The applicant has provided some background, together with related evidence, for the current proposals in order to put them into context and to explain the thinking behind the submission. This is helpful in fully understanding the proposals.

The entire site was acquired by the present owner in March 2006. The previous owner was struggling to make the nursery viable, and it is understood that he, in fact, went bankrupt. He did attempt to sell the premises, and agents were instructed to market the property in 2005. Evidence has been submitted that confirms that the agents had no success. Notwithstanding this, the current applicant acquired the site in March 2006, and made his own attempt to re-commence the nursery. Despite attempts to tidy and to improve the appearance of the site, this proved impossible, and evidence has been submitted by the applicant showing that in the period up to the end of 2008, there were increasingly more significant losses. The applicant therefore considers that the nursery is not a viable business. Apart from his own attempt to re-commence the use with new capital, he says that other factors lead to the use being an unviable proposition; the exposed location makes for difficult growing conditions and additional heating costs, the location is not that accessible, and the amenities/experience offered are not attractive when compared with other facilities.

The new owner understands that the use of the site under the current permissions involved uses that were, under the previous owner's stewardship, giving rise to concerns – particularly the sale of cars. He does not wish to perpetuate this image, and therefore wishes to make use of the whole site such that its future use is better suited to its location. As a consequence of the failed nursery and the problems associated with the other permissions, the current package of proposals has been put together.

b) 2010/0165 – The Redevelopment Scheme

The main proposal is essentially to improve and tidy the site through a series of demolitions and new build, so as to extinguish the nursery and presently lawful mixed commercial uses – an overall Plan is provided at Appendix B.

It is proposed to demolish all existing structures and buildings on the nursery site, with the exception of the two steel framed buildings – see Appendix B. These are the buildings approved under the 1987 permission referred to earlier. They were last used however for car repairs and sales. They would be re-used for B1 light industrial workshops and or craft workshops, served by existing car parking and access arrangements. The external appearance of the buildings would alter very little, as they would only be re-clad.

The total floor space of all of the buildings, structures, containers, poly-tunnels and enclosures, that are presently on site amounts to 1846 square metres. The two retained buildings have a combined floor area of 403 square metres – thus removing

1443 square metres of floor area. However it is proposed to add a new small brick built building towards the front of the site. This would be for office use and comprise an area of 235 square metres, thus leaving an overall reduction of 1208 square metres. This small single storey building would take the form of outbuildings and/or a stable block. All access arrangements would remain the same and car parking would be divided throughout the site.

c) 2010/0166 – Change of Use to an Extended Residential Curtilage

The overall proportion of the site formerly used by the nursery was quite large. The previous proposal described above only covers a portion of the site. It is proposed that the remainder be incorporated into the curtilage of the existing house so as to enlarge its garden. This is the area immediately to the rear of the existing house, and was wholly used in the past in connection with the nursery. It is illustrated at Appendix C.

d) 2010/0167 – Removal of the Occupancy Condition

The original occupancy condition attached to the house required the occupancy to someone involved in the operation of the nursery. The applicant considers that this link is no longer required given the current situation on the site, and that it not necessary in connection with the current proposals. The applicant argues that whilst the justification for the condition was originally appropriate, the nursery no longer is viable. He says that the failure of the marketing of the site in the early 2000's, and even with the new capital expended more recently by the current owner, it has not proved to be an economic concern as a business. As such he argues that there is no operational requirement for someone to reside on the site. The occupancy condition was varied in 1997, due to changes in the uses and operation of the site at that time. The nursery was still in use but struggling, and a variety of other uses were introduced to diversify the nursery business. The occupancy condition was varied such that the house was to be occupied by someone involved in the operation of the site as a whole under its new mixed lawful use following the 1997 permission. However, the current applicant points out that the condition also refers to a nursery use, and thus the conclusion is that the house has to remain vacant as long as there is no nursery use running from the site. He continues by saying that the current redevelopment proposals do not require permanent on-site residential presence. The condition in his view is now obsolete.

He does refer to the attempt of the previous owner to remove the condition, but which was dismissed at appeal in 2003. He points out that the Inspector's reasoning was based on there being no analysis provided by the then owner that there was no need for the house in connection with the business, nor relating to its viability. The current applicant says that such evidence is now provided with this application, which gives weight to the conclusion that a nursery here is unviable. Hence in his view the situation is different to that in 2003, confirming that the condition is now obsolete.

Development Plan

Saved Policies of the North Warwickshire Local Plan 2006 – Core Policies 1 (Regeneration), 2 (Development Distribution) and 11 (Quality Development) together with Policies ENV6 (Land Resources), ENV7 (Development of Existing Employment Land outside of Development Boundaries), ENV11 (Neighbour Amenities), ENV13 (Building Design), ENV14 (Access Design)), ECON 9 (Re-use of Rural Buildings), TPT 6 (Vehicle Parking)

Other Material Planning Considerations

Government Policy and Guidance – Planning Policy Guidance Note Number 2 (Green Belts) and Planning Policy Statement Number 4 (Planning for Sustainable Economic Growth)

Consultations

Council's Environmental Health Officers – No objection subject to conditions relating to a ground contamination survey being undertaken prior to the change of use of land to a garden, and in respect of the hours of operation of the B1 uses (0800 hours to 1800 hours on weekdays and 0800hours to 1300 hours on Saturdays with no Sunday working).

Severn Trent Water Ltd – No objection subject to a standard condition.

Warwickshire County Council as Highway Authority – No objection subject to standard conditions.

Representations

The Parish Council has no objection to the main redevelopment proposals, but objects to the other two applications. It considers that the change of use to garden land is not justified by any very special circumstances and that this is only promoted so as to increase the value of the house should the occupancy condition be removed. It cites another case in Corley where a garden extension was refused. It also considers that there are no very special circumstances to remove the occupancy, given that such a proposal failed in 2003, and that an approval here could lead to future abuse of the planning system through creating a precedent.

A local resident has no objection in principle but has asked: what has changed to lead to the likelihood of the occupancy condition being removed as the last attempt failed? Does an approval here affect other proposals for other sites? What is the likely traffic generation? What is a craft workshop? And would the site be occupied by Tom White for his own skip business?

Observations

a) Introduction

This site is in the Green Belt and outside of any settlement defined as a Local Service Centre in the Development Plan. The proposals taken as a whole are inappropriate development in such a location, and as such the presumption is for the refusal of these planning applications. The applicant is however arguing that there are material planning considerations here that amount to the “very special circumstances” of such weight to warrant overriding this presumption. The issue here is thus to identify these considerations and to consider whether they indeed carry significant weight so as to outweigh the harm done to the Green Belt by virtue of the proposals being inappropriate development.

Before looking proposals, it is considered appropriate to look at the site as a whole in the first instance as there are two material planning considerations put forward by the applicant that need to be explored first, in order to establish a background for assessment of the applications.

b) The Nursery

The first consideration is that a nursery use on this site is no longer a viable proposition. There is evidence to support this position. A nursery did operate from this site during the late 1980's and early 1990's under the previous owner. However diversification was required in order to ensure its viability, and other uses were introduced to the site, and this situation was recognised by the Council through a new mixed use permission granted in 1997. Additionally when the previous owner put the site on the market, there was no interest in the site as a nursery. The current owner acquired the site and attempted to revive the nursery through new investment into the nursery business, and into generally clearing and tidying the site, but this too has proven not to be viable. Two owners have therefore not been successful. Moreover both owners have commented that the site is not accessible enough, and that the micro-climatic conditions here are not that conducive for such a business. It is therefore agreed that the applicant's conclusion that the continued use of the site for a nursery is not a viable proposition, is material, and that this carries significant weight.

c) The Lawful Uses

The second consideration is that the site benefits from a mixed use planning permission, which has introduced inappropriate development into the Green Belt – both retail and commercial uses. This is a matter of fact. The 1997 permission brought together a number of factors – the extant composting use; the historic nursery use and introduced other uses in order to diversify the viability of the nursery business. The applicant argues that in his view, because of the demise of the nursery business, which would probably have occurred in any event, the other uses became the dominant use for the site. This led in his view, to the more recent difficulties that the Council has had to deal with on the site prior to its sale – eg. general car repairs, and the storage of car parts. Whilst this is an arguable point, it is agreed that the 1997 permission did not envisage the loss of the nursery business from the site. The scope of the 1997 permission however is a material consideration here as a “fall-back” position, and thus it carries significant weight in the consideration of these applications.

d) The Redevelopment Proposals

The applicant has concluded that a redevelopment scheme for the site is the only means of bringing about an improvement in the appearance of the site; ensuring a viable use for the land, and avoiding a continuation of the uses that were giving rise to concern to both the Council, and significantly to the local community. In order to do so he has proposed uses that are more compatible to the locality, and which bring about a significant reduction in the amount of buildings and structures on the site.

There is already a house on the site with a rear garden. The proposal to extend the garden over part of the former nursery site is reasonable and logical. The extension is wholly within the site and would not involve extension onto agricultural land. It would also adjoin the neighbouring residential curtilage and arguably thus be a better use in that location. Moreover any rear garden presently enjoys permitted development rights such that a large proportion of such land could be covered in buildings, and thus visually the situation could look not very different to that on site presently. As a consequence of all of these factors, this proposal is considered to be reasonable. The representation of the Parish Council is understood, but the other case it refers to was materially different, involving a change of agricultural land, and not as here, a change from a mixed commercial use of land. Moreover this site is wholly contained within that mixed use site. The reference to land value is, as Members are aware, not a material planning consideration.

As indicated above, the 1997 permission led to other uses being authorised at the site, and it was these that led to some of the problems associated with the site – car repairs and the storage of car parts. The larger buildings too, permitted under the 1987 permission, have been used in conjunction with these uses, thus adding to the concerns. The proposal, to remove these uses and to remove the nursery buildings and structures has enabled the site to be looked at again. The proposals remove the prospect of continued B2 industrial uses from the site – i.e. car repairs and composting, and would replace them with B1 light industrial and office use. Moreover, they significantly reduce the floor space on the site, thus enhancing the openness of the Green Belt, and enabling further landscaping. Additionally, the proposed new building would be small, single storey, and brick and tile built, so as better to reflect its location. .

It is agreed with the applicant that the two considerations explored at the beginning of this section are material, and that a redevelopment scheme with a more appropriate outcome should be considered. Taken as a whole it is considered that there is merit in the current proposals. They represent a reasonable attempt to improve the appearance and future use of the site, whilst also recognising planning constraints, and offering planning benefits. In other words the outcomes are beneficial. The issue thus is whether the circumstances outlined are of sufficient weight to be treated as the very special circumstances needed to outweigh the harm done to the Green Belt by potentially granting permission for inappropriate development in the Green Belt. It is considered that they are given the two initial factors identified earlier; the enhanced openness to the Green Belt, the improved visual appearance of the site, the more neighbourly uses within a residential neighbourhood, the lack of adverse impacts, the lack of objection from the Parish Council to the main redevelopment scheme, and the fact that this opportunity represents a reasonable prospect to implement these benefits.

The representation received poses some questions. Conditions can be attached to the grant of any permission restricting uses to light industrial in nature. The County Council as Highway Authority has not objected as they and Planning Officers

consider that traffic generation from the lawful “fall-back” position would be greater than that likely to be generated from the proposed use. Additionally, any approvals here would not act as precedents as every application has to be considered on its merits.

e) The Occupancy Condition

Consideration of this proposal has been left to last because the recommendation here will be consequential to the general view taken by the Board on the comprehensive redevelopment proposals outlined above. If these are agreed, the occupancy condition has to be varied as it wholly relates to the position on site as at 1997, and thus its retention is unsustainable. It is considered that in light of these redevelopment proposals, the removal of this condition can be supported. The reasons are that there would no longer be a nursery on the site; the 1997 permission would no longer carry any weight, there is no evidence to support essential and permanent occupation by any employee managing the site, the fact that the house has become established on the site for some length of time now, and that circumstances have changed materially since the 2003 decision with the evidence supplied on the viability of the business, and the new proposals offering a better planning outcome.

Recommendations

A) PA 2010/0165 – The Main Redevelopment Proposals

That planning permission be GRANTED subject to the following conditions:

- i) Standard Three Year Condition
- ii) Standard Plan Condition – plan numbers 9164/07 and 06A received by the Local Planning Authority on 12 April 2010.
- iii) As Condition 3 in (B) below
- iv) As Condition 4 in (B) below

- v) There shall be no occupation of the buildings shown as B1 Industrial Units and Craft Workshop for business purposes, until such time as all other existing buildings, structures, poly-tunnels and enclosures have been demolished, and all of the resultant materials, together with any existing containers, have been removed from the site

Reason: In order to bring about an overall improvement to the environmental conditions at the site in association with the redevelopment of the site.

- vi) For the avoidance of doubt, the building shown on the approved plan as the “single storey office block”, shall only be used for office purposes within Class B1(a) of the Town and Country Planning (Use Classes) Order 1987, as amended.

Reason: In order to bring about an overall improvement to the environmental conditions at the site in association with the redevelopment of the site.

- vii) The building shown on the approved plan as the “single storey office block” shall be single storey in height, and shall not exceed 232 square metres in gross foot ground floor area.

Reason: In recognition of the overall package of redevelopment proposals for the site that leads to a substantial reduction in floor area and increased openness.

- viii) No work shall commence on the construction of the building shown as the single storey office block on the approved plan, until such time as full details of its appearance and the detailed facing materials to be used have first been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall then be implemented, and only the approved materials shall then be used.

Reason: In the interests of securing a design and appearance for this building that is in keeping with its surroundings.

- ix) The building shown as the single storey office block on the approved plan shall not be occupied for business purposes until such time as drainage plans for the disposal of surface and foul water have first been submitted to and approved in writing. Only the approved measures shall then be installed.

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

- x) For the avoidance of doubt, the buildings shown on the approved plan as, B1 Industrial Units and Craft Workshop, shall only be used for purposes within Class B1 (c) of the Town and Country Planning (Use Classes) Order 187, as amended.

Reason: As for condition (vi)

- xi) The buildings shown on the approved plan as B1 Industrial Units and Craft Workshop shall not be re-clad until such time as the facing materials to be used have first been submitted to and approved in writing by the Local Planning Authority.

Reason: As for condition (viii)

- xii) The buildings shown on the approved plan as B1 Industrial Units, Craft Workshop and Single Storey Office Block shall not be occupied for business purposes other than between 0800 hours and 1800 hours on any week day; between 0800 and 1300 hours on Saturdays, and with no occupation for business purposes on any Sunday or Bank Holiday.

Reason: In the interests of securing the best conditions so as to enhance residential amenity for neighbouring occupiers.

- xiii) There shall be no occupation of the B1 units referred to in condition (v) for the purposes set out in condition (x), until such time as details of a landscaping scheme for the whole of the site have first been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full in the planting season immediately following the approval of these details.

Reason: In the interests of screening the site and so as to improve the appearance of the landscape hereabouts.

- xiv) None of the buildings hereby approved shall be occupied for business purposes until such time as details have been submitted to and approved in writing by the Local Planning Authority in respect of the materials to be used for the drive, access ways and parking areas shown on the approved plan. Only the approved materials shall then be used on site. If gravel is to be used, then the details shall include measures to minimise the deposit of such material on the public highway, and such measures as are approved shall also be implemented prior to use of the site for business purposes.

Reason: In the interests of ensuring that there is no on street car parking and in the interests of the visual amenities of the area.

- xv) The areas of land described as "Open Storage Yard" on the approved plan shall not be used for any purpose other than for storage incidental to the B1 uses hereby permitted, and specifically not for a storage use unconnected with such B1 uses. All such incidental storage here shall not exceed 2 metres in height.

Reason: For the avoidance of doubt, in view of the circumstances of this case, in removing existing B2 uses from the site, and restricting potential B8 uses from the site, and in the interests of improving the visual amenity of the site and so as to reduce any impact on the openness of the Green Belt hereabouts.

- xvi) Notwithstanding the provisions of Parts 8 and 41 of Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010, or any subsequent amendment, there shall be no extension constructed to the buildings on the site unless otherwise agreed in writing by the Local Planning Authority.

Reason: In view of the particular circumstances surrounding the redevelopment proposals for this site so as to secure an improvement in the openness of the site.

- xvii) Gates erected at the entrance to the site shall not be located within 7 metres of the near edge of the public highway footway, and hung so as to open inwards into the site.

Reason: In the interests of highway safety

- xviii) The B1 development hereby approved shall not be brought into use for business purposes until such time as the existing access has been surfaced with a bound material for a distance of 7 metres into the site as measured from the near edge of the public highway footway.

Reason: As above

- xix) The works conditioned in respect of the access shall not be implemented in such a manner as to reduce the effective capacity of any highway drain, or permit surface water to run off the site onto the public highway.

Reason: As above

Policies: As above

Justification

The proposals are for inappropriate development in the Green Belt, and as such there is a presumption of refusal. However, they do represent an opportunity to redevelop a site within the Green Belt that already benefits from lawful development that is in part also inappropriate in such a location. This is by virtue of a mixed use planning permission including use as a nursery; the manufacture and sale of compost, the sale of aquatic products and the sale of classic cars. It is accepted that the evidence submitted shows that the re-introduction of a nursery to the site, as the dominant use, as previously, is not a reasonable prospect. This is a material consideration. The fact that there is already a mixed use planning permission on the site with inappropriate uses in a Green Belt location is also material. The proposals provide an opportunity to improve and enhance the appearance of the site; remove the B2 and retail uses, and to remove a substantial number of buildings such that there is a significant improvement in the openness of the site. The proposals are considered to provide a better environment for the local residential occupiers and to significantly improve the visual appearance of the site. Adverse impacts can be mitigated through conditions. There has been no objection from statutory consultation responses and support in general from the local community. As such all of these considerations do amount to the very special circumstances of sufficient weight to override the presumption of refusal for the inappropriate development proposed in the redevelopment proposals.

B) PA 2010/0166 – The Change of Use to Garden Land

That planning permission be GRANTED subject to the following conditions:

- i) Standard Three Year Condition
- ii) Standard Plan Condition – Plan Number 9164/09 received by the Local Planning Authority on 12 April 2010.
- iii) The development hereby approved shall not be brought into use until such time as a First Phase Desk Top Ground Investigation has taken place in accordance with a brief that shall first have been agreed in writing by the Local Planning Authority. The findings of that Investigation shall then be forwarded to the Authority, and they shall include recommendations, if appropriate, to remediate any ground contamination.

Reason: In order to reduce the risk of pollution given the previous use of the land

- iv) The development hereby approved shall not be brought into use until such time as measures to secure the remediation of any ground contamination that may be found on the site, as a consequence of the Investigation required by condition (iii), have first been agreed in writing by the Local Planning Authority; completed in full to the satisfaction in writing of the Local Planning Authority, and monitoring undertaken and confirmed in writing by the Authority to show that the contamination has been remediated.

Reason: To reduce the risk of pollution given the previous use of the land.

- v) Notwithstanding the requirements of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008, including any subsequent later amendments, no development shall take place in the site hereby approved without the express written consent of the Local Planning Authority.

Reason: In view of the site being within the Green Belt where openness is an important consideration, and due to the circumstances in which this application has been submitted being one of a package of three permissions that brought about environmental improvements over a wider area.

Policies: As above

Justification

Whilst this site is in the Green Belt, it is part of an already developed site used formerly as a nursery, which has now ceased trading. There are related proposals to redevelop that site comprehensively. They include this change of use too. There were poly-tunnels over this part of the nursery site. It is considered that in the circumstances, the change of use to garden land would not impact on the openness of the Green Belt hereabouts; bring about an overall visual improvement, and be a better neighbour to adjoining residential property. The proposal has to be seen in conjunction with the package of measures approved for that nursery – references 2010/0165, 166 and 167. There are no adverse impacts arising from consultation responses from statutory consultees.

C) PA 2010/0167 – The Removal of the Occupancy Condition

- i) That planning permission 1605/1989, dated 12 March 1990, be VARIED so as to remove Condition 5.
- ii) That planning permission 0586/1992, dated 3 August 1992, be VARIED so as to remove Condition 10.
- iii) That planning permission 1245/1997, dated 15 December 1997, be VARIED, so as to remove Condition 1.

Policies: As above

Justification:

This application is one of a package of three dealing with redevelopment proposals for this former Nursery site – references 2010/0165, 166 and 167. The conditions in question here deal with occupancy restrictions on the house at the site. They link occupancy to someone connected with the operation of the use of the site. Evidence has been submitted that strongly suggests a nursery would not be viable here now, and the redevelopment proposals offer a significant environmental gain over continuation of the existing other lawful uses at the site. As a consequence planning permissions have been granted. The occupancy conditions therefore now become obsolete. No evidence has been submitted to show that it still essential to have permanent residential presence at the site for operational purposes. As a consequence, together with all of the other considerations, there is no longer an occupancy requirement. Given the length of time the house has been here, and as it sits in a residential frontage, it is not considered that there is harm to planning policy in retaining the house.

BACKGROUND PAPERS

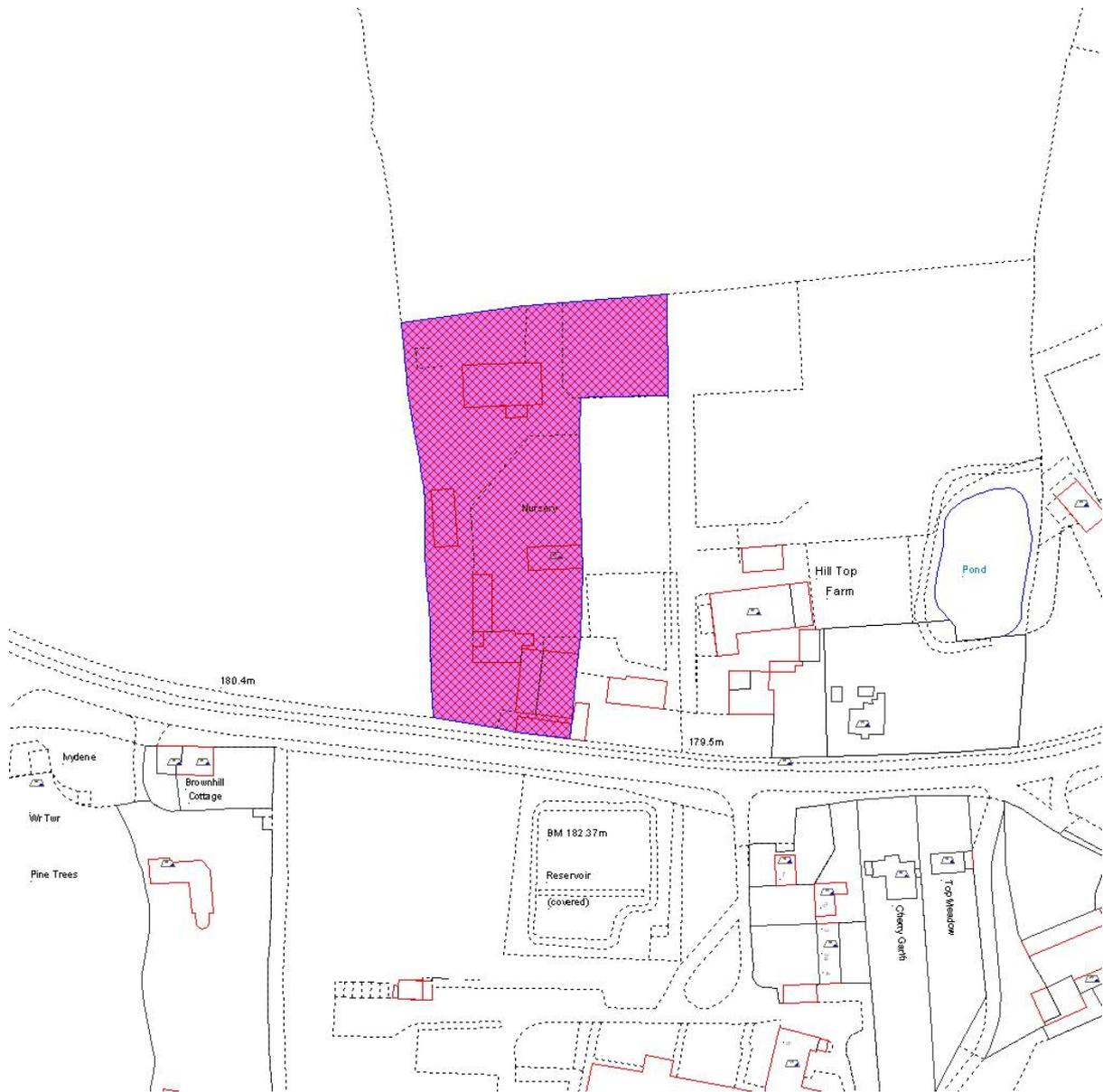
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2010/0165

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	12/4/10
2	Environmental Health Officer	Consultation	15/4/10
3	Environmental Health Officer	Consultation	21/4/10
4	Mr Deakin	Representation	3/5/10
5	Corley Parish Council	Representation	5/5/10
6	Severn Trent Water Ltd	Consultation	4/5/10
7	Warwickshire County Council	Consultation	6/5/10

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.

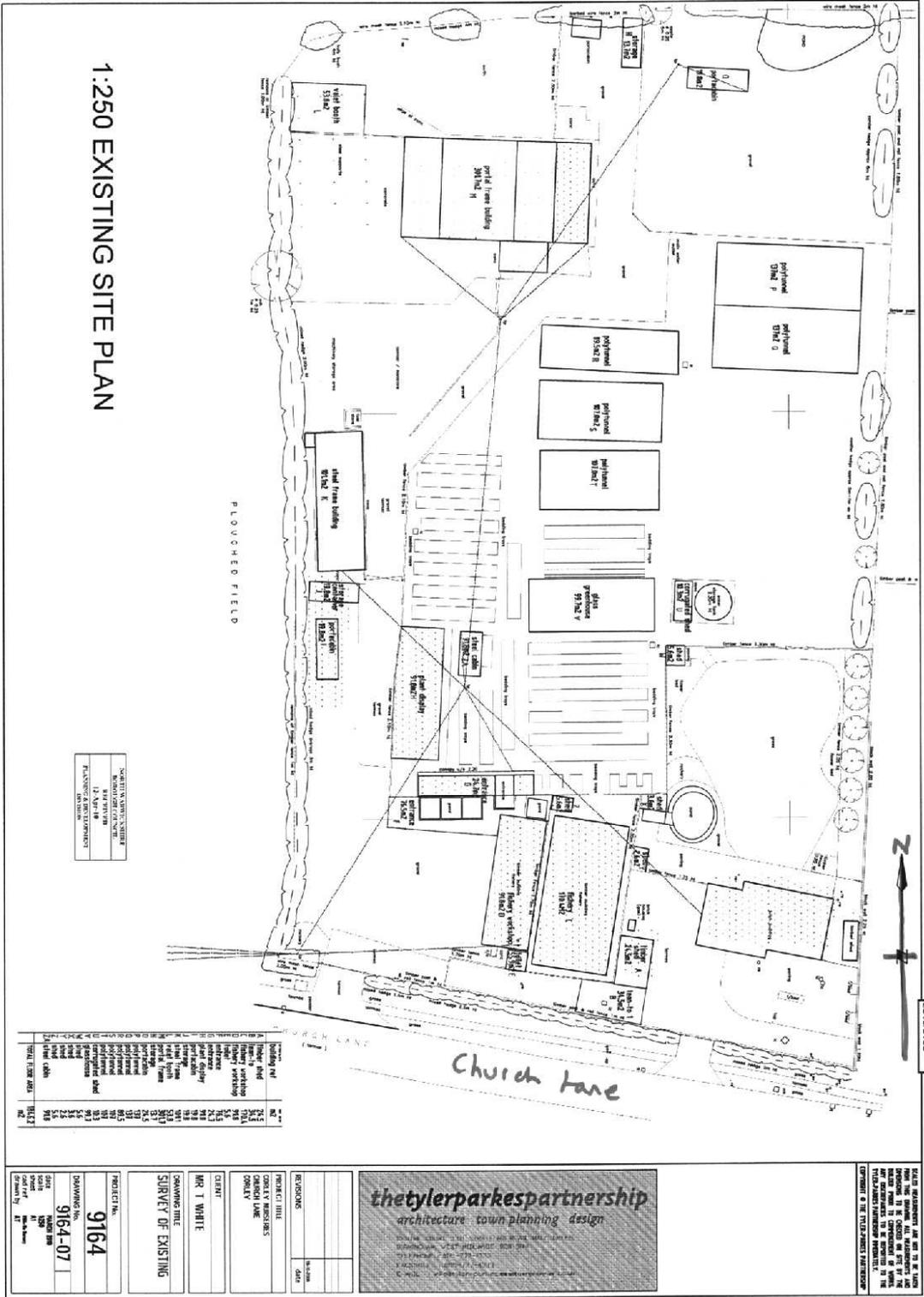
A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.



Board Site Visit
Corley Nursery, Church Lane, Corley
1 May 2010 - 10.00 am

Present: Councillors N and L Derveiks, Lea, Moss and Sherratt

1. Members walked through the site to the rear boundary along the proposed access route, looking at the extent of its coverage with existing buildings and containers. The two buildings proposed to be retained were pointed out.
2. Members returned via the nursery itself, looking at the existing poly-tunnels, the raised beds and the structures at the front of the site.
3. The extent of the garden to the house was noted as was the area proposed to be covered by a garden extension.
4. The position and size of the house was referred to, as was the extent of the adjoining residential curtilage.
5. Members left the site after around 25 minutes.



1:250 EXISTING SITE PLAN

NO. OF BUILDINGS	50
NO. OF PARKING SPACES	12
PLANNING & DEVELOPMENT	12
DATE	12/15/11

NO.	DESCRIPTION	AREA
1	Building 1	1000
2	Building 2	1000
3	Building 3	1000
4	Building 4	1000
5	Building 5	1000
6	Building 6	1000
7	Building 7	1000
8	Building 8	1000
9	Building 9	1000
10	Building 10	1000
11	Building 11	1000
12	Building 12	1000
13	Building 13	1000
14	Building 14	1000
15	Building 15	1000
16	Building 16	1000
17	Building 17	1000
18	Building 18	1000
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37	Building 37	1000
38	Building 38	1000
39	Building 39	1000
40	Building 40	1000
41	Building 41	1000
42	Building 42	1000
43	Building 43	1000
44	Building 44	1000
45	Building 45	1000
46	Building 46	1000
47	Building 47	1000
48	Building 48	1000
49	Building 49	1000
50	Building 50	1000
TOTAL	50000	50000

thetylerparkespartnership
 architecture town planning design

1000 ...
 ...
 ...

PROJECT TITLE: ...

CLIENT: ...

DATE: ...

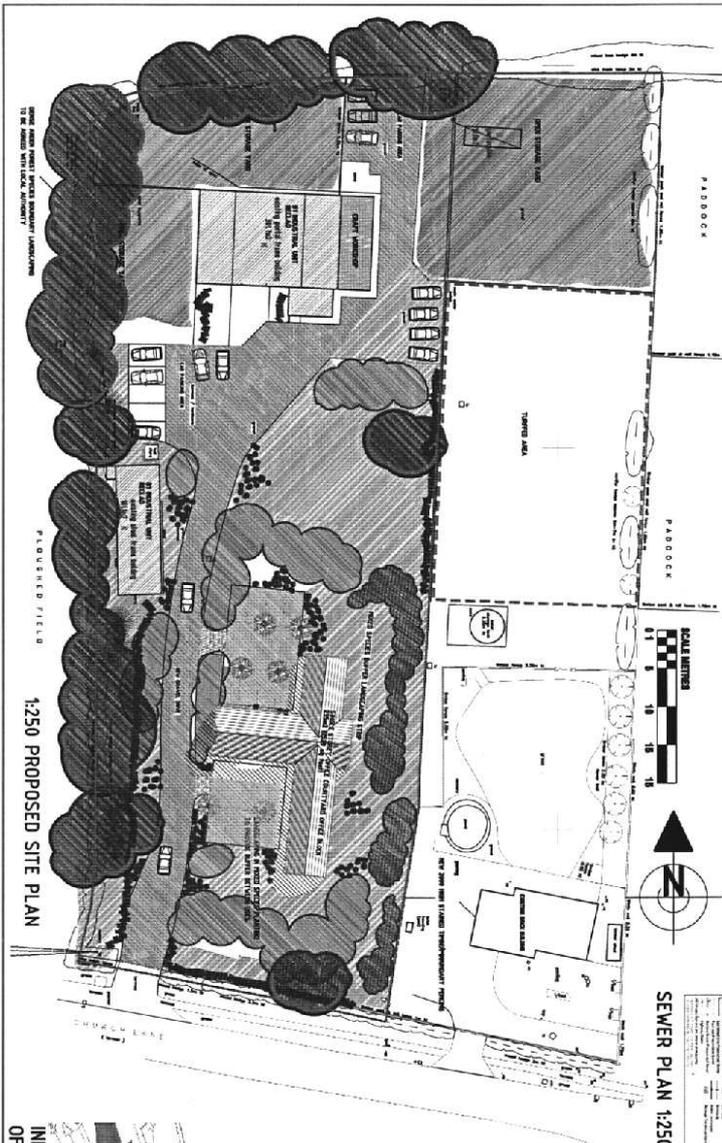
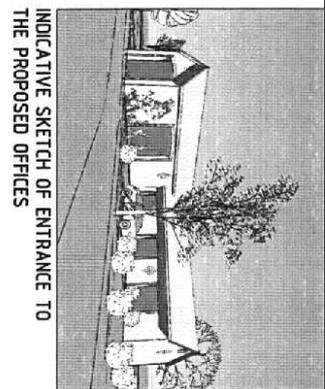
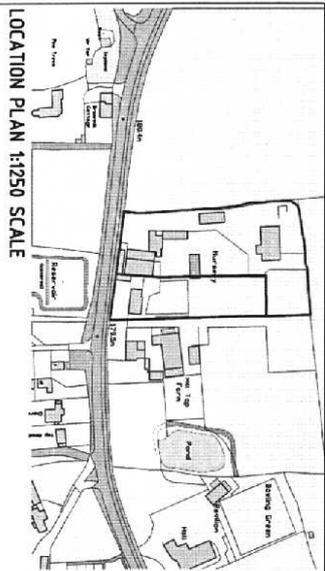
PROJECT NO.: 9164

DATE: 9164-07

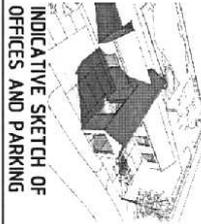
PROJECT NO.: 9164

DATE: 9164-07





SEWER PLAN 1:2500 SCALE



NORTH WARRIOR INSURANCE
 3000 CHURCH ST. N.E.
 RECEIVED
 12-APR-10
 PLANNING & DEVELOPMENT
 DIVISION

thetylerparkespartnership
 architecture town planning design
 1000 12TH AVENUE S.W. SUITE 100
 SEASIDE, WYOMING 82401
 TEL: 307.733.2222 FAX: 307.733.2223
 WWW.TYPARTNERSHIP.COM

DESIGNER/ARCHITECT	DATE
PROJECT TITLE	
CLIENT	
DRAWING TITLE	
PROJECT No.	9164
DRAWING No.	9164-06
SHEET No.	A
DRAWN BY	
CHECKED BY	

20100166

FIELD REPRESENTATIVE AND NOT BE IN FIELD
 CONDITIONS TO BE CHECKED ON SITE BY THE
 ARCHITECT OR ENGINEER OF RECORD TO THE
 TYPARTNERSHIP PRESENTS.
 CONTRACTOR'S USE ONLY

Agenda Item No 5

Planning and Development Board

17 May 2010

Report of the Head of Development Control

The Community Infrastructure Levy and Section 106 Obligations

1 Summary

- 1.1 The report describes the newly introduced Community Infrastructure Levy (CIL) and its impact on the future use of Agreements under Section 106 of the 1990 Planning Act.

Recommendation to the Board

That the report is noted.

2 Consultation

2.1 Portfolio Holder, Shadow Portfolio Holder and Ward Members

- 2.1.1 The Resources Portfolio and Shadow Portfolio Holders have been consulted and any comments received will be reported to the Board.

3 Background

- 3.1 Members have been aware for some time that the Council would have the ability to introduce the CIL after 6 April, in order to pay for infrastructure directly related to, and needed to deliver new development allocated within its forthcoming Development Plan Documents – notably the Core Strategy. Issues concerning when and how to charge the Levy, together with the level of charges, will be set out in the Delivery Plan that will accompany that Core Strategy, and the Council may not introduce the Levy until such time as that Strategy is adopted by the Council. The Government has recently published a useful summary document on the Levy and this is attached in full for the benefit of Members. Members attention is drawn to the sections on how CIL is to be spent – paragraphs 11 and 12, together with a definition of infrastructure – paragraphs 13 to 15. Members should note that in paragraph 14, there is a clear expectation that affordable housing provision will remain within the Section 106 regime. The note also explains that the charging schedule in the Core Strategy will be subject to an independent examination – 30 to 38. The note's final paragraphs deal with the relationship between CIL and Section 106 Agreements – paragraph 59 onwards.

4 Draft Policy on Planning Agreements

4.1 The Government has published a companion consultation paper on the matters raised in the final paragraphs referred to above – namely by providing its proposed policy towards the relationship between CIL and Section 106 Agreements to ensure that there is no overlap between the two regimes. In essence, the potential range of contributions to be sought through future Agreements is reduced, as the CIL would now be the main provider for the majority of such contributions. The consultation paper highlights three proposed reforms to the Section 106 regime.

4.2 The first is to give the tests for planning agreements, as set out in Circular 5/2005, a statutory basis. The five tests as outlined in the Circular would also be reduced to three. Hence, it would be unlawful for an Agreement to be taken into account when determining a planning application, if the Agreement does not meet all of the following tests:

- i) it is necessary to make the development acceptable in planning terms;
- ii) it is directly related to the development, and
- iii) it is fairly and reasonably related in scale and kind to the development.

4.3 The first of these tests would allow the provision of affordable housing for instance, and the second would enable compensatory or mitigation measures for impacts of a new development that were a direct outcome of the implementation of that development itself. The third ensures that any obligations are proportionate to those direct impacts.

4.4 Secondly, when a Local Planning Authority adopts the CIL and its charging regime, there will be a legal requirement on that Authority not to charge a development for the same items through the Section 106 regime. The onus is on the Authority to make explicit within its CIL Charging Schedule, exactly what the CIL is expected to fund.

4.5 Finally, the ability to pool contributions from Section 106 Agreements in order to fund infrastructure or services will be limited as soon as the CIL is introduced by an Authority, or on 6 April 2014 whichever date is earlier. This measure clearly is designed to ensure that CIL is the main contributor for future infrastructure and for sustaining future services.

5 Report Implications

5.1 Finance and Value for Money Implications

5.1.1 The Council has a discretion as to whether it charges CIL or not. That will be determined through the LDF process. The Core Strategy will define the infrastructure to be funded through the CIL; the thresholds for its introduction and the level of the charge. The LDF Group will be considering these issues in preparation for the publication of the Preferred Option for this Strategy.

5.1.2 The new CIL Regulations do enable the Levy to cover associated administrative costs.

5.1.3 Until the Council decides whether to become a CIL Authority or not, all future Section 106 Agreements will now need to pass the three statutory tests, and thus all future financial contributions will need to be firmly based on mitigating the direct impacts arising from a new development. Affordable housing provision is unaffected.

5.2 Legal and Human Rights Implications

5.2.1 There will need to be increased scrutiny behind any obligations set out in future Section 106 Agreements in order to reduce the risk of legal challenge

5.3 Environment and Sustainability Implications

5.3.1 The outcome from the introduction of CIL is to provide and deliver infrastructure associated with a new development so as to mitigate and compensate for impacts arising from that development, as well as to ensure the delivery of more sustainable development.

5.4 Links to Council's Priorities

5.4.1 The combination of CIL and Section 106 Agreements should enable the Council to use all resources available to fund new development and to ensure that it is delivered in a sustainable way.

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

Background Papers

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

Background Paper No	Author	Nature of Background Paper	Date
Community Infrastructure Levy – an Overview	DCLG	Paper	March 2010
Community Infrastructure Levy Guidance	DCLG	Paper	March 2010
New Policy Document For Planning Obligations	DCLG	Consultation Paper	March 2010

Equality Impact Assessment Summary Sheet

Please complete the following table summarised from the equality impact assessment form. This should be completed and attached to relevant Board reports.

Name of Policy Procedure/Service	
Officer Responsible for assessment	

Does this policy /procedure /service have any differential impact on the following equality groups /people

- (a) Is there a positive impact on any of the equality target groups or contribute to promoting equal opportunities and improve relations or:
- (b) could there be a negative impact on any of the equality target groups i.e. disadvantage them in any way

Equality Group	Positive impact	Negative impact	Reasons/Comments
Racial			
Gender			
Disabled people			
Gay, Lesbian and Bisexual people			
Older/Younger people			
Religion and Beliefs			
People having dependents caring responsibilities			
People having an offending past			
Transgender people			

If you have answered **No** to any of the above please give your reasons below

Please indicate if you believe that this document

Should proceed to further Impact assessment

Needs no further action

Risk Management Form

**NORTH WARWICKSHIRE
BOROUGH COUNCIL**

Division

Cost Centre or Service

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Risk Ref	Options for additional / replacement control procedure						Cost Resources	Likelihood (5 = high, 1 = low)	Impact (5 = high, 1 = low)	Net Risk Rating

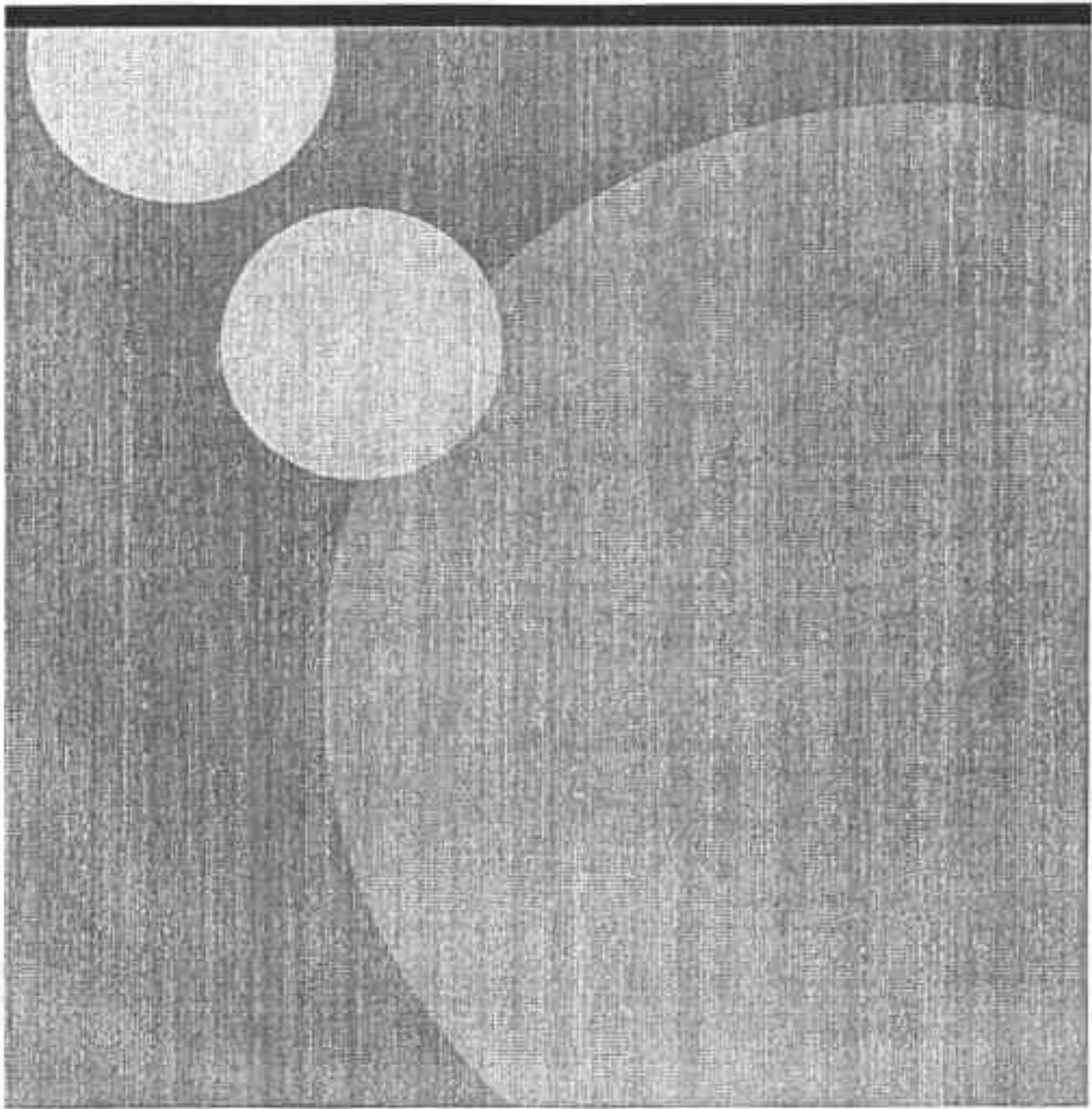
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Community Infrastructure Levy

An overview



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Introduction

1. This document provides an overview of the Community Infrastructure Levy, a new planning charge that will come into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. It explains the key features of the new charge, its rationale, purpose and how it will work in practice. The document is designed to inform all those who have an interest in the levy and who might be involved in its operation. The Government will also issue guidance on specific aspects of establishing and running a CIL regime.

What is the Community Infrastructure Levy?

2. The Community Infrastructure Levy (CIL) is a new charge which local authorities in England and Wales will be empowered, but not required, to levy on most types of new development in their areas. The proceeds of the levy will provide new local and sub-regional infrastructure to support the development of an area in line with local authorities' development plans.

Who may charge CIL?

3. The CIL charging authorities (charging authorities) in England will be district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority and the Mayor of London. In Wales, the county and county borough councils and the national park authorities will have the power to charge CIL. These bodies all prepare development plans for their areas, which are informed by assessments of the infrastructure needs for which CIL may be collected.

Why introduce CIL?

4. The planning system has for a long time allowed local planning authorities to require developers to make payments to mitigate the impacts of new development, using a system known as planning obligations (or Section 106 agreements). However, the planning obligations system has been criticised for not being transparent, leading to concerns that on the one hand planning permission is being bought and sold, and on the other that developers are being held to ransom by local authorities. Planning obligations have also often struggled to contribute effectively to large infrastructure requirements, or infrastructure needs, which are caused incrementally through the cumulative impact of a number of developments. This can result in either the first or last developer in an area contributing disproportionately to the cost of the infrastructure required in that area, because their development was the 'tipping point' for the need for a piece of infrastructure, while others make a low contribution or no contribution at all.
5. Research commissioned by the Government shows that major development disproportionately bears these costs and that despite encouragement by the

Government, local authorities have not spread the burden more fairly and transparently including through the use of local 'tariffs'. At present, only 6 per cent of planning permissions in England make any contributions under the planning obligations regime.¹

6. The Housing Green Paper, published in July 2007, set out a number of options for developer contributions, intended to form the basis of discussion with the development industry. The Green Paper made it clear that in considering whether to proceed with the Government's proposals for a Planning Gain Supplement (PGS), or an alternative, "the test of an effective approach to planning gain will be its ability to raise significant additional funds to support the infrastructure needed for development, in a fair and non-distortionary way, and in a way that preserves incentives to develop in a variety of circumstances". As a consequence of engagement with the industry during summer 2007, the Chancellor was able to announce at the Pre-Budget Report in October 2007 that PGS would be deferred and that the Government would instead legislate for a new statutory planning charge. That charge is the Community Infrastructure Levy (CIL), for which the Government legislated in the Planning Act 2008.
7. CIL builds on many of the proposals that the Government has explored since 2003, not least on the standard charging approach which has formed the basis of most of these proposals. CIL will deliver a number of benefits. These include:
 - far greater legal certainty as to the basis for a charge in a manner that the existing system cannot easily achieve, enabling for example the mitigation of cumulative impacts
 - a broader (and therefore fairer) range of developments contributing; and
 - improvements in transparency; and greater certainty and predictability as to the level of contribution which will be required.

Why should development pay for infrastructure?

8. Almost all development has some impact on the need for infrastructure, services and amenities - or benefits from it - so it is only fair that such development pays a share of the cost. It is also right that those who benefit financially when planning permission is given should share some of that gain with the community which granted it to help fund the infrastructure that is needed to make development acceptable and sustainable.

¹Valuing Planning Obligations in England: Update Study for 2005-06, University of Sheffield, 2008 (www.communities.gov.uk/publications/planningandbuilding/obligationsupdatestudy)

9. However, the Government also believes that developers should have more certainty as to what they will be expected to contribute, thus speeding up the development process, and that the money raised from developer contributions should be spent in a way that developers will feel worthwhile; namely, on infrastructure to support development and the creation of sustainable communities set out in the Local Development Framework. This is what CIL will do.

How much will CIL raise?

10. The introduction of CIL has the potential to raise an estimated additional £700 million pounds a year of funding for local infrastructure by 2016 (the Impact Assessment on CIL published on 10 February 2010 sets out further details). CIL will make a significant contribution to infrastructure provision, but core public funding will continue to bear the main burden. CIL is intended to fill the funding gaps that remain once existing sources (to the extent that they are known) have been taken into account. Local authorities will be able to look across their full range of funding streams and decide how best to deliver their infrastructure priorities, including how to utilise CIL. This flexibility to mix funding sources at a local level will enable local authorities to be more efficient in delivering the outcomes that local communities want.

How will CIL be spent?

11. Local authorities are required to spend CIL revenues on the infrastructure needed to support the development of their area and they will decide what infrastructure is needed. CIL is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. CIL can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure.
12. Charging authorities will be able to use their CIL receipts to recover the costs of administering CIL, with the regulations permitting them to use up to a 5 per cent of their total CIL revenue on administrative expenses to ensure that the overwhelming majority of receipts are directed towards infrastructure provision. Where a collecting authority has been appointed to collect a charging authority's CIL, as will be the case in London where the boroughs will collect the Mayor's CIL, the collecting authority may keep up to 4 per cent of receipts to fund their administrative costs, with the remainder available to the charging authority up to the 5 per cent ceiling.

What is infrastructure?

13. The Planning Act 2008 provides a wide definition of the infrastructure which can be funded by CIL, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows CIL to be

used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities. This gives local communities flexibility to choose what infrastructure they need to deliver their development plan.

14. The draft regulations rule out the application of CIL for providing affordable housing because the Government considers that planning obligations remain the best way of delivering affordable housing. Planning obligations enable affordable housing contributions to be tailored to the particular circumstances of the site and crucially, enable affordable housing to be delivered on-site in support of the Government's policy for mixed communities.
15. In London, the draft regulations restrict spending by the Mayor to funding roads or other transport facilities, including Crossrail to ensure a balance between the spending priorities of the boroughs and the Mayor.

Infrastructure spending outside a charging area

16. Charging authorities may pass money to bodies outside their area to deliver infrastructure which will benefit the development of their area, such as the Environment Agency for flood defence or, in two tier areas, the county council, for education infrastructure.
17. If they wish, charging authorities will also be able to collaborate and pool their CIL revenues to support the delivery of 'sub-regional infrastructure', for example, a larger transport project where they are satisfied that this would support the development of their own area.

Timely delivery of infrastructure

18. It is important that the infrastructure needed by local communities is delivered when the need arises. Therefore, the draft regulations allow authorities to use CIL to support the timely provision of infrastructure, for example, by using CIL to backfill early funding provided by a financier, such as the Homes and Community Agency.
19. The draft regulations also include provision to enable the Secretary of State to direct that authorities may 'prudentially' borrow against future CIL income, should the Government conclude that, subject to the overall fiscal position, there is scope for local authorities to use CIL revenues to repay loans used to support infrastructure.

Monitoring and reporting CIL spending

20. To ensure that CIL is open and transparent, charging authorities must prepare short reports on CIL for the previous financial year which must be placed on

their websites by 31 December each year. They may prepare a bespoke report or utilise an existing reporting mechanism, such as the Annual Monitoring Report which reports on their local development plan.

21. These reports will ensure accountability and enable the local community to see what infrastructure is being funded from CIL. Charging authorities must report how much CIL revenue they received in the last financial year and how much revenue was unspent at the end of the financial year. They must also report total expenditure from CIL in the preceding financial year, with summary details of what infrastructure CIL funded and how much CIL was 'spent' on each item of infrastructure.

Setting the CIL charge

Charging schedules

22. Charging authorities should normally implement CIL on the basis of an up-to-date development plan or the London Plan for the Mayor's CIL. A charging authority may use a draft plan if they are planning a joint examination of their core strategy or LDP and their CIL charging schedule.
23. Charging authorities wishing to levy CIL must produce a charging schedule setting out the CIL rates in their area. Charging schedules will be a new type of document within the folder of documents making up the local authority's Local Development Framework in England, sitting alongside the LDP in Wales and the London Plan in the case of the Mayor's CIL. In each case, charging schedules will not be part of the statutory development plan.

Deciding the rate of CIL

24. Charging authorities wishing to introduce a CIL should propose a rate which does not put at serious risk the overall development of their area. They will need to draw on the infrastructure planning that underpins the development strategy for their area. Charging authorities will use that evidence to strike an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects of the imposition of CIL upon the economic viability of development across their area.
25. In setting their proposed CIL rates, charging authorities should identify the total infrastructure funding gap that a CIL is intended to support, having taken account of the other sources of available funding. They should use the infrastructure planning that underpinned their development plan to identify a selection of indicative infrastructure projects or types of infrastructure that are likely to be funded by CIL. If a charging authority considers that the infrastructure planning underpinning its development plan is weak, it may undertake some additional bespoke infrastructure planning to identify its infrastructure funding gap. In order to provide flexibility for charging

authorities to respond to changing local circumstances over time, charging authorities may spend their CIL revenues on different projects from those identified during the rate setting process.

Evidence of economic viability

26. Charging authorities will need to strike an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects of the imposition of CIL upon the economic viability of development across their area. Charging authorities should prepare evidence about the effect of CIL on economic viability in their area to demonstrate to an independent examiner that their proposed CIL rates strike an appropriate balance.
27. In practice, charging authorities may need to sample a limited number of sites in their areas and in England, they may want to build on work undertaken to inform their Strategic Housing Land Availability Assessments. Charging authorities that decide to set differential rates may need to undertake more fine-grained sampling to help them to estimate the boundaries for their differential rates.

Charge setting in London

28. A London Borough setting a local CIL must take into account any CIL rates that have been set by the Mayor of London. Allowing both the Mayor and the boroughs to levy CIL will enable CIL to support the provision of both local and strategic infrastructure in London.

Differential rates

29. Charging schedules may include differential rates of CIL, where they can be justified either on the basis of the economic viability of development in different parts of the authority's area or by reference to the economic viability of different types of development within their area. The ability to set differential rates gives charging authorities more flexibility to deal with the varying circumstances within their area, for example where an authority's land values vary between an urban and a rural area.

Procedure for setting the charge

Preparing the charging schedule

30. The process for preparing a charging schedule is similar to that which applies to development plans in England and LDPs in Wales in three key respects. Firstly, there is a requirement to consult and a public examination before an independent person (the CIL Examination). Secondly, the report of the

independent examiner will be binding on the charging authority. Thirdly, the charging authority is not under an obligation to adopt the final schedule but can, if it prefers, submit a revised charging schedule to a fresh examination. Charging authorities will be able to work together when preparing their CIL charging schedules.

Public consultation

31. Charging authorities must consult local communities and stakeholders on their proposed CIL rates in an early draft of the charging schedule. Then, before being examined, a draft charging schedule must be formally published for representations for a period of at least four weeks. During this period any person may request to be heard by the examiner. If a charging authority makes any further changes to the draft charging schedule after it has been published for representations, any person may request to be heard by the examiner, but only on those changes, during a further four-week period.

The examination of the charging schedule

32. A charging schedule must be examined in public by an independent person appointed by the charging authority. If any person has requested to be heard before the examiner at the CIL examination, hearings must be held in public. The format for CIL examination hearings will be similar to those for development plan documents and the independent examiner may determine the examination procedures and set time limits for those wishing to be heard to ensure that the examination is conducted in an efficient and effective manner.
33. Where a charging authority has chosen to work collaboratively with other charging authorities, they may opt for a joint examination of their charging schedule with those of the other charging authorities. In addition, a CIL examination of one or more charging schedules may be conducted as an integrated examination with a draft development plan.

Outcome of the CIL examination

34. The independent examiner will be able to recommend that the draft charging schedule should be approved, rejected, or approved with specified modifications and must give reasons for those recommendations. A charging schedule may be approved subject to modifications if the charging authority has complied with the legislative requirements, but for example, the proposed CIL rate does not strike an appropriate balance given the evidence.
35. The independent examiner should reject a charging schedule if the charging authority has not complied with an aspect of the legislation (and this cannot be addressed by modifications), or if it is not based on appropriate available evidence. The examiner's recommendations will be binding on the charging

authority, which means that the charging authority must make any modifications recommended if they intend to adopt the charging schedule and cannot adopt a schedule if the examiner rejects it.

Procedure after the CIL examination

36. To ensure democratic accountability, the charging schedule must be formally approved by a resolution of the full council of the charging authority. In London, the Mayor must make a formal decision to approve his or her CIL charging schedule.
37. In order to ensure that the correct CIL rate is charged, certain errors in the charging schedule may be corrected for a period of up to six months after the charging schedule has been approved. If the charging authority corrects errors it must republish the charging schedule.

Ceasing to charge CIL

38. Charging authorities should keep their charging schedules under review (although there is no fixed end date). Charging authorities may formally resolve to cease charging CIL at any time through a resolution of the full council.

How will CIL be applied?

What is CIL liable development?

39. Most buildings that people normally use will be liable to pay CIL. But buildings into which people do not normally go, and buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery, will not be liable to pay CIL. Structures which are not buildings, such as pylons and wind turbines, will not be liable to pay CIL. CIL will not be charged on changes of use which do not involve an increase in floorspace.

How will CIL be levied?

40. CIL must be levied in pounds per square metre of the net additional increase in floorspace of any given development. This will ensure that charging CIL does not discourage the redevelopment of sites.
41. Any new build – that is a new building or an extension – is only liable for CIL if it has 100 square metres, or more, of gross internal floor space. Whilst any new build over this size will be subject to CIL, the gross floorspace of any existing buildings on the site that are going to be demolished will be deducted from the final CIL liability. To ensure CIL is cost effective to collect, any final net CIL charge less than £50 must not be pursued by the charging authority.

42. In calculating individual CIL charges, charging authorities will be required to apply an annually updated index of inflation to keep CIL responsive to market conditions. The index will be the national All-In Tender Price Index of construction costs published by the Building Cost Information Service of The Royal Institution of Chartered Surveyors.

How does CIL relate to planning permission?

43. CIL will be charged on new builds permitted through some form of planning permission. Examples are planning permissions granted by a local planning authority or a consent granted by the Independent Planning Commission. However, some new builds rely on permitted development rights under the General Permitted Development Order 1995. There are also local planning orders that grant planning permission, for example Simplified Planning Zones and Local Development Orders. Finally, some Acts of Parliament grant planning permission for new builds: the Crossrail Act 2008 is one such Act. CIL will apply to all these types of planning consent.
44. The planning permission identifies the buildings that will be liable for a CIL charge: the 'chargeable development'. The planning permission also defines the land on which the chargeable buildings will stand, the 'relevant land'. Buildings that are to be demolished, whose gross internal floorspace can be deducted from the CIL liability, will be situated on the relevant land.

Who collects CIL?

45. Collection of CIL will be carried out by the 'CIL collecting authority'. In most cases this will be the charging authority but, in London, the boroughs will collect CIL on behalf of the Mayor. County councils will collect CIL levied by districts on developments for which the county gives consent. The Homes and Communities Agency, Urban Development Corporations and Enterprise Zone Authorities can also be collecting authorities for development where they grant permission, if the relevant charging authority agrees.

How is CIL collected?

46. CIL charges will become due from the date that a chargeable development is commenced in accordance with the terms of the relevant planning permission. The definition of commencement of development for CIL purposes is the same as that used in planning legislation, unless planning permission has been granted after commencement.
47. When planning permission is granted, the collecting authority will issue a liability notice setting out the amount of CIL that will be due for payment when the development is commenced, the payment procedure and the possible consequences of not following this procedure. The payment procedure

encourages someone to assume liability to pay CIL before development commences. Where liability has been assumed, and the Collecting Authority has been notified of commencement, parties liable to pay CIL will benefit from a 60 day window in which they can make payment.

48. Where the CIL charge is over £10,000, the liable parties will be able to pay CIL within a series of instalment periods from the commencement date. The number of instalments will vary, depending on the size of the amount due. If the payment procedure is not followed, payment will become due in full.

Who is liable to pay CIL?

49. The responsibility to pay CIL runs with the ownership of land on which the CIL liable development will be situated. This is in keeping with the principle that those who benefit financially when planning permission is given should share some of that gain with the community. That benefit is transferred when the land is sold with planning permission, which also runs with the land. The draft regulations define landowner as a person who owns a 'material interest' in the relevant land. 'Material interests' are owners of freeholds and leaseholds that run for more than seven years after the day on which the planning permission first permits development.
50. Although ultimate liability rests with the landowner, the regulations recognise that others involved in a development may wish to pay. To allow this, anyone can come forward and assume CIL liability for the development. In order to benefit from payment windows and instalments, someone must assume liability in this way. Where no one has assumed liability to pay CIL, the liability will automatically default to the landowners of the relevant land and payment becomes due immediately upon commencement of development. Liability to pay CIL can also default to the landowners where the collecting authority, despite making all reasonable efforts, has been unable to recover CIL from the party that assumed liability for CIL.

Charity and Social Housing Relief

51. The draft regulations give relief from CIL in two specific instances. First, a charity landowner will benefit from full relief from their portion of the CIL liability where the chargeable development will be used wholly, or mainly, for charitable purposes. A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes. The charging authority must publish its policy for giving relief in such circumstances. Secondly, the draft regulations provide 100% relief from CIL on those parts of a chargeable development which are intended to be used as social housing.
52. To ensure that reliefs from CIL are not used to avoid proper liability for CIL, the draft regulations require that any relief must be repaid, a process known

as 'clawback', if the development no longer qualifies for the relief granted within a period of seven years from commencement of the chargeable development.

Exceptional circumstances

53. Given the importance of ensuring that CIL does not prevent otherwise desirable development, the draft regulations provide that charging authorities have the option to offer a process for giving CIL relief in exceptional circumstances where a specific scheme cannot afford to pay CIL. A charging authority wishing to offer exceptional circumstances relief in its area must first give notice publicly of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the following conditions are met. Firstly, a section 106 agreement must exist on the planning permission permitting the chargeable development. Secondly, the charging authority must consider that the cost of complying with the section 106 agreement is greater than the CIL charge and that paying the charge would have an unacceptable impact on the development's economic viability. Finally, relief must not constitute a notifiable State aid.

In-kind payments

54. There may be circumstances where it will be more desirable for a charging authority to receive land instead of monies to satisfy a CIL liability, for example where the most suitable land for infrastructure is within the ownership of the party liable for CIL. Therefore, the draft regulations provide for charging authorities to accept transfers of land as a payment 'in kind' for the whole or a part of a CIL charge, but only if this is done with the intention of using the land to provide, or facilitate the provision of, infrastructure to support the development of the charging authority's area.
55. To ensure that 'in-kind' payments are used appropriately, such payments may only be accepted where the amount of CIL payable is over £50,000 and where an agreement to make the in-kind payment has been entered into before commencement of development. Land that is to be paid 'in kind' may contain existing buildings and structures and must be valued by an independent valuer who will ascertain its 'open market value', which will determine how much CIL liability the 'in-kind' payment will off-set. Payments in kind must be provided to the same timescales as cash CIL payments.

How will CIL payment be enforced?

56. The vast majority of CIL liable parties are likely to pay their CIL liabilities without problem or delay, guided by the information sent by the collecting authority in the liability notice. In contrast to negotiated planning obligations which can cause delay, confusion, and litigation over liability, CIL charges are

intended to be easily understood and easy to comply with. However, where there are problems in collecting CIL, it is important that collecting authorities have the means to penalise late payment and deter future non-compliance. To ensure payment, the draft regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments.

57. In most cases, these measures should be sufficient. However, in cases of persistent non-compliance, the draft regulations also enable collecting authorities to take more direct action to recover the amount due. One such measure is the CIL stop notice, which prohibits development from continuing until payment is made. Another is the ability to seek a court's consent to seize and sell assets of the liable party. In the very small number of cases where a collecting authority can demonstrate that recovery measures have been unsuccessful, a court may be asked to commit the liable party to a short prison sentence.
58. The payment and enforcement provisions of the draft regulations add substantial protection for both charging authorities and liable parties compared with the existing system of planning obligations, particularly for small businesses which may not have easy access to legal advice. This is an important benefit of the new legislation which has not been available before.

The relationship between CIL and planning obligations

59. CIL is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific impact mitigation requirements without which a development should not be granted planning permission. Some of these needs may be provided for through CIL but others may not, particularly if they are very local in their impact. Therefore, the Government considers there is still a legitimate role for development specific planning obligations to enable a local planning authority to be confident that the specific consequences of development can be mitigated.
60. However, in order to ensure that planning obligations and CIL can operate in a complementary way and clarify the purposes of the two instruments the draft CIL regulations scale back the way planning obligations operate. Limitations will be placed on the use of planning obligations in three respects:
- I. Putting the Government's policy tests on the use of planning obligations set out in Circular 5/05 on a statutory basis for developments which are capable of being charged CIL
 - II. Ensuring the local use of CIL and planning obligations does not overlap; and

- III. Limiting pooled contributions from planning obligations towards infrastructure which may be funded by CIL.

Making the Circular 5/05 tests statutory for CIL development

61. The draft regulations place into law for the first time the Government's policy tests on the use of planning obligations. The statutory tests are intended to clarify the purpose of planning obligations in light of CIL and provide a stronger basis to dispute planning obligations policies, or practice, that breach these criteria. This seeks to reinforce the purpose of planning obligations in seeking only essential contributions to allow the granting of planning permission, rather than more general contributions which are better suited to use of CIL.
62. From 6 April 2010 it will be unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL, whether there is a local CIL in operation or not, if the obligation does not meet all of the following tests:
- (a) necessary to make the development acceptable in planning terms
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
63. For all other developments (i.e. those not capable of being charged CIL), the policy in Circular 5/05 will continue to apply.

Ensuring the local use of CIL and planning obligations does not overlap

64. On the local adoption of CIL, the draft regulations restrict the local use of planning obligations to ensure that individual developments are not charged for the same items through both planning obligations and CIL. Where a charging authority sets out that it intends to fund an item of infrastructure via CIL then that authority cannot seek a planning obligation contribution towards the same item of infrastructure.
65. A charging authority should set out its intentions for how CIL monies will be spent on the authority's website. If a charging authority does not set out its intentions for use of CIL monies then this would be taken to mean that the authority was intending to use CIL monies for any type of CIL infrastructure, and consequently that authority could not seek a planning obligation contribution towards any such infrastructure.

Limiting Pooled s106 contributions for CIL infrastructure

66. On the local adoption of CIL or nationally after a transitional period of four years (6 April 2014), the draft regulations restrict the local use of planning

obligations for pooled contributions towards items that may be funded via CIL. CIL is the government's preferred vehicle for the collection of pooled contributions.

67. However, where an item of infrastructure is not locally intended to be funded by CIL, pooled planning obligation contributions may be sought from no more than five developments to maintain the flexibility of planning obligations to mitigate the cumulative impacts of a small number of developments.
68. For provision that is not capable of being funded by CIL, such as affordable housing or maintenance payments, local planning authorities are not restricted in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies set out in Circular 5/05.
69. Crossrail will bring benefits to communities across London and beyond and its funding will be met by a range of sources, including contributions from CIL and planning obligations. To effectively maintain the ability of planning obligations to raise revenue for Crossrail, this restriction will not apply to planning obligations that relate to or are connected with the funding of Crossrail.

Next steps

70. The Government has announced that it will consult on a new policy for planning obligations to reflect the introduction of CIL and related reform to the use of planning obligations, as well as to deliver the Government's Planning White Paper (2006) commitment to streamline planning policy. This policy will replace Circular 5/05 and will form an Annex to the new Development Management Planning Policy Statement on which the Government launched a consultation in December 2009.
71. The Government will also produce new guidance and support for local authorities concerning the setting and operation of CIL, including effective use of planning obligations alongside CIL.