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**Friday, 24 August 2018**

**Chairman: Councillor D Payne**  
**Vice-Chairman: Councillor P Handley**

**Members of the Committee:**

**Councillor Mrs K Arnold**  
**Councillor R Blaney**  
**Councillor Mrs C Brooks**  
**Councillor B Crowe**  
**Councillor Mrs M Dobson**  
**Councillor P Duncan**  
**Councillor J Lee**

**Councillor Mrs P Rainbow**  
**Councillor F Taylor**  
**Councillor Mrs L Tift**  
**Councillor I Walker**  
**Councillor B Wells**  
**Councillor Mrs Y Woodhead**

**MEETING:      Planning Committee**

**DATE:            Tuesday, 4 September 2018 at 4.00 pm**

**VENUE:        Civic Suite, Castle House, Great North Road,  
Newark, Notts, NG24 1BY**

**You are hereby requested to attend the above Meeting to be held at the time/place  
and on the date mentioned above for the purpose of transacting the  
business on the Agenda as overleaf.**

**If you have any queries please contact Catharine Saxton on [catharine.saxton@newark-sherwooddc.gov.uk](mailto:catharine.saxton@newark-sherwooddc.gov.uk).**



## **AGENDA**

### **Page Nos.**

- |    |   |        |
|----|---|--------|
| 1. | Apologies for Absence                               |        |
| 2. | Declarations of Interest by Members and Officers    |        |
| 3. | Declaration of any Intentions to Record the Meeting |        |
| 4. | Minutes of the Previous Meeting                     | 5 - 12 |

### **Part 1 - Items for Decision**

- |     |  |           |
|-----|--|-----------|
| 5.  | Ombudsman Decision - South Clifton   | 13 - 21   |
| 6.  | 11 Friend Lane, Edwinstowe, Nottinghamshire (18/00139/FUL)<br>Site Visit: 9.30am – 9.40am                                  | 22 - 29   |
| 7.  | Park Farm, Main Street, Carlton on Trent (18/00698/FUL)  | 30 - 41   |
| 8.  | 37 and 39 Halloughton Road, Southwell, Nottinghamshire (18/01258/FUL)  | 42 - 69   |
| 9.  | Former Garage Site, Thorpe Close, Coddington, Nottinghamshire<br>(18/00413/FUL)  | 70 - 89   |
| 10. | Land at the Water Tower, Goldstraw Lane, Fernwood (18/00474/FULM)<br>(MAJOR)<br>Site Visit: 10.30am – 10.40am              | 90 - 114  |
| 11. | Future Fishing Ltd, Unit 17, Hardys Business Park, Hawton Lane, Farndon<br>(18/01118/FUL)<br>Site Visit: 10.10am – 10.20am | 115 - 135 |
| 12. | Land at Enfield Court, Harby, Notts (18/01217/OUT)   | 136 - 151 |

### **Part 2 - Items for Information**

- |     |                    |           |
|-----|--------------------|-----------|
| 13. | Appeals Lodged     | 152 - 153 |
| 14. | Appeals Determined | 154       |

### **Part 3 - Statistical and Performance Review Items**

There are none.

### **Part 4 - Exempt and Confidential Items**

There are none.

- |     |                                   |  |
|-----|-----------------------------------|--|
| 15. | Exclusion of the Press and Public |  |
|-----|-----------------------------------|--|

To consider resolving that, under section 100A (4) of the Local Government

Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1, 2, 3 and 7 of part 1 of Schedule 12A of the Act.

There are none.

NOTES:-

A Briefing Meeting will be held in Room F1, Castle House at 3.00 pm on the day of the meeting between the Business Manager – Growth & Regeneration, the Chairman and Vice-Chairman of the Committee to consider late representations received after the Agenda was published.

## NEWARK AND SHERWOOD DISTRICT COUNCIL

Minutes of the Meeting of **Planning Committee** held in the Civic Suite, Castle House, Great North Road, Newark, Notts. NG24 1BY on Tuesday, 7 August 2018 at 4.00 pm.

PRESENT: Councillor D Payne (Chairman)

Councillor Mrs K Arnold, Councillor R Blaney, Councillor Mrs C Brooks, Councillor B Crowe, Councillor Mrs M Dobson, Councillor P Duncan, Councillor Mrs P Rainbow, Councillor F Taylor, Councillor I Walker, Councillor B Wells and Councillor Mrs Y Woodhead

APOLOGIES FOR ABSENCE: Councillor P Handley (Vice-Chairman), Councillor J Lee and Councillor Mrs L Tift

### 54 DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

Councillor R.V. Blaney declared a Personal Interest in Agenda Item No. 17 – Active4Today Ltd., Newark Sports & Fitness Centre, Bowbridge Road, Newark (18/01097/FUL) as he is a member on the Board of Directors.

Councillors: Mrs A.C. Brooks, P.C. Duncan and D.R. Payne all declared a Non-Pecuniary Interest in the following Agenda Item Nos: 6 – Former Garage Site, Thorpe Close, Coddington (18/00413/FUL), 11 – Land off Westgate, Southwell (18/00832/FUL), 12 – 7 Allenby Road, Southwell (18/01006/FUL) and 16 – Former Garage Site Woodlands, Winthorpe (18/00630/FUL) as they were all Board Members of Newark and Sherwood Homes.

Councillor Mrs P. Rainbow declared a Personal Interest in the following Agenda Item Nos: 7 – 42 Lower Kirklington Road, Southwell (18/00394/FUL) and 10 – 22 Halloughton Road, Southwell (18/00785/FUL) as both the applicants were known to her.

### 55 DECLARATION OF ANY INTENTIONS TO RECORD THE MEETING

The Chairman informed the Committee that the Council was undertaking an audio recording of the meeting.

### 56 MINUTES OF THE PREVIOUS MEETING

The Committee considered the minutes of the meeting held on 24 July 2018.

AGREED that the minutes of the meeting held on 24 July 2018 be approved as a correct record and signed by the Chairman.

### 57 LAND AT CINDER LANE, OLLERTON, NOTTINGHAMSHIRE (16/01102/OUTM) (MAJOR)

The Committee considered the report of the Business Manager - Growth & Regeneration, following a site inspection, which sought outline planning permission for a residential development for 25 dwellings with primary access off Cinder Lane with all other matters reserved.

The Business Manager – Growth & Regeneration advised the Committee of the reasons for the delay in bringing the application before them referring to the applicant needing to acquire land to address highways issues and the Council's 5 Year Housing Land Supply position. He stated that the applicant had sought to address all technical reasons that might have resulted in the application being refused.

Members considered the application with the local Ward Member stating that he did not find the application acceptable and agreed with the officer recommendation of refusal, adding that it was outside of the village envelope and to grant would result in a development being located in open countryside.

It was noted that the site had previously been put forward for housing when the Local Plan and the Strategic Housing Land Availability Assessment was being developed and had, at that stage, been rejected. The application site remained outside of the development envelope and it was considered that there were no exceptional circumstances that warranted it to be granted.

AGREED (unanimously) that outline planning permission be refused for the reasons contained within the report.

58 FORMER GARAGE SITE, THORPE CLOSE, CODDINGTON, NOTTINGHAMSHIRE (18/00413/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, which sought planning permission for the demolition of existing garages and the development of 1no. 3-bedroomed unit.

Councillor David Armstrong, representing Coddington Parish Council, spoke against the application in accordance with the views of the parish council, stating that the parish's objections remained the same despite the revisions to the application. In response to whether he conceded that there was a need for 1 or 2 bedroomed social housing in the location, Councillor Armstrong conceded that there was such a need.

Members considered the application noting the Council's ambitious 5 year programme for social housing and that they were seeking to make use of the sites in their ownership. Comment was made that the proposed 3-bedroomed unit was causing issues with the existing dwellings and how vehicular access would be achieved. It was suggested that the applicant be asked to consider reducing the footprint of the property which would protect the access to the existing dwellings.

AGREED (unanimously) that the item be deferred for one committee cycle and that the applicant be asked to consider reducing the footprint of the proposed dwelling having consideration of the comments above.

59 42 LOWER KIRKLINGTON ROAD, SOUTHWELL (18/00394/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, which sought planning permission for a proposed new bungalow in the grounds of 42 Lower Kirklington Road, Southwell.

Members considered and supported the application. A Member queried whether the materials to be used on the hardstanding was permeable and requested that an additional condition be attached to require this in the interests of flood risk where necessary.

AGREED (with 10 votes for with 2 abstentions) that full planning permission be approved subject to the conditions contained in the report together with an additional condition where necessary requiring the use of permeable materials on the hardstanding in the interests of flood risk.

60 ORDER OF BUSINESS

Due to an issue with technical equipment, the Chairman changed the order of business as follows.

61 7 ALLENBY ROAD, SOUTHWELL (18/01006/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, which sought planning permission for the demolition of an existing single store outbuilding to the rear corner and the erection of a single storey extension at the rear corner to house lounge/diner and shower room together with the installation of a dropped kerb to the front.

AGREED (unanimously) that full planning permission be approved subject to the conditions and reasons contained within the report.

62 ACTIVE4TODAY LTD NEWARK SPORTS AND FITNESS CENTRE, BOWBRIDGE ROAD, NEWARK (18/01097/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, which sought planning permission for the extension to and reorganisation of the car park to provide 56 additional spaces incorporating additional lighting, CCTV, lining works, road signage, drawing and landscaping.

AGREED (unanimously) that full planning permission be approved subject to the conditions contained within the report.

63 APPEALS LODGED

AGREED that the report be noted.

64 APPEALS DETERMINED

AGREED that the report be noted.

65 QUARTERLY ENFORCEMENT ACTIVITY UPDATE REPORT

AGREED that the report be noted.

66 EXCLUSION OF THE PRESS AND PUBLIC

The Committee were advised that the previously exempt report in relation to the Residential Development at Epperstone Manor, Main Street, Epperstone (05/01839/FULM, 07/00244/FULM and 08/018141/FULM) was no longer exempt.

The Business Manager – Growth & Regeneration advised that a revised Section 106 Agreement had been concluded that would secure the transfer of the recreational land to the District Council which in turn would be transferred to the Parish Council.

67 LAND ADJACENT TO THE MANOR HOUSE, MAIN STREET, HOVERINGHAM (18/00373/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, which sought planning permission for the proposed erection of 1no. 2-bedroomed dwelling.

It was reported that Planning Committee had considered and resolved to approve the application, contrary to Officer recommendations in May 2018. The Environment Agency had subsequently submitted comments that represented new material information that needed to be considered in an overall planning balance. Members were advised that the key point for consideration was whether the new information changed their overall resolution to grant planning permission.

Councillor Lady Helen Nall, representing Hoveringham Parish Council, again spoke in support of the application in accordance with the views of the parish council.

Councillor R.J. Jackson, local Ward Member for Dover Beck, also spoke in support of the application reiterating his previous comments that the application site was at the highest point within the village.

AGREED (with 11 votes for with 1 abstention) that contrary to Officer recommendation full planning permission be approved subject to demonstration that the proposal would minimise, as far as practicable, the flood risk to third parties to the satisfaction of Newark & Sherwood District Council and that appropriate and proportionate mitigation measures for possible flooding to be secured by conditions as well as other suitable conditions.

In accordance with paragraph 12.5 of the Planning Protocol, as the motion was against Officer recommendation, a recorded vote was taken.

Councillor	Vote
Mrs K. Arnold	For
R.V. Blaney	For
Mrs A.C. Brooks	For
R.A. Crowe	For
Mrs M. Dobson	For
P. Duncan	Abstain



G.P. Handley	Absent
J. Lee	Absent
D.R. Payne	For
Mrs P. Rainbow	For
F. Taylor	For
Mrs L.M.J. Tift	Absent
I. Walker	For
B. Wells	For
Mrs Y. Woodhead	For

68 LAND AT MAIN STREET, NORTH MUSKHAM (18/00597/FULM)

The Committee considered the report of the Business Manager - Growth & Regeneration, following a site inspection, which sought planning permission for a proposed development of 12 affordable homes and 4 market bungalows which was a resubmission of Application No. 16/01885/FULM.

A schedule of communication was tabled at the meeting which detailed correspondence received after the Agenda was published from the following: Nottinghamshire County Council; 12 no. neighbours; LLFA; North Muskhams Parish Council; LCC – Archaeology; and NSDC - Community Sports & Arts Development. A list of conditions and notes to the applicant had also been forwarded to Members after the Agenda had been published.

The Business Manager – Growth & Regeneration advised the Committee that the main areas for consideration were: need; the mix of affordable and market homes; flood risk; and impact on heritage addressing each in turn.

Councillor Ian Harrison, Chairman of North Muskhams Parish Council, spoke against the application in accordance with the views of the parish council. He stated that the parish considered that there had been no discernible mitigation against the previous objections of the district council.

In considering the application, the Committee's previous decision to refuse in September 2017 and the reasons given were noted. A Member commented that the issues surrounding heritage, need and flood risk had all now been satisfactorily addressed.

AGREED (with 9 votes for, 2 votes against with 1 abstention) that full planning permission be approved, subject to the conditions contained within the report and the signing of a S106 Agreement to secure the affordable housing was retained in perpetuity.

69 22 HALLOUGHTON ROAD, SOUTHWELL (18/00785/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, which sought planning permission for the demolition of an existing dwelling and replacement with a new 2 storey dwelling incorporating ancillary accommodation.

A schedule of communication was tabled at the meeting which detailed correspondence received after the Agenda was published from the applicant's agent and a neighbour.

Councillor R.B. Laughton, local Ward Member, spoke against the application and in support of the Officer's recommendation to refuse due to the design and character impact of the proposed dwelling.

The Business Manager – Growth & Regeneration advised that Officers had concerns with the description of the proposed dwelling and the impact that the proposal would have on the character and appearance of the area. He advised Members that they must consider whether the footprint of the proposal, location within the plot of land together with the scale and design of the property, noting the proposed domed aluminium roof, was acceptable.

In considering the application, Members noted that the comments of Southwell Town Council appeared to be contradictory. They were supportive of the proposal but had requested that the local Ward Member call it in on the grounds of loss of privacy on neighbouring properties and the visual impact of the aluminium roof.

Members agreed that they were not opposed to modern and innovative designs but that this was not the correct location and the plot of land was not large enough to accommodate it.

AGREED (with 11 votes for with 1 abstention) that planning permission be refused for the reasons contained within the report.

70 LAND OFF WESTGATE SOUTHWELL (18/00832/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, which sought planning permission for the development of 1no. 3-bedroomed and 2no. 1-bedroomed bungalows.

A schedule of communication was tabled at the meeting which detailed correspondence received after the Agenda was published from: the applicant's agent; Nottinghamshire County Council – Highways; and Southwell Town Council.

It was noted that the Committee had previously considered and deferred the application in July 2018 to allow Officers to negotiate a reduction in the scheme to 3 units and to make amendments to the parking provision to allocate spaces to respective dwellings. Following consultation on the revised Scheme, the Committee considered that the application was now acceptable.

AGREED (unanimously) that full planning permission be approved subject to the conditions contained within the report.

71 BURTON JOYCE CAR CENTRE, OLD MAIN ROAD, BULCOTE (17/01729/FULM)

The Committee considered the report of the Business Manager - Growth & Regeneration, following a site inspection, which sought planning permission for the demolition of existing buildings and the erection of 43 retirement living apartments for the elderly including communal facilities, landscaping, car parking and ancillary development.

In considering the application a Member noted the comments of Planning Policy and Strategic Housing in relation to an affordable housing contribution. He also expressed concern about the apparent disparity between the appraisal summaries submitted by the applicant and that of the independent expert commissioned by the Council. In summary the Member stated that they were being asked to consider a development which they approved of in relation to location and design but which did not provide the Council with the commuted sum they were anticipating.

AGREED (with 11 votes for with 1 abstention) that:

- (a) officers be given delegated authority to resolve the disparity between the appraisal summaries by either:
  - (i) negotiating an additional amount of monies towards the affordable housing contribution; or
  - (ii) verifying the accuracy of the Council's aforementioned independent expert as to the findings contained within the appraisal summary;
- (b) subject to additional monies being secured for the affordable housing contribution or verification that the previous findings from the independent viability assessor are correct, full planning permission be approved, subject to the applicant entering into a S106 Agreement to secure contributions towards affordable housing and community facilities and subject to the conditions contained within the report conditions (with delegated authority to amend flood risk/contamination conditions as appropriate with advice from relevant consultees) .

72 3 MILNER STREET, NEWARK ON TRENT (18/01112/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, which sought planning permission for a change of use from garages and apartments into a single dwelling house.

Members considered the application and were fully supportive of the proposed change of use from garages and apartment into a single dwelling house.

AGREED (unanimously) that full planning permission be approved subject to the conditions contained within the report.

73     LAND ADJACENT TO 31 DARRICOTT CLOSE, RAINWORTH (18/00572/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, which sought planning permission for a change of use of public open space to extend the garden area of 31 Darricott Close, Rainworth.

Members considered the application and commented that no response had been received from Rainworth Parish Council in relation to whether they would wish to purchase the parcel of land and that it was hoped that the value of the land was recognised by the Council's Asset Management Business Unit.

Members suggested that the Council's Legal Services be requested to consider the disposal of the land with a view to imposing a restrictive covenant on its future use.

AGREED     (unanimously) that:

- (a)     the parcel of land be disposed of subject to the imposition of a restrictive covenant; and
- (b)     full planning permission be approved subject to the conditions contained within the report.

74     FORMER GARAGE SITE WOODLANDS WINTHORPE (18/00630/FUL)

The Committee considered the report of the Business Manager - Growth & Regeneration, following a site inspection, which sought planning permission for the demolition of existing garages and the development of 1no. 1-bedroomed bungalow.

Members considered the application and agreed that the proposed widening of the access road was unnecessary and should be retained at the existing width.

AGREED     (unanimously) that full planning permission be approved subject to the conditions contained within the report and that the access road be retained at the existing width giving delegated authority to officers to seek this amendment, subject to a public consultation on an amended plan not raising any new material planning issues.

Meeting closed at 7.26 pm.

Chairman

## **PLANNING COMMITTEE - 4 SEPTEMBER 2018**

### **OMBUDSMAN DECISION – SOUTH CLIFTON**

#### **1.0 Purpose of Report**

- 1.1 To update Members on a recent Ombudsman decision and to seek approval for the payment to the complainant of the sum recommended by the ombudsman by way of remedy. The ombudsman's finding was that there had been maladministration and injustice and they recommended the council pay the sum of £700 to the complainant by way of remedy. As this relates to a planning enforcement matter, approval of the ombudsman's recommendation falls within the remit of the Planning Committee. Should the committee reject the ombudsman's findings, the matter would need to be referred to Council for determination. The ombudsman's decision is attached at Appendix 1.

#### **2.0 Background Information**

- 2.1 Members will be aware of an ongoing enforcement issue relating to an unauthorised use of a caravan and the running of a business in South Clifton.
- 2.2 The case was first referred to the Ombudsman in May 2015 which resulted in an investigation. The final decision, which the Ombudsman issued in November 2015 is summarised as:
- The council had taken appropriate action.
  - There was some delay that warranted an apology.
  - The council should ensure residents are regularly updated about actions it is considering.
- 2.3 Following on from this, in March 2017, the complainant submitted a further complaint to the Ombudsman stating:
- The council failed to take the agreed action i.e. providing bi-monthly updates to Parish Councils to ensure residents were kept informed of the action the council is taking.
  - The council failed to send a letter of apology to the complainant.
  - The council has failed to take any action in respect of the site and the problems raised previously remain unresolved.

#### **3.0 Information relating to the complaint**

- 3.1 The Ombudsman acknowledged that this is a complex case. Since the initial complaint in 2015 the council continued to carry out enforcement of the site which resulted in the council securing a court order for the land to be vacated and the caravan to be removed no later than 1 April 2017. This order was not complied with and the council considered taking direct action. However, in doing so the Council had to balance the planning harm against the housing and welfare needs of the occupiers given that the caravan was their principal home.
- 3.2 During 2017 the case was complicated further in that the owners became bankrupt and the land in question transferred to the Crown to be held in escheat. The council obtained advice from Counsel regarding enforcement objectives and ownership of the land. Counsel

confirmed that the Crown must consent to the council entering land it owned and permission must be sought for the council to take further enforcement action on the land.

- 3.3 Discussions took place with the Crown who advised that it did not propose to take any action that might be constructed as an act of management of the land. It could not give consent but neither was it likely to interfere with action taken by an appropriate body with the appropriate power to act.
- 3.4 Although residential use of the site had ceased, the site still contained commercial items. The council commenced committal procedures for the breach of the injunction. Further investigations identified that the site had been significantly cleared of commercial items. The remaining items were unlikely to justify enforcement action. It is acknowledged that local residents may consider nothing other than the full site being cleared as acceptable.

#### **4.0 Ombudsman Decision**

- 4.1 The draft decision which was issued on 3 July 2018 found that there was fault by the council which warrants a remedy. It stated that “there was avoidable delay in pursuing enforcement action about breaches of planning control and that the council failed to meet the recommendations it agreed with the Ombudsman relating to the 2018 complaint.”
- 4.2 The council responded to and challenged the draft decision. It acknowledged a letter of apology had not been sent and accepted that it would immediately action this.
- 4.3 The council advised that it had updated local members, local residents and the parish council as necessary and appropriate. However as regular bi-monthly updates were not made to the parish council, the Ombudsman considered that residents were not kept adequately informed of the action being taken by the council on a longstanding enforcement situation. To find maladministration by reason of the council’s failure to rigidly adhere to bi-monthly updates, even when there is nothing to report is, in the council’s opinion, excessive, especially when the Parish Council had not raised any concerns with the council’s approach.
- 4.4 The Ombudsman suggested by way of remedy that the council pay the complaint £700 which included £200 for the time and trouble the complainant was put to in pursuing their complaint. The council’s initial response was that the sum of £200 was proportionate. However the council challenged the payment of an additional £500. Although the council sympathises with the frustrations of the complaint, given the complexities of the site and matters beyond the council’s control, this payment is not attributable or proportionate to any council action or lack of it.
- 4.5 The Ombudsman was not willing to alter the initial recommendation to award an additional £500 which he considered reflected the frustration and distress the matter had caused to the complainant and further, advised that this was in accordance with their guidance on remedying complaints. This guidance is available here.

<https://www.lgo.org.uk/information-centre/reports/advice-and-guidance/guidance-notes/guidance-on-remedies>

4.6 When deciding on the appropriate level of compensation to be paid to the complainant for their frustration and distress, the Ombudsman took into account the significant delay in getting the case to court between 2015 and 2016 and the impact of the council's failure to address fully the recommendations in his previous report which reduced the complainant's confidence that the matter would be resolved.

4.7 As the Ombudsman decision is one of maladministration and injustice, the acceptance of the findings of the report, including the payment of the recommended sum by way of remedy, has to be approved by the Planning Committee. If the committee do not accept the Ombudsman's findings, the matter will need to be referred to Full Council for a decision. Given the level of the recommended payment, it is considered on balance that this should be accepted and the payment made to the complainant accordingly.

## **5.0 Equalities Implications**

5.1 The purpose of this report is to request that Members accept the Ombudsman's findings and therefore there are no equality implications as a result of the content of this report.

## **6.0 Finance Comments FIN18-19/2003**

6.1 There is currently no budget provision for this payment. Should this payment be made, it would have to be met from the General Fund balance.

## **7.0 RECOMMENDATION**

**That Members accept the Ombudsman's finding of maladministration and injustice and approve recommended remedy of payment of £700 to the complainant.**

## **Background Papers**

Nil

For further information please contact: Jill Baker on ext. 5810 or Matt Lamb ext.5842

**Kirsten Cole**  
**Deputy Chief Executive**

**Complaint reference:**  
16 018 056

**Complaint against:**  
Newark & Sherwood District Council

## **The Ombudsman's final decision**

Summary: There was avoidable delay in pursuing enforcement action about breaches of planning control at a site near to Ms X's home. The Council also failed to meet the recommendations it agreed with the Ombudsman on Ms X's earlier complaint about the same issue.

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## **The complaint**

1. Ms X complains the Council has failed to take the action it agreed following a previous complaint she made about the use of a field near her parent's home.
2. In November 2015 the Council told us it was considering taking further action. It agreed to proceed with any action it intends to take in a timely fashion. It also agreed to make at least bi-monthly updates to the Parish Council to ensure residents were kept informed of the action the council is taking and the reasons for its decisions. The Council agreed to send the complainant a letter of apology for the delays identified in progressing action at various points. Ms X says the Council has failed to do what it agreed.
3. Ms X complains the Council has failed to take any action in respect of the site and the problems she complained of previously remain unresolved.

## **The Ombudsman's role and powers**

4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

6. I spoke to Ms X and considered the complaint she made. I considered the information she provided.
7. I made enquiries of the Council and considered its response. I visited the Council offices to look at its files and I interviewed officers.
8. I sent my draft decision to the complainant and to the Council to enable both parties to comment before I made a final decision.



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## What I found

### Background

9. Ms X complains that the Council has failed to take appropriate planning enforcement action against a third party (Mr Y) about the use of a site near to her parent's home. She also complains the Council has not carried out the action it agreed following her previous complaint to the Ombudsman about the issue.
10. In November 2015 the Ombudsman found the action the Council had taken in respect of the site between 2011 and 2015 had been appropriate. The Council had issued Enforcement Notices and it prosecuted Mr Y for his failure to comply. In July 2015 the Council resolved to obtain an Injunction against Mr Y requiring him to cease the unauthorised use of the field for residential and commercial purposes and to remove structures and items that related to both residential and commercial use.
11. However, there had been delay and the Council was, at times, slow to take action. The Council agreed to apologise to Ms X for the delay. It also agreed to update the Parish Council about the action being taken at the site every two months, so that residents were kept up to date.

### Action taken since 2015

12. The Council engaged external solicitors in August 2015 to arrange an injunction hearing. The court held directions hearings in April 2016 and July 2016. In September 2016, the courts scheduled a hearing for December 2016.
13. Ms X became aware that in July 2016 the Council had discussed with Mr Y's solicitor a proposal that he vacated the site and carried out the required action voluntarily. Ms X felt this was inappropriate given the time the matter had been ongoing and Mr Y's lack of compliance previously. I have seen the background documents that relate to the discussion about the voluntary undertaking. There are clear reasons why the Council took this step and it is clear the Council had intended the undertaking to be made to the court, as part of the injunction proceedings which would make it binding.
14. In September 2016 it became clear that Mr Y would not agree voluntarily to all of the action required.
15. A substantive court hearing took place in December 2016. The court granted an injunction in January 2017 requiring Mr Y to cease the unauthorised use of the site and remove structures and relevant goods by 1 April 2017.
16. In March 2017 the Council visited the site and established that Mr Y had not vacated the site or complied with the other elements of the injunction. There is evidence the Council was preparing to take direct action to clear the site if this was not done by April 2017.
17. In April 2017 the Council brought the case back 'in-house' from the external solicitors. Officers noted they had delegated authority to proceed with direct action to achieve the action required by the injunction. They also agreed to update member of the planning committee.
18. A further complication came to light in 2017. The Council had become aware that the land in question was now owned by the Crown. In May 2017 the Council took counsel advice about its enforcement objectives, Mr Y's situation and issues about ownership of the land.

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19. Counsel confirmed that the Crown must consent before the Council entered land it owned and permission must be sought for the Council to take further enforcement action on the land.
  20. In July 2017 Mr Y moved out of the caravan on site to live elsewhere. Ms X told me the caravan was removed in August 2017. Although this resolved part of the breach of planning control, Mr and Mrs Y had not complied with the remaining elements of the injunction.
  21. The Council wrote to the Crown on 16 August explaining the situation. It asked the Crown for permission, as a matter of courtesy to enter the land for the purposes of enforcement.
  22. The Council noted it received reports that other people had been on site, since Mr and Mrs Y left, but this was on an ad-hoc basis. The Council chased the Crown for a response on 26 September 2017. As of September, it stated it awaited consent from the Crown before it could take any further action.
  23. On 3 October, the Crown told the Council that it did not propose to take any action that might be construed an act of management of the land. In practical terms, the Crown stated it could not give consent, but neither was it likely to interfere with action taken by an appropriate body with the appropriate power to act.
  24. In October 2017 Ms X told me the commercial use of the site had continued as usual despite Mr and Mrs Y having left the caravan site and the residential use of the site having ended. The Council confirmed that it had no evidence to suggest the commercial use had ceased as of October 2017.
  25. The Council told me although it did not proceed with direct action, it began committal proceedings against Mr Y for breach of the injunction. This was on the basis that, although residential use of the site had ceased, the site still contained significant materials, lorry bodies and general commercial paraphernalia.
  26. On 6 December 2017, a committal hearing took place. At the hearing Mr Y showed the court photographs of the site showing it had been largely cleared. The court issued a revised court order which stated the committal application would be dismissed unless the Council applied for it to be re-listed by 5 January. The court stated a new hearing would only be needed if the Council considered the breach of planning was resolved to the satisfaction of the Council.
  27. The Council considered the evidence Mr Y presented to the court and from a site visit that officers conducted immediately after the court hearing. The case officer wrote a report to consider what further action the Council should take.
  28. The report made clear that the injunction had not been complied with. However, because the residential use had ceased and the site had been cleared of commercial items to a significant extent, the officer noted it was necessary to consider what items remained on site, the harm they posed and whether it was expedient to continue with enforcement action or committal proceedings.
  29. The report noted that fencing, stables a metal container unit and a shed remained on site. In addition, a large metal framed building remained, along with a loaded lorry trailer and a unit. The officer noted that the Council had previously considered the planning breaches were visually harmful. He also noted the Council had previously refused permission for a similar metal storage building on the site.

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30. The case officer considered the stables, fencing container and shed were not visually harmful in planning terms and would be unlikely to justify enforcement action in themselves, particularly in a rural context.
31. He considered that following the clearance of the commercial paraphernalia, the metal framed building now had the backdrop of the fencing shed and stables. As a result, it was not considered as visually harmful as previously envisaged (provided it was being used for agricultural purposes). He acknowledged that local residents may consider nothing other than the full site clearance was acceptable, but the situation was now finely balanced. He recommended that it was no longer expedient to pursue the matter. The Council considered there was little or no evidence that commercial use of the site was continuing as of December 2017.

### **Apology/Communication to remedy from Ms X's 2015 complaint**

32. In response to my enquiries on Ms X's current complaint the Council told me it had not sent a letter of apology. However, it had offered verbal apologies when speaking to Ms X subsequently. The Council stated it had updated local council members, local residents and the parish council 'as necessary and appropriate'.
33. The Council's records show some apparent confusion over who should have sent the letter of apology to Ms X's family. This appears to have resulted in no apology letter being sent.
34. There is evidence the Council provided some updates to the Parish Council occasionally and updated Ms X when she made contact. I recognise that it is not possible for the Council to release information about third parties, and the need to maintain confidentiality limited what the Council could tell residents. However, regular bi-monthly updates to the Parish Council were agreed to ensure residents knew the action being taken on a regular basis, given this is a longstanding enforcement situation. This would also enable residents to challenge the Council if there was, apparently, a lack of progress. The Council does not appear to have placed emphasis on ensuring the agreed actions from the previous complaint were met in full.

### **Relevant Law**

35. Section 178 of the Town and Country Planning Act allows a council to take direct action. It allows councils to enter land and to take any steps required by an enforcement notice. The law allows these steps to be taken without an injunction.
36. Section 187B of the Town and Country Planning Act allows a council to apply to the courts for an injunction to restrain a breach of planning control. This is a significant action to take.
37. Paragraph 207 of the National Planning Policy Framework (NPPF) states that effective enforcement action is important to maintain public confidence in the planning system. However, enforcement action is discretionary and councils should act proportionately when responding to reports of breaches of planning control.

### **Analysis**

38. We found there was delay by the Council when we investigated Ms X's previous complaint. Given the planning enforcement issues had been longstanding, we recommended the Council took the action it intended in a timely fashion. We also recommended the Council maintained regular contact with the Parish Council and sent a letter of apology to Ms X's parents.

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39. There has been further delay in taking action since 2015.
40. The Council's planning committee authorised officers to get an injunction and to take direct action in July 2015. The Council is not obliged to take injunction proceedings before it takes direct action. However, the Council took legal advice and determined it was appropriate to do so in this case. This was a decision it reached properly following legal advice.
41. However, there was a long delay between July 2015 and April 2016 when the first of the hearings took place.
42. I am unable to set out the background to show why the Council proposed Mr and Mrs Y made an undertaking to the courts in or around July 2016. This is because it involves information the Council received about third parties that must be kept confidential. However, I am satisfied the decision to propose an undertaking, given the circumstances at the time, was a decision the Council considered properly. Although I understand Ms X considers the Council should not have taken the approach it did, I am satisfied it was not made to show leniency. Rather, given the presenting circumstances, the intention was to ensure that the issues at the site were resolved and compliance was achieved.
43. However, even though accepting a voluntary agreement was a step the Council was entitled to consider, the overall time it took to achieve the injunction hearing was excessive. The Council used an external solicitor for this work, but it retained responsibility for the matter. The time taken to progress the matter is especially disappointing given the delays identified in the previous investigation and the Council's agreement to make progress in a timely fashion as a result. The delay constitutes fault by the Council.
44. The injunction obtained in January 2017 required Mr Y to cease the unauthorised use of the site and clear the site by 1 April 2017. There were several complications to taking further action after 1 April 2017. The first was that the Crown had become the owner of the land. The Council took legal advice and established that it needed the permission of the Crown to take the direct action. The Council sought permission in August 2017. This further delayed direct action but the Crown's response in October 2017 indicated the Council is not prevented from taking direct action if it considers it appropriate.
45. The Council did not proceed with direct action. But it took committal proceedings against Mr Y. This went before the court in December 2017. At the hearing, Mr X demonstrated to the court that he had taken some action to clear the site. The Council had to consider whether this changed its view. It re-visited the site and considered its position. It took the view that it was no longer expedient to act. Although this was a shift from its previous view, the report about the matter clearly considered the situation as it stood, the planning history, the Council's previous stance and residents' views. It decided it should not pursue the matter further. The law does not oblige councils to take formal action.
46. I recognise that Ms X would want to see direct action to completely clear the site. While the Crown's response indicated this was still an option, the Council considered the actions taken by Mr Y were sufficient to change its view. The Council clearly considered formal action was necessary in the past, but it was entitled to reconsider because of work Mr Y had done. The decision not to take further action was a professional judgement the Council was entitled to take. I have no grounds to question it.

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47. Ms X explained to me that in her view, the commercial use of the site was continuing regardless of the removal of Mr Y's residential caravan. She explained that she had suffered low level anti-social behaviour from those on the site for a long period which she continued because the Council had not taken action. Although there are few formal reports of the anti-social behaviour themselves, I acknowledge that the ongoing situation has been stressful and delays in taking action have been frustrating for Mrs X and her parents.
48. The Council's report focussed on the acceptability of the buildings and items on site. It noted the Council would consider the situation afresh if the situation changed. Given the history of the site and Ms X's reports of continuing commercial use for car breaking, I would expect the Council to properly consider any other information Ms X or other local residents have that the site is still being used for commercial purposes. It should investigate and write to Ms X to confirm the outcome of its investigation within eight weeks of receiving any further information Ms X wishes to provide.
49. It is disappointing that the Council failed to write and apologise to Ms X following Ms X's previous complaint. It also failed to consistently provide the updates it agreed to. This too is clearly fault as the Council had agreed to take this action.

### **Agreed Action**

50. To recognise the further delays that occurred over a long period, the failure to follow our earlier recommendations and the frustration and distress that the matter caused to Ms X and her family, the Council agreed to pay Ms X £700. This includes £200 for the time and trouble she was put to in pursuing her complaint. This payment should be made within four weeks of our final decision.
51. The Council agreed it would investigate any information Ms X wished to provide to the Council about the continuing use of the site for commercial purposes. Ms X should provide the Council with any further evidence or information she has within two weeks of my final decision. The Council should investigate and write to Ms X to update her of progress within eight weeks of my final decision. It should continue to update Ms X regularly should the investigation take longer than this to conclude.

### **Final decision**

52. There was fault by the Council that warrants a remedy.

### **Investigator's decision on behalf of the Ombudsman**

## PLANNING COMMITTEE – 4 SEPTEMBER 2018

<b>Application No:</b>	<b>18/00139/FUL</b>	
<b>Proposal:</b>	<b>Proposed erection of a detached two storey dwelling with a detached garage</b>	
<b>Location:</b>	<b>11 Friend Lane, Edwinstowe, Nottinghamshire</b>	
<b>Applicant:</b>	<b>Mrs Jean Donson</b>	
<b>Registered:</b>	<b>25.01.2018</b>	<b>Target Date: 22.03.2018</b>

**This application is being presented to the Planning Committee in line with the Council's Scheme of Delegation as the officer recommendation for the application differs from that of the Parish Council.**

### The Site

The application site relates to a proportion of the existing residential curtilage associated to 11 Friend Lane, a detached single storey bungalow located on the south side of Friend Lane and within the defined built-up area of Edwinstowe.

The application site is level in nature and consists of a predominantly manicured lawn with ornamental trees and shrubs. A detached double garage sits adjacent to the west elevation of the existing dwelling with hard surfaced parking and turning area at the front of the site. A brick wall approx. 1.4m high and pair of black painted metal entrance gates is located at the front of the site, together with a mature hedgerow approx. 1.5m high.

Friend Lane contains dwellings that range in design, scale and appearance although the majority of dwellings are either detached or semi-detached and set within fairly large plots. To the east of the application site are a row of two-storey terrace dwellings (1, 7 and 9 Friend Lane) situated at the back edge of the footway and to the west of the site is 13 Friend Lane, a detached bungalow set back from the highway all with frontages onto Friend Lane. To the rear of the site is a narrow private road with the railway line beyond. Friend Lane is a private road that is not formally adopted by the Highway Authority.

### Relevant Planning History

No relevant planning history.

### The Proposal

The proposal seeks full planning permission for the erection of a single independent detached 2 bedroom dwelling and a detached single garage at the site which would utilise the existing vehicular access at the site. The proposed access drive measures 3.5m wide, with a 4.5m entrance width, by 31m in length. The deposited plan states a new access is to be created for the existing dwelling, although exact details of how this would be formed have not been submitted.

The proposed dwelling would face in an easterly direction and have a dormer bungalow design with a single front (east) facing dormer window and 2 No. rooflights on the rear facing roof pitch. The proposed dwelling would measure 12.5m in depth and span 9m in width. The roof design would be dual-pitched with a maximum ridge height of 6.7m and 2.9m to eaves level. The accommodation would comprise an entrance, hall, lounge, living/kitchen, bathroom and bedroom on ground floor and a bedroom and bathroom at first floor level. The bungalow is positioned 6m away from the boundary with 13 Friend Lane to the west and would be served by a c64sqm rear garden area.

The proposed garage would be located in the south-eastern corner of the site and sit at the end of the access drive facing towards Friend Lane. It has a double pitch roof and would measure 5m in depth, 3.6m in width and 3.9m in height to the ridge and 2.4m to the eaves. It is positioned in close proximity to the rear boundary as well as the shared boundary with 9 Friend Lane to the east.

#### Public Advertisement Procedure

Occupiers of nine properties have been individually notified by letter.

#### Planning Policy Framework

#### The Development Plan

#### **Newark and Sherwood Core Strategy DPD (adopted March 2011)**

Spatial Policy 1 – Settlement Hierarchy  
Spatial Policy 2 – Spatial Distribution of Growth  
Spatial Policy 6 – Infrastructure for Growth  
Spatial Policy 7 – Sustainable Transport  
Core Policy 3 – Housing Mix, Type and Density  
Core Policy 9 – Sustainable Design  
Core Policy 10 – Climate Change

#### **Allocations & Development Management DPD**

DM5 – Design  
DM12 – Presumption in Favour of Sustainable Development

#### Other Material Planning Considerations

- National Planning Policy Framework 2018
- National Planning Practice Guidance suite, on-line resource
- Publication Amended Core Strategy 2017

#### Consultations

**Edwinstowe Parish Council** – Support the proposal.

**NCC Highways Authority** – ‘Friend Lane is not public adopted highway, therefore the Highway Authority has no objections to this proposal.’

**Representations have been received from 5 local residents which can be summarised as follows:**

- Concerns raised over proximity of the proposed dwelling to shared boundary and the potential overshadowing and overlooking impacts.
- Concerns over the proposed dwelling becoming larger at a later date.
- Wishes any damage to the Friend Lane during construction to be repaired.

Comments of the Business Manager

The Council is of the view that it has and can robustly demonstrate a 5 year housing land supply which has been confirmed by a number of recent appeal decisions including the dismissal of the Farnsfield appeal (at Public Inquiry) by the Secretary of State in April 2018. I do not intend to rehearse this in full other than to say that the policies of the Development Plan are considered up to date for the purposes of decision making and thus carry significant weight in an overall planning balance.

**Principle of Development**

The site is located within the main built up area of Edwinstowe which is defined as a Principal village within the Settlement Hierarchy set out by Spatial Policy 1 of the Core Strategy and where the provision of housing is sought to secure a sustainable community. As such, there is no objection to the principle of the development at the site.

The National Planning Policy Framework promotes the principle of a presumption in favour of sustainable development and recognises that it is a duty under the Planning Acts for planning applications to be determined in accordance with the development plan. Where proposals accord with the Development Plan they will be approved without delay unless material considerations indicate otherwise. This is reflected within the Development Plan under Policy DM12 of the Allocations and Development Management DPD.

It is relevant to acknowledge that at the present time, the LPA is well advanced in the process of a plan review following the Independent Examination which took place on 1 and 2 February 2018. However, the policy framework for the assessment of a proposal such as this is not proposed to alter under the current Review and the support for additional housing in Edwinstowe in principle is still supported. Whilst the NPPF identifies that there is a presumption in favour of sustainable development, this does not automatically equate to the development being granted as other material considerations need to be taken into account.

Impact on Character and Appearance of the Area

The NPPF states that good design is a key aspect of sustainable development and new development should be visually attractive as a result of good architecture and appropriate landscaping.

Core Policy 3 states that the Council will seek to secure an appropriate mix of housing types to reflect local housing need including smaller houses of 2 bedrooms or less and housing for the elderly and disabled population.

Core Policy 9 requires proposals to demonstrate a high standard of sustainable design and that proposals should be of an appropriate form and scale to their context complementing the existing



built and landscape environments. This policy also provides that applications 'demonstrate an effective and efficient use of land that, where appropriate, promotes the re-use of previously developed land and that optimises site potential at a level suitable to local character.

Policy DM5 states that proposals creating backland development will only be approved where they would be in keeping with the general character and density of existing development in the area, and would not set a precedent for similar forms of development, the cumulative effect of which would be to harm the established character and appearance of the area. This is consistent with Paragraph 53 of the NPPF which states that 'Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area'.

In terms of Local Distinctiveness Policy DM5 (4) requires the District's landscape and character of built form to be reflected in the scale, form, mass, layout, design, materials and detailing of proposals for new development.

Whilst the provision of a small 2-bed dwelling would be in line with the requirements of Core Policy 3, the site comprises a backland development to the rear of 11 Friend Lane with the land proposed for development measuring approximately 0.05 hectares.

Once beyond the three terraced two-storey properties, the existing development along Friend Lane is loose knit and informal in terms of its layout with good sized plots and fairly low boundary treatments giving an open feel along this part of this narrow lane. Dwellings are both two-storey and bungalows, however, I am mindful that there are no other examples of back land or tandem development along the lane and as such, I am of the opinion that the proposed development would not follow the grain of development and distinctiveness within the locality and would have a negative impact on the character of the area.

Both the size and position of the proposed new plot does not reflect that of the surrounding area. Furthermore, I am of the opinion that there would be a number of other opportunities along Friend Lane whereby plots could be developed in a similar manner and this principle could all too readily be repeated which both individually and cumulatively would have a material harmful impact on the character and appearance of the wider locality and set a precedent for such type of development. Whilst the proposed development would be to the rear of 11 Friend Lane and set back from the highway, due to the nature of the site which is level and open, as well as the modest height of No. 11 Friend Lane, I am of the opinion that elements of both the proposed dwelling and garage would be visible from Friend Lane and be clearly read as a separate development plot, which is not associated to 11 Friend Lane, to the detriment of the visual amenities of the site and character of the wider street scene. I am also conscious that the ridge and scale/massing of the proposed dwelling would be greater than the existing dwelling which would also contribute to the intrusive and inappropriate nature of the development when viewed from the lane. Rather than appear as a subservient outbuilding, it would be more dominating and in my view harmful. The creation of the new driveway would result in the loss of small ornamental trees and although no details have been submitted, the creation of a new access to serve the existing dwelling may result in hedgerow loss.

It is therefore considered that the proposal represents inappropriate backland development that would not be in keeping with the general character and grain of development within the immediate locality and as such is contrary to Policy DM5 which seeks to resist undesirable development in backland sites. In addition it is contrary to the aims of the NPPF, in particular

Section 12 paragraphs which advises that permission should be refused for development of poor design and fails to take the opportunities for improving the character and quality of an area and the way it functions.

### Impact on Neighbours

Impact on amenity is a long standing material consideration of the planning process and relates both to the impact on existing development as well as the amenity created for the proposed occupiers.

Policy DM5 of the DPD provides that the 'layout of development within sites and separation distances from neighbouring development should be sufficient to ensure that neither suffers from an unacceptable reduction in amenity including overbearing impacts, loss of light and privacy'. In addition a core planning principle of the NPPF is to 'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings'.

In considering the relationship with the existing dwelling at the site, I am mindful that there would be a separation distance of 5.6m between the side elevation of the proposed dwelling and the closest elevation of no. 11 Friend Lane which contains a single window serving a bedroom to its rear elevation facing the site. There is also a greenhouse set against this window. While I am mindful that the proposed development would present a gable towards this existing bedroom window, in also bearing in mind that this bedroom is served by another window on the side elevation facing onto the main side garden areas, it is considered, on balance, that the proposal would not result in such an overbearing or overshadowing impact to constitute a refusal of planning permission on these grounds.

I am mindful that the proposal would result in the loss of a portion of the private amenity space associated to no. 11 Friend Lane, however I am of the opinion that the remaining portion (c380m<sup>2</sup>) would be adequate in order serve the existing dwelling. The amenity area associated to the proposed dwelling of c64m<sup>2</sup> is considered appropriate when taking account of the size of the proposed dwelling and number of bedrooms.

Having considered the separation distances to No. 9 Friend Lane and No. 13 (65m and 40m respectively) I am also satisfied that the proposed dwelling would not result in any material impact on neighbouring amenity. Proposed first floor windows would face onto the rear extremities of the neighbours' rear gardens and due to the acute angles are unlikely to have a significant detrimental impact on the privacy of the remaining gardens areas or dwellings either side of the site. I note that the proposed garage would be positioned close to the shared boundary with No. 9 Friends Lane, however when taking account of the relatively modest dimensions of the proposed garage and position at the rear of the site, I am of the view that this element of the proposal would also not result in any material impact on neighbouring amenity.

I am therefore satisfied that the proposal accords with the amenity criteria set out within Policy DM5 of the DPD.

### Highway Matters

Spatial Policy 7 of the Core Strategy seeks to ensure development proposals provides safe, convenient and attractive accesses for all and provide appropriate and effective parking provision, both on and off site, and vehicular servicing arrangements. Policy DM5 of the DPD reflects the

aims of SP7 and adds that parking provision should be based on the scale and specific location of the development.

I am mindful of the unadopted status of Friend Lane and that the Highway Authority has not raised an objection to the proposal. I am of the view that the existing access to the site would be suitable and that there would sufficient parking and turning areas for both the proposed dwelling and the existing dwelling 11 Friend Lane. As such I am satisfied that the proposal would not result in any material highway safety concerns and in accordance with Spatial Policy 7 and Policy DM5.

The comments in relation to the potential damage to Friend Lane highway are noted however this would be a civil matter between the shared owners of the highway and would therefore not be afforded any material weight in the determination of this planning application.

### Conclusion and Planning Balance

The proposed development would not result in any material impact on the amenity of neighbouring properties or upon highway safety at the site. It is noted that the application site is in a sustainable location for new housing development and would contribute to the supply of housing and therefore have some economic and social benefits which modestly weigh in favour of the application. However, the proposed development, would represent an incongruous and alien form of development at odds with the grain and layout of existing built form by virtue of its backland position, height and scale/massing in comparison to the existing dwelling at the site and is considered to result in a material and harmful impact on the character and appearance of the site and wider locality, which could too readily be repeated along the lane. It is therefore considered contrary to the aims of Core Policy 9 of the adopted Core Strategy and Policy DM5 of the DPD as well as the NPPF, a material planning consideration. The harm is considered to outweigh the benefits of the scheme in this case.

### RECOMMENDATION

**That planning permission is refused for the following reason:**

01

In the opinion of the Local Planning Authority (LPA) the proposal would constitute an incongruous and alien form of development that would be at odds within the existing grain and character of the area by virtue of its backland position and its height and scale/massing in comparison to the existing dwelling when viewed from Friend Lane which would result in a material adverse impact on the character and appearance of the site and wider area. It is also considered that approving this development would set a harmful precedent for similar types of alien backland development which cumulatively would further erode the character and appearance of the area. The proposal is therefore contrary to Core Policy 9 (Sustainable Design) of the adopted Newark and Sherwood Core Strategy and Policy DM5 (Design) of the adopted Allocations and Development Management DPD as well as the advice within the NPPF, a material planning consideration. There are no other material planning considerations that outweigh this harm.

## Notes to Applicant

01

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason(s) for refusal. Working positively and proactively with the applicants would not have afforded the opportunity to overcome these problems, giving a false sense of hope and potentially incurring the applicants further unnecessary time and/or expense.

02

You are advised that as of 1st December 2011, the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority you are advised that CIL applies to all planning permissions granted on or after this date.

Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

## Background Papers

Application Case File

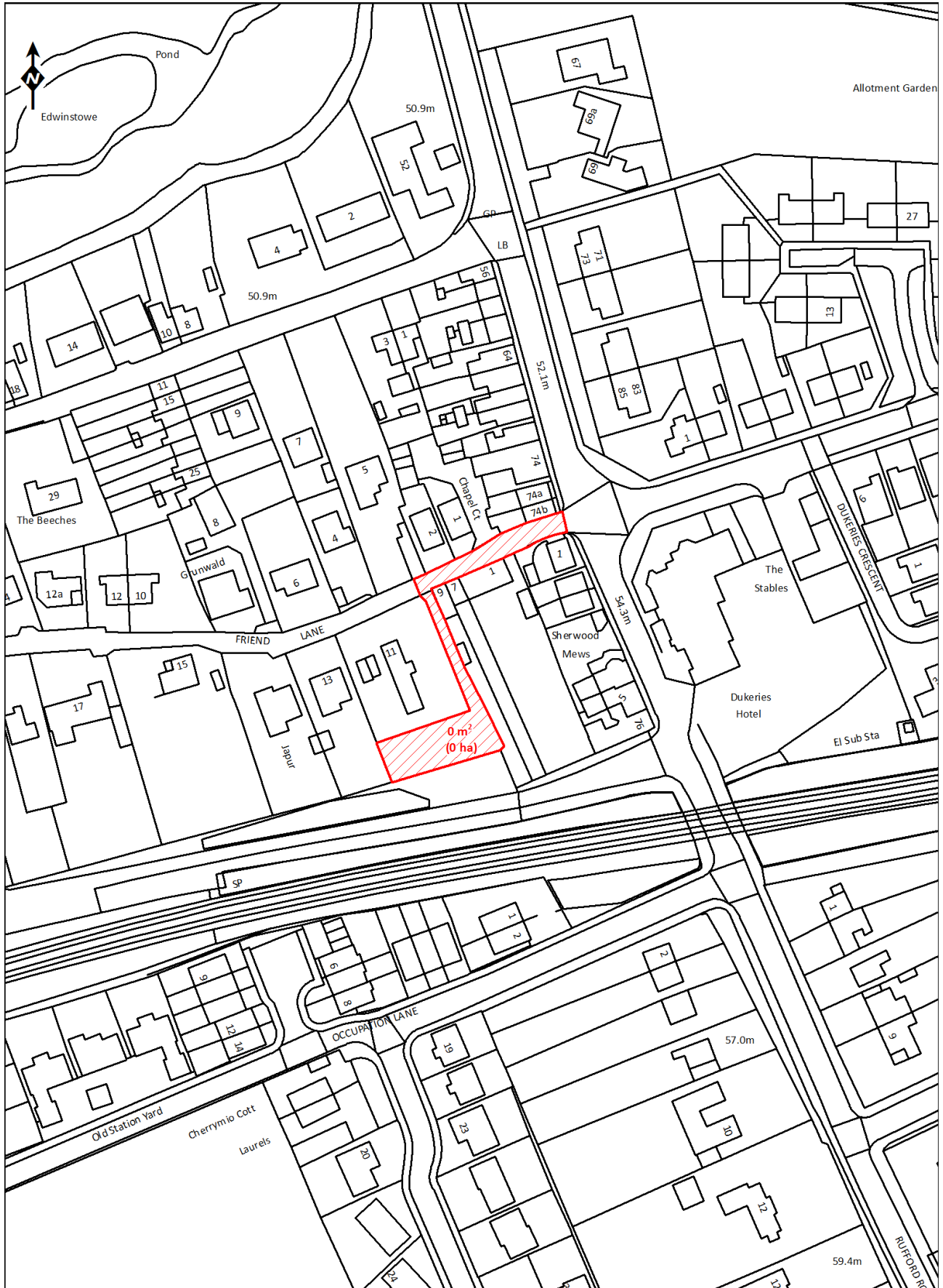
For further information, please contact Gareth Elliott on ext 5836.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**

**Business Manager Growth & Regeneration**

# Committee Plan - 18/00139/FUL



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## PLANNING COMMITTEE – 04 SEPTEMBER 2018

<b>Application No:</b>	<b>18/00698/FUL</b>		
<b>Proposal:</b>	<b>Application to vary plans condition attached to planning permission 06/01847/FUL to vary the approved plans</b>		
<b>Location:</b>	<b>Park Farm, Main Street, Carlton on Trent</b>		
<b>Applicant:</b>	<b>Peterhouse Construction Ltd - Mr Peter Harpham</b>		
<b>Registered:</b>	<b>16.04.2018</b>	<b>Target Date:</b>	<b>11.06.2018</b>

**This application is being presented to the Planning Committee in line with the Council's Scheme of Delegation as Sutton on Trent Parish Council has objected to the application which differs to the professional officer recommendation.**

### The Site

The application site relates to a roughly rectangular parcel of land (approx. 0.6ha) between Old Bell Lane and Main Street within the main built up area of Carlton on Trent and within the Conservation Area. The site contains a number of former barns, workshops and stables as well as semi-detached and terrace dwellings which are currently under construction. The site is bound to the west by B1164 and to the east and south by residential properties along Main Street. The main vehicular access to the site is via Old Bell Lane to the north. The majority of the site is located within Flood Zone 2.

### Relevant Planning History

06/01847/FUL - Conversion of former barns into 1 No. dwelling, former stables into workshop and carport, former cartshed into garages and erection of 4 No. detached dwellings, 3 No. terraced houses and associated garages. Refused 22/05/07. Allowed on Appeal 07.11.07.

17/00959/FUL - Proposed new dwelling - revised design to Plot 4. Approved 21.08.2017.

17/02228/NMA - Application for non-material amendment to planning permission 06/01847/FUL to include an approved plans condition to the original permission. Approved 02.01.2018.

### The Proposal

The proposal seeks a variation to the approved plans condition attached to the original consent for residential development of the site under section 73 of the Town and Country Planning Act 1990

A plans condition was attached to the original consent (Ref. 06/01847/FUL) by virtue of the non-material amendment application 17/02228/NMA. This condition lists all of the approved details that were granted planning permission by the Inspector appointed by the secretary of state on appeal Ref. APP/B3030/A/07/2048040 planning permission and APP/B3030/E/07/2048046 conservation area consent (see above site history section).

One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. In this respect the plans of the extant 2006 consent are controlled by the plans listed on the condition attached by virtue of the non-material amendment application 17/02228/NMA. This proposal seeks to vary that condition through the substitution of a new set of plans. These new plans show the following changes to the approved set of plans;

**Plot 1 – Drawing Number: 10A/32/2016**

- North East Elevation: replace ground floor lobby doors with glazing to be in line with main building line; infill of porch and replacement of recessed door and window with small window; alteration to air vents;
- South East Elevation: removal of roof light and modification to French door;
- North West Elevation: removal of roof light; addition of 3 windows; modifications to approved windows and alteration to design and pitch of the roof of connecting building;
- South West Elevation: addition of windows and doors and alteration to pitch and design of roof of connecting building;
- The new build element ('connecting building') that links the existing barn and outbuilding (which are to be converted), has had its design amended slightly – the pitch has been altered and style/materials (windows, doors, etc.) have been changed to better reflect its role as a link between the two buildings and to ensure it fits in better on a visual level.

**Plot 2 – Drawing Number: 22A/32/2016**

- South Elevation: removal of top section of large window; one window replaced;
- East Elevation: addition of one window.

**Plot 3 – Drawing Number: 32/32/2016**

- North Elevation: addition of two roof lights;
- West Elevation: repositioning of first floor window and modification to design of ground floor window;
- South Elevation: removal of large central glazed section and door, addition of 2 small windows at ground floor; replacement of ground floor window with doors to match opposite side;
- East Elevation: removal of one first floor window, modification to design of ground floor window.

**Plot 5/6/7 – Drawing Number: 53/32/3016**

- North East Elevation: additional window at first floor serving plot 7;
- Modification of door and window designs.

### **Plot 8 – Drawing Number: 82A/32/2016**

- South West Elevation: removal of bay window section;
- North West Elevation: removal of door and replacement with window; addition of two windows;
- North East Elevation: removal of one window; addition of a smaller window; remodelling of ground floor bay window;
- South East Elevation: removal of door and first floor window; removal of ground floor window; alterations to window and door in garden room;

### **Amended Site Plan – Drawing Number: 2G/32/2016**

- Plot 1: western boundary moved 1200mm west. A new 1.8m vertilap wooden fence along the new boundary with plot 8.
- Plot 3: western boundary moved to increased distance between western gable and plot 4's garage access.
- Plot 5+6: addition of a footpath to connect plot 6 with its parking spaces – this will run parallel to the landscaped mound on the western boundary of plots 5+6.
- Plot 7: repositioning of car parking spaces.

### **Public Advertisement Procedure**

Occupiers of fifteen properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local press.

### **Planning Policy Framework**

#### **The Development Plan**

#### **Newark and Sherwood Core Strategy DPD (adopted March 2011)**

Core Policy 3 - Housing Mix, Type and Density  
Core Policy 9 – Sustainable design  
Core Policy 10 - Climate Change  
Core Policy 12 - Biodiversity and Green Infrastructure  
Core Policy 14 - Historic Environment

#### **Allocations & Development Management DPD (adopted July 2013)**

DM5 – Design  
DM7 - Biodiversity and Green Infrastructure  
DM9 – Protecting and Enhancing the Historic Environment  
DM12 – Presumption in Favour of Sustainable Development



## **Other Material Planning Considerations**

- National Planning Policy Framework 2012
- Planning Practice Guidance, on line resource
- Section 66 of the Planning Act.

## **Consultations**

### **Carlton on Trent Parish Council – Objects to the proposal;**

There was much discussion about this application at last night's meeting, not least the fact that it was very difficult to work out what was changing.

The councillors voted unanimously to **oppose** the application.

The principal reasons for this were the impact of some changes on other properties:

1. Plot 3 East elevation - repositioning of windows. These windows overlook properties making privacy of neighbouring gardens an issue. Councillors believe that the original plans stated 3 smaller windows with obscure glass. Some months ago the issue was raised that there had been deviation from these plans and a site visit took place by Chris Briggs. The council were informed that changes had been made to meet current building regulations so two larger windows were necessary. However, residents from neighbouring properties report that objects such as step ladders can still clearly be seen inside the property so presumably inhabitants could equally see out. Should you be minded to approve the application the council would like to see a condition enforcing obscure glass in these windows. Councillors would also like confirmation that future residents would not be able to change these to clear glass.
2. Plot 3 North elevation - addition of roof lights. The dormer windows appear to sit on the wall joists meaning that they will overlook neighbouring gardens and will give direct line of sight straight into the windows of the barn resulting in loss of privacy for those properties. Should you be minded to approve the application the council would like to see a condition imposed so that these have to be set at a height which prevents inhabitants from looking out.
3. Plot 5/6/7 window - North East Elevation - addition of window at first floor. Whilst plot 5 and 6 do not overlook other properties, plot 7 does, so councillors are again concerned about the loss of privacy resulting from the addition of this window in plot 7 and would like to see this removed.

Just as a point of note, councillors were concerned that the plan being used is out of date - the public footpath no longer follows this route, having been moved several years ago - it would have helped to see the present route to ensure that none of these changes impacted upon the footpath.

Thanks again for the extension giving councillors chance to visit the site and fully consider the impact of the proposed changes.'

**Conservation Section –** 'Conservation has no objection to the amended details. The window tweaks and general modifications are relatively minor and cause no harm to the historic

environment in this case. The proposals are consistent with the overall approach envisaged when the scheme was originally approved.

I have taken into account our duties under sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 in reaching this view.'

**No other representations have been received.**

#### Comments of the Business Manager

Section 73 of the Town and Country Planning 1990 Act provides that applications may be made for planning permission to remove or vary conditions applied to a previously approved planning permission. It is stated that local authorities may decide whether to grant permission subject to differing conditions, remove the conditions altogether or refuse to alter the conditions. Thus it is possible to apply for conditions to be struck out, or for their modification or relaxation. The section makes it clear that in considering such an application a local planning authority may only consider the "question of the conditions" affected rather than considering the principle of the development again. However, in terms of decision making, a Section 73 application should be treated just like any other application, and due regard paid to the development plan and other material considerations.

An application under Section 73 is therefore a fresh planning application but should be determined in full acknowledgement that an existing permission exists on the site. This Section provides a different procedure for such applications for planning permission and requires the decision maker to consider only the question of the conditions subject to which planning permission was granted. As such, the principle of the approved development cannot be revisited as part of this application.

The principle of development has been established through the previous granting of planning permission (06/01847/FUL), it is only the amendments as outlined above in the proposals section of this report which are the subject of this application.

#### **Heritage Considerations and the Impact on Character of the Area**

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 'Act') requires the Local Planning Authority (LPA) to pay special attention to the desirability of preserving or enhancing the character and appearance of the CA.

Policies CP14 and DM9 of the Council's LDF DPDs, amongst other things, seek to protect the historic environment and ensure that heritage assets are managed in a way that best sustains their significance. Key issues to consider in proposals for additions to heritage assets, including new development in conservation areas, are proportion, height, massing, bulk, use of materials, land-use, relationship with adjacent assets, alignment and treatment of setting.

The importance of considering the impact of new development on the significance of designated heritage assets, furthermore, is expressed in section 16 of the National Planning Policy Framework (NPPF – revised July 2018). When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, for example. Any harm to, or loss of, the significance of a designated heritage asset

(from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

In terms of overall design considerations, The NPPF states that good design is a key aspect of sustainable development and new development should be visually attractive as a result of good architecture and appropriate landscaping. Core Policy 9 states that new development should achieve a high standard of sustainable design and layout that is of an appropriate form and scale to its context complementing the existing built and landscape environments. Policy DM5 of the DPD states that local distinctiveness should be reflected in the scale, form, mass, layout, design and materials in new development.

I note that colleagues in conservation raise no objection to the proposed development, and I concur with the expressed opinion in that the amendments to the approved scheme put forward within this application are minor in nature would not result in any harm to the historic environment. It is therefore considered that the proposal would accord with the aims of Policies CP14 and DM9 as well as being consistent with section 72 of the Act.

### **Impact on Residential Amenity**

Policy DM5 of the DPD states that the layout of development within sites and separation distances from neighbouring development should be sufficient to ensure that neither suffers from an unacceptable reduction in amenity including overbearing impacts, loss of light and privacy. The NPPF seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings. I have assessed the impacts on a plot by plot basis below.

#### *Plot 1*

With regards to the changes to plot 1, and in considering the additional glazing that would be positioned at ground floor level and there being a significant degree of separation between plot 1 and the closest neighbouring properties (in excess of 30m to No. 3 Park Farm Cottages and the properties on Old Bell Lane), I am of the opinion that the proposal would not result in any further material overlooking impact on existing neighbouring properties.

In regard to the additional windows on the north-west elevation facing plot 8, and having now received confirmation from the application that a 1.8m timber fence would run along the re-positioned boundary line between plot 1 and plot 8, I am satisfied that the additional glazing on this elevation would not result in any material overlooking impact on the future occupiers of plot 8.

As the other amendments relate to the removal of features, I am satisfied that the changes to plot 1 would not result in any material impact on neighbouring amenity.

#### *Plot 2*

The changes to the south elevation of plot 2 results in a loss of glazing, with the loss of the top section of the large window and the change from one window to an entrance door. As such, it is considered that there will be no undue impact on residential amenity of neighbouring properties. While the change to the east elevation would involve the addition of one window, as this would be positioned at ground floor level, it is also considered that there would be no material overlooking impact on neighbouring amenity over and above the approved scheme. Overall, the proposed

changes are considered to be minor in nature and would not result in any material impact on the character and appearance of the residential unit.

### *Plot 3*

The proposed amendments to plot 3 consist of additional rooflights on the north elevation, which faces into the development site. These rooflights would be positioned above 6 feet from floor level at their lowest point as confirmed by the agent and as such, as such I am satisfied that there would be no undue overlooking impact arising from the additional rooflights.

With regard to the re positioning of windows to this plot, given the separation distances it is not considered this would result in any undue overlooking to existing neighbouring properties.

The windows at first floor level on the east elevation are shown to be obscure glazed, with the escape window W15 confirmed by email to have a limiter restricting it to a maximum opening distance of 5 inches, which is considered to mitigate any material overlooking impact on neighbouring amenity.

The re-positioning of the window on the west elevation is considered to be minor in nature. This would serve an ensuite and a condition requiring it to be obscure glazed and non opening up to a minimum height of 1.7 above floor level would again mitigate any potential overlooking.

The removal of the glazed screen and insertion of 2 No. recessed windows at ground floor level to the south elevation are not considered to result in any material overlooking impact.

### *Plots 5 & 6*

There are no changes to plots 5 and 6, which make up 2 out of the 3 terrace dwellings. The change to the end terrace, plot 7, is detailed below.

### *Plot 7*

The single change to plot 7 is an additional first floor window on the north-east elevation. As this would serve a bathroom and the applicant has confirmed that obscure glazing would be used, I am satisfied that this would not result in any material overlooking impact.

### *Plot 8*

I am mindful of the additional glazing on the north-west elevation of plot 8, however as this elevation overlooks the rear garden and main road (B1104) beyond, I am satisfied that this change would not result in any material overlooking issues. The remaining changes involve the removal of windows and doors or minor remodeling of existing windows. As such these changes are considered to not result in any material impact on the amenity of neighbouring amenity or the character and appearance of this residential unit.

### *Other Layout Changes*

The remaining amendments relate to minor alterations to the layout within the development site, including internal boundaries and slight re-positioning of car parking spaces. These amendments are not considered to result in any material impact on the amenity of the future occupants of the development or existing neighbouring properties.

### **Impact on Highway Safety**

Policy DM5 is explicit in stating that provision should be made for safe and inclusive access to new development whilst Spatial Policy 7 encourages proposals which place an emphasis on non-car modes as a means of access to services and facilities.

As the vehicular and pedestrian entrance/exits to the site would remain identical to the approved scheme with only minor layout changes to pedestrian footpaths within the site, I am satisfied that the proposed amendments would not result in any material impact on highway safety at the site.

### **Other Matters**

In terms of the CIL liability for the proposal, the original development was granted in 2007 prior to the adoption of CIL and implemented within the timeframe set out in condition 1 of this permission. This application seeks minor material amendments to the approved scheme although there is no increase in floor space over the previously approved scheme. As such, it is considered that the development would be unlikely to be CIL liable.

### **Conclusion**

For the reasons outlined above it is considered that the proposed variation of the plans condition is acceptable and that the application should be supported.

As noted above, Section 73 allows the Local Authority to modify conditions as deemed necessary upon the granting of a variation. In this instance, details have been previously provided which have been considered acceptable to discharge conditions. As such it is recommended that the wording of the conditions be modified to reflect the previously approved details. An additional condition is also deemed necessary to secure the obscure glazing on the additional window on Plot 7 as previously discussed. There is no need for a commencement condition to be applied as the development has already started on site and therefore remains extant.

### **RECOMMENDATION**

**That planning permission is approved subject to the conditions and reasons shown**

#### **Conditions**

01

The development hereby permitted shall not be carried out except in complete accordance with the following approved plans, references

2G 32 2016 REV G SITE PLAN

10A 32 2016 REV A - PLOT 1 - PLANS AND ELEVATIONS

21A 32 2016 PLOT 2 - FLOOR PLAN

22A 32 2016 REV A - PLOT 2 – ELEVATIONS

31 32 2016 PLOT 3 - FLOOR PLANS

32 32 2016 – PLOT 3 ELEVATIONS

51 32 2016 – PLOT 5, 6 and 7 GROUND FLOOR PLANS

53 32 2016 - PLOT 5, 6 AND 7 ELEVATIONS

81A 32 2016 REV A PLOT 8 - FLOOR PLANS

82A 32 2016 REV A - PLOT 8 - ELEVATIONS

unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the permission.

Email from the agent dated 22/08/18 stipulating the boundary treatment along Plot 1 and 8 plus details of the restrictor on plot 3 first floor windows.

Reason: So as to define this permission.

02

The external elevations of development shall be constructed with the approved materials which consist of Autumn Russet and Oast Russet facing brickwork.

Reason: In order to preserve or enhance the character and appearance of the conservation area.

03

The development shall be carried out in accordance with the approved joinery details, as shown on plans Ref.

LNBU 204782 – 02 proposed door and skylight details Plot 1

LNBU 20478 – 03 proposed window details Plot 1

LNBU 204782 – 04 typical door and Window Detail

56/32/2016 casement window details plots 5, 6 and 7

57/32/2016 French door details Plot 5, 6 and 7

86/32/2016 casement window details plot 8

85/32/2016 casement window section Plot 8

87/32/2016 front entrance door and surround Plot 8

84/32/2016 vertically sliding sash window frame Plot 8

Reason: In order to preserve or enhance the character and appearance of the conservation area.

04

All pointing of existing brickwork shall be flush jointed using a lime based mortar mix, the extent of which, joint width and finish shall firstly be agreed in writing by the Local Planning Authority (LPA) following an inspection on site by the LPA's representative, of a sample panel of no less than 1 metre square prepared as the first pointing/re-pointing work to take place associated with the works/alterations hereby approved.

Reason: In order to preserve or enhance the character and appearance of the conservation area.

05

The approved planting scheme as shown on Plan Ref. drawing LNBU 80137-10 A together with a species list of the same number dated 16th April 2010 shall be carried out during the first planting season (November – March) following the date when the proposed dwellings are ready for occupation. The scheme shall be maintained for a period of 5 years following the date of planting. During this period any trees or shrubs which die or are damaged, removed or become seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally required to be planted.

06

The first floor bathroom window opening on the north-east elevation serving plot 7 shall be obscured glazed to level 3 or higher on the Pilkington scale of privacy or equivalent and shall be non-opening up to a minimum height of 1.7m above the internal floor level of the room in which it is installed. This specification shall be complied with before the development is occupied and thereafter be retained for the lifetime of the development unless otherwise agreed in writing by the local planning authority.

Reason: To safeguard against overlooking and loss of privacy in the interests of amenity of occupiers of neighbouring properties.

07

The dressing area and bedroom windows (W15 and W16) opening on east elevation on plot 3 at first floor level shall be obscured glazed to level 3 or higher on the Pilkington scale of privacy or equivalent and window W16 shall be non-opening up to a minimum height of 1.7m above the internal floor level of the room in which it is installed and window W15 shall have a restrictor in place as detailed by the email from the agent dated 21/08/18 restricting the maximum opening to 125mm. This specification shall be complied with before the development is occupied and thereafter be retained for the lifetime of the development unless otherwise agreed in writing by the local planning authority.

Reason: To safeguard against overlooking and loss of privacy in the interests of amenity of occupiers of neighbouring properties

## Notes to Applicant

01

This application has been the subject of pre-application discussions and has been approved in accordance with that advice. The District Planning Authority has accordingly worked positively and pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

02

The applicant is advised that all planning permissions granted on or after the 1<sup>st</sup> December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development given that there is no net additional increase of floorspace over the development that was granted planning permission under Ref. 06/01847/FUL in 07/11/07 prior to the adoption of CIL and lawfully implemented within the original timeframe.

## BACKGROUND PAPERS

Application case file.

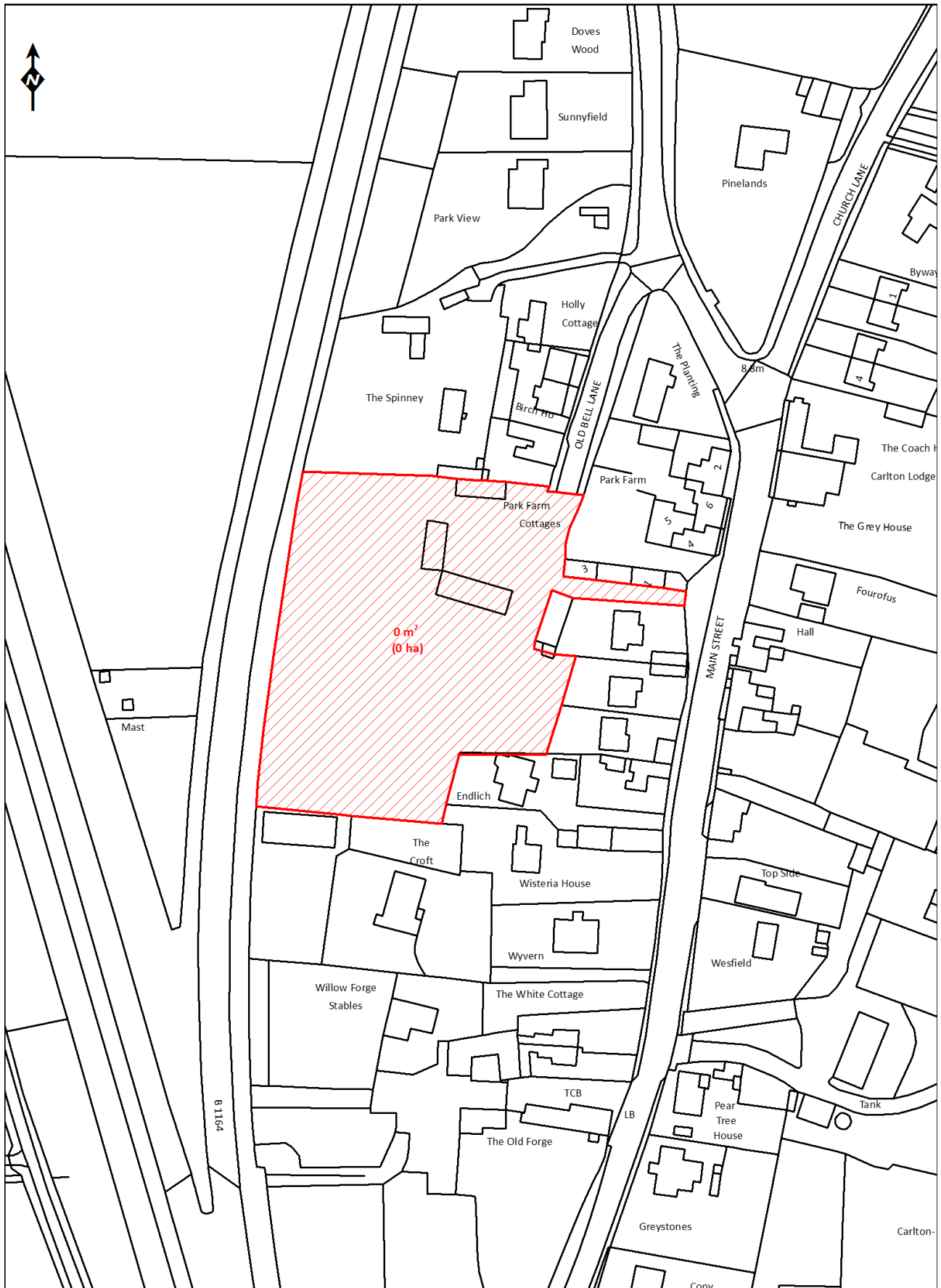
For further information, please contact Gareth Elliott on ext 5836.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**

**Business Manager Growth and Regeneration**





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## PLANNING COMMITTEE – 4 SEPTEMBER 2018

<b>Application No:</b>	<b>18/01258/FUL</b>		
<b>Proposal:</b>	<b>Demolish 2 no. semi-detached properties known as 37 and 39 Halloughton Road, Erect 2 no. detached replacement dwellings with garages within the boundaries of the above properties and garden</b>		
<b>Location:</b>	<b>37 And 39 Halloughton Road Southwell Nottinghamshire NG25 0LP</b>		
<b>Applicant:</b>	<b>Mr D T and Miss P A Orwin</b>		
<b>Registered:</b>	<b>04.07.2018</b>	<b>Target Date:</b>	<b>29.08.2018</b>
<b>Extension of Time Agreed Until 6<sup>th</sup> September 2018</b>			

**This application is being presented to the Planning Committee in line with the Council's Scheme of Delegation as Southwell Town Council has objected to the application which differs to the professional officer recommendation.**

### The Site

The application site relates to a plot of land of approximately 0.22 hecatres in extent which as existing forms the residential curtilages of the dwellings known as 37 and 39 Halloughton Road. The existing properties are a pair of semi-detached single storey bungalows orientated towards the vehicular access which serves the site from Halloughton Road. At the time of the Officer site visit the characteristics of the site vary within the site with the eastern area of the site being less manicured than the land immediately to the rear of the dwellings.

The site is within the urban boundary of Southwell as defined by the Proposals Map of the Allocations and Development Management DPD. The site is also within the designated Conservation Area Southwell Protected Views Zone (So/PV). The Potwell Dyke shares the north eastern boundary of the site. There is a public right of way along the vehicular access to the site which then follows the southern boundary of the site. The site is within Flood Zone 1 according to the Environment Agency maps and despite its proximity to the Potwell Dyke is shown to be at very low risk of surface water flooding.

Other than the aforementioned Potwell Dyke, the site is land locked by residential curtilages. Properties to the south along Halloughton Road are typically dormer bungalows. Properties to the west also along Halloughton Road are typically two storey. The dwelling to the east; 39a Halloughton Road is a dormer bungalow with its principle elevation orientated towards the site. The dwelling to the north; 35a Halloughton Road forms a single storey bungalow with its principle elevation towards the northern boundary of the site. The access to the site also serves as the vehicular access for 35a and 39a thus serving a total of four dwellings.

## Relevant Planning History

The following planning history relates to the eastern area of the site (i.e. the wider curtilage rather than the footprint of the properties themselves):

**17/00771/FUL** - Erection of 1 No detached dwelling with attached garage.

*Application determined by Planning Committee on June 5<sup>th</sup> 2018 and refused by decision dated 6<sup>th</sup> June 2018 for the following reason:*

The proposal relates to the erection of a single detached dwelling with a proposed vehicular access utilising an existing access from Halloughton Road. The access currently serves four dwellings but is also designated as a public Right of Way- Southwell Footpath Number 27. The Footpath is officially recorded on the County's Definitive Map of Rights of Way and further information recently obtained indicates that a public footpath was expressly reserved along the southern boundary of the access way over land within the ownership of No. 39, Halloughton Road. There is a need to ensure safe access by pedestrians (who have a legal right to use the route unhindered). In line with comments of Nottinghamshire County Council as the Highways Authority, officers consider that the current proposal would intensify the existing vehicular use of the access to a degree which would amount to an unacceptable level of harm to pedestrian safety of the users of the Right of Way.

In addition to the above identified harm, the access road does not meet current standards to allow for two vehicles to pass. The current physical boundary constraints prevent the potential to mitigate this impact through adequate widening to the required width of 5.25m. This presents the potential for vehicular obstruction to the public highway as vehicles are waiting to access and egress the site.

Despite best endeavors from the applicant to overcome the aforementioned harm, the Highways Authority and consequently officers of the Local Planning Authority are of the view that the proposal is unacceptable in highway terms causing demonstrable harm to both pedestrians and the efficient movement of the highways network. This is contrary to Spatial Policy 7 and the relevant aspects of Policy DM5 as well as the intentions of the NPPF which form a material consideration to the decision. No other material considerations have been identified which would sufficiently outweigh this harm.

## The Proposal

The application seeks full planning permission for the demolition of the two existing bungalows which exist within the site and their replacement with two detached dwellings. The design of one of the dwellings has evolved during the life of the application owing to Officer negotiations. For the avoidance of doubt, the proposal has been considered on the basis of the following plans:

- Proposed Site Layout – DO/HRS/P2P Rev. D (received 23<sup>rd</sup> August 2018)
- Proposed Dwelling No. 37 Plans and Elevations – HRS/P2/2 Rev. C (received 8<sup>th</sup> August 2018)
- Proposed Dwelling No. 39 Plans and Elevations – HRS-P2-1 Rev. A (received 3<sup>rd</sup> July 2018)
- Proposed Access Improvement Details – DO-HRS-P2D Rev. A (received 3<sup>rd</sup> July 2018)
- Proposed Boundary Privacy Fence Plan and Elevation – HRS-P2-F Rev. A (received 3<sup>rd</sup> July 2018)

- Existing Site Layout Plan – DO/HRS/EX (received 4<sup>th</sup> July 2018)
- Site Location Plan – DO-HRS-LP2 (received 3<sup>rd</sup> July 2018)
- Topographical Survey - JPD/MSE/3673 Drawing No. 2 (received 3<sup>rd</sup> July 2018)

The application has also been accompanied by the following supporting documents:

- Design and Access Statement;
- Heritage Statement;
- Method Statement for Tree Protection;
- Flood Risk Statement.

The dwellings would be positioned perpendicular to one another such that the proposed replacement for no. 37 would be orientated towards the shared access with a detached garage to the north of the plot. This property would be positioned broadly at the point of the site where the existing semi-detached bungalows are positioned. The replacement dwelling for no. 39 would be orientated towards the southern boundary towards the access to the adjoining property at no. 39a and the public footpath beyond. This dwelling is proposed to have an attached garage projecting at a perpendicular angle to the principle elevation. No. 39 would be positioned towards to the east of the site in an area which is currently vacant of built form.

The maximum ridge height of no. 37 is approximately 6.1m with an eaves height of approximately 2.7m. The maximum ridge height of no. 39 is approximately 6.2m with an eaves height of approximately 2.6m. Materials proposed comprise a variety of facing brick, stone, render and Cedar boarding with a tiled roof. The dwellings have been designed as dormer bungalows with 5 roof dormers proposed to serve no. 37 and 3 proposed to serve no. 39.

The application also details works to the existing access including works to the verges to ensure a minimum width of 3.5m.

All trees and hedges to the boundaries are to be retained and maintained with small ornamental trees to the centre of the site to be removed.

#### Departure/Public Advertisement Procedure

Occupiers of 20 properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local press.

#### Planning Policy Framework

##### The Development Plan

##### **Southwell Neighbourhood Plan (made October 2016)**

Policy SD1 - Delivering Sustainable Development  
 Policy E2 – Flood Resilient Design  
 Policy E3 - Green Infrastructure and Biodiversity  
 Policy E4 - Public Rights of Way and Wildlife Corridors  
 Policy E5 – Green Link  
 Policy DH1 – Sense of Place  
 Policy DH3 – Historic Environment

Policy TA1 – Cycle and Pedestrian Routes  
Policy TA2 – Public Transport Connectivity  
Policy TA3 – Highways Impact

**Newark and Sherwood Core Strategy DPD (adopted March 2011)**

Spatial Policy 1: Settlement Hierarchy  
Spatial Policy 2: Spatial Distribution of Growth  
Spatial Policy 7: Sustainable Transport  
Core Policy 3: Housing Mix, Type and Density  
Core Policy 9: Sustainable Design  
Core Policy 14: Historic Environment

**Allocations & Development Management DPD (adopted July 2013)**

Policy So/HN/1 – Southwell Housing Need  
Policy So/PV – Southwell Protected Views  
Policy DM1 – Development within Settlements Central to Delivering the Spatial Strategy  
Policy DM5 – Design  
Policy DM9 – Protecting and Enhancing the Historic Environment  
Policy DM12 – Presumption in Favour of Sustainable Development

**Other Material Planning Considerations**

- National Planning Policy Framework 2018
- Planning Practice Guidance 2014

**Consultations**

**Southwell Town Council** – *Additional comments received 24<sup>th</sup> August 2018:*

The Council previous comments still stand.

*Original comments received:*

Southwell Town Council considered application 18/01258/FUL 37-39 Halloughton Rd and agreed by majority to object to this application and to ask that Cllr Bruce Laughton call in this application for the following reasons:

It is contrary to the Neighbourhood plan policies:

SD1 Sustainable Development & HE1 House Type and Density -Over intensification of site, with the design of the proposed houses being dissimilar to other in the area and the increase is Massing between 3 & 4

HE1-Loss of smaller bungalows

The designs increase the Massing at the edge of the town.

E2 & E5 Lack of 8mt buffer strip to the property and also the proposal to enclose the dumble by the planting a hedge at the rear of the garden

It was mentioned by a member of the public that the ownership certificate submitted is incorrect.

**NSDC Conservation – Demolish 2 no. semi-detached properties known as 37 and 39 Halloughton Road, Erect 2 no. detached replacement dwellings with attached garages within the boundaries of the above properties and garden**

While I have been to site and made my own assessment, for ease I repeat some elements of my colleague's comments on the previous application at this site (17/00771/FUL).

While the housing facing into Halloughton Road are not within Southwell Conservation Area Appraisal number 37 and 39 Halloughton Road and the land adjacent are within the boundary, within the Westgate Character Area, as identified in the Conservation Area Appraisal.

Number 37 – 39 are semi-detached bungalows of a mid to later C20 date. They are of no architectural or historic merit. As part of Halloughton Road they sit with other buildings of a similar age, of a mixture of one, one and half and two storey modest houses. To the north of the proposal site is one of the dumbles/dykes that are such a feature of Southwell. In this particular case there is no footpath along this part of the dumble. There is, however, a public footpath bringing people right up to the proposal site and then down a route lined with a close boarded fence, keeping wider views back into the Conservation Area constrained at this point. So while the site is set well back from Halloughton Road it has some, but limited presence in the public realm. To the north of the application site, on the other side of the dumble, the character becomes more historic with older houses and former industrial buildings being located close to the landmark Grade II listed Holy Trinity Church. From the gardens of 37-39 Halloughton Road the spire of the church is seen.

The proposal has the potential to affect the character and appearance of the Southwell Conservation Area and the setting of the Grade II listed church.

#### *Legal and policy considerations*

Southwell Neighbourhood Plan, specifically the Design and Heritage section .

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. In this context, the objective of preservation is to cause no harm. The courts have said that these statutory requirements operate as a paramount consideration, 'the first consideration for a decision maker'.

Section 72 of this Act requires the Local Planning Authority (LPA) to pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area. The same weight of this duty applies.

Policies CP14 and DM9 of the Council's LDF DPDs, amongst other things, seek to protect the historic environment and ensure that heritage assets are managed in a way that best sustains their significance.

The importance of considering the impact of new development on the significance of designated heritage assets, furthermore, is expressed in section 12 of the National Planning Policy Framework (NPPF). Paragraph 132 of the NPPF, for example, advises that the significance of designated heritage assets can be harmed or lost through alterations or development within their setting. Such harm or loss to significance requires clear and convincing justification. The NPPF also makes it clear that protecting and enhancing the historic environment is sustainable development (paragraph 7).

#### *Principle of demolition*

Having inspected the bungalows and found them to be of no architectural or historic merit I have no in-principle objection to their demolition, which will not in itself cause any harm to the character or appearance of the Conservation Area or the setting of the nearby church.

#### *Principle of new development here.*

I have no in-principle objection to two new dwellings here, which includes not just the replacement of the existing bungalows but also the erection of a new dwelling on the land to the rear (east) of the bungalows. While this is essentially backland development, in plan form terms a new dwelling to the rear of 37-39 would not necessarily be out of character as this would essentially read as an infill between 39 and 39a, within a building line created by numbers 35a, 37-39, 39a and 65a. While I note the garden area of number 39 is somewhat run down at the moment this is immaterial to my assessment of whether this is suitable for new development, which is based on the size of the plots, size of the buildings within the plots, spacing between the buildings and the character and appearance of this area.

In area where there is already a building line established, and where there seems to be a reasonable space for new development, and where the buildings in this building line are of no specific significance, there is no Conservation objection to the principle of new development here.

#### *Design*

In terms of the design of the proposed new build, I note they are one and a half storeys compared to the single storey bungalow currently on the site. While I accept the new buildings will be taller, this is not necessarily out of character - this part of the Conservation Area being well represented with positive and neutral buildings of this scale.

While the glimpses towards the church spire would be more limited by taller development this is in relation to a limited and incidental view from a footpath which is quickly enclosed by close boarded fencing, the overall impact on the significance of the church being negligible.

In terms of the size of the proposals I note they are materially larger than the existing bungalows and the other buildings in this building line. They do have a rather uncharacteristically sprawling footprint and elevation, but this is more an issue of general planning character rather than any sustained conservation objection, owing to the limited visibility of the proposal and limited character contribution of the area generally. I note the previous Conservation Officer raised a similar point on the scale of the buildings but felt this was not materially harmful to the significance of the identified heritage assets, and I maintain this view.

Despite their elongated elevations, which could be broken up or reduced, I still believe the proposal will not harm the character and appearance of the Conservation Area or the significance of the Listed Building (through impact on its setting).

My only remaining point is that I would want to ensure a soft and green character is maintained to the boundary with the dumbie.

**Southwell Civic Society** - This is over intensive development of this back land site. These two properties replace two semi-detached bungalows, however the new proposal covers a much larger area.

Whilst the ownership of the site extends to the centre of the Dumbie, which is some three metres deep at this point, the planting of a yew hedge along the edge of the watercourse is completely unacceptable. The owner will have riparian rights and with a hedge in place will not be able to facilitate the maintenance of the stream. The hedge will occupy the area required in time of flood.

The strip alongside the Dumbie should be left wild and uncultivated to maintain the important wildlife corridor through this part of Southwell. Permission for any scheme on this site should be subject to a condition that this area should be left natural and uncultivated as is the case of the gardens in Westgate Mews where between 10 and 15 metres have to be left wild; re Applications 00/00952/FUL and 02/02643/FUL. The latter was subject to Appeal and the Inspector stated in his conclusions “ *I shall ensure that details are submitted that establish the locations and treatment of the site boundaries and ensure the preservation of the land at Westhorpe Dumbie*”.

The access to these properties is also a public right of way. Parking provision is proposed to be three for each house and together with on-line shopping and the postal service now using vans there will be an increase in vehicular movements to the detriment and danger of pedestrians using the shared driveway.

**NSDC Access and Equalities Officer** – Observations in relation to Building Regulations.

**NCC Highways Authority** – Since this is a like-for-like replacement of two dwellings with another two, no objections are raised to the principle of this proposal since there is unlikely to be any significant increase in traffic movements.

However, the details of the footpath / access improvements shown on drawing DO/HRS/P2P/C should be amended and could be agreed by condition (see below).

Block paving should not be used as this would create a maintenance issue, and the hooped railing /barriers should be excluded.

Notwithstanding any improvements agreed, such works will not and cannot be viewed to compromise or remove any over-riding rights of way.

Subject to the above, the following condition is recommended:

Notwithstanding the details shown on drawing DO/HRS/P2PC, no development hereby approved shall commence until footpath/access improvements are firstly amended, submitted to, and approved in writing by the LPA in liaison with the Highway Authority.

**NCC Rights of Way Officer** – No comments received.



**NCC Flood – Additional comments received 24<sup>th</sup> August 2018:**

No objections subject to the following:

1. The development should not increase flood risk to existing properties or put the development at risk of flooding.
2. Any discharge of surface water from the site should look at infiltration – watercourse – sewer as the priority order for discharge location.
3. SUDS should be considered where feasible and consideration given to ownership and maintenance of any SUDS proposals for the lifetime of the development.
4. Any development that proposes to alter an ordinary watercourse in a manner that will have a detrimental effect on the flow of water (eg culverting / pipe crossing) must be discussed with the Flood Risk Management Team at Nottinghamshire County Council.
5. It is recommended that the applicant familiarises themselves with riparian responsibilities and maintenance requirements for the watercourse adjacent to the site and designs the boundary in a manner that will allow access to the watercourse when necessary. It is recommended that a 4m easement is provided from the centreline of the watercourse to any physical boundary. This will allow vehicular access if required.

*Original Comments received:*

No objections subject to the following:

1. The development should not increase flood risk to existing properties or put the development at risk of flooding.
2. Any discharge of surface water from the site should look at infiltration – watercourse – sewer as the priority order for discharge location.
3. SUDS should be considered where feasible and consideration given to ownership and maintenance of any SUDS proposals for the lifetime of the development.
4. Any development that proposes to alter an ordinary watercourse in a manner that will have a detrimental effect on the flow of water (eg culverting / pipe crossing) must be discussed with the Flood Risk Management Team at Nottinghamshire County Council.

**The Environment Agency** – I refer to the above application which was received on the 9 August 2018.

According to our information the site falls in Flood Zone 1 and thereby not normally an application that we expect to be consulted on

The flood risk is contained to the watercourse at this point and the development is not immediately adjacent to the watercourse so it doesn't raise any significant concerns.

The LLFA have been consulted and provided comments on surface water flood risk.

**Trent Valley Internal Drainage Board** – The site is outside of the Trent Valley Internal Drainage Board district but within the Board's catchment.

There are no Board maintained watercourses in close proximity to the site, however, the development is in close proximity to the Potwell Dyke. The Board is aware of flooding problems in the Southwell area.

The Board's consent is required for any works that increase the flow or volume of water to any watercourse or culvert within the Board's district (other than directly to a main river for which the consent of the Environment Agency will be required).

Surface water run-off rates to receiving watercourses must not be increased as a result of the development.

The design, operation and future maintenance of site drainage systems must be agreed with the Lead Local Flood Authority and Local Planning Authority.

**Cadent Gas** – Should you be minded to approve this application please can the following notes be included as an informative note for the Applicant

Considerations in relation to gas pipeline/s identified on site:

Cadent have identified operational gas apparatus within the application site boundary. This may include a legal interest (easements or wayleaves) in the land which restricts activity in proximity to Cadent assets in private land. The Applicant must ensure that proposed works do not infringe on Cadent's legal rights and any details of such restrictions should be obtained from the landowner in the first instance.

If buildings or structures are proposed directly above the gas apparatus then development should only take place following a diversion of this apparatus. The Applicant should contact Cadent's Plant Protection Team at the earliest opportunity to discuss proposed diversions of apparatus to avoid any unnecessary delays.

If any construction traffic is likely to cross a Cadent pipeline then the Applicant must contact Cadent's Plant Protection Team to see if any protection measures are required.

All developers are required to contact Cadent's Plant Protection Team for approval before carrying out any works on site and ensuring requirements are adhered to.

Email: [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) Tel: 0800 688 588

### *Affected Apparatus*

The apparatus that has been identified as being in the vicinity of your proposed works is:

- Low or Medium pressure (below 2 bar) gas pipes and associated equipment. (As a result it is highly likely that there are gas services and associated apparatus in the vicinity)

### *Requirements*

*BEFORE carrying out any work you must:*

- Carefully read these requirements including the attached guidance documents and maps showing the location of apparatus.
- Contact the landowner and ensure any proposed works in private land do not infringe Cadent and/or National Grid's legal rights (i.e. easements or wayleaves). If the works are in the road or footpath the relevant local authority should be contacted.

- Ensure that all persons, including direct labour and contractors, working for you on or near Cadent
- and/or National Grid's apparatus follow the requirements of the HSE Guidance Notes HSG47 'Avoiding Danger from Underground Services' and GS6
  - Avoidance of danger from overhead electric power lines'. This guidance can be downloaded free of charge at <http://www.hse.gov.uk>
- In line with the above guidance, verify and establish the actual position of mains, pipes, cables, services and other apparatus on site before any activities are undertaken.

**Ramblers Association** - The Design and Access Statement acknowledges the close involvement of Southwell Footpath 27 with this development. We have no objection.

**Representations have been received from 13 local residents/interested parties which can be summarised as follows:**

#### Principle of Development

- The Neighbourhood Plan has identified the need for housing to be for an ageing population with a particular need for smaller units
- This is a windfall site and in complete opposite to what is needed
- The plans should build two new bungalows in the same position or the existing bungalows should be refurbished
- The NPPF states that the policies in the Neighbourhood Plan will take precedence over exiting non-strategic policies in the local plan
- SNP HE1 seeks to increase smaller bungalows and this policy takes precedence – to approve this application would set a dangerous precedence
- Southwell has an abundance of large homes
- No objection to development per se but object to this proposal
- Very few bungalows are being built – the council are in danger of losing two sought after properties
- The site offers the elderly chance to see grandchildren using the nearby school at the moment
- If the application were to be approved it would send a message to developers that they can knock down bungalows and build houses
- The revised NPPF gives precedence to Neighbourhood Plans in the planning process

#### Impact on Character including the Conservation Area

- The site is within the Conservation Area because it is within a stone's throw of the Holy Trinity Church which is a listed building
- It is important to protect the sense of greenery and this development is an over intensification of the area
- The development would reduce the visibility of the Church
- The application site is visible from the public footpath
- Detritus mentioned in the previous report is the applicants own rubbish and should be dealt with by enforcement
- The design of the dwellings are executive dwellings with a sprawling footprint
- The architectural style is at odds with the established buildings around the plot, i.e. bungalows

- The Conservation Area should be protected for future generations
- The footprint is too close to the Dumble
- Views from neighbouring properties would be prevented from views towards the Church
- Poor quality design is a breach of policy
- The existing bungalows have been badly maintained and do detract from the Conservation Area
- The proposed dwellings are substantially larger and taller than the properties in the vicinity
- The Dumble is an important local feature such to SNP policies E2 and E5
- The topographical survey falls the differing gradient of the site
- The Conservation Officer opposes any incursion into the Dumble but the applicant proposes to lay a Yew hedge
- The Planning Inspectorate has made reference to the high quality design and sense of place of the area in the appeal decision for Denholme Cottage
- The dwellings would be materially higher than the adjoining properties and incorporate full dormers
- The complex roofs are inconsistent with adjoining properties
- The two dwellings would be overbearing and sprawling on the size of the plots
- The dwellings are not in keeping with the surrounding properties
- The smaller property is extremely close to all boundaries imposing on the Dumble
- The proposal will improve the existing untidy and unkempt drive
- The border to the site has already been improved with the planting already done
- The revised plans show modest reduction in mass but makes little difference to the sprawling footprint which is out of keeping and has no sense of place
- No. 39 is too large for its plot and the footprint needs to be reduced which would result in a major re-design

#### Impact on Trees and Ecology

- The applicant has already removed several mature trees and an established hedge in bird breeding season
- There is little room for suitable trees in the new application

#### Impact on Highways including Public Right of Way

- The use of the access has intensified since the bungalows were built in the 1960s which has exasperated access problems
- The application does not overcome the footpath issues which were identified by the previous refusal
- There would be a health and safety risk to the footpath which is heavily used
- The number of bedrooms would mean 3 or more cars per dwelling
- No public or private vehicular rights exist or can be acquired
- The footpath is administered by NCC Highways and neither NSDC nor the applicant, have any control or jurisdiction over this public asset
- The minimum access width required is 5.25m
- The properties footprint reduces parking and circulation
- The traffic flow for the proposed properties would be greater than the existing bungalows
- The access onto Halloughton Road has poor visibility splays
- The right of way is used by elderly and children
- Delivery vehicles frequently can't turn around so reverse out of the access

- The access off Halloughton Road is unrealistic to accommodate the volume and size of the vehicles
- Deliveries of materials would be impossible down the lane incorporating the public footpath
- Concern about comings and goings of traffic from any redevelopment of the site
- Delivery vehicles reverse down the access as they cannot turn around
- There would be conflict with vehicles getting in and out
- The proposal is not 'like for like' as suggested by the Highways Authority
- The no right turn rule to Halloughton Road from Westgate is frequently broken

#### Impact on Infrastructure including Flooding

- Neighbouring properties will be compromised in terms of the capability of the sewerage network
- The application proposes the enclosure of part of the Dumble and cultivation of the rear boundary hedge adjoining the watercourse with no provision for any form of buffer as required by policy E2
- SNP E2 requires an 8m buffer from the boundary of development to the top of the bank of any watercourse for maintenance and pollution reasons
- The revised position of the hedge falls well within the Dumble and on a very steep bank which is not shown on the plans
- The application should be refused as it proposes to develop within the flood zone which is contrary to planning policy at all levels

#### Impact on Amenity

- The dormers which face south overlook the rear gardens on Halloughton Road
- The flank elevation on no. 39 faces the front and main living rooms of 39a with a higher ridge height
- Private amenity space is reduced to 3.5m when the requirements of the SNP and the Conservation Officer are taken into account and would be north facing which is far too small for a property of this size
- The properties would cause an overshadowing of neighboring properties
- The height of the dwellings would intrude on neighbouring privacy
- The proposed property at no. 39 would lead to light pollution as there are many areas of substantial glazing situated very close to adjoining properties and existing properties which leave external lights on overnight
- The proposed property has to accept the nature of the surrounding as they exist and cannot require adaptations elsewhere to render it more habitable

#### Other Matters

- The original application was incorrect in signing Certificate A as there were other owners of the site than the applicant
- The application should not be entertained on the basis of the incorrect certificate
- The original plans for 39a have already been modified since it was built and it is now operated as a business
- No early consultation with the community has taken place

- Revised re-consultation letters have not been received from a number of neighbouring parties
- The changes, amendments and the council website failures have shortened the response time for revised comments – especially during the holiday period
- People may not have been persistent to approach the Council directly for the plans when the website was down
- The application remains invalid as the published contains an incorrect certificate of ownership
- The Case Officer has failed to do their job properly and are relying upon the Courts to avoid the consequence of their actions
- The front page of another applicant is a fresh application onto this application
- The public now has full reason to be confused as to the nature of this application which records two application forms with different applicants – one of which is invalid due to an incorrect ownership certificate and the other is invalid because it is incomplete
- The public do not know who the applicant is

### Comments of the Business Manager

#### *Preceding Matters*

As is referenced above through both the summary of neighbouring comments but also the comments of the Town Council, concern was raised in respect to the original application submission that the signing of ownership Certificate A was incorrect in that notice was not served on all owners of the site. This has been resolved during the life of the application with a revised section of the application form and revised Certificate A being received on 9<sup>th</sup> August 2018 adding Miss P A Orwin as a joint applicant. Officers have taken the opportunity to discuss the matter with internal legal expertise and it has been confirmed that the authority may agree to amendments to the application, provided that the changes are not so substantial that the application can only be considered fairly and appropriately by requiring a fresh application to be lodged. Despite the comments that there is confusion as to who the applicant is; Officers are confident that the public facing planning file is clear in that the updated applicant details is clearly marked as 'Amended Application Form (Applicant Details)' and postdates the original form. To confirm, it is the submission of Officers that changes to the applicant does not prejudice any party and that the application has been lawfully made and thus can be considered.

#### *Principle of Development*

The NPPG acknowledges that Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area, thus providing a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.

Following public consultation and independent examination, at its council meeting on 11 October 2016 Newark and Sherwood District Council adopted the Southwell Neighbourhood Plan. The Neighbourhood Plan now forms part of the development plan for the district and its policies are a material consideration alongside other policies in the development plan and carry weight in the determination of planning applications in Southwell. In this instance the most relevant policies in the Neighbourhood Plan are listed above and are considered against the relevant aspects of the proposal in the assessment below.

The adopted Neighbourhood Plan for Southwell outlines an overall support for residential development within the town, through meeting the strategic requirements for growth whilst maximizing the benefits for the community (Objective 6). Spatial Policy 1 of the Core Strategy outlines the settlement hierarchy for the District identifying Southwell as a Service Centre. It is intended that Service Centres will act as a focus for service provision for a large local population and a rural hinterland. As such residential development within the site is acceptable in principle provided the proposal accords with the remainder of the development plan.

It is relevant to acknowledge that at the present time, the LPA is well advanced in the process of a plan review following the Independent Examination which took place on February 1<sup>st</sup> and 2<sup>nd</sup> 2018. For the avoidance of doubt the Council does currently have a 5 year housing land supply against the only OAN available and produced independently by consultants and colleague Authorities. I do not consider it necessary to rehearse the full position in respect of this matter given the support for additional housing in Southwell in principle. Whilst the NPPF identifies that there is a presumption in favour of sustainable development, this does not automatically equate to the development being granted as other material considerations need to be taken into account.

The site lies within the Conservation Area for Southwell. As such any proposed development must comply with the principles of NP Policy DH3; Policy DM9 and Core Policy 14. Criteria within these policies require proposals to take into account the distinctive character and appearance of the Conservation Area.

#### *Housing Delivery*

The proposal relates to the demolition of two semi-detached dwellings and replacement with two detached dwellings. Therefore numerically the proposal does not change the number of residential units within the site.

Notwithstanding this, Officers fully concur with the comments received through the consultation period that the nature of the properties which would replace the existing dwellings are materially different in their size and design. The existing properties are both three bedrooms. The proposed dwelling at No. 37 would deliver 4 bedrooms at first floor (as well as an office above the detached garage which could be converted to bedroom accommodation without the need for a separate planning application). The proposed dwelling at no. 39 is three bedrooms (although again with a spacious ground floor office which could be converted to a bedroom).

It is fully appreciated that the stance of the Neighbourhood Plan shows an encouragement for the provision of smaller homes for young people and families including through the emphasis of bungalow accommodation. It is equally acknowledged that Policy So/HN/1 of the Allocations and Development Management DPD seeks to ensure that the majority of new housing on windfall sites within Southwell will be one or two bedroom units in line with the identified housing need. However, the policy which dictates Housing Type and Density – Policy HE1 of the NP relates to developments of 11 dwellings or more and therefore would not be directly applicable to the current proposal for 2 replacement dwellings.

It is a material planning consideration that the authority has been previously challenged on its application of Policy So/HN/1 through an appeal at Brooklyn on Lower Kirklington Road (APP/B3030/W/17/3179351). The Inspectors decision allowing the appeal was dated 17<sup>th</sup> January 2018. In respect to matters of housing need the Inspector makes the following comments:

9. However, the ADMDPD was adopted in 2013 and the justified reasoning for policy So/HN/1 explains that it is based upon the Housing Needs Assessment which informed the preparation of the Core Strategy. As the Core Strategy was adopted in 2011, the data upon which this policy is based is at least 7 years old.

10. The most recent evidence on housing need is the Housing Market Needs Sub Area Report which was published in 2014. It found in Southwell that there was a greater need for houses of 3 or more bedrooms than there was for properties of two bedrooms or less. As a result, the proposed development would provide housing of a size for which the current local evidence is the greatest need exists in Southwell. This is an important material consideration which, in my judgement, given that policy So/HN/1 of the ADMDPD is based upon significantly older evidence, outweighs non-compliance with this policy. Owing to the more recent evidence on housing, I find that the proposal would comply with Core Policy 3 of the Core Strategy.

Bearing in mind the conclusions the Inspector drew regarding So/HN/1, I have therefore considered the most up to date evidence of the housing need in Southwell which is contained within the Housing Needs Survey Sub Area Report 2014 by DCA. This provides that in the Southwell Sub Area (where this site falls) the most needed type of accommodation are 2 beds (37.9%) followed by 4 beds (33%) followed by 3 beds (16.3%) followed by 1 beds (10.1%) and finally five or more beds (2.7%). It confirms that 'In the market sector the main size of property required by both existing and concealed households moving is two bedrooms.'

On the face of it therefore, the Inspectors conclusions appear to be incorrect. However, following further interrogation it appears that the Inspector was making reference to a cumulative need, i.e. the cumulative percentage need for 3, 4 and 5 beds is 52% which is greater than the cumulative percentage need for 1 and 2 beds at 48%. This does not change the position that the *greatest* need in the market sector is for 2 bed units.

Another factor which requires consideration is that the current application is for two replacement dwellings. Given that the existing dwellings are 3 bedrooms, the overall addition in bedrooms would be one. If applications were submitted to extend the existing bungalows to a three and four bed unit, it is likely that this would be acceptable under the provisions of householder planning policy. Thus, whilst it is an undesirable position in the context of the Neighbourhood Plan aspirations and comments received, when taking account of all of the matters discussed above, Officers do not consider that it would be reasonable to resist the application purely on the basis that it does not deliver one or two bedroom units as true single storey bungalows.

#### *Impact on Character including the Conservation Area*

Although the proposal relates to the replacement of two existing dwellings, given the siting of the proposed no. 39 towards the east of the site (an area which is currently an area which is void of built form being part of the wider residential curtilages of the existing bungalows), the proposed development would introduce an element of backland development. Policy DM5 states that proposals creating backland development will only be approved where they would be in keeping with the general character and density of existing development in the area. As was the case with the previous application on this part of the site (17/00771/FUL), there is an acceptance that a backland character has already been established in the immediate site surroundings both from the existing dwellings (where the proposed no. 37 would be positioned) as well as the more recent dwellings at 35a and 39a. If this proposal were to be approved, there would not be a risk of setting



a precedent in the immediate area given that the proposed dwellings would occupy the available space and essentially there would be no further vacant plots.

A number of the comments received during consultation have referred to the design of the proposed replacement dwellings both in respect to their sprawling footprint but also their substantive scale when compared to the existing properties (and in some references neighbouring plots). It is suggested that the dwellings should be replaced on a like for like basis or refurbished as existing. To confirm, despite their presence within the Conservation Area, Officers do not consider that the existing bungalows are of significant architectural merit such that their retention could be insisted upon in principle.

Officers fully concede that the replacement dwellings would significantly increase the amount of built form within the site summarised briefly by the following table:

	<b>Existing semi-detached bungalows</b>	<b>Proposed dormer bungalows</b>
<b>Footprint</b>	229m <sup>2</sup>	400m <sup>2</sup>
<b>Floor Space</b>	229m <sup>2</sup>	540m <sup>2</sup>

*(Figures provided by the agent based on internal floor space measured in accordance with RICS practice (an area below 1500mm headroom is not counted as floor space)).*

This amounts to a percentage increase of 75% to footprint and 135% to floor space. It is difficult to make exact calculations as to the volume increase due to the nature of the roof design with dormer windows but it is equally accepted that this is likely to be substantial. Notwithstanding the revisions which have been sought throughout the life of the application (discussed further below), Officers consider that these increases need not be fatal in principle. As outlined above, Southwell is a sustainable settlement and therefore the assessment differs significantly to one which may be undertaken in a different site context for a replacement dwelling such as an assessment in an open countryside location. Officers have already identified that it would not be reasonable to seek a reduction in bedroom numbers on the basis of the Development Plan and other material considerations and therefore, subject to the design of the dwellings meeting the remainder of the development plan, including in the context of the Conservation Area, the larger scale of the properties proposed is not considered to lead to a reason to resist the application in principle. Indeed the comments of the Conservation Officer outline that this part of the Conservation Area is well represented with positive and neutral buildings of a similar scale. In line with this judgement Officers would disagree that the proposal amounts to an over development of the site contrary to the NP policy SD1.

As identified by the Conservation Officer comments above, the sites location within the designated Conservation Area requires the decision taken to consider Section 72 of the Act and in doing so pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area. It is noted that the Conservation Officer comments reference the National Planning Policy Framework 2012 which was updated since receipt of the above comments by a revised Framework dated 24<sup>th</sup> July 2018. For the avoidance of doubt, and confirmed by the material considerations outlined above, the recommendation of Officers is based on the 2018 Framework. The 2018 document deals with matters of conserving and enhancing the historic environment at Chapter 16. Paragraph 192 confirms that, in determining applications, account should be taken of (amongst other factors) the desirability of sustaining and enhancing

the significance of heritage assets. Any proposed development must also comply with the principles of Policy DH3; Policy DM9 and Core Policy 14. Criteria within these policies require proposals to take into account the distinctive character and appearance of the Conservation Area. Furthermore, the Southwell Neighbourhood Plan (SNP) seeks for sustainable development that has regard for the town's unique character, historic environment and landscape setting.

The original application was assessed by the Council Conservation Officer with comments received 20<sup>th</sup> July 2018 and listed in full above. It is not intended to repeat the comments here save to say that Officers concur with the conclusions that the proposal (even in its original form which as discussed below has been subsequently revised) would not harm the character and appearance of the Conservation Area or the significance of the nearby Listed Building.

A number of consultation comments have made reference to the proximity of the site to the Grade II listed Holy Trinity Church. It has been stated that the development proposed would block views of the Church both from neighbouring properties as well as to users of the public footpath. As Members will be aware, a right to a view is not a material planning consideration but the inference from these comments is that the development would affect the setting of the Listed Building which does of course form a material planning consideration. This has been addressed by the Conservation Officer as follows:

*While the glimpses towards the church spire would be more limited by taller development this is in relation to a limited and incidental view from a footpath which is quickly enclosed by close boarded fencing, the overall impact on the significance of the church being negligible.*

In addition to the above, it is notable that the immediately surrounding area (i.e. to the south of the Potwell Dyke) is already relatively dense such that the increase in built form is unlikely to be perceptible in the overall setting of the Church. In this context, given intervening distances and existing development built form, Officers have also identified no harm against Policy So/PV which seeks to protect the views of a number of principal heritage assets in Southwell.

Moving then to assess the design of the dwellings themselves, as is referenced by the description of the proposal, the dwellings are designed as dormer bungalows with a variety of materials. Officers raised concern in respect to the original proposals in terms of the overall bulk and scale, particularly of the proposed dwelling at No. 37. On the basis of these discussions, a revised plan for this dwelling (and an updated site block plan) has been submitted received on 8<sup>th</sup> August 2018. This now demonstrates a detached garage which has severed a link with the host dwelling assisting in breaking up the sprawling footprint and built form. Whilst this is considered to be a design improvement, the case nevertheless remains that the proposed dwellings would be of a substantial scale. Their imposition would in some respects be further exasperated by the use of pitched glazed entrances and numerous roof dormer windows. Ideally Officers would have liked to have been able to secure a greater reduction in overall scale but this has not been forthcoming and therefore it remains for Members to assess the proposal on its merits as presented.

It is notable that the dwellings occupy a setback position from the highway and therefore would not be overly imposing on the streetscene. Nevertheless, it is equally notable that there is a public right of way which follows the southern border of the site and despite the fence which borders this right of way, there will still be visibility of the proposed dwellings and their associated scale. Visibility in itself does not automatically amount to visual harm however. The neighbouring dwelling to the east; no. 39a also utilises roof dormers to which the proposed development would be read in the context of. Moreover, so too do the plots fronting Halloughton Road with their rear

elevations to the south of the site. Taking these surrounding site circumstances into account, Officers have found no justifiable reason to resist the proposal on the basis of the design of the dwellings.

The revised scheme is considered to be compliant with the requirement of Policy DH3 of the NP; Policy CP14 of the Core Strategy; and Policy DM9 of the DPD in terms of preserving the historic environment and Policy So/PV and Policy DM5 of the DPD in terms of reflecting local distinctiveness as well as policy DH3 of the SNP.

### *Impact on Amenity*

An assessment of amenity, as confirmed by Policy DM5, relates both to an assessment in relation to existing neighbouring residents but also to the proposed occupiers.

Dealing firstly with the proposed occupiers, both plots have been afforded an area of private amenity space. Comments received during consultation have referred to the site circumstances whereby the land levels within the site fall towards the Potwell Dyke (as shown by the topographical survey) and therefore the entire garden area for no. 39 would not be useable and in any case would be north facing. It is suggested that on the basis of the NP requirements in terms of an 8m buffer strip to watercourses (notwithstanding that the Potwell Dyke is in riparian ownership as discussed below) the actual useable garden space for no. 39 would have a length of 3.5m. Officers heavily dispute that this would be the reality. Even if there were to be 8m between the dyke and development, there is nothing to prevent this space forming part of the private amenity space for the proposed dwelling. The land levels which exist within the site would be appreciable to any proposed occupiers when considering the purchase of the property. The privacy of the amenity space for the proposed dwellings between one another would be secured by a boundary treatment of 1.5m fencing with 0.3m trellis top and a beech hedge. Officers consider the amenity arrangements for the proposed dwellings to be acceptable.

It then falls to assess the impact on the development in respect to the impacts on neighbouring amenity, a matter which requires a careful degree of consideration given that the neighbouring occupiers would have the proposed development imposed upon them. Members may recall in the previous application which affected part of the site, that there were negotiations in terms of the proposed dwelling (now proposed no. 39) in terms of a reduction of footprint at the rear to reduce amenity impacts. This is now however largely irrelevant in that it was secured mostly on the basis of securing appropriate amenity provision for the existing bungalows which would clearly be demolished as part of the current proposal.

However, the distances between the proposed dwellings and existing neighbouring dwellings (as annotated on the proposed site layout plan) remains modest in some respects. Staying with no. 39, the proposed distance between the side gable of the dwelling (which features no first floor windows) and the existing property to the east would be just 12.1m. The side gable would be facing the principle elevation of the neighbouring dwelling where there are principle rooms served by roof dormer windows at first floor. Officers have considered this relationship in the context of a potential overbearing impact noting that the proposed dwelling would have a proposed ridge height of approximately 6.2m. However, it is notable that the positioning of the dwellings does not fully align. Thus, whilst the entire principle elevation of the neighbouring dwelling was face towards built form, the majority of this built form would be in respect to the single storey forward projecting garage and home office link. The boundary treatment is established by a 1.8m high fence which would assist in screening the ground floor of the proposed dwelling. There is a slight

advantage in the design of the roof which hips at the top slightly albeit the eaves height would still be approximately 4.6m just 12.1m from habitable rooms. This would of course be a fundamental change in comparison to the existing site scenario where the existing bungalows are around 35m away. Whilst the proposal is considered to be at the cusp of acceptability in respect to distances, Officers are mindful that the applicant has at least attempted some mitigation efforts to ensure that the majority of the built form in front of the neighbouring dwelling would be single storey. Noting that there would be no additional overlooking impacts envisaged, Officers do not consider that the additional overbearing impacts would be significantly harmful to neighbouring amenity to justify a refusal of the application in their own right.

In terms of the proposed no. 37, this would share a close spatial relationship with the principle elevation of no. 35a. This has been raised as a concern during the life of the application and as such has been addressed by the agent through the submitted revised plans. The revised plans annotate through red outline, the existing scenario established by the existing bungalows. The closest area of built form to the existing occupiers of no. 35a would be the proposed (now detached) garage. The plan demonstrates that, whilst the overall height would be marginally increased, the proposed development would feature a pitched roof sloping away from the neighbouring property (as opposed to a gable end as existing) and a blank wall with no fenestration details (as opposed to a side gable with windows at both ground and first floor). The footprint of the proposed garage would be set approximately 1.5m closer to the shared boundary (albeit still 2.6m away) but would also be approximately 3m further eastwards in comparison to the existing bungalows so that there would be a reduction of width of built form in front of the principle elevation. Taking all of these factors into account, Officers consider that the overall amenity impact to no. 35a would be neutral in comparison to the existing established scenario.

There are other existing properties whose outlook would be affected by the proposed development, notably those to the south of the site fronting Halloughton Road. However, as Members will be aware, visibility does not in itself amount to amenity harm. The site layout plan has annotated distances between the proposed dwellings and the neighbouring plots showing a minimum of 28m (this distance is in respect to the side gable of the proposed garage at no. 39 and the rear elevation of no. 59 Halloughton Road). These distances are considered sufficient to alleviate any potential overbearing from the development.

The principle elevation of both properties proposed would have first floor roof dormers orientated towards the rear elevations of neighbouring plots. However, in terms of overlooking and subsequent loss of privacy, the closest distance from the first floor windows to neighbouring rear elevations would be approximately 35m. This is considered to be an appropriate distance such that neighbouring properties would not be detrimentally affected by overlooking.

Concern has been raised during the consultation process that the large expanses of glazing on the proposed dwelling at No. 39 specifically would cause light pollution to neighbouring properties. It is stated that adjoining properties already have permanent external lighting which is left on during the night. In some respects this again falls to the acknowledgement that the proposed development would indeed be visible from neighbouring properties. However, Officers do not consider that the lighting from the proposed property would be materially different from an expected amenity relationship in a main built up area. It is therefore considered that this matter alone would not amount to a detrimental impact on neighbouring amenity which would warrant resistance of the application.

Therefore, whilst there is no doubt that the proposal would alter the relationship with a number of existing properties surrounding the site, on the basis of the above assessment this is not considered to be to a degree which would warrant refusal on amenity grounds. The proposal is therefore considered compliant with Policy SD1 of the NP and the relevant elements of Policy DM5 of the Allocations and Development Management DPD.

#### *Impact on Highways including Public Right of Way*

Members will recall the constraints of the site in terms of the presence of the public right of way through their consideration of the previously refused scheme referenced in the planning history section above. For the avoidance of doubt, these constraints have not changed through the current application submission and the matter remains that the proposed dwellings would have a vehicular access which would be shared with a designated right of way.

The NP includes a suite of policies in respect to matters of Transport and Access including Policy TA1 'Cycle and Pedestrian Routes' which confirms that, *'Where appropriate, proposals for new development in Southwell must demonstrate how account has been taken to improve the pedestrian and cycle network within the town, helping to provide links to the district centre'*. Furthermore, Spatial Policy 7 of the Core Strategy seeks to ensure safe, convenient and attractive accesses for all and ensure that the safety, convenience and free flow of traffic using the highway are not adversely affected.

The weight attached to the safety of the highways network including the affected public footpath is significant as demonstrated by the refusal of the previous application affecting part of the site as referenced above. Nevertheless, Members will be aware that each application must be considered on its own merits and clearly the current application is materially different to the previous application which was refused.

The application relates to the demolition of two existing bungalows which already have an established use of the access for vehicles and have done for many years. Officers note that, as existing, the vehicular access to the site is substandard and would not allow two vehicles to pass one another. It is acknowledged that the proposed site layout demonstrates improvements to the access including an intention to widen the access to an overall width of 3.5m. However, there is no doubt that the improvements demonstrated would fall short of the required standard for a minimum width of 5.25m. The plans also suggest a hooped railing and barriers at the point where the footpath follows the southern boundary of the site. As is detailed in the comments of NCC Highways above, their view is that this should not be included and a condition suggesting a revised plan has been suggested. This has been passed to the acting agent and a revised plan demonstrating the changes sought by the Highways Authority was received on 23<sup>rd</sup> August 2018. An additional period of re-consultation has been undertaken on the basis of this plan – any comments received following agenda print will be reported to Members as a late item.

The current application would not result in a net addition of dwellings within the site. Whilst the dwellings would be larger in size, Officers would again refer to the judgement above that the extension of the existing dwellings would be acceptable in principle and therefore this is not considered fatal in principle. This is accepted by the comments of the Highways Authority which confirm that there is unlikely to be any significant increase in traffic movements.

Whilst the concerns received during consultation in respect of a potential conflict with the right of way are fully appreciated (and indeed were attributed determinative weight in the previous

proposal) Officers consider that the material change in circumstance in the current application amount to it being unreasonable to resist the current application on the same basis. The current proposal would not lead to an intensification of the highways access in numerical unit terms as acknowledged by a lack of objection from the Highways Authority. Without such an objection, Officers consider that it would be unreasonable to resist the proposal (and ultimately defend at appeal) on this basis. The current proposal is therefore considered, subject to conditions, to comply with Policy TA1 of the NP, Spatial Policy 7 of the Core Strategy and the relevant elements of Policy DM5 of the Allocations and Development Management DPD.

### *Impact on Flood Risk*

Policy E2 of the SNP states that development proposals requiring a flood risk assessment must be designed to avoid increasing the risk of flooding both on and off site. The proposed development is located in Flood Zone 1 in accordance with Environment Agency mapping, in addition the site is not considered to be at high risk of surface water flooding and as such no flood risk assessment is required in support of the proposal. No objections have been raised by either the Environment Agency or NCC Lead Local Flood Authority and I have identified no reason why surface water management would create an issue to either the proposed occupiers or neighbouring residents.

The application has nevertheless been accompanied by a Flood Risk Assessment which acknowledges the local history in respect of flood events in Southwell. The Statement outlines that the finished floor levels of the proposed dwellings would be between 3.8m and 4.3m above the level of the Potwell Dyke and that the existing scenario whereby surface water naturally drains into the Dyke will be maintained. The proposed dwellings are intended to drain to soakaway.

The originally submitted site location plan demonstrated a Yew hedge would be planted to the northern boundary of site adjacent to the Potwell Dyke. I appreciate that Policy E2 of the SNP refers to the design of buffer strips of 8m between the bank of watercourses adjacent to sites. Whilst not technically applicable to the current application given that a FRA is not formally required matters of flooding remain a material planning consideration (and indeed a significant cause for concern in Southwell) and thus officers have again reviewed the application in the context of the proposed hedge. Trent Valley as the internal drainage board (TVIDB) have been consulted on the proposals. As the comments above reference, it has been confirmed that the Potwell Dyke does not fall within their maintenance. Officers have previously made enquiries with the TVIDB to ascertain the remit of maintenance. It is confirmed that the Potwell Dyke is in riparian ownership and therefore maintenance is subject to private arrangements. The rationale of the buffer referred to by the NP is so that watercourses can be appropriately maintained. Presumably the distance is taken from conditions which have been previously suggested by TVIDB to allow an appropriate width for machinery. Clearly, in this case, machinery would not be required for maintenance and therefore Officers continue to be of the stance that the strict application of this policy is not required.

Consultation has been received that the yew hedge originally shown to be immediately adjacent to the dyke would not establish due to the variation of land levels. The boundary treatment is also referred to by the comments of Southwell Civic Society and NSDC Conservation. The former comments refer to a previous appeal decision (2002) where an Inspector secured boundary details to ensure the preservation of land adjacent to the Dumble. Officers have discussed the northern boundary treatment with the applicant during the life of the application to ascertain the exact intentions in terms of maintenance. The agent has addressed the matter through the latest revised site location plan (received 14<sup>th</sup> August 2018) which now demonstrates that the hedge

would be set back by a minimum distance of 1.8m to allow a service margin to the dyke. It is confirmed that the hedge would be planted 2.5m above the dyke. It is noted that the latest comments of the NCC Flood refer to an aspired distance of 4m from the centreline of a watercourse to any physical boundary. When scaled from the latest submitted plan, the distance between the centre of the watercourse and the proposed Yew hedge varies between approximately 2.6m and 3.4m. Whilst this falls slightly short of the distance referred to by NCC Flood, this is purely a recommendation and it is noted that NCC Flood have not advanced to an objection. Notwithstanding that the maintenance would fall to private ownership, Officers are satisfied that the revised plan demonstrates an appropriate boundary treatment such that the flow of the dyke would not be adversely affected and therefore the proposal would not amount to adverse consequences in respect to flood risk.

### *Impact on Trees*

Comments have been received during the consultation period that there have been recent works on the site which have removed previous trees within the site (as part of the previous application the submission was specific to the fact that the trees removed without consent were conifers). The site is within the designated Conservation Area and thus any works to trees would require the consent of the LPA. Whilst any tree removal without consent is clearly not something the LPA would advocate, it must be stated that it is likely that if a notification for removal of conifers had have been forthcoming, it would have been approved given the context of the site and the low amenity value that conifers typically offer.

As is referenced above there is an ongoing enforcement matter at the site whereby a previous hedgerow along the boundary with the public footpath has been removed and replaced with a fence which now forms part of this application. It is understood that a replacement hedgerow has also been planted. Following discussion with enforcement colleagues it appears that the fence has been lowered in height to 2m (in line with the current application submission) along the majority of its length but that there is still a small section which exceeds the height at around 2.15m. If Members are minded to approve the application then Officers will continue enforcement negotiations to reduce the entirety of the fence height in line with the application submission.

The application has been accompanied by a Method Statement for Tree Protection which is welcomed. This document outlines the methods of protection for trees to be retained around the boundaries of the site. The D&AS confirms that the development will necessitate the removal of small ornamental trees in the centre of the site but having viewed these on site it is not considered that this would be of detriment to the character of the wider designated conservation area.

### *Other Matters*

Concern has been raised that letters sent in respect to the revised consultation period were not received by a number of properties. Officers have checked internal systems and can clarify that the letters were sent. Unfortunately the matter of whether these letters were delivered is beyond the control of the local planning authority. It has been further suggested that the period for re-consultation was inadequate in the holiday period and noting that the Council's website was unavailable at some points during this consultation. The overall formal date for the expiry of comments is August 31<sup>st</sup> 2018 but clearly any comments received after this date before the determination will still be considered and reported to Members as a late item. Officers therefore

consider that the consultation process and length meets statutory requirements and allows for a fair consideration of the application by interested parties.

### Overall Planning Balance and Conclusion

The application relates to the replacement of two modest bungalows with two detached dormer bungalows of a greater scale. Notwithstanding that the proposed dormer bungalows would represent an approximate increase of 135% in respect to floor space, having carefully assessed the site circumstances, Officers consider that the increase in scale and overall built form need not be fatal in principle and that the site can accommodate the development without amounting an over intensification of development within the site. This judgement is taken in the context that Southwell is identified as a sustainable settlement where additional housing development is supported.

The above appraisal outlines the comprises of the scheme in terms of the increase in number of bedrooms (which would not be the preferred 2 bedrooms albeit neither are the existing bungalows); the amenity relationships including instances which are considered at the cusp of acceptability; and character impacts in terms of the overall increase in property scale.

It is fully acknowledged that the access road leading to the site is substandard in that it is of inadequate width to allow two vehicles to pass and the intensification of use of such a road would result in an increase in the likelihood of unacceptable danger to users of the highway. Moreover, the access forms an existing public right of way and therefore an intensified use of this access has the potential to increase conflicts between vehicular traffic and pedestrian users of the right of way.

However, as is agreed through the comments of the Highways Authority, it would not be reasonable to conclude that the current application does amount to an intensification of the vehicular access use given that it would retain the existing scenario of serving 4 dwellings.

The benefits of the scheme in terms improvements to the existing access which would serve existing residents are attached positive weight. Furthermore the design and layout of the scheme is considered satisfactory with regards to visual amenity and residential amenity overall and the proposal is not considered to raise any adverse impacts in respect of flood risk matters.

As such, the recommendation is one of approval subject to the conditions outlined below.

### **RECOMMENDATION**

**That full planning permission is approved subject to the conditions and reasons shown below.**

#### Conditions

01

The development hereby permitted shall not begin later than three years from the date of this permission.

Reason: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.



02

The development hereby permitted shall not be carried out except in complete accordance with the following approved plans reference:

- Proposed Site Layout – DO/HRS/P2P Rev. D (received 23<sup>rd</sup> August 2018)
- Proposed Dwelling No. 37 Plans and Elevations – HRS/P2/2 Rev. C (received 8<sup>th</sup> August 2018)
- Proposed Dwelling No. 39 Plans and Elevations – HRS-P2-1 Rev. A (received 3<sup>rd</sup> July 2018)
- Proposed Boundary Privacy Fence Plan and Elevation – HRS-P2-F Rev. A (received 3<sup>rd</sup> July 2018)

unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the permission.

Reason: So as to define this permission.

03

Prior to any development hereby approved above slab level details and samples of the materials identified below have been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Facing Materials

Bricks

Roofing Tiles

Reason: In the interests of visual amenity

04

Prior to the occupation of the dwellings hereby approved, the access widening works shown on plan reference DO/HRS/P2P Rev. D (received 23<sup>rd</sup> August 2018) shall be implemented in accordance with the plan and retained for the lifetime of the development unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of highway and pedestrian safety.

05

The approved soft landscaping demonstrated on plan reference Proposed Site Layout – DO/HRS/P2P Rev. D (received 23<sup>rd</sup> August 2018) shall be completed within 6 months of the occupation of the development hereby approved, or such longer period as may be agreed in writing by the local planning authority. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority. The approved hard landscaping shall be implemented on site prior to

first occupation.

Reason: To ensure the work is carried out within a reasonable period and thereafter properly maintained, in the interests of visual amenity and biodiversity.

06

Notwithstanding the provisions of the Town and County Planning (General Permitted Development) (England) Order 2015, other than development expressly authorised by this permission, there shall be no development under Schedule 2, Part 1 of the Order in respect of:

Class A - enlargement, improvement or other alteration of a dwellinghouse

Class B - additions etc to the roof of a dwellinghouse

Class C - other alterations to the roof of a dwellinghouse

Class E - buildings etc incidental to the enjoyment of a dwellinghouse

Class F - hard surfaces incidental to the enjoyment of a dwellinghouse

Or Schedule 2, Part 2:

Class A - gates, fences, walls etc

Or Schedule 2, Part 14:

Class A - installation or alteration etc of solar equipment on domestic premises

Class B - installation or alteration etc of stand along solar equipment on domestic premises

Class H - installation or alteration etc of wind turbine on domestic premises

Class I - installation or alteration etc of stand alone wind turbine on domestic premises

Reason: In the interests of visual and residential amenity and to preserve the setting of the Conservation Area.

07

Prior to the occupation of the development hereby permitted, the boundary treatments shown on the approved plans DO/HRS/P2P Rev. D (received 23<sup>rd</sup> August 2018) and Proposed Boundary Privacy Fence Plan and Elevation – HRS-P2-F Rev. A (received 3<sup>rd</sup> July 2018) shall be implemented on site and shall then be retained in full for the lifetime of the development unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of residential and visual amenity.

08

The development hereby permitted shall not commence above slab level until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.

#### Notes to Applicant

01

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk)

The proposed development has been assessed and it is the Council's view that CIL IS PAYABLE on the development hereby approved as is detailed below. Full details about the CIL Charge including, amount and process for payment will be set out in the Regulation 65 Liability Notice which will be sent to you as soon as possible after this decision notice has been issued. If the development hereby approved is for a self-build dwelling, residential extension or residential annex you may be able to apply for relief from CIL. Further details about CIL are available on the Council's website: [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/) or from the Planning Portal: [www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil](http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil)

#### Community Infrastructure Levy

Dev Types (use class)	Proposed floorspace (GIA in Sq. M)	Less Existing (Demolition or Change of Use) (GIA in Sq. M) Includes % splits	A Net Area (GIA in Sq. M)	B CIL Rate	C Indexation at date of permission	CIL Charge
Residential	540	229	311	100	320	<b>£35,978.56</b>
<b>Totals</b>						<b>£35,978.56</b>

02

This application has been the subject of discussions during the application process to ensure that the proposal is acceptable. The District Planning Authority has accordingly worked positively and pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

Considerations in relation to gas pipeline/s identified on site:

Cadent have identified operational gas apparatus within the application site boundary. This may include a legal interest (easements or wayleaves) in the land which restricts activity in proximity to Cadent assets in private land. The Applicant must ensure that proposed works do not infringe on Cadent's legal rights and any details of such restrictions should be obtained from the landowner in the first instance.

If buildings or structures are proposed directly above the gas apparatus then development should only take place following a diversion of this apparatus. The Applicant should contact Cadent's Plant Protection Team at the earliest opportunity to discuss proposed diversions of apparatus to avoid any unnecessary delays.

If any construction traffic is likely to cross a Cadent pipeline then the Applicant must contact Cadent's Plant Protection Team to see if any protection measures are required.

All developers are required to contact Cadent's Plant Protection Team for approval before carrying out any works on site and ensuring requirements are adhered to.

Email: [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) Tel: 0800 688 588

#### BACKGROUND PAPERS

Application case file.

For further information, please contact Laura Gardner on ext. 5907.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**  
**Business Manager Growth and Regeneration**



## PLANNING COMMITTEE – 4 SEPTEMBER 2018

Application No:	18/00413/FUL	
Proposal:	Demolition of existing garages and development of 1 x 3 2 bed unit	
Location:	Former Garage Site, Thorpe Close, Coddington, Nottinghamshire	
Applicant:	Newark and Sherwood District Council	
Registered:	06 March 2018	Target Date: 01 May 2018
	Extension of Time Agreed	

This application is being presented to the Planning Committee in line with the Council's Scheme of Delegation as Coddington Parish Council has objected to the application which differs to the professional officer recommendation.

This application is one of several schemes currently being considered by the Council for the residential development of land owned by the Council. The need for affordable housing remains high on the Council's agenda, as indeed it does nationally. The developments are being put forward as part of a five year building programme by Newark and Sherwood Homes (NSH) to deliver approximately 360 new affordable dwellings across the District to directly meet affordable housing need. Under the Council's constitution, schemes submitted specifically as part of this 5 year affordable housing programme need to be determined by the Planning Committee where the officer recommendation differs from that of the host Parish or Town Council.

### Update

This application was deferred from the 7<sup>th</sup> August 2018 Planning Committee to allow officers the opportunity of seeking amendments to secure a smaller bungalow on the site. The applicant has agreed to provide a two bedroom bungalow and therefore amended plans have been received, the description of development has been changed and a 14 day public re-consultation has been undertaken, comments from which will be reported to Members on the late items schedule where necessary.

Prior to that, this application was previously deferred from the June 2018 planning committee to enable a previous consultation period to conclude. As this report was published on previous agenda's, the report that follows has been updated with all new matters relating to the latest amendments updated in bold and superseded matters having been ~~stuck out~~ where necessary. The recommendation remains for approval.

### The Site

The site comprises a garage court located on the western side of Thorpe Close with its access taken between numbers 20 and 22. This garage court is laid with a bound hardstanding and comprises 10 single storey garages which are sited along the western site boundary.

Two storey residential dwellings surround the site. There are three existing vehicular

accesses/rights of way off the garage court serving numbers 20, 22 & 24 Thorpe Close. It was noted at the time of the officer site visit that the garage court is also being used for the parking of cars on an informal basis.

The site lies within an area prone to surface water run-off and is outside of the Coddington Conservation Area which lies to the south-west.

### Relevant Planning History

None relevant.

### The Proposal

Full planning permission is sought for the demolition of an existing garage court and the erection of one bungalow. There are currently 10 garages on site which are proposed to be demolished.

The proposed bungalow has a ~~rectangular~~ **broadly square** footprint and would measure ~~11.6m~~ **8.65m** wide by ~~7.57m~~ **8.54m** deep to a ridge height of ~~5.45m~~ **5.69m**. It has a simple ridge roof and its front elevation has ~~two small projecting rendered gables~~ **a single gable over the kitchen window**. The dwelling would comprise hall, ~~open plan~~ kitchen/dining room and lounge, bathroom and ~~three~~ **two** bedrooms. It should be noted that the application description has been changed to reflect this as it originally referred to a 3 bedroom unit. Proposed materials are cited as Cadeby red multi facing bricks ~~with the render being off white and the use of~~ Russell Grampion roof tiles in slate grey.

The application is accompanied by the following plans and supporting information:

Site Location Plan, Ref 40860/ID43001B (amended and received 18/05/2018)

~~Proposed Site Layout Op 4, 40860/ID43009K (amended and received 01/06/2018)~~

**Proposed Site Layout Op 5, 40860/ID43/010AC (received 16/08/2018)**

Proposed Plans & Elevations, 40860/ID43/06A **011 (received 13/08/2018)**

Materials Elevations, 40860/ID43/006B **012 (received 13/08/2018)**

Proposed Drainage, 100 P02

Phase 1 Desktop Study Report, by Collinshallgreen, November 2017

Phase 2 Desktop Study Report, by Collinshallgreen, November 2017

Information provided in respect of Garage Useage

Proposed Tracking, E454/150/P04 (as amended, received 18<sup>th</sup> June 2018)

Amended Application Form (received 11/05/2018) with confirmation of Notice having been served on neighbouring land owner.

**Revision C of the Option 5 layout plan (received on 16<sup>th</sup> August 2018) has been amended to remove a very small amount of soft landscaping adjacent to the neighbours wall, apparently at the request of neighbouring residents following the applicants own internal consultation process.**

~~The application has been amended several times during the lifetime of the application.~~

~~Layout plan version K has been submitted in response to concerns raised via Cllr J Lee, a local resident and the Parish Council. The bin store has been relocated and the strip of planting along the rear boundary with the concerned neighbour has been removed. This now provides 6.34m of reversing space from the back edge of no. 20 Thorpe Close to the path in front of the proposed~~

~~bungalow to allow vehicles to reverse out. NASH have confirmed they are unable to re-site the bungalow any further back due to an easement.~~

#### Departure/Public Advertisement Procedure

Occupiers of 14 properties have been individually notified by letter. A site notice has also been displayed near to the site giving an overall expiry date of 30<sup>th</sup> March 2018.

#### **Planning Policy Framework**

##### **The Development Plan**

##### **Newark and Sherwood Core Strategy DPD (adopted March 2011)**

Spatial Policy 1 - Settlement hierarchy  
Spatial Policy 2 - Spatial distribution of growth  
Spatial Policy 3 – Rural Areas  
Spatial Policy 6 - Infrastructure for Growth  
Spatial Policy 7 - Sustainable transport  
Core Policy 1 - Affordable Housing Provision  
Core Policy 3 - Housing Mix, Type and Density  
Core Policy 9 – Sustainable design  
Core Policy 10 - Climate Change  
Core Policy 12 - Biodiversity and Green Infrastructure

##### **Allocations & Development Management DPD**

DM1 – Development within settlements central to delivering the spatial strategy  
DM3 - Developer Contributions  
DM5 – Design  
DM7 - Biodiversity and Green Infrastructure  
DM12 – Presumption in Favour of Sustainable Development

##### **Other Material Planning Considerations**

- National Planning Policy Framework July 2018
- Planning Practice Guidance 2018
- Publication Core Strategy 2017

##### **Consultations**

Amendments have been sought during the lifetime of the application which have been subject to re-consultation. Comments on the final amendments **received in August 2018** will be reported to Members as late items where necessary.

##### **Coddington Parish Council –**

**(02/07/2018)**

Coddington Parish Council objects to this application, for the reasons previously submitted.



An updated tracking plan for Thorpe Close 2 has recently been published on the planning website. The tracking lines are unchanged, with only the site layout updated:

- This provides No. 24 Thorpe Close with a small amount of additional room, although the bins are now close to the corner of their car movements.
- Moving the footpath back near No. 20 Thorpe Close has zero impact as the pinch points are where the tracking line is tangential to the part of the bungalow garden boundary (which has not been moved at all).
- The garden needs to be reduced along the full length of the tangent points to make the vehicle right of way for No. 20 Thorpe Close usable, and revised tracking plans provided that demonstrate this.

(11/06/2018)

“Thorpe Close 2 planning application 18/00416/FUL revised plans 4 June 2018

In addition to the previous objections, Coddington Parish Council submits the following objections:

1. SP3 IMPACT

Loss of Amenities.

The owner of no.24 Thorpe Close cannot exit from his garage, or enter his garage without an excessive number of steering manoeuvres.

The owner of no. 20 Thorpe Close cannot reverse into his parking space which has been in use for 30 years. The revised plan shows that the measurement of land available for access has been taken from inside the gate posts of no. 20 and includes a section of the property's own driveway. The plan also shows that the measured available access would encroach beyond the boundary of the proposed development. The plan shows a potential extension of the gateway to ease access, but states that this is not provided for within the scope of the current application. CPC suggests that the provision of a wider gateway access should be a condition of this application.

There has been no formal agreement that residents of 20 and 24 Thorpe Close and of 7a Beckingham Road have rights of access.

The provision of fencing for the boundary is inadequate and should be replaced by a wall.

There is no provision for the area to be lit, thus creating even more difficulties for residents access their garage/parking space.

2. SCALE.

This location is inappropriate for a three bedroomed bungalow causing over-development and reliance on land outside of the applicant's ownership. The site would be more appropriate for a smaller two bedroomed bungalow.”

*Previous comments:*

01/06/2018 - "Coddington Parish Council objects to the above application which does not Address Policy SP3 of the Core Strategy on the following grounds:

- Loss of amenities
- Need and specification of the proposed dwelling.

The Parish Council also considers that more detailed conditions are required during the demolition and construction works being planned by the applicant in Coddington to control the impacts on the residents and local transport.

A revised plan (version G, following numerous earlier versions) is mentioned in a letter published on 29 May 2018, but as of 31 May 2018 the plan had not been published with a closing date for comments of the following day, so was obtained direct from the consultants! It is of concern that no additional consultation period has been provided following these very late changes in layout, and the latest plan has still not been published on the closing date for comments.

#### Loss of amenities.

These garages are well used but have since been given up due to letters issued to tenants of the garages by Newark and Sherwood Homes. These will be the last remaining garages for rent from Newark and Sherwood Homes in Coddington. The complete loss of these garages and additional off-street parking spaces (which have been ignored in the officer's report) represents a significant cumulative impact in the village on:

- Residents, including those with limited mobility, using the garages near their homes.
- Congestion along the only regular bus route around the village.

This will mean that there will be increased street parking with the associated problems of access for local residents, emergency vehicles, utility vehicles and buses. There are no replacement garages or car parking spaces provided for the residents in any of the developments proposed by the applicant, even though nearby land is in the ownership of the applicant.

#### Need and specification

The 2014 Housing Market Needs survey assessment for the rural sub area clearly states that the need is for one and two bedroom dwellings. Permission for seven 1 and 2-bedroom social dwellings by the applicant has already been approved within the village. This application for a 3-bedroom bungalow does not fulfil the need criteria, with no justification being offered for proposing a dwelling not meeting the identified market need for smaller properties, and the size and alignment of the building is contributing to the difficulties with demonstrating access to rights of way for vehicles.

Coddington Parish Council objects to the application on the grounds set out above. Residents attended a public meeting with the Parish Council and there were widespread concerns about the impact of the demolition and construction work on neighbouring residents, which are not fully addressed in the proposed conditions.

If the application is approved, to ensure the safety of residents and workers, a condition should be placed such that no development shall take place, including any works of demolition, until a

Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors;
- ii. loading and unloading of plant and materials;
- iii. storage of plant and materials used in constructing the development;
- iv. the erection and maintenance of security hoarding;
- v. reinstatement of boundaries and gardens;
- vi. wheel washing facilities;
- vii. measures to control the emission of dust and dirt during construction;
- viii. a scheme for recycling/disposing of waste resulting from construction works;
- ix. delivery, and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development. A similar condition was applied by the Planning Inspectorate in a recent appeal decision on another site in Coddington, and the same standards should be applied to this development proposed by the Local Planning Authority.

A similar approach should be adopted for the other construction work by the applicant and other developers in Coddington, and there needs to be managed coordination between the applicant's construction sites in Coddington to limit the cumulative impacts on village residents and bus routes."

04/05/2018 – 'We note from the web site that the closing date for comments on this application is now 15 May. Following concerns raised by the Parish Council on behalf of residents adjacent to the proposed development site, we have not been notified of any changes to the plans to allow unrestricted vehicle access to the neighbouring driveways. There is a new diagram of tracking on the web site, but no explanation of what has changed or any practical proof that this will resolve the problems.

At the site meeting with Newark and Sherwood Homes, questions over encroachment on to privately owned land of a house on Ross Close and the right of rear access to a house on Beckingham Road were also raised. Have these issues been addressed?'

27/03/2018 - 'Coddington Parish Council unanimously objects to the application for a 3-bedroom bungalow to be built on the site of the Thorpe Close garages.

The position of the new dwelling and its car parking spaces would restrict the vehicular access of residents living on either side of the access road, to the extent that they could not get their vehicles in and out of their own driveways. In addition, the newly-built detached house on Beckingham Road which was granted vehicular access at the rear of the property through the Thorpe Close garages' forecourt would be left with no vehicular access.

The Council is in agreement that there is a need for more social housing to be built, but not in this confined space which is particularly unsuitable for what is designed to be a family home. The development would be an over-intensification of the site, resulting in loss of privacy for existing homes and for the new dwelling, being over-looked on three sides by two-storey houses. Furthermore, it would appear from the plans that the site of the proposed bungalow encroaches on the privately-owned land of a property on Ross Close.

Residents have complained of a lack of communication, and there has been conflicting information on the type of property to be built. The plans show that this is an application for a 3 bed bungalow, not a 2 bed bungalow as stated in the consultation letter and on the site notice.'

#### **NCC Highways Authority –**

29/06/2018 – (in response to the revised tracking plan submitted 11/06/2018) "Further to previous emails I believe Drwg 40860/ID43/009K is acceptable but the 'snaking' manoeuvre shown on the tracking drawings do not demonstrate how a car could be reversed from the car space relating to 20 Thorpe Close and as one might normally reverse a car from a car parking space i.e. reverse straight back and put full right lock on to exit the close."

31/05/2018 - "Further to comments dated 27 March2018, submissions of car swept path drawings and a revised drawing 40860-ID43-009F have now been received to address earlier concerns about vehicular access to 20 Thorpe Close.

Ideally the entrance to the gateway of 20 Thorpe Close should have a small radius instead of a right-angled kerb line, but this is a minor detail that can either be resolved prior to permission or agreed as part of the construction works.

No objections are raised."

24/05/2018 – Comments on plan Proposed Site Layout Op 4, 40860/ID43009E:

"I have just seen the latest submission and remain concerned (23 & 24.5.18). I don't think that all is as clear as it may first appear. Please can we have a chat?"

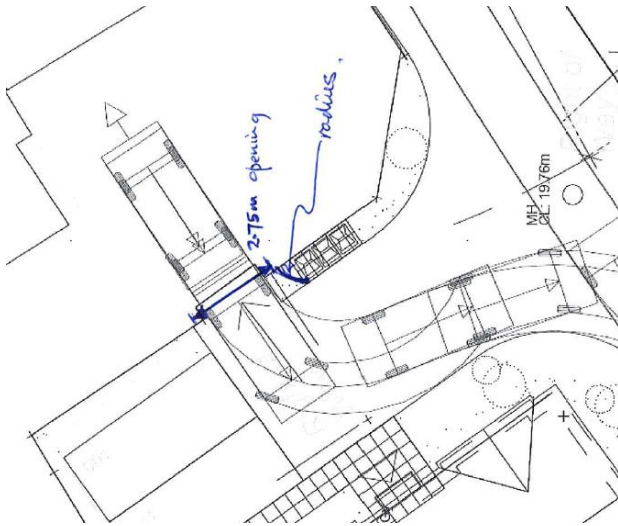
A discussion took place with NCC and it was established that if the access to no. 20 Thorpe Close could not be widened (which this application cannot secure due to ownership issues) then the amount of reversing space rear of the access would need to be increased by 600mm in which case it would remove NCC's concerns. This was relayed to the applicants and an amended plan has been submitted to reflect this overcoming their concern.

18/05/2018 – Comments on amended tracking plan:

"It is unnecessarily very tight.

I think they should widen the rear access to 2.75m and have radius kerb (I have illustrated this roughly on the sketch below).

If they can meet this, then all should be ok."



#### Previous Comments:

27/03/2018 - "The loss of off-street parking provision is regrettable and, ideally, alternative provision should be made for any existing users of the garages. However, consideration has to be given to the proposed use rather than the consequence of the loss of the existing use.

The access off Thorpe Close is sufficiently wide to cater for the traffic associated with the proposed dwelling and benefits from a separate footpath. It is assumed that the access will remain private, but consideration may be given to lighting the access/parking area.

Parking provision is acceptable and turning facilities are provided.

Notwithstanding the above, if the right of way to the rear of 20 Thorpe Close is intended for vehicular use, a swept path drawing should be submitted to demonstrate how a car may conveniently manoeuvre in and out of the access. Alternatively, I suspect that minor scheme amendments will need to be made to provide adequate turning space Subject to seeing the above matter resolved, I would offer no objection."

#### **Trent Valley Internal Drainage Board – Comment as follows:**

"The site is outside of the Trent Valley Internal Board's district but within the Board's catchment.

There are no Board maintained watercourses in close proximity to the site.

Surface water run-off rates to receiving watercourses must not be increased as a result of the development.

The design, operation and future maintenance of site drainage systems must be agreed with the Lead Local Flood Authority and Local Planning Authority."

#### **NSDC (Environmental Health) – 07/03/2018**

The EHO has reviewed the submitted Site Investigation and recommends that the outstanding matters are dealt with via a condition (see proposed Condition 2)

**Cadent Gas (14/03/2018)** – ‘Cadent have identified operational gas apparatus within the application site boundary. This may include a legal interest (easements or wayleaves) in the land which restricts activity in proximity to Cadent assets in private land. The Applicant must ensure that proposed works do not infringe on Cadent’s legal rights and any details of such restrictions should be obtained from the landowner in the first instance.

If buildings or structures are proposed directly above the gas apparatus then development should only take place following a diversion of this apparatus. The Applicant should contact Cadent’s Plant Protection Team at the earliest opportunity to discuss proposed diversions of apparatus to avoid any unnecessary delays.

If any construction traffic is likely to cross a Cadent pipeline then the Applicant must contact Cadent’s Plant Protection Team to see if any protection measures are required. All developers are required to contact Cadent’s Plant Protection Team for approval before carrying out any works on site and ensuring requirements are adhered to.’

**Two representations have been received from local residents making the following summarized comments:**

- No objection to the bungalow but object to the insufficient space allowed to enable vehicles to manouvre into the gardens of existing properties through the site; making it impossible for residents to access their properties over their existing right of way.
- Concern that cars will now have to be parked on the road because there would be no garage.

*It should be noted that these comments above were made in respect of the first tracking plan which has since been amended. Since the revised tracking plan was consulted upon the following comments have been received through 4 representations;*

- Access is required on foot or by vehicle to the rear of 7a Beckingham Road – the proposed tracking plan submitted on the planning application does not consider this nor does it consider the impact it has on the right of access for the residents of 24 Thorpe Close;
- Concerns that right of access to 24 Thorpe Close, 20 Thorpe Close and 7a Beckingham Road will be restricted in the event the occupiers of the proposed development have guests or own more than two cars;
- Assumed the 3 bed bungalow would be occupied by a family which could own least 2 cars and possibly 3 and will most certainly have guests that will require a parking provision which has not been considered;
- Concerns that the revised planning application may infringe on the garden to the rear of 7a Beckingham Road;
- Loss of privacy as the proposed garden backs onto the garden of 7a Beckingham Road. The proposed garden boundary will replace a brick garage wall. If the proposed development is approved what measures will be taken to maintain our privacy and restore the property boundary on a like for like basis?
- The proposed site is a small area overlooked on all sides by homes that require and have the right to continued access to the site;
- Due to the approved development of the other garage site on Thorpe Close, street parking will be reduced further;
- Concerns about safety and land access during the construction phase.
- Object due to concerns of being able to get in and out of the their rear yard which backs onto the garage court, especially in the dark, but due to concerns that there is insufficient space.

There are two brick pillars that need to be positioned and new gates will be required. This should be at the applicant's expense. Even if done it will still be difficult to reverse in. This is causing a lot of worry and stress and it is not fair. The bungalow should be moved.

- Continue to object to latest tracking plan for the reasons set out in the above bullet points.

### Comments of the Business Manager

The starting point for development management decision making is S.38(6) of the Planning and Compulsory Purchase Act 2004, which states that determination of planning applications must be made in accordance with the development plan unless (emphasis added) material considerations indicate otherwise.

Notwithstanding the current process of Plan Review, at the current time the Adopted Development Plan for the District is the Core Strategy DPD (2011) and the Allocations and Development Management Policies DPD (2013). The Council is of the view that it has and can robustly demonstrate a 5 year housing land supply. This was confirmed by the Secretary of State in dismissing the appeals for the housing developments at Farnsfield (heard through a Public Inquiry which sat in November 2017) in April 2018. The policies of the Development Plan are therefore considered up to date for the purposes of decision making.

### Principle of Development

Spatial Policy 1 of the adopted Core Strategy details the settlement hierarchy which will help deliver sustainable growth and development in the District. The intentions of this hierarchy are to direct new residential development to the Sub-Regional Centre, Service Centres and Principal Villages, which are well served in terms of infrastructure and services. At the bottom of the hierarchy, within 'Other Villages' in the district, development will be considered against the sustainability criteria set out in Spatial Policy 3 (Rural Areas). Coddington is defined as an 'other village.'

The five criteria outlined by SP3 are location, scale, need, impact and character, which are considered below.

#### *Location*

The first criterion of SP3 details that 'new development should be within the main built up areas of villages, which have local services and access to Newark Urban Area.' The proposed development site is within the main built up area of the village adjacent to existing residential development on Thorpe Close and Beckingham Road. With regards the provision of services; whilst Coddington is defined as an 'Other Village' in the settlement hierarchy it does contain a Primary School, two public houses, a shop, a village hall, recreation ground and church. In addition, Coddington is served by regular bus connections to Newark where a wider range of services can be found. I therefore consider the site accords with the locational requirement of Policy SP3.

#### *Scale and Impact of Development*

The guidance note to accompany SP3 confirms that the scale criterion relates to both the amount of development and its physical characteristics, the latter of which is discussed further in the Character section below. One single storey dwelling is considered relatively small scale in numerical terms in a village which was detailed as having 1,684 residents in 2016. As such the

proposal is unlikely to detrimentally affect local infrastructure such as drainage and sewerage systems. I also consider that one additional dwelling is highly unlikely to materially affect the transport network in terms of increased traffic levels in volume particularly as two off street car parking spaces would be provided for it. The displacement of parked cars is discussed in detail within the highway section of this report.

#### *Impact on Character/Visual Amenities*

The character criterion of SP3 states that new development should not have a detrimental impact on the character of the location or its landscaped setting. The assessment overlaps with the consideration required by Policy DM5 which confirms the requirement for new development to reflect the rich local distinctiveness of the District's landscape and character through scale, form, mass, layout, design, materials and detailing. Core Policy 9 states that new development should achieve a high standard of sustainable design and layout that is of an appropriate form and scale to its context complementing the existing built and landscape environments. Furthermore the revised NPPF continues to state that good design is a key aspect of sustainable development and new development should be visually attractive as a result of good architecture and appropriate landscaping.

The application site falls within a residential area which has a mix of single and two storey semi-detached, and terrace dwellings.

The development proposes one single storey dwelling located centrally within the site and would be constructed of red brick. ~~with rendered elements.~~ Its positioning on what would become a private drive would make the dwelling discreet when combined with its height and I am satisfied that the design of the proposed dwellings is acceptable and that in terms of appearance, the proposed development would sit well within the context of the adjoining dwellings and the wider residential setting, meeting the policy requirements of SP3, CP9 and DM5.

#### *Need for Development*

With respect to the local need criterion of SP3, it is noted that the bungalow proposed would be a dwelling offered for social rent and thus a type of house that meets with the definition of affordable housing which forms part of a wider capital programme for investment and delivery of affordable housing provisions within this District over the next 5 years. For the avoidance of doubt there is an affordable housing need across the District, which includes Coddington. The need is not Coddington specific in that there is no local housing needs survey for the village. The need covers a slightly wider geographical area, including Newark. The district wide Housing Market and Needs Assessment (2014) identified that within the rural south sub area (of which Coddington is a part of) there is a housing need for smaller homes (1 bedroom - 234 units and 2 Bedroom - 458), with a clear demand for bungalows in particular. The Council's housing register indicates a demand for affordable housing for older people's accommodation and for small dwellings. **This application as amended specifically addresses the need identified with the rural south sub area.** It is therefore considered that a need exists within Coddington for small, single storey affordable units and this proposed development would assist in meeting that need. The proposal is therefore considered to accord with the need element of policy SP3.



### Impact on Residential Amenity

Policy DM5 of the DPD states that the layout of development within sites and separation distances from neighbouring development should be sufficient to ensure that neither suffers from an unacceptable reduction in amenity including overbearing impacts, loss of light and privacy. The revised NPPF seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings.

The site is surrounded by existing residential properties on all boundaries and as such consideration of the perceived impact on neighbouring amenity forms a material consideration.

The proposed dwelling is single storey being approximately 5.4569m in height. It is considered that the separation distances of the proposed bungalow to neighbouring properties are sufficient (they range from ~~12.39m~~ **12.59m** (NE) to ~~16.78m~~ **15.44m** (N) at their closest points) to ensure that the dwellings would not result in an unacceptable degree of overbearing impact or loss of light for existing neighbours. Given the proposal is single storey in height, it is not considered that the development would result in overlooking of neighbouring properties subject to appropriate boundary treatment which would be secured by way of condition. Given the distances involved there will inevitably be overlooking of the garden of the proposed bungalow from existing dwellings. However I do not consider that this is any worse than many existing relationships in the area and is not so harmful as to warrant a reason for refusal.

### Highway Impacts

SP7 provides, amongst other things, that development should provide for safe, convenient access, be appropriate for the highway network in terms of the volume and nature of traffic generated, ensure that the safety, convenience and free flow of traffic using the highway are not adversely affected; provide appropriate and effective parking provision and ensure that vehicular traffic generated does not create new, or exacerbate existing on street parking problems, nor materially increase other traffic problems. Policy DM5 reflects this.

NCC Highways Authority has commented that the proposed access to the new dwelling and the level of parking are acceptable such that they do not raise any objections. However there are other factors that require consideration;

#### *Displacement of Parked Cars*

It was noted that several cars were parked on the site during the officer site inspection, which I understand belong to local residents who park there on an informal basis, without any express permission to do so as confirmed by the agents of this application.

It is noted that the NCC Highways Authority have not made comments/raised concerns regarding the loss of car parking spaces. Nevertheless it is a matter that warrants consideration.

The table below provided by the applicants (which has been edited to remove personal information) shows that of the 10 garages, only 4 are rented out to properties within a 10 minutes (approx.) walking distance of the site. Of these, 3 use the garages to park their car one of which has a driveway as an alternative option. The other 2 do not have a driveway where they could park their cars so arguably the scheme would displace these 2 cars to on-street parking onto both Thorpe Close and Ross Close.

Address of current garage renter	Postcode of garage renter	Garage Address	Tenant has off street parking	Garage Use	Is property in local area
Beckingham Road	NG24	1 Thorpe Close	Property Not local	Storage	Yes 10 mins walk
The Osiers	NG24	2 Thorpe Close	Property Not local	Storage	No 1hr walk
Thorpe Close	NG24	3 Thorpe Close	No Drive	Daily use car	Yes 2 mins walk
Vacant		4 Thorpe Close	Vacant	Vacant	Vacant
Primrose Avenue	NG24	6 Thorpe Close	Property Not local	Storage	No 1hr walk
Butt Lane	LN6	7 Thorpe Close	Property Not local	Storage	No 2hr walk
Vacant		8 Thorpe Close	Vacant	Vacant	Vacant
Thorpe Close	NG24	9 Thorpe Close	Yes Property has drive	Daily use car	Yes 2 mins walk
Ross Close	NG24	10 Thorpe Close	No Drive	Daily use car	Yes 2 mins walk

I have also had regard to the cumulative impact specifically in relation to the scheme (17/02294/FUL) that was approved by Members at the March 2018 Planning Committee relating to the garage court to the north of this, also at Thorpe Close. It was established that of the 19 occupied garages 9 could potentially be used for tenant vehicle parking that are within a 5 minute walk, 3 benefitted from off street parking (driveway or parking bay) which leaves a total of 6 tenants which could potentially be using their garages for vehicle parking. For clarity of these 6 tenants 1 is a NSH resident and 5 are private occupiers. The report goes on to state:

*It is not possible to categorically state that 6 of the total 28 garages (21%) are being used for vehicle parking, however having reviewed street view imagery it would appear that should this be the case that all of the 6 properties which currently do not have off street parking and rent a garage within the development site could, should they so wish, accommodate a driveway to the side/front of their properties to accommodate a vehicle. It is therefore not considered that the removal of the garages on the development site would result in such a significant increase in on-street parking in the area to such a detriment to highway safety to warrant refusal of the application.*

Even taking into account the worst case cumulative situation, I do not consider that the displacement of 8 cars (cumulatively) would amount to such harm that would warrant a reason for refusal that could be successfully defended on appeal.

#### *Rights of Access*

Two properties (no.20 & 24 Thorpe Close) currently enjoy rights of access over the land/garage court to get to their properties. No. 20 has an existing gated access that opens onto to the garage court whilst no. 24 has two accesses to their front boundary and to a garage to their west. These accesses are shown to be maintained as part of the planning application.

However residents and the Parish Council have commented that the layout is such that users would find it difficult to maneuver a car over the right of way. A tracking plan was submitted in an attempt to demonstrate that the rights of accesses worked for residents and NCC Highways Authority raised some concerns that this appeared tight and that a small car had been used for the tracking. An amended tracking plan was subsequently provided on 16<sup>th</sup> May 2018. In response NCC commented that the tracking plan in respect of No. 20 was unnecessarily very tight and suggested widening the access to 2.75m and to use a radius kerb and that if this were to be achieved it would be acceptable.

The applicant has indicated that they are able to add the curb radius ~~(not yet shown on revised plan revision K – see Condition 012)~~ but that the existing access point to number 20 lies outside of their control and they are unable to widen it. Separately and via the Parish Council, the owners of no. 20 have expressed a wish to widen their access (which does not require planning permission) and the agents have confirmed there would be no objection to this. There is now a separate ‘in principle’ agreement in place for the agents to undertake these works if the owners give consent albeit this is a matter that lies outside of the planning regime as it would not be possible to require the applicant to widen an access that they do not control.

Members will note that the Highways Authority were still raising concerns in relation to the plan revision E and it has been established that as the access cannot be widened through this application, a suitable alternative would be to lengthen the amount of turning space behind the access by 600mm to make it easier for the affected resident and avoid the snaking in and out. The Highways Authority have essentially stated that the proposal is acceptable but acknowledge in ~~the most recent~~ their **previous comments** that the scheme would involve the snaking in and out of the access for the occupiers of no. 20 Thorpe Close which is not ideal. However access is possible and I consider that this would therefore not sustain a reason for refusal. ~~This amended plan (revision F K) is therefore acceptable and is satisfactory to the Highways Authority as confirmed by their latest comments. An additional condition (no. 12) is suggested to achieve the outcome that NCC have advised us upon. Members will need to determine whether they consider this is a matter that should be determinative.~~ **The amended scheme for the smaller bungalow allows for additional hard standing to allow the right of ways at no. 20 & no. 24 Thorpe Close additional maneuvering space.**

I am also aware that there is a concern regarding maneuvering in the dark and I consider that it would be reasonable to require the applicants to provide a low level lighting scheme to assist with this and this can be controlled by condition (see Condition 11). The right of access(es) to no. 24 are demonstrated as being acceptable and has been revised to include additional space to allow the residents ~~an extra 1m~~ **extra space** to enable easier maneuvering of their personal truck. There is no material reason to withhold a planning permission on the basis of inability for existing residents to utilise their existing rights of way. In any event NSH have worked positively with the affected persons in order to resolve these issues and via the Parish Council, I am advised that these residents now ‘welcome this development’.

The last correspondence (albeit more is expected) from Coddington Parish Council has suggested that a number of residents remain concerned with the scheme and this appears to primarily relate to their rights of access and ability to gain access.

I understand that specifically CPC are concerned that;

- *The measurements shown for vehicle access to the rear of 20 Thorpe Close had been taken from inside the property and also extended on to the property of the proposed development. In response I would refer Members to **the latest plan Option 5 Revision K** which shows that the distance annotated of 6.34m is taken from the outside of the gates to the back edge of the footpath in front of the proposed bungalow and that extra space is now provided to enable vehicles to reverse out and swing round to the left.*
- The necessary widening of the gateway to no. 20 Thorpe Close was not part of the application and would be at the occupiers own expense. In response, this widening whilst acceptable from a planning perspective does not form part of the application site and we cannot require the applicants to widen this when it is not within their gift to do so. As an aside the applicant has been advised of this request to contribute to the costs of doing this and this may or may not be subject to a separate agreement outside of the planning regime.
- The site allotted for bins for the new property had been moved, but soft landscaping on the corner was still shown.
- The occupier of no. 24 Thorpe Close had asked for another 1m of access to his property, but this was not shown on the plan. He had demonstrated that even with an extra metre, it would take 6 manoeuvres to get his car in and out of the driveway. In response I can confirm that additional reversing space has been shown on the revised drawings. Revision D showed reversing space of 7.2m whereas later plans including version K now show 8.2m of reversing space.

I believe that the scheme does now allow for existing residents to maintain their rights of access (which is a separate legal matter between the applicants and the residents – and not one that the regulatory planning regime can resolve) in an acceptable way which now conforms with NCC Highway advice and there are no grounds to refuse the scheme on this basis.

### Drainage

The site lies within Flood Zone 1 albeit it is noted to lie within an area prone to surface water flooding. A surface water management plan has been submitted as part of supporting documentation which details how surface water would be managed on the site. The proposed layout is considered to be acceptable and would not result in any greater surface water flooding issues than that which currently exists from the large areas of hardstanding on the site. Rather, the level of hardstanding on site would be reduced which could improve the existing situation.

### Other Matters

The comments received from colleagues in Environmental Health regarding potential contaminated land are noted and are capable of being controlled by condition which is necessary and reasonable.

### *Land ownership/Boundary Disputes*

Following the concerns raised by one local resident (verbally) that the site location plan was incorrect because it showed the use of part of their garden, it has been established the original site location and block plans were incorrect insofar as they show the garages protruding into the garden of a dwelling to the west, showing a doglegged shaped garden. In reality the garden of the neighbour runs straight and it was established that the Ordnance Survey layer of the plan is incorrect. Revised plans have been submitted to show that the site would not encroach into the

neighbours garden and the plans have been appropriately annotated. I am satisfied that the correct ownership certificate has been served and that no persons have been prejudiced.

### *Walls of Garages*

The walls of the garages that form the boundary with the application site appear to be of sound construction and appearance. It has been requested that the applicant carefully demolish the garages to allow the walls of the garages (which would need to be suitably reinforced) be retained thus maintaining the common boundaries with neighbours and minimizing disruption to them. The applicant had previously agreed in principle to this but it has become apparent upon investigation that this is not possible because they are built on old slabs which will need to be replaced with different boundary treatments. However the applicant has now confirmed that where walls of garages are to be removed these will be replaced with brick walls.

I would draw Members attention to suggested conditions no. 5 & 6 which aim to deal with the methodology for demolition and temporary boundary treatment at the construction phase plus the required permanent boundary treatments at operational stage. It is open to Members, if minded to approve, to impose a more rigorous CEMP condition as suggested by the Parish Council if they consider it justified.

### Conclusion and Planning Balance

Taking the above into account I am of the view that the proposed development would provide for a family home in an area where there is a need for small single storey units and conclude that the site is in a relatively sustainable location. The development would have an acceptable impact on the character of the area, neighbouring amenity, highway safety and drainage. Whilst this scheme would displace some cars from the garages lost, on balance it is considered that the limited harm through consequential on-street parking would be outweighed by the positive of providing a much needed affordable home. There are no further material considerations that would warrant refusal of the application.

### **RECOMMENDATION**

**That planning permission is approved subject to the conditions and reasons shown below.**

#### Conditions

##### 01 (Time for Implementation)

The development hereby permitted shall not begin later than three years from the date of this permission.

Reason: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

##### 02 (Land Contamination)

No development shall take place until the applicant has verified that clean capping material imported to site for use in garden areas and soft landscaping is suitable for its proposed use, in line with current guidance, to the satisfaction of Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised.

03 (Plan Condition)

The development hereby permitted shall not be carried out except in complete accordance with the following approved plans

Site Location Plan, Ref 40860/ID43001B

**Proposed Site Layout Op 5, 40860/ID43/010A- C (received 16/08/2018)**

**Proposed Plans & Elevations, 40860/ID43/011 (received 13/08/2018)**

Proposed Drainage, 100 P02

unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the permission.

Reason: So as to define this permission.

04 (External Materials)

The development hereby permitted shall be constructed entirely of the materials details as shown on drawing number Materials Elevations, **40860/ID43/012** unless otherwise agreed in writing by the local planning authority through a non-material amendment application.

Reason: In the interests of visual amenity.

05 (Methodology for Demolition and Boundary Treatments at Construction phase)

No development shall be commenced on site, including any demolition, until a methodology for the demolition of the garages along with details of temporary boundary treatments to be erected during the construction phase have been submitted to and approved in writing by the Local Planning Authority. The demolition shall then be in accordance with the approved methodology submission.

Reason: In in the interests of amenity and site safety.

06 (Boundary treatments at operational phase)

No part of the development shall be brought into use until precise details of all the boundary treatments proposed for the site including types, height, design and materials, have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of the dwelling and shall then be retained in full for a minimum period of 5 years unless otherwise agreed in writing by the local planning authority. These boundary treatments shall comprise brick walls where they replace the walls of garages that will be lost as part of this permission unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of residential and visual amenity.

07 (Landscaping Scheme)

Prior to first occupation of the dwelling hereby approved, full details of both hard and soft landscape works shall be submitted to and shall be approved in writing by the local planning authority. These details shall include:-

a schedule (including planting plans and written specifications, including cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants,

noting species, plant sizes, proposed numbers and densities. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species; and

hard surfacing materials.

Reason: In the interests of visual amenity and biodiversity.

#### 08 (Implementation of Landscaping)

The approved soft landscaping shall be completed during the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the local planning authority. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the current or next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority. The approved hard landscaping scheme shall be implemented prior to first occupation of the dwelling hereby approved.

Reason: To ensure the work is carried out within a reasonable period and thereafter properly maintained, in the interests of visual amenity and biodiversity.

#### 09 (Removal of PDR)

Notwithstanding the provisions of the Town and County Planning (General Permitted Development) (England) Order 2015, other than development expressly authorised by this permission, there shall be no development under Schedule 2, Part 1 of the Order in respect of:

Class B - additions etc to the roof of a dwellinghouse

Class C - other alterations to the roof of a dwellinghouse

Reason: In the interest of protecting neighbouring amenity in accordance with the aims of Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (2013).

#### 010 (Provision of car Parking)

No part of the development hereby permitted shall be brought into use until the parking areas are provided in accordance with the approved plan. The parking areas shall not be used for any purpose other than parking of vehicles.

Reason: In the interests of highway safety.

#### 011 (External lighting scheme)

Prior to first occupation of the dwelling hereby approved, details of an external lighting scheme shall be submitted to and be approved in writing by the local planning authority. The details shall include location, design, levels of brightness and beam orientation, together with measures to minimise overspill and light pollution. The lighting scheme shall thereafter be carried out in accordance with the approved details and the measures to reduce overspill and light pollution retained for the lifetime of the development unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of visual and residential amenity and to help ensure that manouvering of vehicles is done so safely in times of darkness.

012 (Additional condition to require minor amendment to the plan)

Notwithstanding the approved layout drawing **(40860/ID43/10A C)**, prior to the development commencing, a revised plan showing a small radius kerb at the entrance to the gateway of no. 20 Thorpe Close shall be submitted to and approved in writing by the LPA. The development thereafter shall be completed in accordance with the amended plan unless otherwise agreed in writing by the LPA.

Reasons: In the interests of amenity and highway safety.

### **Notes to Applicant**

01

The applicant is advised that all planning permissions granted on or after 1 December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

The proposed development has been assessed and it is the Council's understanding that CIL may not payable on the development hereby approved as the development is made up entirely of Social Housing provided by local housing authority, registered social landlord or registered provider of social housing and shared ownership housing. It is necessary to apply for a formal exemption to confirm this view, which must be made to the Council prior to the commencement of development on CIL 4 form which is also available on the Council's website.

02

This application has been the subject of discussions during the application process to ensure that the proposal is acceptable. The District Planning Authority has accordingly worked positively and pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

### **Background Papers**

Application Case File

For further information, please contact Clare Walker on ext. 5834.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**  
**Business Manager Growth & Regeneration**





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## **PLANNING COMMITTEE – 4 SEPTEMBER 2018**

Application No:	18/00474/FULM (MAJOR)		
Proposal:	Proposal to convert existing Water Tower into 2 dwellings (apartments), with 11 additional new build apartments on the same site		
Location:	Land At The Water Tower, Goldstraw Lane, Fernwood		
Applicant:	Mr Harman Kalsi		
Registered:	19 March 2018	Target Date: 18 June 2018	
	Extension of Time Agreed Until 7 September 2018		

**Due to the difficult balance that needs to be struck between heritage benefits and highway harm, the application has been referred to the Planning Committee by the Business Manager for Growth and Regeneration under his powers set out in the Scheme of Delegation.**

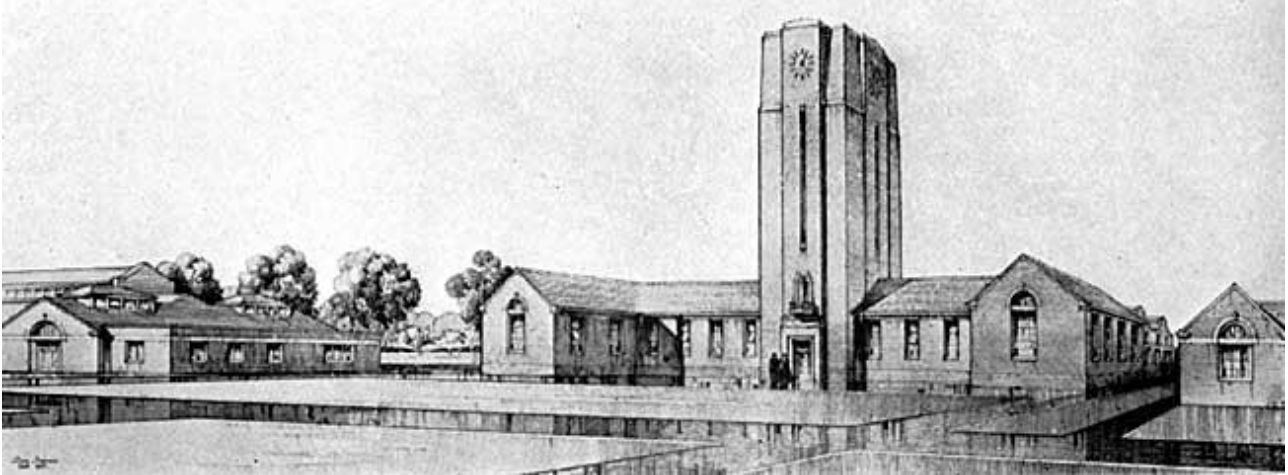
### **The Site**

The application site is situated within the existing Fernwood housing development within the defined Newark Urban Area, to the south-east of the town and on the eastern side of the A1. This residential development has been erected on the former Balderton Hospital site and this powerhouse tower (known locally as the Fernwood water tower) is the last remaining structure standing of the former mental institution.

Construction of the tower appears to have started in the 1930s, but wartime halted construction when a large Victorian house on the site was used by officers from Balderton airfield. Work recommenced in 1945 but was not finally finished until 1957- when it was opened by the Minister of Health Enoch Powell. It was built as a chimney, not a water tower. Side wings have been demolished but scarring on the structure remain where they once attached. The architecture of the tower design is reminiscent of the Home Ales Office tower in Arnold (Nottingham) which was designed by T.C Howitt (1936) - the central portion of the Arnold building is a water tower and has a similar clockface. The Balderton tower is architecturally more elegant in its form. The structure is considered to be a non-designated heritage asset due to its local historic and architectural interest and is registered as such on the Historic Environment Record (HER).

The tower has been unused for some years and measures 26.6m in height and has a footprint of 70 square metres and sits in an L-shaped 0.15 hectare site. The tower is roughly square in shape and is constructed of red brick in an art deco style. It is currently bounded on all sides by a 2m high close boarded timber fence. It is surrounded by existing residential development on three sides (mostly two-storey, but three and four storey on the opposite side of Goldstraw Lane) and the southern boundary fronts Goldstraw Lane. Its presence and form has impacted on the layout, structure and vistas of the new development. The tower forms a distinct landmark focal point at the head of Ruby's Walk, which forms a central pedestrian walkway which links with the only

other historic building on the larger development site, Balderton Hall.



### Relevant Planning History

PREAPP/00292/16 - Conversion and renovation of existing water tower into apartments and new build to include 11 new dwellings (Apartments).

15/00009/FUL - Demolition of existing tower and erection of 7 new dwellings, refused 03.03.2015 for the following reasons:

1. The proposed development would result in the total loss of the existing Tower which represents a non-designated heritage asset that is of local historic and architectural interest. In addition, no adequate justification has been evidenced within the submission in terms of

marketing and viability to demonstrate that the building cannot be converted to a viable new use. As such the proposal is contrary to Core Policy 14 of the Core Strategy DPD and Policy DM9 of the Allocations and Development Management DPD.

2. Plots 2 and 6 of the proposed development would, by reason of their proximity and relationship, result in a detrimental impact on the privacy and outlook of future occupiers of both units. As such, the proposal is contrary to Policy DM5 of the Allocations and Development Management DPD and the NPPF.

3. In the absence of a Protected Species Survey, the application has failed to adequately demonstrate that the proposal would result in the conservation and enhancement or adequate mitigation of biodiversity. As such the proposal is contrary to Core Policy 12 of the Core Strategy DPD and the NPPF.

07/01335/FUL - Full planning permission for proposed conversion of and extension to disused water tower to form restaurant and bar (A3 & A4 use) (Re-submission). Approved 23.11.2007.

03920421 - Outline planning permission for village to include residential, retail A1, A2, A3, Business B1, school, village hall and roads. Approved subject to a S106 agreement 03.03.1999. Condition 3 attached to the permission stated that the Water Tower and Balderton Hall shall not be demolished.

The Balderton Hospital Planning Brief also sought to retain the Water Tower and the Hall and alluded to the tower being more suited for commercial purposes due to its size and design.

### The Proposal

Full planning permission is sought for the conversion of the existing tower and new build development to provide a total of 13 residential units. This comprises:

- 2 apartments (two 2-bed) one above the other, within the existing water tower,
- 3 apartments (one 1-bed; two 2-bed) within two storey wings to be constructed either side of the tower; and
- 8 apartments (two 1-bed; six 2-bed) within two separate two-storey blocks to the rear of the site.

The left hand wing attached to the water tower provides access via an undercroft through to the two rear courtyard blocks. There is a total of 19 on-site parking spaces provided to serve the 13 units, seven are provided along the frontage with Goldstraw Lane, one within the undercroft and the rest are to the rear of the site. The undercroft is decorated by art deco-style gates.

The existing water tower has solid walls 750mm thick and has a narrow vertical glazing panel within each elevation and a clock face at the top (apart from the rear elevation where there is a round glazed opening). The proposed external alterations to the water tower are limited to increasing the size of the vertical opening in the rear elevation in order to provide additional internal light.

Internally, whilst the Structural Appraisal sets out that the tower has five floors (in addition to a

basement of unknown depth), not all storeys have an existing floor. Between the first floor and fourth floor level, the structure is open. The existing internal floors are constructed in reinforced concrete and are currently limited to ground, first and fourth floor only. The proposal therefore includes the insertion of internal floors to provide a total of 8 floors, above the entrance hall the next 3 floors comprise the lower apartment and the top 4 floors comprise the upper apartment. To give an idea of internal floor areas of rooms, the smallest bedroom is 13 sq m, with the smallest living/dining area of 21 sq m. Internal access is provided by an internal lift which would serve floors 0 (to access the lower apartment) and 5 (to access the upper apartment). In addition, a main internal staircase is proposed that provides separate access to all floors (apart from the top floor) and then within each apartment there are other staircases that provide private movement between floors.

The two new wings attached to the tower reflect the position of previous historic additions. They measure approx. 9.5m in width either side of the tower, approx. 9.2m in depth and approx. 8m in height. The left hand wing is positioned 1.3m off the south-western common boundary and the right hand wing is approx. 0.9m off the north-eastern common boundary. The principle window openings are in the front and rear elevations with one small first floor window in each of the side elevations. They are designed to reflect the 1930's art deco style of the tower and would be constructed in red brick to match the tower.

The two proposed courtyard blocks are positioned on the site to represent a continuation of the layout of built form of existing housing outside the site. The new build elements have flat roofs approx. 6.5m in height. Block 1 positioned in the narrowest part of the site is mostly rectangular in shape and measures approx. 16.4m wide by 7.8m along the narrow end gable. This block is positioned directly adjacent to the site boundaries. Block 2 positioned to the rear of the tower is T-shaped and measures approx. 14.6m wide by 6m deep with the rear element measuring approx. 11.4m long by 5.8m deep. This Block is positioned directly adjacent to the rear boundary of the application site. Both these new blocks are designed to reflect the 1930's art deco style of the existing water tower but are proposed to be constructed of a white render finish.

Supporting information submitted include the following:

- Design and Access Statement;
- Structural Appraisal;
- Protected Species Survey; and
- Economic Statement.

The plans considered by this application are listed below:

- Site and Location Plans (Drawing No: A100);
- Ground Floor Level (Drawing No: 1076/A101);
- First Floor Level (Drawing No: 1076/A102);
- Water Tower Layouts (Drawing No: 1076/A108);
- Roof View (Drawing No: 1076/A109);
- Elevations 1 of 4 (Drawing No: 1076/A110);
- Elevations 2 of 4 (Drawing No: 1076/A111);
- Elevations 3 of 4 (Drawing No: 1076/A112);
- Elevations 4 of 4 (Drawing No: 1076/A113);
- Parking (Drawing No: 1076/A117);
- Refuse Strategy (Drawing No: 1076/A118);
- Flat GIA (Drawing No: 1076/A119); and

- Shadow Cast (Drawing No: 1076/A120).

#### Departure/Public Advertisement Procedure

Occupiers of 63 properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local press.

#### **Planning Policy Framework**

##### **The Development Plan**

##### **Fernwood Neighbourhood Plan (made 28 September 2017)**

- NP1 – Design Principles for New Development
- NP2 – Housing Type
- NP3 – Residential Parking on New Development
- NP5 – Green Spaces, Landscaping and Biodiversity
- NP6 – Protecting and Enhancing Heritage Assets
- NP7 – Supporting Better Movement and Connections

##### **Newark and Sherwood Core Strategy DPD (adopted March 2011)**

- Spatial Policy 1 – Settlement Hierarchy
- Spatial Policy 2 – Spatial Distribution of Growth
- Spatial Policy 7 – Sustainable Transport
- Core Policy 1 – Affordable Housing Provision
- Core Policy 3 – Housing mix, Type and Density
- Core Policy 9 – Sustainable Design
- Core Policy 12 – Biodiversity and Green Infrastructure
- Core Policy 14 – Historic Environment
- NAP1 – Newark Urban Area

##### **Allocations & Development Management DPD (adopted July 2013)**

- Policy DM1 – Development within settlements central to delivering the Spatial Strategy
- Policy DM2 – Developer Contributions and Planning Obligations
- Policy DM5 – Design
- Policy DM7 – Biodiversity and Green Infrastructure
- Policy DM9 – Protecting and Enhancing the Historic Environment
- Policy DM12 – Presumption in Favour of Sustainable Development

#### **Other Material Planning Considerations**

- National Planning Policy Framework 2018
- Planning Practice Guidance (on-line resource)
- Newark and Sherwood Amended Core Strategy 2017
- Newark and Sherwood Developer Contributions and Planning Obligations SPD 2013

## Consultations

**Fernwood Parish Council – Object.** “The Parish Council believes that 19 car parking spaces will be insufficient for 13 properties. Goldstraw Lane already suffers from inconsiderate parking and is congested; this development would be likely to lead to more cars being parked on the road. The Fernwood Neighbourhood Plan, section 14 and building for Life 12, section 10 outline the need for anticipating car parking demand.

Further Feedback – The Parish Council welcomed the development and designs for the tower, recognizing this as a good way to use and maintain it. If the number of parking spaces could be increased sufficiently, the Parish Council would be in favour of the application (Councillors estimated that each property would have 2 cars).”

**NCC Highways Authority – Comments received 30.05.2018**

### “Additional information

Following my previous comments dated 23 April, the agent has confirmed that the number of apartments is not to be reduced, that a parking barrier could be installed at the access to the site and a parking management agreement could be introduced for the expected residents.

These do not address the concerns raised, therefore, it is recommended that this application be refused for the following reason:

The proposed development fails to make adequate provision for the parking/manoeuvring of vehicles within the site curtilage resulting in an increase in the likelihood of danger to other users of the highway due to vehicles being parked on the public highway/footway.”

Comments received 24.03.2018 -

“This proposal is for the conversion of the existing water tower into 2 dwellings and the construction of 11 new build apartments – 3 x 1 bed and 10 x 2 bed units. There are 19 parking spaces proposed within the site curtilage and no additional provision for visitors. There is the concern that this number would be insufficient for this use, and would result in further on street parking in an area where considerable on street parking already exists.

The layout as shown on plan no. 1076/A117 for many of the parking bays involves a parallel parking arrangement which does prevent the free flow of vehicles whilst manoeuvring takes place. This is particularly so for bay 7, adjacent the main access, and bay 8, adjacent the main driveway to the rear of the site.

Is there a possibility that the number of units could be reduced to ensure the level of parking is adequate for the site?”

**NSDC, Conservation –** “The tower is the last remaining part of the Balderton mental institute, namely the iconic power house (locally known as Fernwood water tower). The structure is a Local Interest building and is considered to be a non-designated heritage asset due to its local historic and architectural interest.

The retention of the tower was secured via a section 106 agreement relating to the redevelopment of the wider hospital site. Nevertheless, we recognise that there are complex structural and viability issues to consider.



### Legal and policy considerations

Policies CP14 and DM9 of the Council's LDF DPDs, amongst other things, seek to protect the historic environment and ensure that heritage assets are managed in a way that best sustains their significance.

The National Planning Policy Framework (NPPF) makes it clear that protecting and enhancing the historic environment is sustainable development (paragraph 7). In accordance with Annex 2 of the NPPF, Local Interest buildings are non-designated heritage assets. The impact of a proposal on the significance of a non-designated heritage asset is a material consideration, as stated under paragraph 135 of the NPPF. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

### Significance of heritage asset

Fernwood Hospital Tower is included in the HER (ref 3.3.17). It is identified as a powerhouse with the following description: "Powerhouse/clocktower dating to the 1930's development of the hospital site. A square tower built of brick in an art deco style".

The tower comprises red brick walls in a distinctive Flemish bond and is approximately 26m in height. The internal floors are constructed in reinforced concrete. There are long vertical slits within the walls.

Construction of the tower appears to have started in the 1930s, but wartime halted construction when a large Victorian house on the site was used by officers from Balderton airfield. Work recommenced in 1945 but was not finally finished until 1957 when it was opened by the Minister of Health Enoch Powell. The side wings have been demolished (these can be seen in the attached image and evidenced by the scarring in the side walls of the tower).

Although the tower has lost much of its context, the structure remains an iconic landmark structure. The architecture of the tower design is reminiscent of the Home Ales Office tower in Arnold (Nottingham) which was designed by T.C Howitt (1936), noting that the central portion of the Arnold building is a water tower and has a similar clock face.

Ultimately, the Balderton tower is architecturally elegant in its form and contributes positively to the character and appearance of the local area.

### Assessment of proposal

The submitted scheme proposes to convert the tower into two apartments. Two new wings will be erected on either side of the tower with additional new build on the site forming a total of 11 further residential units.

Conservation acknowledges that the applicant has spent considerable time developing ideas for the site, indicative plans for which have previously been discussed with the Conservation Team. We are happy to confirm therefore that the current submission accords with advice we have previously given (ref PREAPP/00292/16).

The structural report substantiates the claim that the tower is capable of conversion. Conservation considers that there is clear benefit in finding a viable new use for the building.

In the context of the housing redevelopment around the tower, the prospect of suitably designed further development around the tower is acceptable. The concept of two side wings to the tower



has a historic basis, noting the presence of previous wings in this location (see historic sketch drawing attached showing previous single storey side wings).

The proposed conversion of the tower has been well-thought out given the constraints imposed by the structure. The new side wings, furthermore, have a strong art deco feel which sits comfortably in this context. The limited scale of the proposed wings and the glazed connections help to maintain the primacy of the tower, and the design and detailing of the new additions compliment the architecture of the tower. In addition, it is noted that the undercroft is a clever way of providing access to the rear whilst maintaining the balance of the wings. The gates proposed reference the art deco character, helping to maintain the positive appearance of this key elevation.

The new build at the rear continues the art deco character of the proposed side wings. Given the constraints of the plot shape and the neighbouring residential development, the proposed layout is considered to be acceptable. Fundamentally, the scale, form and design of the new build is considered to sustain the significance of the heritage asset.

#### Summary of opinion/recommendation

The proposal sustains the architectural interest of the heritage asset and therefore complies with heritage objectives contained within CP14 and DM9 of the Council's LDF DPDs. The proposal also complies with heritage advice contained within section 12 of the NPPF, notably paragraph 135.

If approved, precise details of the facing materials, window schedule (with particular regard to main front elevation), gate design/specification, schedule of external works to water tower and a brick panel for the front elevation of the new wings of tower, should all ideally be conditioned. In addition, a basic level 1 recording of the building (photographic) should be submitted along with the existing drawings, all to be submitted to the County HER (in accordance with paragraph 141 of the NPPF)."

**NSDC, Environmental Health (Contaminated Land)** – "The application site is located within the former Balderton hospital. Historic mapping/plans indicate that the former building on this part of the site housed an incinerator, boiler house and workshops and was also used for oil storage.

Due to these previously contaminative uses and if no desk top study has been submitted prior to, or with the planning application, then I would request that our full phased contamination condition be attached to the planning consent."

#### **Independent Viability Assessor –**

The applicant has sought to challenge the level of developer contributions by way of Affordable Housing and Infrastructure provision on the basis that the level of contributions proposed would render the development economically unviable.

An independent viability assessment has been commissioned to determine whether the policy based contributions are viable and, if not, the level of contributions that can be delivered whilst maintaining economic viability.

The main premise of the viability appraisal, following advice contained in the NPPF, is that the development should be deliverable, taking account of the full cost impact of planning policies (including affordable housing, CIL and other infrastructure contributions) whilst maintaining a reasonable return to the landowner and developer.

The detailed methodology to assess the economic viability of development is set out in 'Viability for Town Planners Guidance Notes.'

### Key Assumptions

GENERAL		
Net Developable Site Area		0.16Ha
Development Scenario		Brownfield
Total Unit Numbers		13
AREAS		
Net Residential Sales Area	Houses	539sqm
	Apartments	397sqm
Gross Construction Area	Houses	539sqm
	Apartments	397sqm
AFFORDABLE HOUSING		
Affordable Housing Delivery Test Parameters		0-30%
Affordable Housing Tenure Mix		60% Social Rent
		40% Intermediate
SALES VALUES		
	Houses	£2200sqm
	Apartments	£2000sqm
CONSTRUCTION COSTS		
	Houses	£1289sqm
	Apartments	£1431sqm
ABNORMAL DEVELOPMENT COSTS		
Abnormal Construction Costs		£91,848
LAND VALUE ALLOWANCE		
Residual Land Value with Planning Permission		-£85,142
Existing Land Use Value	Based on EUV £370,000Ha	£231,500
Share of Uplift in Land Value to Landowner		NA

Land Value Allowance in Viability Appraisal		£100,000
<b>OTHER FEES &amp; COSTS</b>		
Professional Fees		8.0%
Legal Fees		0.5%
Statutory Fees (Planning, Build Regs, Warranties)		1.1%
Sales/Marketing Costs		3.0%
Contingencies		5.0%
CIL		£24,255
Planning Obligations		£0
<b>FINANCE COSTS</b>		
Interest		5%
Arrangement Fee		1%
<b>DEVELOPMENT PROFIT</b>		
Development Profit Return on GDV	Market Housing	20%
	Affordable Housing	6%

### Assumptions Comments

The viability assessment submitted by the applicant is dated October 2016. As such all cost and value assumptions are considered to be out of date. The only cost assumption used in the Council's appraisal is the applicant's estimate of abnormal costs to refurbish the external envelope of the water tower at £91,848. This is based on a detailed structural survey and is considered reasonable.

The standard fee and cost assumptions adopted by NSDC have been used in the appraisal.

For the purpose of the initial appraisal, no Sec106 Contributions or Affordable Housing obligations were included. CIL charges have been applied to the new build element of the scheme.

A sales rate of £2000 sqm has been applied to the Water Tower Apartments. The new build courtyard development consists of duplex terraced houses rather than apartments and an enhanced sales rate of £2200sqm has been applied.

Current BCIS construction cost rates have been applied with a reduced allowance of 5% for external areas to reflect the constrained nature of the site.

The initial residual land value appraisal indicated a negative figure of -£85,000. It is acknowledged that some value must be placed on the land in this type of appraisal so a nominal figure of £100,000 has been adopted.

### Viability Results & Conclusions

A copy of the Viability Appraisal is attached to the Report.

The appraisal indicates negative viability of -£219,111 with no infrastructure or affordable housing contributions.

The Water Tower development is complex and sale values for apartments in this location are not likely to generate a premium. The new build element of the scheme is not sufficient to subsidise the abnormal Water Tower restoration costs and it is recommended that affordable housing and infrastructure contributions would not be economically viable.”

**NSDC, Community Facilities** – No response received.

**NSDC, Parks and Amenities** – No response received.

**NSDC, Strategic Housing** – No response received.

**NSDC, Waste** – No response received.

**Representations have been received from 3 local residents/interested parties 2 objecting to the application which can be summarized as follows:**

- 11 new builds on this site is far too many, 4-5 would be enough;
- Not enough car parking would be provided to an area that is already overcrowded;
- The development would over-shadow surrounding houses and block all sunlight to houses on the east side of the development;
- It will result in a loss of privacy with large windows overlooking existing housing;
- This part of the main road is already heavily parked due to the existing apartments blocks which means buses are unable to stop at the stops they should and pull up in front of houses;
- As the Water Tower is Fernwood’s landmark sight, seen from the A1 and many miles in each direction, it would spoil the character of this old building;
- The tower should be preserved and the Land put to better use as open space/parkland especially when there are already plans for more houses to go up to the east of the village;

**One supporting stating that this is a great use for both the former water tower and the surrounding land.**

### Comments of the Business Manager

The NPPG acknowledges that Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area, thus providing a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.

Following public consultation and independent examination, at its council meeting on 28 September 2017 Newark and Sherwood District Council adopted the Fernwood Neighbourhood Plan. The Neighbourhood Plan now forms part of the development plan for the district and its policies are a material consideration alongside other policies in the development plan and carry weight in the determination of planning applications in Fernwood. In this instance the most relevant policies in the Neighbourhood Plan are listed above and are considered against the relevant aspects of the proposal in the assessment below.

The Council is of the view that it has and can robustly demonstrate a 5 year housing land supply which has been confirmed by a number of recent appeal decisions including the dismissal of the Farnsfield appeal (at Public Inquiry) by the Secretary of State in April 2018. I do not intend to rehearse this in full other than to say that the policies of the Development Plan are considered up to date for the purposes of decision making and thus carry significant weight in an overall planning balance.

### Principle of Development

The site is located within the main built up area of Fernwood, which is an established residential area within the defined Newark Urban Area. Newark is defined as a 'Sub Regional Centre' as set out in the Settlement Hierarchy defined by Spatial Policy 1 of the Core Strategy which states that Newark should be the focus for new housing growth in the District.

I am satisfied that the site is located within the main built up area of a sustainable settlement, and as such, there is no objection in principle to the residential development at the site. However, the impact upon the character and appearance of the area, the effect on residential amenity of neighbouring properties, ecology matters and parking/highway safety will all need to be taken into consideration and are discussed below.

### Background/Planning History

Fernwood sits on the former Balderton Hospital site, whose redevelopment was set out in a Planning Brief for the site produced by Newark and Sherwood District Council. The Brief identified buildings of merit, including Balderton Hall and the Water Tower which were to be retained. This was reinforced by Condition 3 attached to the original planning consent (Ref: 03920421) which stated that these two buildings shall not be demolished. Indeed, the importance and significance of these two buildings is also clearly evident from the existing layout of new housing development where Ruby's Walk provides a vista, elongated space that links these two buildings together spatially. In 2007, the Tower gained planning permission for conversion and extension to form a restaurant and bar use (Class A3 and A4). This consent has now lapsed, however, it does demonstrate that the building and site can be redeveloped and achieve an acceptable use. The significance of the Water Tower is also identified within the Fernwood NP.

The history of the Water Tower itself is set out in the Conservation officer's comments above and recognizes that the Tower is a non-designated heritage asset and also a building of local importance with visual landmark status around the wider area. This is set out in more detail below.

### Housing Density, Mix and Need

Core Policy 3 provides that development densities should normally be no lower than 30 dwellings per hectare net. Average densities of between 30-50 dwellings per hectare have been set for the 3 strategic sites in the Newark Urban Area, which includes Fernwood.

Excluding the proposed apartments within the water tower, the scheme of 11 new build apartments on 0.15 hectares equates to 73 dwellings per hectare. Clearly this is somewhat above the considered "average densities" expected in urban areas such as this. However, it is considered that this reflects the following three issues, firstly, the proposed apartment development will always result in higher densities compared to ground based housing, secondly, that the limited area of the site is constrained and restricted by surrounding development and thirdly that the level of units provided must be sufficient to support the financial burden of the repair and conversion of the water tower.

Section 11 of the NPPF is entitled "Making effective use of land" (para 117) states that planning policies and decision should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Para 118 goes on to state that planning policies and decisions should, amongst other criteria, give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs and support appropriate opportunities to remediate derelict land as well as promote and support the development of under-utilised land and buildings. Section 11 then goes on to refer to achieving appropriate densities and should support development that makes efficient use of land, taking into account a range of criteria including, the desirability of maintaining an area's prevailing character and setting, or of promoting regeneration and change and the importance of securing well designed, attractive and healthy places.

The NPPF states that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed and that the need of groups with specific housing requirements are addressed.

Paragraph 68 of the NPPF states that "Small and medium sized sites can make an important contribution to meeting housing requirement of an area and are often built-out relatively quickly. To promote the development of a good mix of sites, local planning authorities should," amongst other criteria, "support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes."

It also states in paragraph 61 of the NPPF that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies.

The Development Plan (in terms of the policies identified below) reflects and is compliant with the NPPF. The Council has sought to plan for a mix for communities and has identified the size, type and range of housing that is required taking into account local demand as is reflected in the following policies.

Core Policy 3 states that the LPA will seek to secure new housing which adequately addressed the local housing need of the district, including the elderly and disabled population. It says that mix will be dependent on the site location (in terms of settlement), local circumstances, viability and any local housing need information. The Publication Amended Core Strategy has, based on more up to date evidence, named that the greatest need for the District as being smaller houses of 2 bedrooms or less and housing for the elderly or disabled population. NP2 of the Neighbourhood Plan states that "Development proposals for housing schemes are required to deliver a housing mix that reflects the need in the Strategic Housing Market Assessment 2015 (or equivalent). This should include smaller market dwellings to suit older people that will also be suitable for younger people as first time buyers."

This proposal would provide 10 x 2 bedroom apartments and 3 x 1 bedroom apartments. Whilst there is a limited mix in terms of the number of bedrooms, I am satisfied that the scheme would deliver units that meet the most up to date identified needs for the district in a sustainable location. The 5 ground floor apartments with accommodation only on the ground floor would potentially be suitable for the elderly or disabled population and the remaining units are likely to be ideal for younger first time buyers.

I therefore conclude that the scheme meets with the policy aspirations of CP3 and NP2, and although represents a high density, is considered to be acceptable and reflects the local need and mix requirements.

#### The impact on the character and appearance of the area (including Design and Heritage)

Core Policy 9 requires that developments achieve a high standard of sustainable design and layout that is capable of being accessible to all and of an appropriate form and scale to its context complementing the existing built and landscape environments and requires developments make the most efficient use of land at a level suitable to local character. Policy DM5 provides that the district's landscape and character of built form should be reflected in the scale, form, mass, layout, design, materials and detailing of proposals and states that where local distinctiveness derives from the presence of heritage assets, proposals will also need to satisfy DM9. Policies CP14 and DM9 of the Council's LDF DPDs, amongst other things, seek to protect the historic environment and ensure that heritage assets are managed in a way that best sustains their significance and seek to secure their continued protection or enhancement, as well as contributing to the wider vitality, viability and regeneration of the areas in which they are located and reinforce a strong sense of place.

The NP recognizes that the Water Tower is a non-designated heritage asset that is at risk as it has been unused for 50 years and that new uses can often be the key to a building's preservation. Policy NP6 of the Neighbourhood Plan states that proposals that require a change of use of a heritage asset at risk will be considered favourably where all of the following can be demonstrated:

- a. there is no reasonable prospect of the original use being retained or reinstated; and
- b. the proposed development would represent a viable use that would secure the future heritage asset; and
- c. where the proposed use is not for residential purposes, the proposed use will help to support a prosperous rural economy; and
- d. the change of use will not be detrimental to the significance of the heritage asset and its setting.

The NPPF states at paragraph 197 that *“the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*

The Tower is considered to have both historic and architectural interest. Historically it is a physical representative of the site’s past and contributes to the area’s sense of place and individuality. The structure has considerable local importance in terms of its contribution to local character and distinctiveness. Architecturally, the Tower has an art-deco design, which recognizes the era in which it was designed and is reminiscent of the Home Ales Office tower in Arnold (Nottingham) which was designed by T.C Howitt (1936). Its completed construction after the Second World War means that it was probably one of the latest power houses commissioned prior to the nationalization of electricity supply and such structures were characteristic in providing power to large institutions, which in this case was Balderton Hospital. Its architecture therefore also reinforces the individual sense of place.

In terms of its significance, the Tower is representative of the historic art-deco architectural trend of the 1930’s. Its height and simple (but brutal-like) form also provides some aesthetic appeal, which is celebrated and emphasized by its positioning at the head of Ruby’s Walk as a striking feature at the end of this vista. However, it is also acknowledged that the Tower has lost its historic context.

The Structural Appraisal submitted with the application states that the structure is in sound condition and is capable of conversion.

The views of Council’s Conservation Officer are set out above and Members will see that they are supportive of the scheme and that there is a clear benefit to securing a viable use for this non-designated heritage asset which has remained vacant for many years. Having identified the positives of the design and layout of the scheme the Conservation officer concludes stating that the “scale, form and design of the new build is considered to sustain the significance of the heritage asset.” I concur with this view.

In addition to the benefit to the heritage asset itself, it is also acknowledged that the retention and re-use of the building in this way would reflect the importance of the tower to its wider setting and its landmark location at the end of Ruby’s Walk within the estate as well as its significance as a landmark building from beyond the village of Fernwood.

With regards to the proposed development within the rest of the site, the scale and layout reflects that advised during pre-application discussions and the design and detailing captures the essence and flair of the 1930’s art deco movement and would provide great interest architecturally and renew the prominence and focus of the site within the streetscene and the wider area. The proposed new development would make a positive contribution to local character and distinctiveness and both the NP and one of the representations received demonstrate the importance of the Tower in providing Fernwood with a distinctive identity that is very important to the local community. However, it is acknowledged that the new wings are approx. 8m in height compared to the existing two storey houses either side of the site with a ridge height of approx. 6.6m, however, this difference would be less obvious with the set back from the road. The position of the tower set back from the road frontage has led to parking provision along the main frontage of the site, which is at odds with NP1 of the Neighbourhood Plan which states that the layout should integrate car parking into the scheme so that it does not dominate the street. The submitted plan also shows planting along the footway verge to soften and mitigate this harm.



For these reasons I consider that the proposal accords with the relevant policies of the Development Plan and bring about heritage gains that will need to be weighed in the planning balance.

#### Impact on residential amenities

Policy DM5 requires development to be acceptable in terms of not having a detrimental impact on residential amenity both in terms of existing and future occupiers and states that development proposals should ensure no unacceptable reduction in amenity including over bearing impacts, loss of light and privacy. The NPPF seeks to secure a high standard of amenity for all existing and future users.

The site is confined and constrained by the siting of existing residential development that surrounds it, the majority of which is two storey, apart from the three and four storey flat development on the opposite side of Goldstraw Lane. Careful consideration has been given to the impacts of the scheme and I consider these further below.

#### *The two apartments within the existing tower*

The height, bulk and massing of the existing tower is already in place and will remain the same within the proposals. The proposal will, however result in an additional degree of overlooking from the existing narrow glazed units as a result of the new use. The south-western end of the tower will house the proposed lift and staircase and the submitted drawings show that the narrow glazed units on this elevation would not be accessible to enable a view out. The north-eastern elevation of the tower also shows that the solid wall of the tower would sit directly behind this narrow glazed unit thereby preventing any ability to see out of it. The south-eastern (front) elevation has an existing large window at first floor level and the proposed plans show that this would serve a bathroom and the narrow glazed unit above it would serve a mixture of bathrooms and small storage rooms until on the penultimate floor and above it would serve habitable rooms. This elevation faces Ruby Walk and as such I do not consider that this would result in any unacceptable degree of overlooking or loss of privacy. The north-western (rear) elevation shows the proposed insertion of a new wider vertical glazed unit that runs from first floor to all upper floors apart from the top one which would be served by a circular window (that already exists). Directly to the rear of the site is a two storey building with its gable end (with no openings) facing the site. At ground floor level are garages and there is a flat above. At the front of this unit is an open, shared garage court, which is already within the public realm. Views at an acute angle from these openings would overlook two storey dwellings and more importantly their private rear gardens. Clearly this would result in some additional loss of privacy over and above the existing situation to neighbours to the rear, albeit at a 45 degree angle to the right and a much lesser angle to the left, where gardens are positioned approx. 28m away, which will need to be weighed in the balance.

There is no outdoor private amenity space provided for future occupiers, however, they are likely to be occupied by young people who do not necessarily want such facilities and therefore I do not consider this to be fatal to the scheme.

#### *The two proposed wings either side of the tower*

As the position of the tower is already fixed on the site, any addition to it, that reflects the previous historic additions to it, would result in new development close to boundaries on either side of the site along Goldstraw Lane, but in a set-back position. The proposed front elevation would be set back approx. 3m and 2.5m from the rear elevations of the existing houses. The proposed new built form would be 1.3m and 0.9m off the common boundaries with the houses

either side. The impact of this has been reduced on the south-western side by the open undercroft at ground floor level however, it would result in the 7.6m high side elevation (brick wall) running for approx. 6m at first floor level along the rearmost part of their rear garden. On the north-western side, the 7.6m high side elevation for 5m along the rearmost part of their garden and beyond. This will inevitably result in an increased sense of enclosure both within their rear gardens and outlook from windows in their rear elevations. A shadow cast drawing has been submitted which shows that the left hand wing would have an additional limited overshadowing impact on the rearmost part of the adjacent rear garden in the early morning during the summer months and additional overshadowing would result to the whole of the rear garden from the right hand wing in the evening during the summer months. It is acknowledged that these rear gardens of both existing adjacent properties either side of the site are almost directly north facing and as such the level of sunlight enjoyed will already be somewhat limited. The same drawing shows that the proposals would not result in any additional overshadowing in the winter months over and above that already experienced.

In terms of privacy, there is one small window within each side elevation at first floor level serving a bathroom and which would be located towards the end of the rear gardens of the properties either side. Provided these windows are obscurely glazed and fixed shut, I consider that privacy levels would be adequately protected, should permission be granted. There is a double door opening proposed at ground floor level in the north-east elevation, positioned in close proximity to the neighbour's fence. As the room that this opening serves already has a window on the front elevation, it is considered that this opening should be conditioned out in the event that planning permission is approved.

Both the sense of enclosure to existing dwellings either side and summer evening overshadowing to the whole rear garden of the dwelling to the north-east of the site must be given some negative weight in the overall balance.

Again, there is no outdoor private amenity space provided for future occupiers, however, not everyone wants such facilities and any buyer would be fully aware of this situation, therefore I do not consider this to be fatal to the scheme.

#### *The proposed two courtyard blocks*

The position of these blocks have been carefully laid out to provide a continuation of the existing built form outside the site, so that proposed blank gables face onto existing blank gables. The side gable of Block 1 would be approx. 20.5m from the rear elevation of the dwellings fronting Goldstraw Lane, the rear elevation would be approx. 16m from the side elevation of the bungalow to the rear, and the proposed front elevation would be approx. 10.5m from the front elevation of Block 2. Although this latter distance is somewhat tight, it is considered that the different angles of windows within the front elevation would help prevent direct overlooking and as such is considered to be on the cusp of acceptability.

The blank side gable of Block 2 is approx. 10.5m from the rear elevation of the left wing (and its first floor apartment rear windows) which again is on the cusp of acceptability, the rear projection of Block 2 is approx. 15.5m from the rear elevation of the right wing, but with angled openings in the front elevation and the rear elevation of the rear projection is positioned 4.5m off the rear boundary of the site, beyond which is an open garage courtyard area but at a very oblique angle would be the first floor flat above the garages. The proposed rear gable of the rear projection faces the two storey end gable of an existing house which has one small window at first floor level in its end gable with a distance of approx. 2.5m between.

Having carefully considered the impact of the proposed development on surrounding dwellings, I am satisfied that given the scale, separation distances, relationship between existing built form and proposed together with their associated openings and proposed positions and orientations, I am satisfied that the proposed two courtyard blocks are acceptable in terms of their impact on the amenities of existing neighbours.

The four ground floor apartments have their own outdoor private amenity spaces, however the four upper apartments do not have such facilities.

Given the scale, layout and separation distances of the proposed development, it is considered that the residential amenity of existing occupiers would not be unacceptably harmed by the conversion of the tower or the two courtyard blocks, however, it is acknowledged that the two proposed wings of the tower would result in some adverse impact on the sense of enclosure from the proposed side gable walls together with overshadowing of the rear garden to the north-west in the evening summer months, which needs to be weighed in the balance.

#### Impact on Ecology

Core Policy 12 and Policy DM7 promote the conservation and enhancement of the District's biodiversity assets. NP5 states that development must assess the impact of the proposals on local biodiversity, with mitigation where required and an overall net enhancement will be encouraged. The NPPF also seeks to minimise impacts on biodiversity and provide net gains where possible.

The application has been accompanied by a Protected Species Survey which has surveyed the existing building for bats and nesting birds. This concludes that a search of the accessible internal areas and the exterior of the building recorded no evidence of bat activity in any area, the building is of a construction detail that is occasionally utilized by roosting bats, however, given the lack of access to the upper floors it is recommended that a precautionary approach be taken and that prior to the start of planned works that scaffold is erected within the building to gain safe access to the upper sections of the building and a suitably qualified ecologist undertake a precautionary check for the presence of bats in the upper sections of the building. In addition that all contractors be informed that they must stop work at once if they see bats or suspect that they are present and follow the procedure set out in Appendix 2 of the report.

In relation to birds, the report states that as the building is clearly used for nesting by species of common birds, any future redevelopment work should avoid the active nesting season, or if not then a search for nests should be carried out before commencing work and active nests protected until the young fledge.

I am satisfied that these recommendations along with ecological enhancements could be secured by condition. Subject to this, I consider that the proposal would accord with the Development Plan with regards ecology impacts.

#### Impact on Highways and Parking

Spatial Policy 7 of the Core Strategy encourages proposals which place an emphasis on non-car modes as a means of access to services and facilities. It also seeks to minimise the need for travel through measures such as travel plans, provide safe convenient and attractive accesses for all and provide links to the network of footways etc. to maximise their use, be appropriate for the highway network in terms of volume and ensure the safety, convenience and free flow of traffic are not adversely affected, provide appropriate and effective parking provision and ensure that the traffic generated from a proposal does not create new or exacerbate existing on street parking problems. Policy DM5 is explicit in stating that provision should be made for safe and inclusive

access to new development and appropriate parking provision. NP3 states that schemes for major residential development should provide a street layout and housing design that accommodates the car parking required based on Fernwood's location and associated car ownership levels and in accordance with the NPPF criteria. It also states that proposals are required to be in accordance with residential car parking research, highways and development control guidance (or equivalent) and the findings in the Fernwood BFL12 Assessment at Appendix A. The NP outlines the conclusion of the BFL12 assessment are that:

"For future development, a wider range of parking, including on-street parking and parking squares, should be considered. On-plot parking should be arranged so that frontages are not 'open,' with cars screened by boundary treatments so they do not dominate the street scene. Where rear courts are needed, they should be small (no more than 6 spaces) and should be secure and well overlooked."

The NP also states that car ownership in Fernwood is much higher than the District and national average; nearly half of all households own 2 cars, this is nearly double the County average.

Members will note that the Highway Authority has objected to the scheme (details of which are contained within the consultation section above). The Highway Authority has clarified that they would require 20 spaces to serve the occupants plus 2 visitor spaces. The proposal provides 19 spaces and is therefore 3 spaces short. Despite attempts by the applicant to address and persuade the Highway Authority, through the insertion of a barrier across the site entrance so the on-site spaces would be for occupiers of the site only and a management parking arrangement that could be secured through a legal agreement, they remain of the view that the scheme is unacceptable and should be refused, stating that "I confirm that the HA is happy to defend its recommendation for refusal of this application based on the current information which does not provide any justification for the level of parking proposed. In our view the amount of proposed parking has a shortfall that would result in additional on-street parking in an area that already suffers from this, including parking on the shared foot/cycleway." In addition the Highway Authority has raised concerns regarding the parallel parking required to access parking spaces 7 and 8, which takes more time to maneuver in and out of and which are positioned close to the access off Goldstraw Lane and likely to lead to other vehicles seeking to access the site to be delayed on the public highway.

In order to ensure the scheme is financially viable, 13 units is the minimum number of apartments required in order to render the scheme financially viable, which is outlined further below in the viability section, so there is no scope from the developer's perspective to reduce the number of apartments.

The Highway Authority are the statutory consultee and highway experts in this instance on highway safety and accordingly I give great weight to their objection given the potential harm to highway safety.

#### Flood Risk and Drainage

Core Policy 10 of the Core Strategy requires development to be located in order to avoid both present and future flood risk. Core Policy 9 requires new development proposals to proactively manage surface water. Policy DM5 also seeks to ensure development is safe for the intended users without increasing flood risk elsewhere. This broadly reflects the advice in the NPPF.

The site is located within Flood Zone 1 according to the Environment Agency's flood risk maps and it is therefore at low probability of flooding from river and coastal sources. The proposal seeks to use a sustainable drainage system to deal with surface water disposal. Although information submitted is very limited on this aspect of the scheme, it is likely that this aspect could be adequately conditioned if approval was forthcoming. Subject to this, I consider the proposal would accord with CP9, CP10 and DM5 of the Development Plan.

#### Developer Contributions and Viability

Spatial Policy 6, Policy DM2 and Policy DM3 set out the approach for delivering the infrastructure necessary to support growth. This states that infrastructure will be provided through a combination of the Community Infrastructure Levy, developer contributions and planning obligations and where appropriate funding assistance from the District Council. The Developer Contributions and Planning Obligations SPD provides the methodology for the delivery of appropriate infrastructure.

In terms of the starting point, the contributions that would ordinarily be sought are as follows:

#### *Affordable Housing*

Core Policy 1 provides that for schemes of 11 or more dwellings, on-site affordable housing should be provided with a tenure mix of 60% social rented and 40% intermediate housing. This is reaffirmed within the Council's SPD on Developer Contributions. A scheme for 13 dwellings would require 3 affordable houses on-site to meet the 30%.

In Newark there is need for 2 bedroom affordable dwellings as well as one bedroom affordable units. Given the nature of the development it is unclear as to whether a registered provider would take units on the site and an off-site contribution was likely to have been sought, albeit the viability issues (discussed shortly) means that this has not been progressed. No affordable units are being offered as part of this proposal.

#### *Provision for children and young people*

As a development of 13 dwellings, this application would normally need to make provision for public open space at 18m<sup>2</sup> per dwelling (234m<sup>2</sup>) as set out in the Developer Contributions SPD. As none is shown on the layout nor indeed would it be appropriate to, it would be expected that a financial contribution should be provided in lieu of this which would be spent to upgrade the existing parks within Fernwood, the nearest of which is a short walk away to the south. This is based on £927.26 per dwelling based on 2016 indexation equating to £12,054.38.

#### *Community facilities*

Community facilities are defined as including Community Halls, Village Halls, Indoor areas for sport, physical activity, leisure and cultural activity and Halls related to places of worship. The Council's SPD provides where existing infrastructure exists or where small scale developments do not warrant new infrastructure, a contribution may be appropriate to support the existing infrastructure such as a village or community hall or other community asset. It goes on to say that 'it is further recognised that some community facilities are not fulfilling their potential to meet the needs of residents and thus may appear to be underused. In such circumstances qualitative improvements to such facilities would increase their ability to make a positive contribution to meeting the needs of the community.'

The site itself is too small to provide community facilities on it and therefore any additional pressure upon community facilities that this scheme would place upon the community should be met off-site by way of a financial contribution. I have not received any comments from the Community Projects Manager to date but will report further comments to Members via the Late Items schedule. Any financial contribution toward community facilities which is based on £1,384.07 (figure from SPD but indexed at 2016) per dwelling equates to a maximum of £17,992.91.

### *Education*

The Developer Contributions and Planning Obligations SPD indicates that development which generates a need for additional primary school places will be secured via a legal agreement on development. Nottinghamshire County Council has confirmed that a development of 13 dwellings would yield an additional 3 primary school places. Each primary school place costs £11,455 based on their methodology thus a primary education contribution of £34,365 would be required to accommodate the additional pupils projected to arise from the proposed development. In terms of secondary education the development would be covered under CIL regulations.

### *Libraries*

The trigger for library contributions has now been raised and would not be applicable to this scheme.

<b>CONTRIBUTION</b>	<b>Policy Requirement</b>
<b>Affordable Housing</b>	<b>30% on-site provision (equating to 3 units)</b>
<b>Children's Play Area</b>	<b>Provision either on-site (at a rate of 18m<sup>2</sup> per dwelling) or by financial contribution based on £927.26 (indexation 2016) equating to £12,054.38</b>
<b>Primary Education</b>	<b>£34,365 to provide 3 additional primary places (at £11,455 per place)</b>
<b>Community Facilities</b>	<b>Financial contribution based on £1,384.07 per dwelling (2016 indexation) equating to £17,992.91</b>
<b>TOTAL</b>	<b>3 x affordable houses on site plus £64,412.29</b>

## Viability

The National Planning Policy Framework says that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all circumstances in the case. The NPPG makes clear that in decision taking, “viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.”

A Viability Case has been submitted that seeks to demonstrate that the scheme cannot afford to contribute to any of the normal expected developer contributions as doing so would render the scheme unviable. The Council has commissioned an independent expert to provide independent advice to the Council in respect of viability. Their advice to the Council is contained within the consultation section of this report.

Members will note that our Independent Viability Assessor concluded that the development cannot afford to pay any of the requested developer contributions. It is noted that the appraisal indicates negative viability of -£219,111. They state that “the Water Tower development is complex and sale values for apartments in this location are not likely to generate a premium. The new build element of the scheme is not sufficient to subsidise the abnormal Water Tower restoration costs.”

Therefore on the basis of the advice received, I am satisfied that the applicant has successfully demonstrated that the scheme is unviable, even without any developer contributions being met.

## Other matters

Contaminated Land - The Council’s Environmental Health Service has acknowledged the former power house/boiler house that previously operated at this site and as such recommends that a standard contaminated land condition be imposed on any permission which would ensure that the site would be properly cleaned prior to the residential use commencing on the site.

## Planning Balance and Conclusion

Members will note from the appraisal above that in this particular case there are many material planning considerations to balance in coming to a final view. This site is located in a sustainable location within the settlement of Fernwood and within the Newark Urban Area. The building represents a non-designated heritage asset which is of significance locally by the nature of its landmark prominence from both within and outside Fernwood and which has been left unused for 50 years and will continue to decline.

The existing Tower represents a non-designated heritage asset that is of local historic and architectural interest and represents a positive contribution to the character and distinctiveness as well as being a striking physical landmark structure in the both the immediate and wider area. The proposal would bring back into active use this heritage asset and so greatly increase its potential of being retained for years to come and improve the surroundings of the building through the removal of the close boarded timber fence around its vacant land and sympathetic additions which better complement the water tower. I am also satisfied that the level of new build development is the minimum required in order to bring forward the proposals, albeit still in negative viability. As professional officers, there is a strong desire to want to see this local landmark tower restored and retained with a viable and long term use in place.

However these heritage benefits need to be carefully balanced against the highway concerns and the fact that this scheme cannot afford to pay the necessary and appropriate contributions towards primary education, affordable housing, community facilities or children's open space. In addition there are also concerns with regard to the sense of enclosure created to neighbours either side of Goldstraw Lane. I take the view that the heritage benefits and the need to secure a viable future use of the tower should take priority in this particular instance over the inability of the scheme to pay towards the infrastructure impacts of the proposal, albeit I say that with some caution with respect to education and affordable provision (I consider there is sufficient provision within Fernwood to largely absorb the impact of the scheme for community facilities and open space). After careful consideration, the heritage benefits are also considered to outweigh the impacts on the two neighbouring properties.

However, in terms of the highway safety harm, Members will note the firm view of the Highway Authority that the scheme would be harmful to highway safety on the basis of the shortfall of 3 parking spaces and concerns regarding manoeuvrability from spaces 7 and 8 within the site. This view regarding the lack of parking is shared by the Parish Council. However it should also be noted that unless a new use can be found for this building, this heritage asset that is of such value to the local community will deteriorate further and may ultimately be lost.

In an overall planning balance, therefore, as highway experts I give great weight to Highway Authority objection. On a very fine balance, I conclude that this amounts to a determinative material consideration. On this basis I recommend refusal.

### **RECOMMENDATION**

**That planning permission is refused for the following reason:**

The proposal does not provide for sufficient on-site parking. Consequently the development would likely further increase on street parking and parking on the shared foot/cycleway in the vicinity resulting in an increase in the likelihood of danger to other users of the highway due to the likelihood of vehicles being parked on the public highway, and exacerbate these existing problems within this area. Furthermore, there is also concern that manoeuvrability into and out of parking spaces 7 and 8, located close to the site access, is likely to lead to other vehicles seeking to access the site to be delayed on the public highway which would also increase the likelihood of danger to other users of the highway.

In the opinion of the Local Planning Authority the proposal is therefore contrary to Spatial Policy 7 (Sustainable Transport), Core Policy 9 (Sustainable Design) of the Newark and Sherwood Core Strategy Adopted March 2011 and Policy DM5 (Design) of the Allocations and Development Management DPD Adopted July 2013 and Policies NP3 (Residential Parking on New Development) which together form the Development Plan. There are no material planning considerations that outweigh the harm identified.

### **Notes to Applicant**

01

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason(s) for refusal. Whilst the applicant has engaged with the District Planning Authority at pre-application stage our advice has been consistent from the outset. Working positively and proactively with the applicants would not have afforded the



opportunity to overcome these problems, giving a false sense of hope and potentially incurring the applicants further unnecessary time and/or expense.

02

You are advised that as of 1st December 2011, the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority you are advised that CIL applies to all planning permissions granted on or after this date. Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

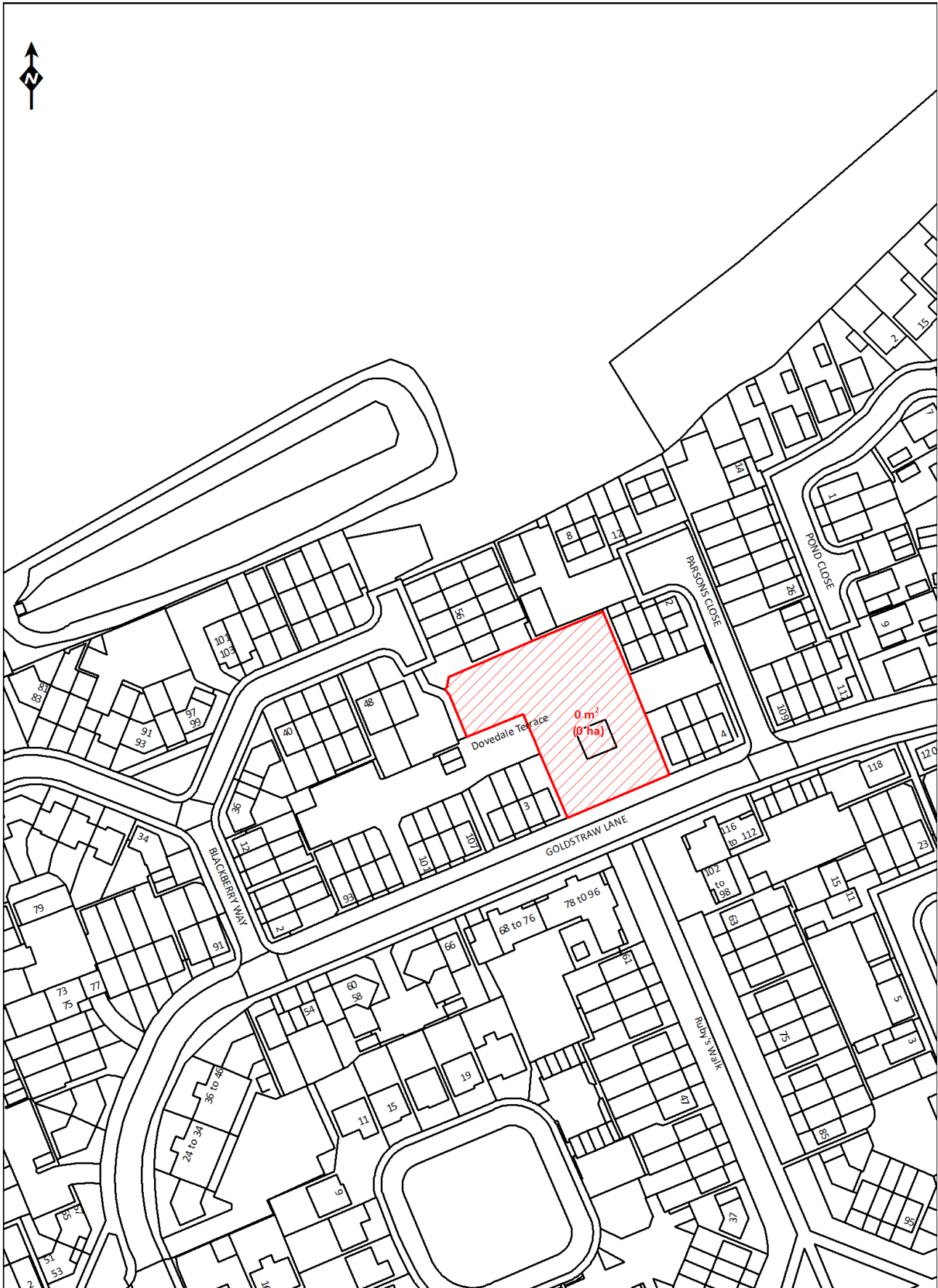
#### **BACKGROUND PAPERS**

Application case file.

For further information, please contact **Julia Lockwood** on ext. **5902**.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**  
**Business Manager Growth and Regeneration**



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## PLANNING COMMITTEE – 4 SEPTEMBER 2018

<b>Application No:</b>	<b>18/01118/FUL</b>		
<b>Proposal:</b>	<b>Application to Retain Existing Building and Use as a Sui Generis Retail Warehouse Club with ancillary B1 (Business) and B8 (Storage and Distribution) uses</b>		
<b>Location:</b>	<b>Future Fishing Ltd, Unit 17, Hardys Business Park, Hawton Lane, Farndon, NG24 3SD</b>		
<b>Applicant:</b>	<b>Frank Hardy &amp; Sons (Farndon) Limited - Mr Jack Hardy</b>		
<b>Registered:</b>	<b>13 June 2018</b>	<b>Target Date: 08 August 2018</b>	<b>Extension of Time: 16 August 2018</b>

**This application is being presented to the Planning Committee in line with the Scheme of Delegation as in the judgement of an Authorised Officer, the specifics of the application warrant determination by the Planning Committee. In this particular case, the application is finely balanced. In addition, the description of development requires careful assessment due to potential CIL and enforcement implications.**

### The Site

The 0.15 Ha site relates an existing building at Hardy' Business Park. It is a warehouse style building with mezzanine floor located immediately to the south west of another building. A garden centre and other business park buildings and are located immediately to the south west, west and north of the building. The application building is a steel portal framed building with plastic coated green sheet walls and roof. The building has two side doors and a main entrance with large roller shutter at the front of the building.

The site located in the open countryside and is served by an existing access off Hawton Lane which leads through the Business Park and to the site. Agricultural fields are located around the edge of the wider site.

The position of the building and the majority of its access is located in Flood Zone 3. A small part of the access is located within Flood Zone 2.

### Relevant Planning History

*The planning history below sets out the planning history relevant to the wider Hardy's Business Park site. For the avoidance of doubt, the plot on which the proposed building is located does not benefit from any previous planning permission albeit it was previously used as a menage. The building was built in 2016 or later (according to aerial photography records).*

18/01117/FUL Application to Retain Existing Building and Use Building and Forecourt for Use as a Gym (Use Class D2) – permission 01.8.18.

18/01121/FULM Application to Retain Existing Buildings and Use Buildings for a Mixed Use of B1 (Business); B2 (General Industry); and B8 (Storage and Distribution) – permission 1.8.18

18/00770/LDC Certificate of Lawfulness to continue the existing mixed Use of: 1) for B8 Storage Involving External Storage (at no more than 2m high from the adjacent ground level) and Internal Storage within Shipping/Storage Containers; 2) the siting of a maximum of 9 Shipping/Storage Containers (that shall be no higher than 3.2m in height from the adjacent ground level); 3) the Parking of a maximum of 3 HGV Lorry Trailers; and 4) the siting and storage of a maximum of 6 items of plant and machinery (that shall be no higher than 3.2m in height from the adjacent ground level) – Certificate issued

04/01022/FULM Change of use from existing agricultural buildings to industrial units classes B1-B2 – permission 09.07.2004

95/50583/FUL Agricultural storage building – permission 29.06.1995

11901358 Siting of mobile café – permission 04.06.1991

### The Proposal

The proposal seeks full planning permission to retain the existing building and use as a Sui Generis Retail Warehouse Club with ancillary B1 (Business) and B8 (Storage and Distribution) uses. The application is retrospective in nature and the building has been in situ since May 2016 according to the planning application forms. The building has a floorspace of 731m<sup>2</sup>.

The red line boundary of the application site contains no parking spaces albeit the application form states that there are 6 car parking spaces which I assume are available for use on the wider Business Park site (within the blue line boundary of the application site).

The use described as a ‘members only’ club is managed and maintained through the on-site electronic till and online registration NB with a sign in the entrance stating that membership is free. It employs 3 full time members of staff. The site operates 09:00 – 18:00 Monday to Saturday and 10:00 – 16:00 Sundays and Bank Holidays according to the submitted application form.

The planning application is accompanied by the following supporting documents:

- Supporting Statement
- Flood Risk Assessment and Sequential Test
- Uses Within Building Statement

### Departure/Public Advertisement Procedure

A site notice was posted adjacent to the site on 26.06.2018.

### Planning Policy Framework

#### **The Development Plan**

*Newark and Sherwood Core Strategy Adopted March 2011*

Spatial Policy 1 - Settlement Hierarchy

Spatial Policy 2 – Spatial Distribution of Growth

Spatial Policy 3 - Rural Areas

Spatial Policy 6 – Infrastructure for Growth

Spatial Policy 7 – Sustainable Transport

Core Policy 6 – Shaping our Employment Profile

Core Policy 8 – Retail Hierarchy

Core Policy 9 – Sustainable Design

Core Policy 11 - Rural Accessibility

Core Policy 12 – Biodiversity and Green Infrastructure

Core Policy 13 - Landscape Character

*Allocations and Development Management DPD Adopted July 2013*

Policy DM5 – Design

Policy DM7 – Biodiversity and Green Infrastructure

Policy DM8 – Development in the Open Countryside

Policy DM11 – Retail and Town Centre Uses Policy

Policy DM12 – Presumption in Favour of Sustainable Development

#### **Other Material Considerations**

- National Planning Policy Framework 2018
- Planning Practice Guidance
- Newark and Sherwood Amended Core Strategy DPD 2017
- The Newark and Sherwood Landscape Character Assessment SPD

#### Consultations

**Farndon Parish Council** – Support proposal.

**NCC Highways** – The Highway Authority is satisfied that the level of off-street parking provision within the site is sufficient to accommodate the proposed uses. We therefore do not wish to raise an objection.

**Highways England** – No objection

**Environment Agency** –

*Comments received 30.07.2018:*

If the finished floor levels are indeed a minimum of 13.0mAOD, then yes, the suggested condition would be acceptable to us:

‘Within three months of the date of this decision, a scheme of mitigation to protect against flood risk as set out in the approved Flood Risk Assessment (FRA) compiled by WtFR Ltd (ref: WTFR-FRA-2018/04/Q24 Unit 9, Units 10-12 and Units 13-16) on 30th May 2018, shall be submitted to and approved by the Local Planning Authority. For the avoidance of doubt, this scheme shall include:

- Identification and provision of safe routes into and out of the site to an appropriate safe haven.
- Details flood resilient design measures incorporated into the final design as stipulated within section 9.3 of the FRA (including any undertaken retrospectively).
- timing / implementation arrangements of all mitigation measures identified.

The mitigation measures set out in the approved scheme shall be fully implemented in accordance with the timing / implementation arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To ensure safe access and egress from and to the site and to reduce the risk of flooding to the proposed development and future occupants.’

*Comments received 26.06.2018:*

The proposed development will only meet the requirements of the National Planning Policy Framework if the following measures as detailed in the Flood Risk Assessment submitted with this application are implemented and secured by way of a planning condition on any planning permission.

Condition:

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) compiled by WtFR Ltd (ref: WTFR-FRA-2018/04/Q24 Unit 17) on 30<sup>th</sup> May 2018 and the following mitigation measures detailed within the FRA:

- Identification and provision of safe routes into and out of the site to an appropriate safe haven.
- Finished Floor Levels (FFL) to be set no lower than 13.03mAOD for unit 17as indicated within sections 4.1, 9.1 and 10 of the FRA.
- Flood resilient design measures incorporated into the final design as stipulated within section 9.3 of the FRA.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason:

- To ensure safe access and egress from and to the site.
- To reduce the risk of flooding to the proposed development and future occupants. The FRA mentions that the stipulated FFL of 13.03mAOD may not be able to be achieved due to planning constraints. It should be noted that although specific site ground levels have not been provided in the FRA, LIDAR data suggests ground levels ranging between 12.4mAOD and 13.4mAOD on site and therefore the suggested FFL should be achievable. If this level cannot be achieved then we would like to be re-consulted with revised FFL. I also wanted to point out that the FRA uses 20% climate change allowances when informing FFL. You

should be aware that climate change guidance has been updated and both 30% and 50% climate change allowances should now be considered when proposing FFL. While we do not currently have updated modelled data to reflect these changes we have seen that, on models which have been updated the 1 in 1000 year levels closely reflect those of the 50% climate change allowance outputs.

As the proposed use is less vulnerable and fully within FZ2 we are satisfied that the site will remain safe with these floor levels however we would suggest incorporating flood resilient design with a 300mm freeboard above the 1 in 1000 year level (i.e. 13.19mAOD) to add a further level of resilience and protect the business during times of extreme flooding.

#### Advice to LPA:

The Environment Agency does not normally comment on or approve the adequacy of flood emergency response procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement with this development during an emergency will be limited to delivering flood warnings to occupants/users covered by our flood warning network. The Technical Guide to the National Planning Policy Framework (paragraph 9) states that those proposing developments should take advice from the emergency services when producing an evacuation plan for the development as part of the flood risk assessment.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

#### Advice to applicant:

While the Environment Agency do not object to the FFL being set at 13.03mAOD it may be prudent to incorporate an additional 300mm of flood resilient construction above the 1 in 1000 year level of 12.89mAOD (i.e. 13.19mAOD for unit 17) in to the final design. This will give an added level of flood resilience to the building and in the event of extreme flooding will reduce the impact on the business.

Flood proofing measures include barriers on ground floor doors, windows and access points and bringing in electrical services into the building at a high level so that plugs are located above possible flood levels.

Consultation with your building control department is recommending when determining if flood proofing measures are effective.

Additional guidance can be found on the [www.gov.uk](http://www.gov.uk) website pages under the heading 'Prepare for a flood and get help during and after'. These pages can be found by clicking on the following link – [Prepare for a flood and get help during and after - GOV.UK](#)

#### **NSDC Planning Policy –**

Warehouse clubs are included within the definition of retail development provided in the NPPF, and consequently policy relevant to main town centre uses is applicable.

#### Sequential Test

I'm not of the view that the proposal falls within the exemptions to the sequential test listed at para 88 of the updated NPPF, consequently the test should be applied in line with local and national policy.

Application of the test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations. Robust justification must be provided where this is the case, and land ownership does not provide such a justification. In addition we also need to be mindful that there may be viability concerns associated with sequentially preferable locations and so need to be realistic and flexible in terms of our expectations.

I'm content that there is in all likelihood a particular market/locational requirement which suggests that the application of the test should be limited to a select number of defined centres in the Newark Area. I would suggest that the applicant's suggestion of the Newark Urban Area should be widened to incorporate the Local Centre at Collingham, which is located within reasonable proximity to the River Trent and former gravel pits (features which the applicant has suggested contribute towards the active fishing community in the area). I do not concur that possession of, or the ability to provide, dedicated parking provision ought to necessarily form a site requirement though. Particularly where a site within a Town Centre is being considered, given the availability of parking elsewhere to serve the unit.

In terms of the exercise undertaken by the applicant, potential alternative sites with a minimum 500 sqm floorspace have been considered – demonstrating flexibility on their part, and so I would be comfortable with those discounted below this level. I'm also satisfied with those ruled out due to present unavailability (Northgate, the NSK allocation and the Local Centres associated with the strategic sites), even having had regard to the widened test within the updated NPPF which explicitly allows for consideration of suitable sites which are expected to become available within a 'reasonable period'. I have no reason to doubt the figures presented over business rate and rent increases contributing towards the dismissal of the remaining sites identified by the applicant. If a site had been ruled out due to one of those financial factors then it may have been worthwhile seeking further more detailed information from the applicant to allow us to consider what increase could feasibly be supported. However I am mindful of the need to be realistic over our viability expectations and the need for the test to be applied in a proportionate manner. Having looked through our recent monitoring surveys I cannot identify any additional vacant units which the applicant should consider within Newark Town Centre or either of the Balderton Local Centre's.

Turning now to Collingham Local Centre Units 1 and 2, High Street (the former Co-op store) appear to remain vacant. However my understanding is that the unit would fall significantly below the 500 sqm threshold. On balance I would consider it unlikely that there would be any other edge-of-centre or superior out-of-centre locations able to accommodate the business.

I would therefore be comfortable in reaching the conclusion that there unlikely to be any sequentially preferable locations able to accommodate the unit / business having had reasonable regard to the requirements of the business.

### Impact Test

The unit exceeds the impact thresholds within the amended Core Policy 8 emerging through the review of the Core Strategy. I would disagree with the applicant over the weight that they can be afforded as part of the Development Management process – which I would deem to be significant, consistent with the tests at para 48 of the NPPF. This reflected the approach we have followed with retail proposals elsewhere.

Nevertheless the business as currently trading is fairly specialist in nature and unlikely to compete with the existing offer in any of the centres within the Newark Urban Area or at Collingham's Local



Centre. Whilst I accept that Sports Direct and Millets (both located in Newark Town Centre) are likely to retail some similar goods this would make-up only a small proportion of their overall offer. It is also, in my view, reasonable to assume that any diversion which does occur is extremely unlikely to be significant adverse in terms of its impact on Newark Town Centre.

Where my concern would lay is with an unrestricted warehouse club consent that could accommodate convenience or bulky comparison goods at some point in the future, the potential impact of which could be very different. These concerns could however be addressed through agreeing the use of a suitably worded condition restricting the warehouse club to the retailing of angling related goods.

**NSDC Environmental Health (contamination)** – No observations.

**NSDC Access Officer** - It is recommended that the developer be advised to give consideration of inclusive access to and use of the proposal for all, with particular reference to access and facilities for disabled people. Inclusive access for all around the site and to, into and around the proposal should be carefully considered.

It is recommended that the developer's attention be drawn to BS 8300: 2018– 'Design of an accessible and inclusive built environment - Code of Practice' as well as Approved Document M of the Building Regulations, which contains further useful guidance in this regard. It is recommended that a separate enquiry be made regarding any Building Regulations matters. It is further recommended that the developer be mindful of the provisions of the Equality Act.

**Neighbours/Interested Parties** – No letters of representation received.

#### Comments of the Business Manager

#### **Principle of Development**

##### *Description of Development:*

The description of development has been amended during the lifetime of the application to reflect the fact that the proposed B1 and B8 Uses within the building are ancillary to the main use of the building by Future Fishing Ltd.

The main use applied for as part of this application is a sui generis retail warehouse club use. In the 2005 amendments to the Use Classes Order 1987, a sui generis use of "a retail warehouse being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club" was added.

Advice contained within DCP Online states that '*It has been argued that this form of shopping is not strictly "retailing", and this was confirmed in the Thurrock court case. Here, it was held that a Costco warehouse club that involved the sale of goods to members who paid a subscription, did not fall within use Class A1. Of course, the reality is that a club warehouse is tantamount to retailing and that impact on existing centres is just as likely as in the case of a store where goods are sold to any visiting member of the public*'.

In the case of Future Fishing, the membership is free and not therefore in my opinion difficult to sign up to unlike Costco for example which is a retail warehouse club where you are required to

provide ID and pay an annual membership which makes it much more difficult to attract/enable passing trade.



Photo of sign on shop entrance taken 26.06.2018

Also, the main ethos behind a Retail Warehouse Club is that they sell bulkier goods in large quantities and then sell onto to smaller traders more cheaply than A1 shops. I can't see that this is the case with Future Fishing and in my opinion is therefore more akin to A1 retail.

Given this view, further advice was sought from the Council's legal department who have advised the following with respect to the proposed sui generis retail warehouse club use:

*'The leading authority in this field is R v Thurrock EX p. Tesco Stores Ltd 92 L.G.R. 321; [1993]. This is widely known as the "Costco" case.*

*In the Costco case, Schiemann J said "In my judgment, if there is a restriction on those who can come and buy then the premises are not prima facie properly described as being used for the sale of goods to visiting members of the public and in consequence do not fall within class A1 of the order. I say prima facie because I am conscious of cases such as Lewis v Rogers 82 LGR 670 . That was a case brought in relation to the Sunday trading provisions of the Shops Act. Shop keepers who wished to trade on Sundays sought to avoid those provisions by the creation of a club to which one could belong for life upon payment of £5, with no further restriction on eligibility for membership. The court rejected an argument to the effect that, because the consumers were limited to that section of the public which had first paid £5 to join a club, therefore no retail trade or business was carried on there. That conclusion in the context of that case is not surprising. The club was a mere sham designed, and solely designed, to sidestep the Sunday trading provisions of the Shops Act. Lewis v Rogers however is of no assistance in the present case. We are here concerned, not with what was the Parliamentary intention in enacting the Shops Act, but rather what was the planning authority's intention in requiring the s.106 agreement?*

*"The restriction of potential shoppers to club members in the present case appears to be motivated on the part of the applicant by understandable non-planning considerations, and not to be a sham designed to avoid some restriction, and I see no reason why the planning authority should not take the club at face value or (if it be relevant) why I should not do so. From the authority's point of view, the restriction of potential shoppers to those who wished to indulge largely in bulk shopping removed a planning disadvantage, and there was no reason to suppose that the applicants did not wish to achieve that restriction and did not think that the methods they had adopted in the New World to that end might not be successfully transplanted to the Old".*

*He had said earlier "it seems legitimate to assume that it was the presence in the applicant's proposal of the limitation of shoppers to those who –*

- a. Were prepared to pay a significant annual subscription*
- b. Wished to shop in bulk*
- c. Were prepared to shop in a huge shopping facility which, while offering many product categories, nevertheless offered little choice within each category".*

*On balance, Future Fishing does not appear to fall within a retail warehouse club and will more likely fall within A1 retail'.*

On this basis, it has not been demonstrated that the proposed use falls within the definition of a sui generis retail warehouse club. The Agent has declined to amend the description of development on this basis. This does lead me to some difficulty in assessing the application before me. However, legal advice is that I should assess the application as described in the application. For the avoidance of doubt, I am not assessing the retail use which I consider is taking place and that use will be subject to separate enforcement action. I am consequently assessing the proposal as an application to retain the existing building and to use it as a proposed Sui Generis Retail Warehouse Club with ancillary B1 (Business) and B8 (Storage and Distribution) uses. The NPPF inclusion of warehouse clubs within the definition of retail development means that policy considerations in relation to retail remain relevant in any event.

Members should be aware that a Sui Generis use is not CIL liable whereas an A1 retail use is.

*Location:*

It is established that the starting point in assessing a development rests with the Development Plan and that the NPPF should form an important material consideration in the decision making process.

The core of the village of Farndon is located to the north of Fosse Road. In this case, the site is located to the south of Fosse Road and is clearly detached from the main built up part of the settlement with an approximate 60 metre field separating the edge of the wider business park site from Fosse Road. As such, the site is considered to be within the open countryside.

I note the Agent's assertion that the site forms part of the settlement of Farndon however I disagree. The Agent is correct in identifying that the Amended Core Strategy Inspector has suggested, through the issuing of his 'post-hearing note 2', that main modifications will be necessary to make Spatial Policy 3 in its submitted form sound. Clearly the main modifications are yet to be made public and consulted on, however the Inspector's note provides helpful direction. This is set out in full below:

*"However, while I understand what the Council is trying to achieve, I agree with views expressed at the Hearing that the reference to 'the main built-up areas of villages' under the heading Location, in Spatial Policy 3 is a little ambiguous. Some clarity is needed and I wonder whether it might be better to delete the phrase. Any proposals that come forward that would extend a village into the countryside, or have a similar detrimental impact of concern to the Council, could be safely resisted under the later heading of Character."*

Implicit in the above is the anticipation that the policy in its modified form will still need to be able to deal with those locations and circumstances where SP3 ought to facilitate appropriate development and other countryside locations beyond this – where a stricter approach would be necessary (the Inspector's reference to the extension of villages into the countryside as a 'detrimental impact' is notable here). The way in which the modification (currently being considered by the Inspector) has been drafted seeks to reflect this.

The applicant has suggested that the reference within Policy DM8 to the 'main built-up area' renders the policy out-of-date. It is however considered that a more nuanced reading and interpretation is necessary. Beyond the Principal Village level of the hierarchy SP3 allows for some forms of development in certain locations and circumstances, outside of this in the open countryside. Policy DM8 sets the detailed context for what would be appropriate. Whilst the locations where Policy SP3 would support some development will change as a result of the main modifications, it is clear that a distinction with the open countryside will remain. Policy DM8 is clearly orientated around controlling development in open countryside locations, and whilst the amendment of SP3 will have implications for what this includes it is not considered that the current references to 'main built-up area' go to the heart of DM8. The policy remains an appropriate basis for considering development proposals within the open countryside.

Policy DM8 of the DPD states that development away from the main built up areas of villages, in the open countryside, will be strictly controlled and limited to certain types of development. Supporting text to this policy states that *'appropriate development can preserve the countryside as a natural resource whilst contributing to the prosperity of the District but inappropriate development can conversely have an irrevocably harmful effect'*.

In my opinion, the proposal does not sit comfortably under a single development type listed and as such, is not considered to meet any of the exceptions under Policy DM8. However, for completeness it is considered appropriate to assess the proposal against 2 of the most relevant categories listed:

1. Rural diversification – This part of the policy states that *'proposals to diversify the economic activity of rural businesses will be supported where it can be demonstrated that they can contribute to the local economy. Proposals should be complimentary and proportionate to the existing business in their nature and scale and be accommodated in existing buildings wherever possible'*. The supporting text to this policy states that *'the Council will be firm in distinguishing between proposals for genuine diversification and those for independent businesses that may be more sustainably located elsewhere'*.

I am not fully convinced that the proposal represents a typical form of rural diversification given that many of the uses on the site are more typical to those found on industrial estates within urban areas rather than an agricultural unit. Moreover, the nature of the proposed use as by Future Fishing is a different in terms of use class to the many other uses on site which are more typical to B1, B2 and B8 uses of a business park albeit I acknowledge that there may be some similarities with the retail elements of the established farm shop and garden centre.

I note that the Supporting Statement states that fishing is predominantly a rural/countryside activity and the proposal provides a complementary activity to the other rural/countryside activities on the site. However, fishing is not an activity that takes place on site or even adjacent to the site (albeit I note the River Trent is close by approximately 850 to the north west of the site) and cannot therefore be considered complementary to an

existing recreational use of the site. Nor do I agree with the assertion within the submitted Planning Statement that the proposed use directly results in any tourism or community benefits in terms of angling participation and give very little weight to this in the overall planning balance.

Supporting information submitted with other recent planning applications on this site states that the site forms *'part of the overall working farm holding of Frank Hardy & Sons (Farndon) Ltd that has diversified to maintain the overall economic viability by securing a rental income from businesses using and operating from the site'* and the *'buildings are currently used and these occupants provide valuable income to the Business Park and overall farm holding which would be lost if these buildings were not present'*.

Whilst I don't doubt that the business operating from the site contributes to the local economy, it is clear that the proposal would be occupied by an independent business that could be more sustainably located elsewhere. This is particularly the case as I would envisage the customer of this base of this business to be greater than what I would consider to serve the immediately local rural economy given that customers are likely to be from a geographical area which encompasses a number of more sustainable locations e.g. Newark.

2. Employment uses – This part of the policy states that *'Small scale employment development will only be supported where it can demonstrate the need for a particular rural location and a contribution to providing or sustaining rural employment to meet local needs in accordance with the aims of Core Policy 6'*.

Core Policy 6 further states that development sustaining and providing rural employment should meet local needs and be small scale in nature to ensure acceptable scale and impact. It also states that most growth should be in the Sub-Regional Centre of Newark, and a lesser scale in the Service Centres and Principal Villages. The NPPF is supportive of sustainable economic growth and states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

Notwithstanding my views set out in 'Description of Development' section above, the proposed uses fall within a sui generis 'retail business club' use class. This is not therefore a use class which strictly falls to be assessed under Core Policy 6. The site only employs three full time member of staff which equates to 244m<sup>2</sup> of floorspace per member of full time staff which is low in comparison to the recently approved B1, B2 and B8 uses in adjacent building which equated to 118m<sup>2</sup> of floorspace per member of full time staff. As such, I give little weight to the proposed development as an employment use despite its location on the edge of an established business park. In addition, I attach little weight to the loss of the site as employment land given that its use for employment purposes ancillary to the wider business park use has never been secured through a formal planning application.

Overall, I am not convinced that a need for this particular rural location has been demonstrated by the individual business proposed within the building and the proposal is not therefore considered acceptable in principle. The proposal does not represent the growth or expansion of an existing business. This is view is supported in paragraph 83 of the NPPF which states that *'the sustainable*

*growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings' will be supported.*

I am however aware of NPPF in paragraph 117 which requires policies to make as much use as possible of previously-developed or 'brownfield' land except where this would conflict with other policies in this Framework and I note that this land was previously occupied by a menage (which whilst never regularised through a formal planning application, was in situ for a period in excess of 10 years). Despite the open countryside location, the nature of the proposed use is somewhat compatible with the nature of the uses on the wider business park and does provide some benefit (albeit limited) to the rural economy in terms of employment and the re-use of brownfield land in this case. These factors must be weighed in the overall planning which includes a consideration of all other policy considerations including availability of alternative sites and other site specific circumstances as set out below.

#### *Main Town Centre Use:*

Notwithstanding the views set out in 'Description of Development' section above, the proposed use fall within a sui generis 'retail business club' use class. This use is defined within Annex 2 of the NPPF as being a Main Town Centre Use. I note that that some of the goods sold are larger and that the proposal also incorporates ancillary B1 and B8 uses. However, this is not dissimilar to many town centre uses and I do not therefore consider that this is sufficient reason to discount the proposed use as a main town centre use in this case.

Core Policy 8 of the Core Strategy sets out the retail hierarchy within the District and seeks to protect vitality and viability of existing centres and also provide for new centres within strategic sites across the district. The policy further states that retail development in out of centre locations will be strictly controlled and that proposals would need to demonstrate their suitability through the sequential site approach and provide a robust assessment of the impact on nearby centres.

#### *Town Centre Use Sequential Test:*

Paragraph 86 – 88 of the NPPF states that '*Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.*

*When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.*

*This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development'.*

On the basis of my findings with regards to 'Location' above, I do not consider the proposal to represent small scale rural development on the basis that the need for a rural location of the business has not been demonstrated in this instance and the proposal represents some 731m<sup>2</sup> of floorspace. As such, I consider the application of the sequential test to be necessary.

Paragraph 11 of the PPG further states that ‘Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations. Robust justification must be provided where this is the case, and land ownership does not provide such a justification’. The NPPF at para 90 states *‘where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused’*.

The site is located in the open countryside and not within a defined town centre as set out in Core Policy 8. The nearest centres to the application site are Newark Town Centre (approximately 3km to the north east (as the crow flies) and land South of Newark (situated approximately 1.5 km to the east of the site).

The site is located out-of-centre. The Supporting Statement submitted with the application states that there are currently no sequentially preferable sites for the proposed development within Newark Urban Area. I concur with the views of the Planning Policy set out in the Consultations section above which conclude that there unlikely to be any sequentially preferable locations able to accommodate the unit / business having had reasonable regard to the requirements of the business. I therefore consider the proposal to pass the town centre use sequential test.

#### *Impact on Nearby Centres:*

Notwithstanding the adopted policy, a review of both the Core Strategy and the Allocations and Development Managements Plan Documents is currently in progress and in the case of the Core Strategy review is well advanced. The Amended Core Strategy, which contains a revised Core Policy 8, was examined by the appointed Inspector in February 2018. The revised Core Policy 8 follows the recommendations of the December 2016 Town Centres and Retail Study (TC&RS) and seeks to require retail development over 350 GIA outside of the Newark Urban Area to be “robustly assessed, through the undertaking of an impact assessment proportionate to the scale and type of retail floorspace proposed.” At 731m<sup>2</sup> (and 648m specifically for the retail element of the overall floorspace) the proposed floorspace exceeds this threshold and the NPPF makes it clear that retail development includes warehouse clubs. An impact assessment has not been submitted with the application.

I note that Core Policy 8, as revised, differs from the adopted Policy DM11 of the Allocation and Development Management DPD in terms of the threshold at which detailed retail justification will be required. DM11 states that “Retail development in all out-of-centre locations will be strictly controlled. Retail proposals creating more than 2500 sq m of floor space outside of town, district and local centre locations will require justification through the sequential test and robust assessment of the impact on nearby centres and the following:

- The impact on the range and quality of the comparison and convenience retail offer; and
- The impact of the proposal on allocated sites outside town centres being developed in accordance with the Development Plan.”

For the purposes of paragraph 216 of the NPPF (stage of preparation, extent of unresolved objection and degree of consistency with national policy), it is considered that the emerging Core Policy 8 content satisfies the tests to the extent that 1) it is at an advanced stage, with the Examination taken place in February 2018 and only the modifications to be finalised and consulted upon and 2) there are no unresolved objections to the local thresholds set within the emerging

policy. Accordingly, I consider that significant weight can be attached to the policy, and even more importantly the impacts on vitality and viability, on an overall planning balance.

The impact on the vitality and viability of nearby centres is a clear material planning consideration and it is not unreasonable to expect the applicant to provide a proportionate assessment of the likely impact of the proposal. The Supporting Statement submitted with the application does offer some commentary on the retail impact of the proposal.

I concur with the view of Planning Policy set out in the Consultations section above which states that it is 'reasonable to assume that any diversion which does occur is extremely unlikely to be significant adverse in terms of its impact on Newark Town Centre'. This is because Future Fishing is likely to attract customers from a niche market and I am not aware of any shops which focus on mainly on a fishing offer located within Newark Town Centre or other nearby centres. As such, it is not reasonable for me to suggest that proposal would result in the diversion of trade from an existing centre. As a sui generis use, I am also aware that planning permission would not be as easily interchangeable as would be the case if the application had been proposed as an A1 retail use. However, I would still consider it appropriate to impose a condition to restrict the warehouse club to the retailing of angling related goods only. This would be to prevent unrestricted warehouse club consent that could accommodate convenience or bulky comparison goods at some point in the future with a potentially different impact.

The PPG advises that it is when the impacts are unlikely to be significant adverse that the positive and negative effects should be considered alongside all other material considerations. In this case, the impacts of the proposal are considered unlikely to be significant adverse and the effects of the proposal are weighed in the planning balance set out below.

### **Impact on Flood Risk**

Core Policy 10 requires development to be adequately drained and Policy DM5 relates to flood risk and water management. Para.103 of the NPPF states when determining planning applications the Local Planning Authority should ensure flood risk is not increased elsewhere. It is stated that decision makers should only consider development appropriate in areas at risk of flooding where, informed by a site specific flood risk assessment following the sequential test, and if required the Exception Test, it can be demonstrated that development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location and development is appropriately flood resilient and resistant. This includes safe access and escape routes where required and that any residual risk can be safely managed and it gives priority to sustainable drainage systems.

The Environment Agency Flood Map identifies the majority of the site to be located within Flood Zone 3 with part of the access within Flood Zone 2. A Flood Risk Assessment (FRA) and Sequential Test has been submitted with the application.

As a standalone use unconnected to wider business park uses, I consider the application of the sequential test to be necessary in this instance as it does represent an expansion/extension of an existing business. PPG states *"the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases it may be identified from other Local Plan policies, such as the need for affordable housing within a town centre, or a specific area identified for regeneration. For example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed*



*in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives.*

*When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. For example, in considering planning applications for extensions to existing business premises it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere. For nationally or regionally important infrastructure the area of search to which the Sequential Test could be applied will be wider than the local planning authority boundary."*

A search for alternative sites has also been considered under the 'Town Centre Use Sequential Test' section above. The submitted Sequential Test concludes that 'there are no sequentially preferable sites to that proposed available within the Newark Urban Area'. However, I would consider the area of search in relation to a flood risk sequential test in normal circumstances tends to differ to that of a town centre sequential test as this can also include other open countryside locations at lesser risk of flooding. However, the NPPF at paragraph 158 and 159 states that alternative sites should be 'reasonably available' and 'appropriate for the proposed development' as well as 'taking into account wider sustainable development objectives'. As such, whilst I do not consider the submitted flood risk sequential test to be robust in terms of considering all available options, I would concede that there are unlikely to be any sequentially preferable sites when taking into account wider sustainable development objectives i.e. alternative sites are also likely to be in open countryside locations with potentially greater visual harm (when also accepting that an appropriate catchment for the flood risk sequential test matches that of the retail sequential assessment).

The position of the building and the majority of its access is located in Flood Zone 3a. A small part of the access is located within Flood Zone 3a. Whilst it is not considered reasonable to suggest that the established access to the site should be located in a sequentially preferable location, it may be possible for the building to be relocated within an area of the site located in an area at less risk of flooding i.e. Flood Zone 2. I do however note that the building does replace a menage on this position and helps to maximize the use of previously developed land in accordance with Chapter 11 of the NPPF. In addition, the submitted sequential text explores available locations across the Business Park and concludes that *'the available space to accommodate a building of this size is only available in Flood Zone 3'*. I have no evidence to the contrary.

Given my reservations regarding the submitted sequential test, I consider it is worth rehearsing acceptability of the scheme against the Exception Test (even though this is not ordinarily required for a development of this type). Paragraph 34 of the PPG states that *'ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere'*.

The proposed uses with the buildings are classed as a less vulnerable according to the Flood Risk Vulnerability Classification table set out in Planning Practice Guidance. This type of development is appropriate in Flood Zone 2 and 3a. Paragraph 160 of the NPPF states that for the Exception Test to be passed, the development must provide wider sustainability benefits to the community that outweigh flood risk and a site specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking into account the vulnerability of its users, without increasing flood risk elsewhere and where possible, reduce flood risk overall. In addition paragraph 163 of the NPPF states that it must be demonstrated that within the site the most vulnerable development is located in areas of lowest flood risk and development is appropriately

flood resilient and resistant, including safe access and escape routes where required and any residual risk safely managed and it gives priority to the use of sustainable drainage systems.

The submitted FRA recommends that the finished floor level is set 300mm above the predicted flood level of 12.65mAOD, i.e. 12.95mAOD. The Agent has confirmed that the building FFL is set at 13.0AOD which is above what was suggested in the FRA so the Environment Agency raises no objection to this. The Environment Agency also recommends a condition requiring flood resistance and resilience measures are incorporated in the development and that the development ensures safe access and egress from the site during a flood risk event (see section 9.5 of the FRA).

To conclude, the submitted Sequential Test does not demonstrate categorically that there are no other sites within the District reasonably capable of new employment development that is within Flood Zone 1. However, taking a pragmatic view, I would concede that there are unlikely to be any sequentially preferable sites when taking into account wider sustainable development objectives. The proposal would result in limited wider benefits to the community that would outweigh flood risk and this is weighed in the overall planning balance. However, the critical issue here is that submitted site specific Flood Risk Assessment demonstrates that the site can be operated safely in flood risk terms, without increasing flood risk elsewhere, subject to conditions (including an evacuation plan) in accordance with Core Policy 10 and Policy DM5.

### **Impact on Visual Amenity**

Core Policy 9 states that new development should achieve a high standard of sustainable design and layout that is of an appropriate form and scale to its context complementing the existing built and landscape environments. Core Policy 13 requires the landscape character of the surrounding area to be conserved. Policy DM5 states that the rich local distinctiveness of the District's landscape and character of built form should be reflected in proposals for new development.

Core Policy 13 of the Core Strategy addresses issues of landscape character. It states that development proposals should positively address the implications of the Landscape Policy Zones in which the proposals lie and demonstrate that such development would contribute towards meeting the Landscape Conservation and Enhancement Aims for the area.

The District Council has undertaken a Landscape Character Assessment to assist decision makers in understanding the potential impact of the proposed development on the character of the landscape. The LCA provides an objective methodology for assessing the varied landscape within the District and contains information about the character, condition and sensitivity of the landscape. The LCA has recognised a series of Policy Zones across the 5 Landscape Character types represented across the District. Within the Newark and Sherwood Landscape Character Assessment, the application site falls within the Trent Washlands Policy Zone (TW PZ 12). This area has a predominantly flat arable landscape with suburban influences of housing on the edge of Newark and Farndon. The landscape condition is described as poor with the landscape sensitivity described as low. The Policy Action for this area is to 'Create' which the LCA defines as recreating, restoring and reinforcing planting.

The application building is located close to the existing group of buildings on the wider site which inhibits views from the south west, south and south east. Views from all other sides are set against the backdrop of existing buildings and are also highly screened by a high strip of trees to the north west of the site and a less dense strip of landscaping also located along Fosse Road. The proposal does not encroach into the undeveloped open countryside beyond the existing built

envelope of the wider business park site and given the previous use of the land is not considered to result in a harmful effect on the countryside or the surrounding rural landscape.

The building itself is also considered to be in agricultural appearance (steel portal framed building with green sheet cladding to the walls and roof) and its size and setting ensures a development with the rural character of its open countryside setting in this instance in accordance with the aims of Core Policies 9 and 13 of the Core Strategy and DM5 of the DPD.

### **Impact on Highways Network**

Policy DM5 is explicit in stating that provision should be made for safe and inclusive access to new development whilst Spatial Policy 7 encourages proposals which place an emphasis on non-car modes as a means of access to services and facilities.

The Highways Officer raises no objection to the proposal and considers the level of parking (within the blue line boundary) to be adequate when taking into account likely peak times for use of the gym in addition to the location of Hawton Lane which is a cul-de-sac and capable of accommodating overspill parking on the highway and unlikely to present a road safety issue or be considered an obstruction to the freeflow of vehicles. As such, the proposal is not considered to result in any highway safety issues and complies with the above policies.

### **Impact on Residential Amenity**

Policy DM5 of the Council's DPD requires new development to have regard to their impact on the amenity of surrounding land uses and where necessary mitigate for any detrimental impact. The site is located away from residential properties with the nearest dwelling being located approximately 100 metres away. As such, it is not considered that an adverse impact upon the amenity of nearby neighbours would result.

### **Conclusion and Overall Planning Balance**

Notwithstanding the views set out in 'Description of Development' section above, the proposal relates to the retention of a building for a proposed sui generis retail warehouse club in an open countryside location. The need for this particular rural location has not been demonstrated and it is not therefore considered to fully comply with the exceptions listed in Policy DM8 of the DPD.

The proposed use is a main town centre use and should ideally be located within an existing centre. A town centre sequential test has been submitted with the application and concludes that there are no sequentially preferable town centre sites for the development which meet the particular market and locational requirements of the Applicant. It is therefore considered that the proposal passes the town centre use sequential test. The impact of the proposal is considered unlikely to be significant adverse and the nature of the proposal is therefore considered unlikely to result in any adverse impact upon the vitality and viability of nearby centres.

The site is located in Flood Zones 2 and 3. A Flood Risk Sequential Test has been submitted with the application which concludes that there are no sequentially preferable sites which meet the catchment area for the development type proposed. Whilst I have some concerns in relation to the robustness of this assessment, when taking a pragmatic view I would concede that there are unlikely to be any sequentially preferable sites when taking into account wider sustainable development objectives as any other potential sites appropriate for the proposed development

are also likely to be located with open countryside locations. No adverse flood risk impacts would arise from the proposed development subject to conditions.

Consequently, the lack of sequentially preferable sites identified through either the flood risk or sequential testing identified reduces the weight I attach to my principle concern which related to the demonstration of the need for a particular rural location in this instance. I am also aware of the NPPF which requires policies to make as much use as possible of previously-developed land except where this would conflict with other policies in this Framework and I note that this land was previously occupied by a menage which whilst never formally regularised appears on aerial photographs for a period in excess of 10 years. Despite the open countryside location, the nature of the proposed use is somewhat compatible with the nature of the uses on the wider business park and does provide some benefit to the rural economy in terms of employment (albeit limited given that the level of employment generated is low) and the re-use of brownfield land in this case.

The proposal would result in limited wider benefits to the community given the nature of the business which would cater for a niche market from a catchment area which is likely to be larger than the immediate rural community. Minimal benefits to the fishing community and the proximity to the River Trent (on the other side of the settlement of Farndon) are noted.

No other harm has been identified and the proposal is considered to be acceptable from a residential, visual amenity and highway safety perspective. The lack of adverse visual impact is particularly pertinent in relation to the principle open countryside issue in this instance as the proposal is not considered to conflict with the overall reason for Policy DM8 which is to ensure that inappropriate development does not have an irrevocably harmful effect on the countryside and the landscapes, traditional forms of development and biodiversity which it contains. The proposal does not encroach into the undeveloped open countryside beyond the existing built envelope of the wider business park site - if it had, the recommendation would clearly have been a refusal.

Full and proper consideration has been given to all material planning considerations and the appropriate weight afforded to each matter. There are both positive and negative impacts identified. However, in my opinion I consider that the applicant has done enough in each area to persuade me that the recommendation should be an approval. Subject to conditions, I consider that the scheme is acceptable in accordance with the Development Plan and all other material considerations.

## **RECOMMENDATION**

**That full planning permission is approved subject to the following conditions:**

1.

Within three months of the date of this decision, a scheme of mitigation to protect against flood risk as set out in the approved Flood Risk Assessment (FRA) compiled by WtFR Ltd (ref: WTFR-FRA-2018/04/Q24 Unit 17) on 30th May 2018, shall be submitted to and approved by the Local Planning Authority. For the avoidance of doubt, this scheme shall include:

- Identification and provision of safe routes into and out of the site to an appropriate safe haven.

- Details flood resilient design measures incorporated into the final design as stipulated within section 9.3 of the FRA (including any undertaken retrospectively).
- timing / implementation arrangements of all mitigation measures identified.

The mitigation measures set out in the approved scheme shall be fully implemented in accordance with the timing / implementation arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To ensure safe access and egress from and to the site and to reduce the risk of flooding to the proposed development and future occupants.

2.

Within three months of the date of this decision, a Flood Warning and Evacuation Plan shall be submitted to and agreed in writing with the Local Planning Authority, and implemented with immediate effect. The development shall be carried out in accordance with this approved plan. The plan should include provisions for signing up to the Environment Agency's Flood Warning Service for early warning of potential flood events, details of how information would be disseminated and how occupants would be evacuated.

Reason: To ensure safe access and egress from and to the site and to safeguard against the risk of flooding.

3.

Notwithstanding The Town and Country Planning (Use Classes) Order 1987 (as amended), and The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any succeeding orders, the building hereby permitted shall be used for Sui Generis Retail Warehouse Club for the retailing of angling related goods with ancillary B1 (Business) and B8 (Storage and Distribution) uses only.

Reason: To define the permission and to ensure no adverse impact on the vitality and viability of nearby centres.

4.

The premises shall not be open to members of the public outside the following:-

09:00 to 18:00 Monday- Saturday  
10:00 to 16:00 Sundays, Public or Bank Holidays

Reason: For the avoidance of doubt and in the interests of residential amenity.

### **Informatives**

1.

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

The proposed development has been assessed and it is the Council's view that CIL is not payable on the sui generis use of the development hereby approved as the development type proposed is zero rated in this location.

2.

The application as submitted is acceptable. In granting permission without unnecessary delay the District Planning Authority is implicitly working positively and proactively with the applicant. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

3.

While the Environment Agency do not object to the FFL being set at 12.95mAOD it may be prudent to incorporate an additional 300mm of flood resilient construction above the 1 in 1000 year level of 12.9mAOD (i.e. 13.2mAOD) in to the final design. This will give an added level of flood resilience to the building and in the event of extreme flooding will reduce the impact on the business.

Flood proofing measures include barriers on ground floor doors, windows and access points and bringing in electrical services into the building at a high level so that plugs are located above possible flood levels.

Consultation with your building control department is recommending when determining if flood proofing measures are effective.

Additional guidance can be found on the [www.gov.uk](http://www.gov.uk) website pages under the heading 'Prepare for a flood and get help during and after'. These pages can be found by clicking on the following link – [Prepare for a flood and get help during and after - GOV.UK](#)

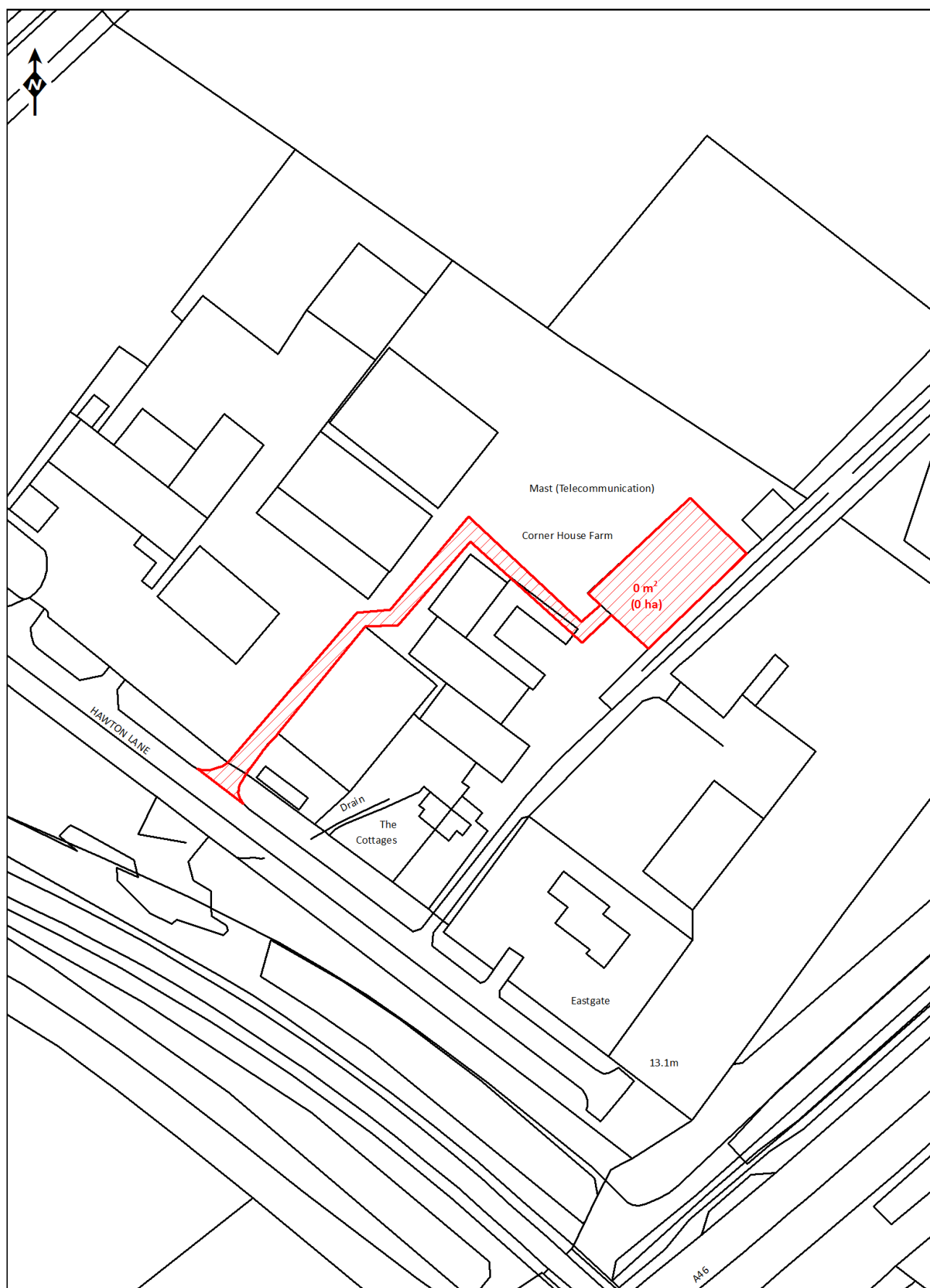
#### **BACKGROUND PAPERS**

Application case file.

For further information, please contact Helen Marriott on ext. 5793.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**  
**Business Manager Growth and Regeneration**



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## PLANNING COMMITTEE – 4 SEPTEMBER 2018

<b>Application No:</b>	<b>18/01217/OUT</b>		
<b>Proposal:</b>	<b>Demolition of existing barn, erection of 4no. dwellings and associated carports/garages.</b>		
<b>Location:</b>	<b>Land at Enfield Court, Harby, Notts</b>		
<b>Applicant:</b>	<b>Mr C Medley</b>		
<b>Registered:</b>	<b>29.06.2018</b>	<b>Target Date: 24.08.2018</b>	<b>Extension of Time Agreed: 07.09.2018</b>

**This application is brought before Members as the Officer recommendation differs from that of the host Parish Council which under the Council's current Constitution it states it should be brought to Committee for Members to determine.**

### The Site

The site lies to the north of the settlement of Harby, to the west of Station Road and is located within a site area of approximately 0.165ha. There are existing dwellings located to the south of the application site with the existing gated access off Station Road to the east.

There is an existing open brick and timber framed agricultural building located to the east of the site adjacent to Station Road. To the north and west of the site are arable fields. The eastern boundary with the highway is defined by a shallow ditch drainage channel with the hedge adjacent.

The application site is reasonably flat throughout however the north-west of the site has a mound of rubbish approximately 1.5-2m high.

The eastern half of the site is designated as being within Flood Zone 1 and the western half is located within Flood Zone 2 in accordance with Environment Agency mapping.

### Relevant Planning History

15/00616/DISCON - Request for confirmation of discharge of condition 02 attached to 14/01768/CPRIOR for Prior Approval for Change of Use from Agricultural Building to Dwelling – Part discharged 05.06.2015

14/02211/NMA - Application for non-material amendment to planning permission 05/02562/FUL for Demolition of modern farm buildings, conversion of barns to form 2 No. dwellings, erection of 4 No. new dwellings & erection of double detached garage for Enfield House – Approved 14.01.2015

14/02139/FUL - Variation of condition 7 of permission 10/01490/FUL to enable retention of one agricultural building – Approved 01.04.2015



14/01768/CPRIOR - Prior Approval for Change of Use from Agricultural Building to Dwelling – Prior approval not required 25.11.2014

*In November 2017 it has been confirmed, although not through the approval of a Lawful Development Certificate, that development had commenced through the excavation of trenches, drainage channels and installation of service ducts. It is the informal opinion of the LPA that this application is extant.*

14/01473/CPRIOR - Prior Approval of Proposed Change of Use of Agricultural Building to a Dwellinghouse – Planning application required 25.09.2014

13/01126/FUL - Proposed erection of single sustainable 'Live / Work' unit to meet a local need – Refused (appeal dismissed) 09.01.2014

12/01329/FUL - Residential development comprising total of 7 dwellings (of which 4 are over and above previous approved scheme). This involves the conversion of barn to two x 4 bedroom dwellings, two new pairs of semi-detached dwellings and amendments to an approved 3 bedroom house to form a four bedroom house. Resubmission of 12/00727/FUL, which was refused. Refused 21.11.2012

12/00727/FUL - Residential development comprising total of 9 dwellings (of which 6 are over and above previous approved scheme). This involves the conversion of barn to 4 dwellings, a new row of 3 terraces, a new four bedroom dwelling and amendments to an approved 3 bedroom house to form a four bedroom house - Refused 07.08.2012

10/01490/FUL - Demolition of modern farm buildings, conversion of barns to form 2 No. dwellings, erection of 4 No. new dwellings & erection of double detached garage for Enfield House. (Variation of conditions 3, 4 & 12 of planning approval 05/02562/FUL) – Approved 20.12.2010

05/02562/FUL - Demolition of modern farm buildings, conversion of barns to form 2 No. dwellings, erection of 4 No. new dwellings & erection of double detached garage for Enfield House – Approved 09.02.2006

76/53 - Building for storage of implements – Approved 02.03.1976

### The Proposal

The applicant seeks outline planning approval for the erection of 4no. market dwellings (2no. semi-detached and 2no. detached) on land formerly used for agriculture but which now appears to be for storage. All matters are reserved apart from access. There is already an access created to the site that serves the southern section of the site which has already been developed with 6 dwellings. The proposal would seek the demolition of the existing open framed agricultural building to the east of the site which measures approximately 12.5m (width) x 18m (length). No details of the height of the building have been submitted as part of the application consideration.

The applicant has indicated on the application form that three of the dwellings would be 3 bedroomed and one would be 4 bedroomed and an indicative layout has been submitted (drwg. 1464M/004).

### Documents/plans submitted in support of the application

DRWG no. 1464M/002 Site Location Plan;  
DRWG no. 1464M/003 Existing Site Block Plan;  
DRWG no. 1464M/004 Site Block Plan;  
DRWG no. 1464M/SA03 Sequential Test Plan;  
Design and Access Statement Artech Designs (1464M/DA01 June 2018);  
Flood Risk Assessment, Roy Lobley Consulting (RLC/0244/FRA01 27/06/2018)

### Public Advertisement Procedure

Occupiers of 9 properties have been individually notified by letter.

### **Planning Policy Framework**

#### **The Development Plan**

#### **Newark and Sherwood District Council Core Strategy DPD (adopted March 2011)**

Spatial Policy 1 - Settlement Hierarchy  
Spatial Policy 2 - Spatial Distribution of Growth  
Spatial Policy 3 – Rural Areas  
Spatial Policy 6 - Infrastructure for Growth  
Spatial Policy 7 - Sustainable Transport  
Core Policy 3 - Housing Mix, Type and Density  
Core Policy 9 – Sustainable Design  
Core Policy 10 - Climate Change  
Core Policy 12 - Biodiversity and Green Infrastructure  
Core Policy 13 – Landscape Character

#### **Allocations & Development Management DPD (adopted July 2013)**

DM1 – Development within settlements central to delivering the spatial strategy  
DM5 – Design  
DM7 - Biodiversity and Green Infrastructure  
DM12 – Presumption in Favour of Sustainable Development

### **Other Material Planning Considerations**

- National Planning Policy Framework 2018
- Planning Practice Guidance 2014

### Consultations

**Harby Parish Council** - This proposal will tidy up the area and the proposed houses will be more in keeping with the village environment in which it is set as well as supplying housing needs for the village. This small-scale development is in line with the Community Led Plan. Although this proposal has been amended from the currently approved application this new proposal is more in keeping with the location

**NSDC Environmental Health Officer** - Agriculture is a potentially contaminative land-use and such land can possibly be used for a wide variety of potentially contaminative activities including: non bunded fuel storage, repair and maintenance of agricultural machinery/vehicles, storage of silage and other feed, slurry tanks/lagoons, disposal of animal waste and disposal of asbestos.

As it appears that no desktop study/preliminary risk assessment has been submitted prior to, or with the planning application, then I would request that our standard phased contamination conditions are attached to the planning consent.

**Environment Agency** - If we accept that the 7.70AOD is the 1 in 1000 flood level then they are only proposing 150mm of freeboard. Models are just that and it's always proposed that 600mm of freeboard is added to take out all risk. This might be negotiated down to 300mm if flood resilience is built into the dwelling as a compromise.

**Nottinghamshire County Council Highways Officer** - The proposed dwellings will be served off a recently constructed private access. Providing vehicular access rights are made available to the residents then there is no objection, since the access is capable of serving additional dwellings.

**Lincolnshire County Council Archaeology** – No archaeological input required.

**NSDC Access and Equality Officer** – Observations

#### Representations

One neighbour has responded seeking clarification on whether the buildings would be bungalows or houses. They state that bungalows would be preferred and they also seek clarification on the exact number of buildings proposed.

#### Comments of the Business Manager

##### *5 Year Housing Land Supply*

With regards to the Councils current position with regards to 5 year housing land supply it is relevant to acknowledge that at the present time the LPA is well advanced in the process of a plan review with an examination which took place in February 2018. For the avoidance of doubt the Council considers that it has a 5 year housing land supply against the only objectively assessed need (OAN) available and produced independently by consultants and colleague Authorities. Therefore for the purposes of decision making, the Development Plan is considered to be up to date. This has also been confirmed by Inspectors through recent appeal decisions dated April 2018 following a Public Inquiry.

##### *Principle of development*

Spatial Policy 1 (Settlement Hierarchy) of the Council's Core Strategy sets out the settlements where the Council will focus growth throughout the District. Spatial Policy 1 and 2 does not include the settlement of Harby as one which is capable of supporting additional growth with its nearest Principal Village identified within the District as Collingham. The application site is located within a reasonably built up rural area and as such Spatial Policy 3 applies. The site, in the wider context, has been partly developed upon with residential development to the south of the current application site. Nonetheless, these are now in private occupation and do not form the basis of

this application. The application site contains an open steel framed agricultural building to the east of the site approximately 12.5m (width) x 18m (length).

Spatial Policy 3 of the Adopted Core Strategy states that housing should be provided for in settlements with an identified local housing need and housing will be focussed in sustainable accessible villages. Applications for new development beyond Principal Villages as specified within Spatial Policy 2 will be considered against the 5 criteria within Spatial Policy 3. This is Location, Scale, Need, Impact, Character.

In considering this proposal I am mindful that the changes to Policy SP3 as part of the plan review. The Amended Core Strategy and evidence base documents were submitted to the Secretary of State on 29th September 2017 for independent examination by a Planning Inspector with the examination having taken place on the 2<sup>nd</sup> February 2018. Further details have been submitted to queries which have been raised relating to Spatial Policy 3 and the Council is currently out to consultation on those amendments. Accordingly for the purposes of this proposal it is considered that weight can be attached to this emerging policy.

### Location

The emerging Spatial Policy 3 of the Core Strategy, which now carries some weight in the decision making process, states within the Location criterion that *'new development should be within the main built-up areas of villages, which have sustainable access to Newark Urban Area, Service Centres or Principal Villages **and** have a range of local services themselves which address day to day needs.'*

The application site is located within the main built up area of the village although to the northern fringe of the settlement. Harby does have some limited facilities to offer new development of a Primary School, Pub, village hall and small shop however it does not have good public transport access to other Service Centres or Principal Villages. Travel Wright provide the no.67 bus service between Newark and Saxilby (Lincoln) and although there is one stop in Harby (Low Street) the earliest bus from Newark is 12:40 and Collingham at 12:58 which arrive in Harby at 13:35. There is 1 subsequent bus which stops at both Newark and Collingham which departs Newark at 14:03 and arrives in Harby at 15:05. There are 4 busses which depart from Collingham however the earliest is 12:58 and the latest is 17:35. An extract of the bus timetable is provided in Table 1 below. Harby is located approximately 4 miles from the settlement of Saxilby which is within Lincolnshire and does provide for more local facilities. However the bus service to Saxilby is inferior than from Newark or Collingham with Harby only identified as a 'Demand Responsive Area' which means the bus does not automatically stop in Harby and the stop has to be booked in advance by telephoning the bus company, much like a taxi service. However there is one scheduled route from Saxilby to Harby which leaves Saxilby at 13:50 and arrives in Harby at 14:00 and carries on to Newark. A copy of the bus timetable is provided in Table 2 below.

With regard to the level of facilities that Harby has to offer it has a primary school, pub, village hall, church, a newly opened village shop and a post office (open two afternoons a week). For a small village it does provide for a degree of servicing. However, there would still remain a need for wider services provided by more sustainable settlements which, as outlined above, would not be reasonably accessible by sustainable access means. Spatial Policy 3 is clear that both elements (i.e. local services and sustainable access) must be met in order for development to meet the locational criteria. Given that the transport links to more sustainable settlements are inferior and thus new residents would be reliant on the use of their own car to access shops and other services

which are not provided for in the existing settlement, Officers consider that locationally the proposal fails to accord with Spatial Policy 3 of the Core Strategy.

A bus service operated by [Travel Wright](#)

Wednesday 15 August 2018 ▼

### Newark - Collingham - Saxilby

☒ Show all stops

Newark Bus Station (Bay A)		07:40	09:03	10:03	11:03	12:03	12:40	13:03	14:03	15:48		17:08	18:08	
Newark Bus Station (Bay AE)	06:40													
Newark, opp Kirk Gate	06:42	07:42	09:05	10:05	11:05	12:05	12:42	13:05	14:05	15:50		17:10	18:10	
Newark, opp Lincoln Street	06:45	07:45	09:08	10:08	11:08	12:08	12:45	13:08	14:08	15:53		17:13	18:13	
Newark, adj Gainsborough Drive	06:47	07:47	09:10	10:10	11:10	12:10	12:47	13:10	14:10	15:55		17:15	18:15	
Winthorpe Demand Responsive Area	06:52	07:52	09:15	10:15	11:15				14:15	16:00		17:20	18:20	
Winthorpe, opp Holme Lane							12:50							
Langford, opp Elmtree Farm	06:56	07:56	09:19	10:19	11:19	12:19	12:54	13:19	14:19	16:04		17:24	18:24	
Collingham, adj The Green	07:00	08:00	09:23	10:23	11:23	12:23	12:58	13:23	14:23	16:08		17:28	18:28	
Collingham Braemer Road (N-bound)									14:27					
Collingham, adj Queen Street	07:02	08:02	09:30	10:30	11:30	12:25	13:00	13:25	14:30	16:10	16:13	17:30	17:35	18:30
Collingham, adj The Rookery									14:32s		16:15s		17:38s	
Collingham, adj The Rookery	07:05	08:05	09:32	10:32	11:32	12:28		13:28		16:13		17:33		18:33
South Scarle Demand Responsive Area							13:04		14:34		16:17s		17:42s	
Besthorpe, adj Trent Lane									14:38		16:21s		17:46s	
Besthorpe Demand Responsive Area							13:08							
North Scarle Demand Responsive Area							13:09		14:39		16:22s		17:47s	
Girton Lane (opp)									14:40		16:23s		17:48s	
Girton Demand Responsive Area							13:10							
Spalford Demand Responsive Area							13:15		14:45		16:25s		17:53s	
South Clifton Demand Responsive Area							13:19		14:49		16:27s		17:57s	
North Clifton Demand Responsive Area							13:21		14:51		16:29s		17:59s	
Thorney Demand Responsive Area							13:28		14:58		16:38s		18:06s	
Wigsley Top Road (SE-bound)							13:32		15:02		16:40s		18:10s	
Harby Low Street (N-bound)							13:35		15:05		16:43s		18:13s	
Saxilby Demand Responsive Area							13:45							
Saxilby, adj Thonock Drive									15:15		16:53		18:23	

Table 1: Travel Wright Bus Timetable route no.67

☒ Show all stopsTable 2 : Travel Wright Bus Timetable route 67

Scale

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## Need

The NPPF (2018) states *“The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as **meeting the needs of the present** without compromising the ability of future generations to meet their own needs”*. (para.7 emphasis added).

SP3 provides that new housing must meet an identified proven local need. The Spatial Policy 3 Guidance Note (September 2013) states that proven local need must relate to the needs of the community rather than the applicant. Assessments should be based on factual data such as housing stock figures where the need relates to a type of housing or census data where the needs relate to a particular population group. The onus is ordinarily on the Applicant to demonstrate a local need.

In this regard I am mindful of the need criterion within the emerging Spatial Policy 3. This states that local housing need will be addressed by focusing housing in sustainable, accessible villages. New housing will be considered where it helps to support community facilities and local services and reflects **local need** in terms of both tenure and house types. Supporting text to this revised policy states that this policy requires applicants to demonstrate the services it will support and the housing need within the area. No information has been submitted with the application to demonstrate housing need in the area.

The ‘Newark and Sherwood Sub-Area Report for Housing 2014’ produced on behalf of NSDC establishes the housing needs position across the District. Harby is included within the Collingham and Meering Area. According to the report there is a demand for 2, 3 and 4 bedroomed market housing, with the highest demand being for 2 bedroomed dwellings.

The settlements of Harby, Thorney and Wigsley have in 2015, published a Community Led Plan for the period of 2015-2025, which illustrates their vision for new development within the communities. This plan stated that within Harby the highest demand was for detached family homes (58% of respondents) on individual plots; however there was also a high demand for affordable/shared ownership properties (46%), bungalows (47%) and semi-detached properties (50%).

Whilst it is clear that substantial work has gone into producing the document, it only shows the preferences of those surveyed. Whilst this carries some weight as an aspiration, the results in the Community Led Plan alone do not demonstrate a proven local need as required by Policy SP3. Identified proven local need is not just a question of what the demand is but also needs to include an analysis of the current housing stock to help identify what is required. The Council’s Spatial Policy 3 Guidance Note states *‘Housing need should not be confused with the state of the housing market in a particular settlement at a particular point in time’ and that ‘Assessments should be based on factual data such as housing stock figures where the need relates to type of housing or census data where the need relates population groups.’* A Housing Needs Assessment, which is the identified route for providing a clear needs assessment has not been produced for Harby and thus whilst the Community Led Plan is a useful document it represents a desire and aspiration for development and not a proven local need. I therefore consider that the document carries very little planning merit.

Nonetheless, the proposal provides for market dwellings which meet a Housing Need within the Collingham and Meering area regardless of the applicant not having provided details of which

community services they would directly support. It is accepted that 3 and 4 bedroomed properties are such which would attract families and as there is a primary school in the village it is reasonable to suggest that this would see some benefit from such a development. Therefore I consider that although there is no housing need survey produced, the proposal would seek to meet the 2014 Housing Need identified through the work carried out by NSDC. I therefore consider that on this basis, and that the proposal would contribute to sustaining community facilities (school), the Need criterion has been met.

### Impact

I consider that a scheme could be designed so it does not have a detrimental impact upon nearby residents. The proposal is for 4 properties, which is low scale, and the level of car-borne traffic caused by the development whilst unsustainable in locational terms is unlikely to be overly excessive in terms of impact due to the proximity to the neighbouring more sustainable settlement of Saxilby.

### Character

The erection of four dwellings is considered low scale and the application is only in outline form with layout to be considered as a reserved matter. The site lies to the north of a recently constructed residential development/conversion of 6 dwellings located off a private access. The layout as proposed, whilst only illustrative, shows how 4 properties would integrate on the site. This illustrated layout and the number of properties proposed would introduce sensible layout, in my opinion which I consider is general accordance with the immediate locale. I therefore consider the proposal would accord with the character criterion of Spatial Policy 3.

The NPPF (2018) states *'the purpose of the planning system is to contribute to the achievement of sustainable development (para 7). 'Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area' (para 9).*

It has not been proven to the satisfaction of officers that the settlement of Harby is adequately serviced by public transport and thus the proposal is located within an unsustainable location. I note that the settlement does provide for some limited 'permanent' facilities. The agent has stated within their Design and Access Statement that additional facilities are provided however these are mainly mobile, such as the butchers, fish and chip van, library, newspapers, bakery van, fresh fish delivery, which I consider to be a response to provide occasional services to a village which is in an unsustainable location, rather than established uses based within the settlement that serve the residents. Such facilities could be achieved in any settlement and are not a permanent base within the village. I still consider the settlement is not wholly supportive of additional speculative development and thus the settlement of Harby fails to be adequately sustainable to support further development.

### *Impact on Highway Safety*

Spatial Policy 7 of the Core Strategy seeks to ensure that vehicular traffic generated does not create parking or traffic problems. Policy DM5 of the DPD requires the provision of safe access to new development and appropriate parking provision and seeks to ensure no detrimental impact upon highway safety.

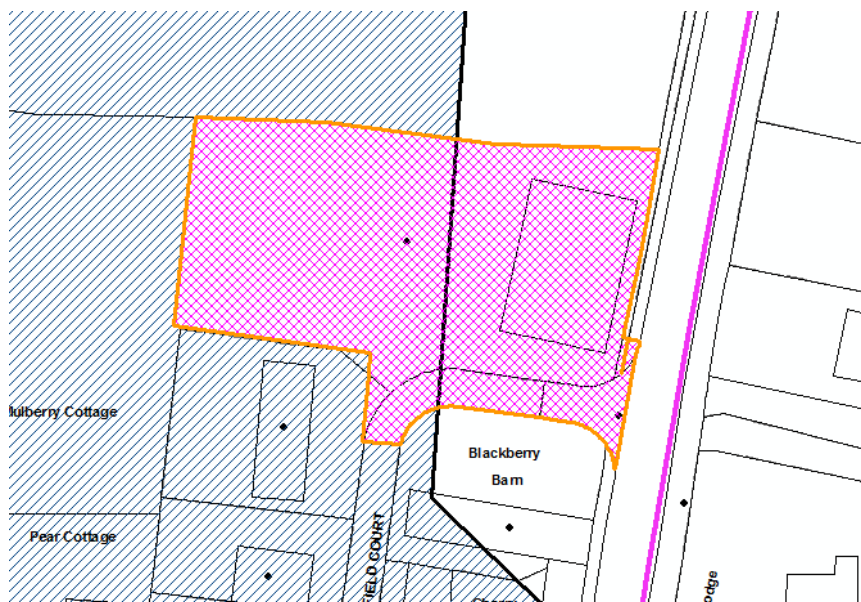


Access is a matter which is to be considered as part of this application and not at reserved matters stage. The proposal would utilise an already constructed access which serves the southern side of the site. The access has not raised any objections from Nottinghamshire County Council Highway colleagues as the access is capable of supporting additional dwellings.

I therefore consider the proposal to be acceptable with regards to highway safety and accords with Spatial Policy 7 of the Core Strategy and Policy DM5 of the ADMDPD.

#### *Impact on Flood Risk*

The application site falls within Flood Zones 1 and 2 according to the Environment Agency flood zone mapping (see plan below). Flood Zone 1 is to the eastern half of the site where plots 1, 2 and 3 are located and plot 4 (and associated garaging), extended spine road and half of the garage building for plots 1 and 2 are located within flood zone 2. The proposed use of residential dwelling houses would be considered as more vulnerable according to the Technical Guidance of the NPPF.



*Flood zone mapping, blue indicates zone 2*

The National Planning Policy Framework (NPPF) provides guidance on dealing with development within Flood Zone 2. Chapter 14 of the NPPF outlines that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Local Plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by:

- applying the Sequential Test, if necessary, applying the Exception Test;
- using opportunities offered by new development to reduce the causes and impacts of flooding; and
- where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to facilitate the relocation of development, including housing, to more sustainable locations (paragraph 157).

Paragraph 158 of the NPPF confirms that the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

This is reflected in Core Policy 10 of the Newark and Sherwood Core Strategy which states that when determining development proposals, the Council will apply a sequential approach to future development and will work with partners to secure strategic flood mitigation measures as part of new development.

Policy DM5 of the Allocations and Development Management DPD contains similar provisions, confirming that the Council will aim to steer new development away from areas at highest risk of flooding. Policy DM5 confirms that proposals within Flood Zones 2 and 3 will only be considered where they constitute appropriate development and it can be demonstrated, by application of the Sequential Test, that there are no reasonably available sites in lower risk Flood Zones. Where development is necessary within areas at risk of flooding, proposals will also need to satisfy the Exception Test where applicable by demonstrating they would be safe for the intended users without increasing flood risk elsewhere. In accordance with the aims of Core Policy 9, proposals should wherever possible include measures to pro-actively manage surface water including the use of appropriate surface treatments in highway design and Sustainable Drainage Systems.

The application has been accompanied by a Flood Risk Assessment (FRA) which includes the application of the Sequential Test. The LPA has not outlined a prescriptive approach to applying the Sequential Test as each application must be considered on its own merits unless specified differently under para 33 of the PPG. The starting stance is that the test be applied at the District-wide level, unless a lesser area is justified by the functional requirements of the development or relevant objectives in the Local Plan. For example if the specific settlement has a Housing Need survey which has been accredited by this Authority which this application would seek to provide a need for, then the sequential test could be more specific to the individual settlement as it would be fulfilling a particular identified need. This approach has been historically advocated by the Environment Agency in their advice to applying the Sequential and Exceptions Test and it is one which the LPA considers is the most reasonable.

The submitted Sequential Test only identifies sites within Harby which are either in a Flood Zone or are not available. Members will be aware that the LPA now considers that it has a proven 5 year housing land supply and as such it would not be seeking to approve development where there is a real risk to the occupiers safety from flood water. Therefore as the LPA has available sites within the District to provide housing which are within areas at lower risk from flooding, the proposal is considered to fail the Sequential Test. The NPPF states that the application of the Exceptions Test is only required when the Sequential Test has been satisfactorily addressed. However for completeness and to inform Members decision making I consider it necessary and appropriate to inform them on how the test could be satisfied.

Paragraph 160 of the NPPF states that for the exceptions test to be passed it should be demonstrated that :

- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; **and**
- b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Whilst the proposal has been demonstrated that it would meet an identified housing need within the Collingham and Meering area, this is offset by the unsustainable location due to the inadequate transport links to sustainable locations. I therefore consider the proposal fails to adequately provide a wider sustainable benefit. The second criterion relates to the levels the buildings would be constructed at, however the proposal must pass both criteria to pass the exceptions test. Within the submitted FRA the applicant has stated that the site is at low flooding risk from fluvial and groundwater sources and existing sewers, nonetheless it is still located within Flood Zone 2. They state that the minimum finished floor levels for all four dwellings would be set 150mm above ground level within Flood Zone 2. Having spoken to the Environment Agency they state that for dwellings located within Flood Zone 2 they should be sited so as to be able to cope with a 1 in 1000 flood event. Therefore they advise that for plot 4 the dwelling should be set no lower than 300mm from 7.70AOD providing that flood resilience measures are built in to the dwelling. However they advise that as the levels are only models it is always best that 600mm of freeboard is added to take out all the risk. Therefore plot 4 and associated buildings and access roads are set a minimum of 150mm lower than minimally acceptable and 450mm lower than is reasonably acceptable in the opinion of the Environment Agency to satisfy the Exceptions Test. Therefore on this basis the proposal, in theory, would fail to comply with the Exceptions Test as set out in the NPPF and in my opinion it would also fail the Sequential Test.

It is therefore considered that there remains sequentially better sites for development within the District which are at lower risk from flooding and indeed a reduction in the number of dwellings and development area of the site could in itself take the development out of Flood Zone 2 as only the western half of the site is within Flood Zone 2. I have raised this issue with the Agent, however their client is seeking to proceed with the application as submitted.

As such, on the basis that the Sequential Test should be applied District wide where there are numerous sites available at lower risk of flooding that could accommodate small scale development sites.

It is considered that in this instance the application fails to satisfy the Sequential Test as set out in para 157 of the NPPF. The development is therefore not considered to be in accordance with Core Policy 10, Policy DM5, Chapter 14 of the NPPF, or Planning Practice Guidance: Flood Risk and Coastal Change.

#### *Housing mix*

Whilst housing type, design and layout are not for consideration at this stage, the applicant had previously stated that the general mix is a 3no. three bedroomed dwellings and 1no. four bedroomed dwelling. Whilst this is not a varied mix I do not see it as wholly inappropriate, given the scale of the site and the surrounding community it seeks to serve. I therefore consider this does not represent an adequate reason for the refusal of planning permission and the proposal generally accords with Core Policy 3 of the Core Strategy.

#### *Impact upon Residential Amenity*

Policy DM5 of the ADMDPD states the “*layout of development within sites and separation distances from neighbouring development should be sufficient to ensure that neither suffers from an unacceptable reduction in amenity including overbearing impacts, loss of light and privacy.*” The application is only in outline form however an indicative layout has been submitted (DRWG 1464M/004). I am confident that a scheme could be produced which ensures that the future

occupiers of the dwellings and existing occupiers of the surrounding sites would not have their amenity detrimentally impacted upon.

### *Impact on the Landscape and Ecology*

The site is identified within the Council's Landscape Character Assessment SPD as being located within the East Nottinghamshire Sandlands Policy Zone ES PZ 02: Wigsley Village Farmlands with Plantations. The landscape condition is defined as being of moderate condition with a very low impact to sensitivity. As such the outcome is to create landscape features in new development such as new hedgerows and restore existing, enhance existing tree cover and landscape planting and promote biodiversity. The proposal does not include measures for landscaping only those shown indicatively on the submitted indicative layout plan. The site is currently a greenfield site and would provide a degree of biodiversity and ecological value however this has not been demonstrated through the submission of an ecological survey. Nonetheless the site is not identified within a protected area for ecology and thus I consider it to provide a low ecological value.

Core Policy 12 of the Core strategy and policy DM7 of the ADMDPD states that new proposal should protect, promote and enhance green infrastructure. Proposals should seek to secure development that maximises the opportunities to conserve, enhance and restore biodiversity. The indicative layout allows the provision of a new hedgerow around the site. I consider that despite this layout the site does have capacity to increase the biodiversity of the site through the planting of hedgerows and native trees which I consider would accord with Core Policy 12 and policy DM7. If Members are minded to approve the application then I consider a condition would be required, securing an appropriate enhanced landscaping scheme.

The erection of 4 dwellings (and associated infrastructure) I consider would have limited impact upon the character of the wider landscape area due to the already built up surroundings to the south and east. Therefore the proposal is considered to adhere to Core Policy 13 of the Core Strategy and the Landscape and Character Assessment SPD.

### *Conclusion*

Taking the above into account I am of the view that the proposed development would fail to accord with the Sequential Test as set out in the NPPF as there are more sequentially preferable sites within the District which are at lower risk from flooding. The settlement of Harby has some facilities to support day to day living, however residents would still be reliant on accessing services in other more sustainable locations to which there is an inadequate public transport links in the village. Residents would therefore be reliant on the use of a private car to access such locations and services. The proposal is therefore also considered to be located in an unsustainable location which fails to accord with the location criteria of Spatial Policy 3 of the Core Strategy.

The development would have an acceptable impact on the character of the area, neighbouring amenity and highway safety. There are no further material considerations that would warrant refusal of the application.

### **RECOMMENDATION**

**That full planning permission is refused due to the following reasons:**

01

The application site contains land which is located within Flood Zone 2 as defined by the Environment Agency data maps. Chapter 14 of the National Planning Policy Framework (NPPF 2018) sets out the due process for assessing new residential development within areas at risk from flooding. The Local Planning Authority must first apply the Sequential Test and then only upon satisfaction of this should the Exceptions Test be applied. In the opinion of the Local Planning Authority the proposal would fail to accord with the Sequential Test as the Council considers there are other more preferable sites at lower risk from flooding within the District to permit housing, and indeed the Council considers it also has a proven 5 year housing land supply so is not reliant on approving such windfall sites which are at risk from flooding. Harby does not have a local housing needs survey and as such these market dwellings are not being built to fulfil a specific identified shortage in local supply.

As such the proposal is contrary to Chapter 14 of the NPPF (2018), PPG (2014), Core Policy 10 of the Core Strategy (2011) and Policy DM5 of the Allocations and Development Management DPD (2013)

02

Spatial Policy 3 of the Newark and Sherwood Core Strategy DPD states that, beyond principal villages, proposals for new development will be considered against a number of criteria including location. In the opinion of the Local Planning Authority, whilst Harby has limited facilities, new residents would be reliant on the use of a car to access other essential day to day facilities due to the inadequate public transport network.

The proposal therefore fails to comply with the location criteria of Spatial Policy 3 and would thus represent the promotion of an unsustainable pattern of development, contrary to the key aims of the National Planning Policy Framework, the Newark and Sherwood Core Strategy 2011 and explicitly Spatial Policy 3.

### **Notes to Applicant**

01

You are advised that as of 1st December 2011, the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority you are advised that CIL applies to all planning permissions granted on or after this date. Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

02

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason(s) for refusal. Working positively and proactively with the applicants would not have afforded the opportunity to overcome these problems, giving a false sense of hope and potentially incurring the applicants further unnecessary time and/or expense.

## BACKGROUND PAPERS

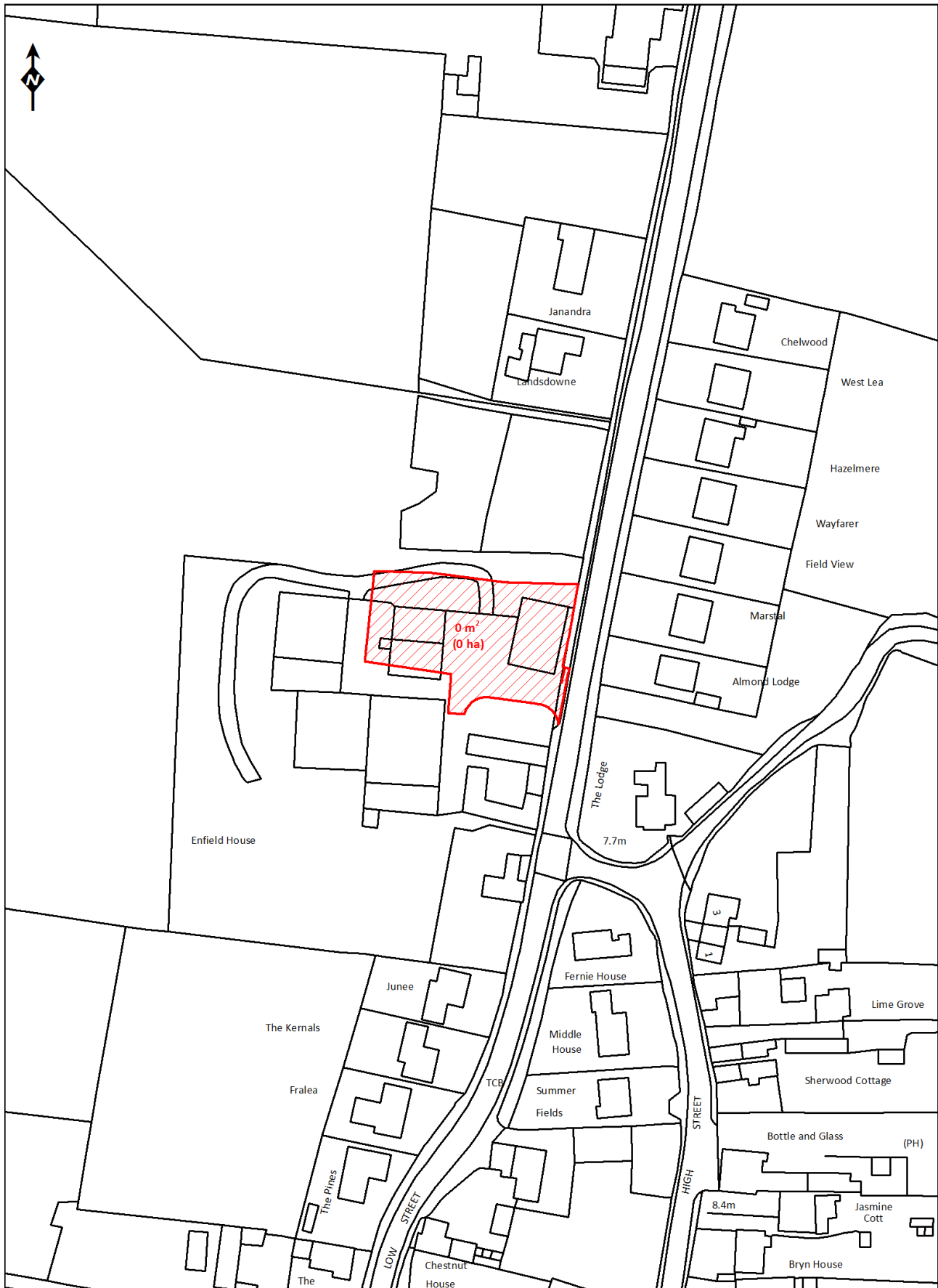
Application case file.

For further information, please contact Lynsey Tomlin on Ext 5329.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**

**Business Manager Growth and Regeneration**



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## **PLANNING COMMITTEE – 4 SEPTEMBER 2018**

### **APPEALS A**

#### **APPEALS LODGED (received between 18 July and 20 August 2018)**

1.0 Members are advised that the appeals listed at Appendix A to this report have been received and are to be dealt with as stated. If Members wish to incorporate any specific points within the Council's evidence please forward these to Planning Services without delay.

#### **2.0 RECOMMENDATION**

That the report be noted.

#### **BACKGROUND PAPERS**

Application case files.

For further information please contact our Technical Support Business Unit on 01636 650000 or email [planning@nsdc.info](mailto:planning@nsdc.info) quoting the relevant appeal reference.

**Matt Lamb**

**Business Manager Growth & Regeneration**



Appeal reference	Application number	Address	Proposal	Procedure
APP/B3030/C/17/3191499		Tresco 5 Main Street North Muskham Newark On Trent Nottinghamshire NG23 6EZ	Appeal against	Written Representation
APP/B3030/C/18/3195346		Forge House Westgate Southwell Nottinghamshire NG25 0LD	Appeal against	Written Representation
APP/B3030/W/18/3199561	17/01812/FUL	Land Near Woodlands Barn, Mill Lane South Clifton Newark On Trent Nottinghamshire NG23 7AN	Erection of detached dwelling	Written Representation
APP/B3030/C/18/3200434		Bargain Booze Unit 3, 2 Church Street Edwinstowe Nottinghamshire NG21 9QA	Appeal against	Written Representation
APP/B3030/W/18/3202259	17/02100/OUT	Chapel Farm Chapel Lane Spalford Newark On Trent Nottinghamshire NG23 7HD	Erection of 2 detached dwellings	Written Representation
APP/B3030/W/18/3204708	18/00599/FUL	Land To The Rear Of 8 Main Street Sutton On Trent, Nottinghamshire	Erection of 4(No.) Dwellings and Associated Garages	Written Representation

**PLANNING COMMITTEE – 4 SEPTEMBER 2018**

**APPENDIX B: APPEALS DETERMINED (18 July and 20 August 2018)**

**NO APPEALS DECIDED WITHIN THIS TIME PERIOD.**

**RECOMMENDATION**

That the report be noted.

**BACKGROUND PAPERS**

Application case files.

For further information please contact our Technical Support Business Unit on 01636 650000 or email [planning@nsdc.info](mailto:planning@nsdc.info) quoting the relevant application number.

**Matt Lamb**

**Business Manager Growth & Regeneration**