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Tuesday, 27 June 2023

**Chairman: Councillor A Freeman
Vice-Chairman: Councillor D Moore**

Members of the Committee:

**Councillor L Dales
Councillor P Rainbow
Councillor S Saddington
Councillor T Wildgust
Councillor C Brooks
Councillor S Crosby
Councillor P Harris**

**Councillor J Lee
Councillor K Melton
Councillor E Oldham
Councillor M Shakeshaft
Councillor M Spoons
Councillor L Tift**

MEETING: Planning Committee

DATE: Thursday, 6 July 2023 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.

AGENDA

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There are none.	
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There are none.	

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 Thursday, 8 June 2023 at 4.00 pm.

PRESENT: Councillor A Freeman (Chairman)
Councillor D Moore (Vice-Chairman)

Councillor Mrs L Dales, Councillor Mrs P Rainbow, Councillor S Saddington, Councillor T Wildgust, Councillor Mrs C Brooks, Councillor J Lee, Councillor K Melton, Councillor E Oldham, Councillor M Shakeshaft, Councillor M Spoors and Councillor L Tift

APOLOGIES FOR ABSENCE: Councillor S Crosby (Committee Member) and Councillor P Harris (Committee Member)

1 DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

Councillors Mrs L Dales declared a Non-Registrable Interest as appointed representative on the Trent Valley Internal Drainage Board.

Councillors J Lee declared a Non-Registrable Interest as appointed representative on the Nottingham Fire Authority.

2 NOTIFICATION TO THOSE PRESENT THAT THE MEETING WILL BE RECORDED AND STREAMED ONLINE

The Chairman advised that the proceedings were being audio recorded and live streamed by the Council.

3 MINUTES OF THE MEETING HELD ON 20 APRIL 2023

AGREED that the Minutes of the meeting held on 20 April 2023 were approved as a correct record and signed by the Chairman.

4 FLAGGS FARM, CAUNTON ROAD, NORWELL, NEWARK ON TRENT, NG23 6LB - 23/00188/FULM

The Committee considered the report of the Business Manager – Planning Development, which sought the change of use of land from agricultural to equestrian use, erection of new stables/livestock building.

Members considered the presentation from the Senior Planning Officer, which included photographs and plans of the proposed development.

A schedule of communication was tabled at the meeting, which detailed correspondence received following the publication of the agenda from the Planning Case Officer and Agent.

Members considered the application and a Member commented that Norwell Parish Council had voted against the application although it was confirmed by the Officer that they had in fact responded that they supported it. It was commented that there was no agriculture on the land which brought into question whether it was an agricultural farm. The two buildings present could have been adapted to make them suitable. Concern was also raised that Nottinghamshire County Council Highways Authority were also not happy with the access, the land may flood and that the increase in buildings was too great and there was not a need.

Councillor J Lee did not take part in the vote as he had not read the Schedule of Communication.

AGREED (with 11 votes For) that Planning Permission be Refused for the reasons contained within the report, with the revision to the wording of the informative no. 1 to correct the plan reference as per the schedule of communication and the deletion of informative no. 2 as drafted and a more suitable informative be added in its place to demonstrate how the authority had been positive and proactive as required by secondary legislation.

Councillor J Lee left the meeting at this point.

5 LAND OFF CLIPSTONE ROAD, EDWINSTOWE - 23/00729/FUL

The Committee considered the report of the Business Manager – Planning Development, which sought the erection of a site manager dwelling.

Members considered the presentation from the Senior Planning Officer, which included photographs and plans of the proposed development.

Members considered the application and the Local Ward Member commented that whilst she was wary about the application the proposal replaced two building which would be demolished and would be in keeping with the buildings being erected.

In answer to a Members question the Senior Planning Officer confirmed that it would not be reasonable to place a condition to tie the proposed building to the adjacent log cabin approved separately as part of a holiday park. It was also confirmed that the permitted development rights had also been removed.

Councillor Mrs Tift entered the meeting during the Officers presentation but did not take part in the debate or vote.

AGREED (with 9 votes For, 1 vote Against and 1 Abstention) that Planning Permission be approved subject to the conditions contained within the report.

6 NOMINATIONS TO THE PLANNING POLICY BOARD THREE MEMBERS OF THE PLANNING COMMITTEE TO BE NOMINATED TO THE PLANNING POLICY BOARD.

The Committee were asked to nominate three Members of the Planning Committee to sit on the Planning Policy Board.

AGREED (unanimously) that Councillors L Dales, D Moore and K Melton be appointed as the Planning Committee representatives on the Planning Policy Board for 2023/24.

7 LEGISLATIVE UPDATE AND INTRODUCTION OF A USE CLASS FOR SHORT TERM LETS AND ASSOCIATED PERMITTED DEVELOPMENT RIGHTS CONSULTATION

The Committee considered the report prepared by the Director of Planning & Growth which sought to appraise Members of the Planning Committee regarding changes to planning legislation; and to set before Planning Committee the latest permitted development right consultation and detail of the Council's response.

AGREED (unanimously) that:

- (a) note the changes and their requirements; and
- (b) note the contents of the Council's response to the permitted development consultation.

8 APPEALS LODGED

AGREED that the report be noted.

9 APPEALS DETERMINED

AGREED that the report be noted.

10 DEVELOPMENT MANAGEMENT PERFORMANCE REPORT

The Committee considered a report presented by the Business Manager - Planning Development, which related to the performance of the Planning Development Business Unit over the three-month period January to March 2023 as well as providing an overview of the performance and achievements across the financial year. In order for the latest quarter's performance to be understood in context, in some areas data going back to March 2020 was provided. The performance of the Planning Enforcement team was provided as a separate report.

A Member commented that there was an expectation to try and do something more advantageous regarding planning policy in relation to biodiversity net gain and there was freedom of movement on this. The Director Planning & Growth commented that any proposals would need to be considered by the Planning Policy Board. Like all Policy decisions whether in the development plan or at a local level, a viability report would be required.

A Member asked for future consideration that all tree applications be submitted to the Planning Committee. The Director Planning & Growth informed the Committee that the tree applications were part of the delegation procedure. An annual review of all applications would be undertaken, and the tree applications could be considered through that process.

A discussion took place regarding the felling of trees and it was suggested that the tree officer provide a presentation to the Council, to get an understanding of what was happening regarding the felling and planting of trees within the district.

AGREED that the report be noted.

11 QUARTERLY AND YEAR END PLANNING ENFORCEMENT ACTIVITY UPDATE REPORT

The Committee considered the report presented by the Senior Planning Enforcement Officer which provided an update on the Planning Enforcement function of the Planning Development Business Unit over the three-month period January to March 2023 as well as providing an overview of the performance and achievements across the financial year. The Committee was also provided with examples of cases that had been resolved (both through negotiation and via the service of notices) and to provide details and explanations of notices that had been issued during that period.

The Chairman congratulated the Senior Planning Enforcement Officer and his team for the work that they had achieved.

A Member requested a breakdown of the decisions made by the Planning Committee in relation to enforcement action to be included in a future Enforcement Report.

AGREED that the report be noted.

Meeting closed at 5.42 pm.

Chairman



Report to Planning Committee 6 July 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Julia Lockwood, Senior Planner, 01636 655902

Report Summary			
Application Number	22/01840/FULM		
Proposal	Construction of Battery Energy Storage System and associated infrastructure.		
Location	Land South of Staythorpe Road, Staythorpe		
Applicant	Ecap Staythorpe BESS Ltd – Elena Savrieva	Agent	RPS – Mr Jonathan Smith
Web Link	https://publicaccess.newark-sherwooddc.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=R1IKHYLBMRQ00		
Registered	23 November 2022	Target Date	22 February 2023
		Extension of time agreed	10 July 2023
Recommendation	That full planning permission is APPROVED, subject to conditions set out in Section 10 in the report		

This application is presented to Planning Committee due to it (a) being a departure from the development plan and recommended for approval and (b) it is a major development and the Officer’s recommendation differs to the Parish Council response.

1.0 The Site

The application site relates to 10.1ha of agricultural land located in the open countryside, comprising two agricultural fields, the eastern (6ha) and the western (3ha) cultivated for cereals. The site is divided into two by an agricultural access which is also a public right of way (Staythorpe FP1) and adjacent to a drainage ditch which all runs along the same route across the site in a north-west to south-easterly direction from Staythorpe Road and defined on either side by hedgerow. The majority of this route also provides for a 33 kV overhead power line. Staythorpe FP1 extends beyond the railway line and continues in the same

direction until it reaches the River Trent, approx. 1km to the south-east from the site. There is both a vehicular and pedestrian crossing across the railway line to the south of the site.

Rundell Dyke runs along the south side of the railway line to the south of the site. The eastern boundary of the site roughly follows the course of Staythorpe Sidings Drain. Both of these are the responsibility of an Internal Drainage Board. There are various agricultural drains and ditches within and around the site boundaries.

The boundary of the application site to the south is defined by a dry ditch (outside the red line), beyond which is a belt of mature trees which run along the length of the railway line. The boundary to the north and west is defined by Staythorpe Road with existing hedgerow and some tree boundary planting, and to the east by Staythorpe Sidings Drain and a hedgerow field boundary with pockets of woodland beyond. Beyond this to the east is the existing National Grid Staythorpe Electricity 400 kW substation which is a substantial structure served by a network of electric pylons, the majority of which is largely screened from the application site by the woodland situated between. Staythorpe Power Station is gas fired and situated 350m to the south-east on the other side of the railway line.

The land is predominantly (70%) in Grade 3a of the Agricultural Land Classification. Annex 2 of the NPPF defines this as 'best and most versatile agricultural land.' The remainder of the site (centrally located and adjacent to the railway line) is within Grade 3b which is of 'moderate quality agricultural land.'

Ground levels at the site are relatively even and sit approx. between 12m and 13.3m Above Ordnance Datum (AOD). Approx two thirds of the site (the northern half as well as the south-eastern corner) lies within Flood Zone 3b and is therefore at highest risk of main river flooding, and within the functional floodplain. The central area adjacent to the railway line is within Flood Zone 2 which means it is at medium risk of fluvial flooding. There is no international, national or local ecological or landscape designations within the boundary or within 1km of the site, the nearest being Farndon Ponds Local Nature Reserve, 1.4km to the south-west which includes priority deciduous woodland habitat and large pond supporting kingfisher and common frog and designated as a Local Wildlife Site (LWS)/ Site Interest for Nature Conservation (SINC).

The settlement of Staythorpe is largely concentrated around Pingley Lane/Close to the north-east and Behay Gardens to the north-west, some of which represent residential properties situated directly opposite the site on the north side of Staythorpe Road. These include a number of dwellings centred around Grange Cottage and Grange Farm House with frontages directly opposite the application site and Staythorpe House Farm and Staythorpe House Cottage to the north-east beyond the boundary of the site further along the road. There is a property to the east (White Cottage c 165m to the site boundary) set back from Staythorpe Road. At the western end of the site is Crossing Cottage (c. 38m to site boundary) with Hughes Close (residential cul-de-sac) beyond situated on the opposite side of the railway line.

The settlements of Rolleston (c. 830m to the south-west) and Averham (c. 900m to the north-east) are close by, the latter includes the designated Averham Conservation Area. There are no designated heritage assets within the application site. The Manor House on Pingley Close is the nearest listed building (Grade II) c. 170m from the site boundary. Averham

Conservation Area includes four Grade II listed buildings as well as the Grade I listed Church of St Michael. There is a Scheduled Monument ('Averham Moat & Enclosure') in the south-eastern corner of Averham Conservation Area. There are also a number of non-designated heritage assets (local listings) within the vicinity of the site, which includes Behay Gardens which represent 13 workers cottages laid out around a central green designed by Architect Thomas Cecil Howitt and constructed in the 1940s in association with the power station. Other non-designated heritage assets within close proximity to the site include Staythorpe House Farm, Grange Farm House, Manor Farm House and outbuildings and house adjacent to Manor Farm House, predominantly concentrated within the main residential area of Staythorpe (on Pingley Lane/Close).

2.0 Relevant Planning History

23/SCR/00002 – Screening Opinion – Construction of Battery Energy Storage System and associated infrastructure, Environmental Impact Assessment not required.

22/SCR/00008 – Screening Opinion Request for a Battery Storage System and associated infrastructure, Environmental Impact Assessment not required.

22/SCR/00010 - Screening Opinion Request for a Battery Storage System and associated infrastructure, Environmental Impact Assessment not required.

PREAPM/00133/22 - Erection of a Battery Energy Storage System (BESS) and associated infrastructure.

08/02006/FULM – Temporary laydown and storage facility during the construction of Staythorpe Power Station with restoration by September 2010, approved December 2008.

95/51657/ELE – Proposal for overhead powerline, approved November 1995.

On land 620m to the north, 23/00317/FULM - Construction and operation of Battery Energy Storage System (BESS), transformer/sub-station and associated infrastructure, pending consideration

3.0 The Proposal

The application seeks planning permission to construct a Battery Energy Storage System (BESS), sub-station compound and ancillary infrastructure. The development would be a temporary development on the land as all equipment would be removed and the land restored to its former condition when the development is decommissioned following 40 years from the date of the development being first brought into use. No connection to the existing National Grid substation to the north-east has been included within the application, although written submissions indicate that a connection would be made by underground cable across the third party land between the two sites. However, in the event that this connection could not be secured, the developers have also demonstrated how the application site could be connected to the sub-station via highway land under permitted development rights.

Just over half of the overall application site would contain development, which would be set back from the boundary with Staythorpe Road, c.100m in the eastern field and c.40m in the

western field. The proposed development comprises 268 battery storage container units, laid out in rows across the site (2.5m between the sides and 0.5m between the ends). The maximum height of these containers is 3.8m above ground level comprising a 2.8m high container on 1m high stilts. These units are also supported by 67 associated power control units and 1 auxiliary transformer. All these units would be sited on concrete stilts sat on a ground surface of limestone chippings and be constructed in metal and finished in Brunswick Green.

The western triangular shaped field accommodates the majority of the battery storage units in four sets of double rows that taper towards the south. It also accommodates a new permissive footpath that runs within the site around the two other boundaries and links at both ends with Staythorpe FP1. The latter will remain (although may close temporarily during the construction period) with new hedgerow planting infilling gaps within the existing hedgerow either side, other than the formation of two vehicular access points.

In the eastern field accommodates a substation compound comprising one 400/132kV substation transformer (max 13m high) and two 132/33kV substation transformers (max 7m high), 1 auxiliary transformer and associated infrastructure. A double row of battery storage units and associated power control units sit set back from Staythorpe Road and in between the two is a permanent welfare area accommodating 3 welfare/control centre buildings, enclosed by a 4m high vertical boarded wooden fence. The two accesses to the site (main and emergency) from Staythorpe Road enter the eastern field.

The northern boundary of both operational areas are defined by 4m high acoustic fencing and additional planting and habitat enhancement areas sit between this new boundary treatment and Staythorpe Road. The remainder of the site (including the main access) would be enclosed by 2.4m high mesh metal fencing. All fencing would be coloured Brunswick Green.

The new main vehicular access is proposed to the east of the existing Public Right of Way and internal roads would lead to two crossings of Staythorpe FP1 to provide access to the western field. At the north-eastern corner of the site an emergency access is provided from Staythorpe Road, close to the eastern boundary. Both accesses would be gated, the main entrance enclosed by a green mesh metal gate and the emergency access which would be enclosed by a five-bar designed gate close to Staythorpe Road and then a solid acoustic gate further into the site.

The proposed development would store electricity as chemical energy, and then import and export electricity when required but would not generate any additional electricity of itself. It is anticipated to have a storage capacity of at least 400 Megawatt-hours (MWh) of energy and power of 200 Megawatt-peak (MWp).



The development comprises the following components:-

- Substation compound to include:

- 1 no. 400kV substation transformer (13m max height) and associated high voltage equipment including cable sealing end, 2 no. 132kV relay and control rooms and 1 no. 400kV relay and control room (14m x 4.7m x 5.1m high), 1 no. 400kV Switchgear Statcom and connection bays;

- 2 no. 132kV substation transformers (55m x 30m x 7m high) and associated 33kV switch room (18m x 4m x 5m high including 1.5m high stilt), back-up supply infrastructure with one 33kV high voltage switch room (18m x 3.5m x 5m high including 1.5m high stilt) and harmonics filter; and

- Associated CAT 2 mesh fencing and gates, internal access tracks, oil separators and 4 car parking spaces.

- 268 containerised battery storage units (9.3m x 1.7m x 3.8m high), lain on limestone chippings surface;
- 67 MV Power control units (6.1m x 2.5m x 3.8m high);
- 2 auxiliary transformers (1.9m x 1.2m x 3.1m high);
- 2.4m high low impact perimeter mesh and deer fencing around the developable areas;

- Internal access tracks made up of Type 1 and Type 2 aggregate;
- 2 water tanks (15m x 5.5m x 3.8m high);
- Welfare Area accommodating Permanent Welfare Centre (6.1m x 2.4m x 3.6m high including 1m stilt), two Temporary Warehouse/Workshops (6.1m x 2.6m x 3.6m high including 1m stilt) and area for 6 car parking spaces;
- CCTV camera systems located within the Welfare area and at the end of each row of battery modules, mounted on 4m high posts;
- Landscaping and biodiversity enhancements, mainly along the boundary with Staythorpe Road and in various on-site ecological management areas in the north, west and south-east of the site;
- New permissive footpath along the western and southern edge of the site;
- Wooden acoustic fencing along the main battery infrastructure (4m in height) set back from but parallel with Staythorpe Road;
- 2.4 m high boundary fencing (e.g. steel mesh coloured Brunswick Green) deer fencing) around the edge of the site;
- Underground cabling between units.

Landscaping mitigation and enhancement works are also proposed (mitigation planting, including new and in-filled hedgerow planting, biodiversity enhancements and a flood compensatory storage area), as set out below:-

- Native Specimen Tree Planting, scrub mix and woodland mix in the following locations- along northern, western and southern site boundaries, along PRow in centre of site, around boundary of welfare area, proposed SUDS and adjacent to boundaries of battery modules;
- Native Species Hedgerow Planting to infill any gaps in existing boundary vegetation;
- Habitat Retained and Habitat Enhanced Areas in south-east corner and north of site;
- Combination of Native Species Tussock and Meadow Mix across open areas of site;
- Four log piles across the site;
- Flood Compensatory storage area in south-east corner of the site.

A number of amended plans have been submitted during the lifetime of the application to make alterations to the scheme in the following way since its original submission:

- Provision of required visibility splays to main access (including removal of trees, hedgerow and vegetation);
- Removal of 4 bays and associated 132kV bars;
- Removal of 1 x 400kV Transformer;
- Cable Sealing End (CSE) added to the south-east of the site;
- Removal of 1 x Statcom unit;
- Moved 1 x Statcom unit in place of the car park (4 bays) located to the south-east of the 400kV Relay and control room;
- Gated emergency road at the north-east corner of the site including an unlocked acoustic gate and associated removal of hedgerow/tree to create access;
- Addition of a new crossing point into the western Battery Energy Storage System (BESS) field to the southwest of the 132kV Substation, including gates, and required removal of hedgerow;
- Reduction of 32 auxiliary transformers from 34 to 2; and

- Addition of 64 x Containers.

The applicants have also provided additional information to clarify other matters.

Given the majority of the existing vegetation to the east of the main access (100m in length) together with a 10m length to accommodate the emergency access, is having to be removed to form the visibility splays, the proposed new planting along the boundary with Staythorpe Road would take place ahead of main construction works to enable it to become established and grow in order to provide screening at the earliest opportunity and would be proposed to be planted in the first planting season following the grant of any planning permission.

The construction phase of the development is expected to take 9-12 months. There would be a temporary construction compound created in the eastern field, immediately east of the proposed permanent Welfare Area, where a number of additional temporary welfare/workshop buildings would be installed during construction enclosed from Staythorpe by wooden fencing.

Whilst not material to the consideration of this planning application, a Community Benefit Trust has been set up to distribute revenue from 2 Megawatt hours (MWh) of Staythorpe BESS to the parishioners of Averham, Kelham and Staythorpe, to reduce their energy bills for the duration of the lifetime of the development.

The developers carried out two separate rounds of public consultation with local residents and representatives for 3 weeks within June/July 2022 and August 2022 and there has been direct engagement with various stakeholders in the community.

The following documents have been submitted in support of the application, however, many of the supporting technical reports set out below do not list the latest infrastructure to be accommodated on the site which has been amended by an e-mail from the agent received 21 June 2023 (superseded documents not referenced):

Plans:

General

- Site Location Plan (Red Line Boundary) Planning Drawing 1 (Ref: 4951-REP-040)
- Topographic Survey (Drawing No: 8859-1 Sheet 1 and Sheet 2)
- Site Layout Plan (UK008_LYP_ Rev I)
- Temporary Construction Compound Layout Planning Drawing 3 (Ref: 4951_DR_P_0006_P2)
- Landscape and Biodiversity Masterplan Planning Drawing 4 (Ref: 4951_DR_LAN_101E)

Access Drawings

- Site Entrance Junction – Visibility Splays Assessment (Drawing No: 4951_DR_P_0001 Rev 2)
- Emergency Access Junction Design (Drawing No: 23065-GA-01 Rev B)

BESS & Other Components

- BESS Battery Container Elevation Plan (Ref: UK008_31_Rev 05)
- DC Box & Inverter elevation plan (Ref: UK008_032_Rev 04)

- Transformer Station (Ref: UK008_033_Rev 04)
- Auxiliary Transformer Container (Ref: UK008_034_Rev 04)
- Smart Controller Elevation Plan (Ref: UK008_035_Rev 04)
- MV Control Unit (Ref: UK008_54_Rev 01)
- Fence Details (Ref: UK008_036_Rev 02)
- CCTV Elevation (Ref: UK008_037_Rev 02)
- Typical 33 kV Cable Cross Section (Ref: UK008_040_Rev 02)
- Temporary Warehouse/Workshop Elevation Plan (Ref: UK008_41_Rev 02)
- Wooden Acoustic Fence (Ref: UK008_042_Rev 02)
- Wooden Fence (Ref: UK008_043_Rev 01)
- Permanent Welfare Centre and Control Room Elevation Plan (Ref: UK008_44_Rev 02)
- Water Tank (Ref: UK008_046_Rev02)
- Typical 132 kV Cable Cross Section (Ref: UK008_048_Rev 01)

Civil Drawings

- Civils Site Layout (Drawing No: UKGC-RCL-UG-001 Rev P4)
- 400 kV & 132 kV Compound Layout SGT1 & SGT2 Circuit (Drawing No: UKCG-RCL-UG-002 Rev P7)
- 132kV / 33kV Compound Layout GT1 & GT2 Circuit (Drawing No: UKGC-RCL-UG-003 Rev P7)
- General Arrangement 400 kV Transformer Bund (Drawing No: UKCG-RCL-UG-004 S1 Rev P4)
- Sections 400 kV Transformer Bund (Drawing No: UKGC-RCL-UG-004 S2 Rev P3)
- General Arrangement 132 kV Transformer Bund (Drawing No: UKGC-RCL-UG-005 S1 Rev P4)
- Sections 132 kV Transformer Bund (Drawing No: UKGC-RCL-UG-005 S2 Rev P3)
- Sections 33 kV Transformer Bund (Drawing No: UKGC-RCL-UG-006 S1 Rev P3)
- Standard Elevations & Details CAT2 Mesh Fence (Drawing No: UKGC-RCL-UG-007 Rev P2)
- Standard Elevation CAT2 5.5m Wide Mesh Gate (Drawing No: UKGC-RCL-UG-008 S1 Rev P2)
- Standard Elevation CAT3 Mesh Pedestrian Gate (Drawing No: UKGC-RCL-UG-008 S2 Rev P2)
- Oil Interceptor Tank 400/132 kV Circuit (Drawing No: UKGC-RCL-UG-010 Rev P2)
- Oil Draw-off Details 400/132 kV Circuit (Drawing No: UKGC-RCL-UG-011 Rev P2)
- 33 kV Switchroom and Distribution Substation for LV supply to site (Drawing No: UK008_051_Rev 01)
- Primary Compound Elevations 400/132 kV Circuit Sheet 1 of 3 (Drawing No: UKGC-RCL-UG-012 S1 Rev P6)
- Primary Compound Elevations 400/132 kV Circuit Sheet 2 of 3 (Drawing No: UKGC-RCL-UG-012 S1 Rev P5)
- Primary Compound Elevations 400/132 kV Circuit Sheet 3 of 3 (Drawing No: UKGC-RCL-UG-012 S1 Rev P3)

Additional Plans and Drawings

- Outline Lighting Plan (Drawing No: UK008_049_Rev C)
- Elevations 400 kV Transformer Bund (Drawing No: UKGC-RCL-UG-004 S3 Rev P1)
- Elevations 400 kV Transformer Bund (Drawing No: UKGC-RCL-UG-004 S4 Rev P1)
- Elevations 132 kV Transformer Bund (Drawing No: UKGC-RCL-005 S3 Rev P1)
- Standard Elevations Relay and Control Rooms 400/132 kV Circuit (Drawing No: UKGC-RCL-UG-009 S1 Rev P2)
- Standard Elevations Relay and Control Room 132/33 kV Circuit (Drawing No: UKGC-RCL-UG-009 S2 Rev P3)
- Standard Elevations Statcom Building 400/132 kV Circuit (Drawing No: UKGC-RCL-UG-009 S3 Rev P1)
- Emergency Access Gate Elevation (Drawing No: UK008_52_Rev 01)
- Wooden Acoustic Gate Elevation (Drawing No: UK008_53_Rev 01)
- Internal Site Layout Swept path analysis with NFRS Fire Tender (Drawing No: 23065/A/TR/02).

Environmental and technical reports:

- Planning, Design and Access Statement by Arcus Consultancy Services, Rev 1, May 2023
- Flood Risk Assessment by Arcus Consultancy Services, Rev 2, May 2023 (as amended by Flood Risk and Drainage Strategy Clarification (Rev I Layout received 26 June 2023))
 - o 1 in 20-year flood levels with layout Figure 1 (Ref: 4951-REP-036)
 - o 1 in 100-year (+50%) Flood Levels with Layout Fig 2 (Ref: 4951-REP-037)
 - o Flood Incident Plan
 - o Soakaway Letter Report
 - o Sequential Test Analysis/Site Selection Report by Arcus Consultancy Services
- Landscape and Visual Appraisal (LVA) Rev 2, May 2023 by Arcus Consultancy Services
 - Bare Earth ZTV Figure 1.4 (Ref: 4951-REP-017)
 - Screened ZTV Figure 1.5 (Ref: 4951-REP-018)
 - Landscape and Related Designations Figure 1.6 (Ref: 4951-REP-019)
 - Landscape Character Areas Figure 1.7 (Ref: 4951-REP-020)
 - Visual Amenity Figure 1.8 (Ref: 4951-REP-022)
 - Cumulative Sites Figure 1.9 (Ref: 4951-REP-023)
 - Viewpoint 1a Staythorpe Road/Grange Farm Figure 1.11a-c, May 2023
 - Viewpoint 1b Staythorpe Road/Pingley Lane Figure 1.12a-c, May 2023
 - LVA Various Viewpoints by Arcus Consultancy Services:
 - Figure 1.10 c-m, May 2023
 - Figure 1.13 b-f, May 2023
 - Figure 1.14 a-c, May 2023,
 - LVA Winter Viewpoints by Arcus Consultancy Services
 - Landscape Mitigation Plan (Drawing No: 4951-DR-LAN-101 Rev E) May 2023
- Agricultural Land Classification by Soil Environment Services Ltd
- Arboricultural Report by AWA Tree Consultants
- Archaeological Evaluation Phase 1 by Wessex Archaeology
- Biodiversity Metric Assessment Rev 2, May 2023 by Arcus Consultancy Services

- BMA Calculations Appendix 1, Rev 2, May 2023
- Ecological Impact Assessment Rev 2, May 2023 by Arcus Consulting Services
- Ecology – Additional Bat Survey by Arcus Consultancy Services
- Economic Statement by Arcus Consultancy Services
- Ground Stability Non-Residential Report by the Coal Authority
- Outline Construction Environmental Management Plan by Arcus Consultancy Services Rev 1, May 2023
- Outline Surface Water Drainage Strategy by Arcus Consulting Services Rev 2, June 2023 (as amended by Plate 2 received by e-mail on 21 June 2023 and Flood Risk and Drainage Strategy Clarification (Rev I Layout received 26 June 2023)
- Public Right of Way Statement by Arcus Consulting Services Rev 1, May 2023
- Air Quality Assessment by Arcus Consultancy Services
- Fire Safety Management Plan Rev 004 June 2023 by WSP
- Noise Impact Assessment by Arcus Consultancy Services, Rev 1, May 2023 and Noise Assessment Addendum by Metrica, Version 3.0, June 2023
- Transport Statement by Arcus Consultancy Services (as amended by Site Entrance Junction – Visibility Plays Assessment (Drawing No: 4951_DR_P_0001 Rev 2)
- Heritage Impact Assessment by Arcus Consultancy Services, Rev 1, May 2023
- Statement of Community Involvement by Counter Context Ltd

Additional Supporting Information:

- Planning Responses and Responses to case officer dated 07.02.2023 and 28.02.2023;
- Summary of Response to Statutory and Non Statutory Consultee comments dated 08.02.2023;
- Summary of Response to Public consultation comments (including Statement from owner and farmer of the land) dated 08.02.2023;
- Community Survey Report dated 08.02.2023;
- Other Approved BESS Applications;
- BESS at Aberdeen, Dyce - Site Block Plan and Decision Notice received 29.03.2023;
- Cooper Energy – Vegetation Management near BESS dated 24.02.2023;
- Photos of typical acoustic fencing;
- Ecap BESS Clarifications dated 22.03.2023;
- Staythorpe 400kV cable highway permitted development route;
- Planning Committee Members Briefing from ECAP;
- Further Clarifications from RPS dated 29.03.2023
- ECAP Clarifications dated 28.03.2023;
- Landscape & Visual Rebuttal dated 21.02.2023;
- NFRS Comment Response Sheet received 14.06.2023;
- 4 Fire Safety Videos received 14.06.2023;
- CFD Modelling Report by Engineering CFD dated 12 June 2023.

4.0 Departure/Public Advertisement Procedure

Occupiers of 120 properties have been individually notified by letter including notification following amendments to the plans and documents. A site notice has also been displayed

near to the site and an advert has been placed in the local press.

Site visits undertaken on 3 January and 20 June 2023

5.0 Planning Policy Framework

The Development Plan

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

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 9 -Sustainable Design
Core Policy 10 – Climate Change
Core Policy 12 – Biodiversity and Green Infrastructure
Core Policy 13 – Landscape Character
Core Policy 14 – Historic Environment

Allocations & Development Management DPD (adopted July 2013)

DM4 – Renewable and Low Carbon Energy Generation
DM5 – Design
DM7 – Biodiversity and Green Infrastructure
DM8 – Development in the Open Countryside
DM9 – Protecting and Enhancing the Historic Environment
DM10 – Pollution and Hazardous Substances
DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework 2021
- Planning Practice Guidance (online resource)
- Newark and Sherwood Landscape Character Assessment SPD, 2013
- Newark and Sherwood Non-Designated Heritage Asset Criteria, 2021
- Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990
- Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (February 2021)
- The Setting of Heritage Assets -Historic Environment Good Practice Advice in Planning: 3 (2nd Edition)
- Conservation of Habitats and Species Regulations 2017, as amended
- Natural Environment and Rural Communities (2006) Act
- The Environment Act 2021
- UK Government Policy Paper - British Energy Security Strategy April 2022
- Energy Act 2013
- National Grid – Future Energy Scenarios (2022)

6.0 Consultations

Comments have been summarised below but are available to view in full on the Council website.

(a) Statutory Consultations

Environment Agency – No objection subject to condition that the development is carried out in accordance with the submitted Flood Risk Assessment.

NCC – Lead Local Flood Authority – No objection, subject to a condition relating to a detailed surface water drainage scheme.

Highways England – No objection, recommend that an informative be attached to request the developer to consult with the A46 Newark By-Pass Team in the event that their detailed plans incorporate new or diverted services with the verges of the A617, to ensure the impacts to the A46 Newark Bypass scheme proposals for the flood compensation area are taken into consideration.

NCC, Highway Authority – No objection subject to conditions relating to the provision of both the main and emergency access and visibility splays being fully provided, reinstatement of kerb and verge to existing access to Staythorpe Footpath 1, measures to prevent deposit of debris on public highway. Amended plans show visibility splays are achievable over highway land to the left and both highway land and land in the control of the developer to the right. The splays are required to be cleared of any vegetation, hedges and trees by the applicant prior to any other access works being carried out.

Historic England – No objection, seek the views of the Council's specialist conservation and archaeological advisers, as relevant.

Natural England – No objection – no significant adverse impacts would result on statutorily protected nature conservation sites or landscapes.

Network Rail – No objection in principle, the development is adjacent to Staythorpe Level Crossing and the Arnold Public Footpath crossing (375 yards to east of Staythorpe Crossing). The safety of railway levels crossings and all crossing users is of paramount important to them and they would have concerns over any proposals that may increase the use (and risk) of a railway crossing. A condition should be imposed to prevent the use of the railway crossing for any construction purpose unless agreed in writing with the Local Planning Authority (in conjunction with Network Rail) in advance. It is Network Rail's national policy to promote the closure of level crossings to improve railway safety wherever possible and in this instance they would welcome the opportunity to discuss the potential closure of Arnolds Footpath Crossing with the developer and Local Authority going forward. The development site itself is some distance from the operational railway boundary, however, they require that the developer ensure that loose materials are properly secured so that they may not blow onto the track. Should use of machinery or any construction be required within 10m of the railway boundary, the developer should liaise with our Asset Protection Team in advance of work

commencing. Guidance on Network Rail requirements are included.

(b) Parish Council

Averham, Kelham and Staythorpe Parish Council (Host):- Object on the following grounds-

- Size and scale, relatively untried and tested technology so close to residential properties;
- Loss of amenity/character of locality, overbearing in relation of size of village;
- Noise;
- Traffic survey questionable;
- On best and most versatile agricultural land;
- Alternative sites of lesser impact on local residents;
- Harmful cumulative impact with other schemes both existing and proposed;
- Flood risks and failure to satisfy Sequential Test;
- Biodiversity net gain is only marginally over 10% requirement;
- Fire Risk inappropriate so close to housing and resulting environmental impact;
- Contrary to SP3 and DM8 policies of the Development Plan;
- Site entrance on blind bend and current design does not provide necessary visibility splays and is unsafe.

Rolleston Parish Council (neighbouring parish):- Object on the following grounds:

- Increased potential for flooding on main roads inhibiting access to Rolleston;
- Construction vehicles resulting in congestion;
- Noise;
- Untested scale of facility so close to residential areas.

(c) Representations

NCC, Rights of Way – No objection - Staythorpe Footpath 1 crosses the proposal site and NCC has received an application to up-grade the public footpath to a bridleway. Should a Temporary Closure of the Footpath be needed this may be granted to facilitate public safety during the construction phase. The revised PRow Statement outlines the consideration, management and maintenance of Staythorpe Footpath No 1 both during construction and during operation.

Notts Ramblers – No objection, but wonder if it would be possible to provide access to the permissive path from the south-westerly corner, near to the level crossing to provide a link to another proposed path and allow walkers to avoid using a very busy road.

Trent Valley Internal Drainage Board – general comments in relation to when the Board's consent is required.

Severn Trent – No comment - foul is proposed to discharge to a cesspit or portaloo which will either be taken off site or managed through an appropriate permit.

NSDC, Emergency Planner - I have no additional comments or concerns beyond those

expressed by NCC Lead Local Flood Authority and the EA.

Notts Wildlife Trust – No objection, in addition to the mitigation and enhancement section of the Ecological Impact Assessment:-

- A sensitive lighting strategy to avoid bat disturbance should be designed following the guidance note of the Institute of Lighting Professionals;
- Due to the displacement of one skylark breeding pair, mitigation should be put in place, such as creating an open grassland in a suitable location;
- Strongly encouraged to adhere to pollution prevention methods around water courses.

Health and Safety Executive – The proposed development does not lie within the Consultation Zone of major hazard sites and major accident hazard pipelines considered by HSE and therefore they have no comments to make.

Nottinghamshire Fire and Rescue Service – Neither support nor object to the development. Due to the lack of national guidance, the Fire Service has sought the professional guidance of the National Fire Chiefs Council who is advised by the industry's leading expert for Lithium-Ion batteries, to ensure their engagement is appropriate, proportionate and consistent. NFRS also acknowledge the involvement of Prof P Christiansen who is the expert adviser to the National Fire Chiefs Council. Following initial concerns raised in relation to fire safety without a secondary access point to the site, the scheme has now been amended to provide this. Amendments have also occurred in relation to the size of the containerised units which have been welcomed. NFRS raised some other comments that the applicants have sought to address in the latest Rev 004 version of the Fire and Safety Management Plan. NFRS have been consulted on this latest version and their final comments are awaited and will be reported to Members on the Late Item Schedule.

NSDC, Conservation – The nearest listed building (Grade II) to the site is The Manor House on Pingley Lane, and although its landscape setting would alter, the setting largely relates to the hamlet on the northern side of Staythorpe Road and therefore there would be a neutral impact on its setting and special interest. The impact on the setting of Averham Conservation Area and its associated Listed Buildings and on the Averham Moat and enclosure Schedule Monument is also considered to be neutral given the distance, topography and planting between them and the application site. The proposal would initially cause harm to the setting of the near-by non-designated heritage assets along Staythorpe Road, including Grange Farm and Behay Gardens due to the likely visual impact on the landscaped setting of these buildings. However, landscape will soften the visual impact over time and therefore significantly mitigate the impact. Para 203 of the NPPF therefore needs to be taken into account where a balanced judgement should have regard to the direct and indirect scale of harm and significance of these heritage assets.

NSDC, Archaeology Adviser – No objection subject to an archaeology condition for a mitigation strategy which will include but may not be limited to further trial trench evaluation and excavation of archaeological remains where identified.

NSDC, Environmental Health –

Noise – The amended Noise Assessment indicates at 'worse case' situation (all plant operating

at maximum concurrently) noise levels will be below likely to give rise to complaints, subject to attenuation being included as per Section 6 of the report. However, it is understood that since that report was written further amendments have been made to the number and make up of noise sources on site with no demonstration that this will not result in higher noise levels from the proposed development. I would therefore suggest that an amended noise assessment is provided, based upon the noise sources proposed.

Lighting – The Outline Lighting Plan does not give indications of lighting levels achieved on the site nor give any indication of the potential for glare etc off site. However lighting columns proposed are relatively short (3m), the lights are distant from site boundaries and the majority appear to be oriented away from residential receptors.

Construction Environment Management Plan – An outline CEMP has been submitted with the application. A full plan should be submitted and approved when details are finalised, based upon this outline plan. I would, however, note that currently works are planned on site from 07:00 – 19:00 weekdays – this Department would generally consider 18:00 to be an appropriate finish time for noisy works.

NSDC, Tree and Landscape Officer – Concerns raised in relation to impact on the public amenity of the area, suggested that the BESS could be planted with trees across whole zone, veteran trees, lighting and CCTV programs should be directed to minimise light pollution, full disclosure of tree removal impact. Accept buffer strip to periphery of site, noting clarification by condition is requested. However, would result in 52, 519sqm of sterile zones with zero vegetation/tree planting and where wildlife will actively be discouraged. Justification –

1. Tree roots may interfere with infrastructure;
2. Access to containers and visual inspection would be impaired;
3. Venting from container is likely to be so severe it will kill any vegetation;
4. The site is designed as a high voltage substation;
5. Vegetation drops leaves and encourages wildlife;
6. Vegetation requires management which would require staff training and cost;
7. Having an open hard surface area will make significant maintenance events lower cost.

Current design does not comply with NPPF, trees can be adjacent to and overhanging substations, that justification is budgetary, species of tree sequoiadendron giganteum is known to be fire resistant, suggested tree planting sites. Should permission be granted, conditions relating to hard and soft landscaping, tree protection, woodland management plan, retained trees condition.

Latest comments state the hedgerow to be removed can be seen on 1875 mapping, indicating this is an 'important' hedgerow under the 1997 Ancient hedgerow and is considered to be significant. Tree removal of T11, T14, T15, T16 are considered important to the character of the area. Justification for hedgerow and tree removal is required, including an exploration of alternatives. If it is agreed these natural features can be removed, conditions should be imposed for replacement of both hedgerow and trees, taking into account the restoration of the canopy coverage of the trees within 3 years.

123 representations have been received from interested/third parties, 51 of which were in a pre-prepared printed format, comprising 118 objections and 5 in support.

The objections can be summarised as follows:-

- Contrary to NPPF and Local Planning Policy Documents;
- Inappropriate site selection and limited size of search radius;
- Dangerously close proximity of large scale industrial development within 100m to residential properties;
- Visual impact of a large scale industrial development on a rural community, roads users and users of Public Right of Way;
- Existing landscaping does not screen the site due to the loss of leaves in winter – the plans do not show mature evergreen trees, which would be essential for screening purposes;
- Loss of landscape character of local area;
- Risk of flooding, both of residential properties and disruption to the highways;
- Risk of fire, consequential release of toxic fumes and the pollution of land, air and watercourses;
- Risks to road safety from location of the site access point, speeds of traffic and increased traffic volume;
- Protection of heritage assets in Staythorpe and beyond;
- Loss of good and moderate grade agricultural land, classified as 3a and 3b when we should be producing more food at home and reducing imports and carbon footprint;
- Exposure to excessive noise, particularly at night;
- Exposure to light pollution;
- Loss of rural character and increased safety risks to users of the Public Right of Way and would ruin the enjoyment of the footpath;
- Ecological and environmental impacts;
- Risk to public safety through genuine fear of crime and apprehension over anti-social behaviour;
- Unknown mental health and well being implications;
- Unknown health implications associated with the exposure to electro magnetic fields, especially to those having received radiotherapy treatment and those with pacemakers;
- Non compliance with the Environmental Stewardship which the land is currently part of;
- Previously refused planning applications in the locality on the basis of it being open countryside and being in a floodzone;
- Flood water would be diverted elsewhere and cause danger to local villagers and could undermine A46 project;
- Cumulative effect of numerous proposed developments in very close vicinity in and around Staythorpe;
- Lack of known risks on a site this size and scale during construction, operational life and period of de-commissioning;
- Human and environmental costs associated with the extraction of base materials;
- Not wholly green energy project;
- Not one single large scale development (up to 550MW) has been proposed this close to residential properties;
- The size, scale and nature is disproportionate and justifiably inappropriate and would result in an overbearing intrusive large scale industrial development;
- There are so many unknown impacts from such a new and unproven technology, there are too many clear and demonstrable significant adverse impacts on the local area, its residents and wider community;

- Even with mitigation measures in place the adverse impacts of this proposal still significantly outweigh the potential benefits of siting a new substation and battery energy storage system in Staythorpe;
- Fear is that future expansion is intended;
- Planning permission was refused a few years ago for a new dwelling on land just opposite the site and it was refused on grounds of being in the open countryside, that the site access fell into Flood Zone 3 and there were other sites available within the District in Flood Zone 1 – the BESS should be refused for the same reasons;
- The Sequential Test should be applied on a much larger area and there is land at lower risk of flooding nearby therefore the ST is failed;
- Proposal fails the Exception Test as any wider sustainability benefits would need to take into account the energy used to mine the battery materials, the energy used in the manufacture of the batteries, the metal containers and energy used to transport materials to the site and energy used in the construction and operation of the facility;
- No safe access or egress would be possible as the access road would flood to a depth of 0.8m, unsafe for any person to access on foot or in a vehicle;
- If public concern of fire safety is based upon genuine fear or apprehension, based on published research, it is a legitimate material planning consideration that must be weighed in the balance;
- Lithium does not need oxygen to burn and during a flood event, there would be no safe access to the site by emergency services;
- Significant impact on quality of life, health and financial well-being which is not reasonable;
- Impact on potential market values and re-selling of properties.

7.0 Comments of the Business Manager – Planning Development

The National Planning Policy Framework (NPPF) promotes the principle of a presumption in favour of sustainable development and recognises the duty under the Planning Acts for planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The NPPF refers to the presumption in favour of sustainable development being at the heart of development and sees sustainable development as a golden thread running through both plan making and decision taking. This is confirmed at the development plan level under Policy DM12 of the Allocations and Development Management DPD.

As the application concerns designated heritage assets of nearby listed buildings, section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 'Act') is particularly relevant. Section 66 outlines the general duty in exercise of planning functions in respect to listed buildings stating that the decision maker *“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.”*

The duty in s.66 of the Listed Buildings Act does not allow a local planning authority to treat the desirability of preserving the settings of listed buildings as a mere material consideration to which it can simply attach such weight as it sees fit. When an authority finds that a proposed development would harm the setting of a listed building, it must give that harm considerable

importance and weight.

The key issues are:

1. Principle of Development
2. Renewable Energy
3. Site Selection
4. Loss of Agricultural Land
5. Impact on Flood Risk
 - a. Surface Water Drainage
 - b. Foul water Drainage
 - c. Fluvial Flooding
 - d. Sequential Test
 - e. Exception Test
6. Landscape and Visual Impacts
 - a. Landscape Character
 - b. Visual Impact
7. Impact on Public Rights of Way
8. Impact on Ecology, Biodiversity and Trees
 - a. Survey Results (Bats, Birds, Badger, Great Crested Newts, Reptiles, Otter, Water Vole, Invertebrates and Other Species)
9. Impact on Heritage
10. Impact on Archaeology
11. Impact upon Residential Amenity
12. Impact upon Highway Safety
13. Other Matters
 - a. Cumulative Impacts
 - b. Length of Temporary Consent
 - c. Connection to Existing National Grid Substation
 - d. Health and Safety

Principle of Development

The site is located within the open countryside. Spatial Policy 3 states that the rural economy will be supported by encouraging tourism, rural diversification and by supporting appropriate agricultural development and that the countryside will be protected and schemes to enhance heritage assets, to increase biodiversity, enhance the landscape and increase woodland cover will be encouraged. Development in the open countryside will be strictly controlled and restricted to uses which require a rural setting.

Policy DM8 of the ADMDPD is silent on the appropriateness of renewable energy in the open countryside. However, the District Council's commitment to tackling climate change is set out in Core Policy 10 which states that the Council is committed to tackling the causes and impacts of climate change and to delivering a reduction in the District's carbon footprint. This provides that the Council will promote the provision of renewable and low carbon energy generation within new development. Although the reference is specifically to energy 'generation' and this development would not generate energy, it nevertheless allows a greater capacity of use of energy generated by these sources through storage. Core Policy 10

then signposts to Policy DM4 which states that permission shall be granted for renewable energy generation development, as both standalone projects and part of other development, its associated infrastructure where its benefits are not outweighed by detrimental impact from the operation and maintenance of the development and through the installation process upon various criteria including landscape character from the individual or cumulative impact of the proposals, heritage assets and their setting, amenity including noise pollution, highway safety and ecology of the local and wider area.

This approach is also echoed by the NPPF which states in para 158 that *'when determining planning applications for renewable and low carbon development, local planning authorities should: a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and b) approve the application if its impacts are (or can be made) acceptable'*.

Policy DM8 also provides support for rural diversification projects – proposals should be complimentary and proportionate to the existing business in their scale and nature. Supporting information has been submitted from the farmer of the land who states “It enables us to diversify, as suggested by the government, without reducing our milk supply, and will enable us to further invest in the farming business going forward into the future.”

In determining this application, it is necessary to balance the strong policy presumption in favour of applications for renewable technologies against the environmental impact. The wider social and economic benefits of the proposal are also material considerations to be given significant weight in this decision. Whilst there is no specific guidance on the assessment of battery energy storage system (BESS) sites in national or local policy, site-specific impacts to consider are likely to be similar to those used in the assessment of large-scale ground-mounted solar farms, which are set out in Paragraph 13 (Reference ID: 5-013-20150327) of the NPPG which outlines a number of factors which local planning authorities need to consider and which are set out below. Given the nature and scale of battery storage, it is inevitable that such development will have impacts, particularly if sited in rural areas. In this context, national and development plan policy adopts a positive approach indicating that development will be approved where the harm would be outweighed by the benefits of a scheme.

The PPG states that whilst local authorities should design their policies to maximise renewable and low carbon energy, there is no quota which the Local Plan has to deliver.

Renewable Energy

The Government recognises that climate change is happening through increased greenhouse gas emissions, and that action is required to mitigate its effects. One action being promoted is a significant boost to energy produced by renewable energy generation. The Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions to Net Zero by 2050. The Clean Growth Strategy 2017 anticipates that the 2050 targets require, amongst other things, a diverse electricity system based on the growth of renewable energy sources. The December 2020 Energy White Paper states that setting a net zero target is not enough, it must be achieved through a change in how energy is produced.

The Net Zero Strategy: Build Back Greener published in October 2021 explains that subject to security of supply, the UK will be powered entirely by clean electricity through, amongst other things, the accelerated deployment of low-cost renewable generation.

More recently, the Government published the British Energy Security Strategy in April 2022 outlining the need for a decarbonised and secure energy supply. It sets out the essential role renewables play in reducing exposure to volatile fossil fuel markets, limiting the UK's reliance on imports, and consequently reducing the cost of consumer energy bills. Specific to electricity generation, the Strategy highlights that by 2030, 95% of electricity could be low-carbon and by 2035, the UK will have a decarbonised electricity system, subject to security of supply.

Newark and Sherwood District Council declared a climate emergency in 2019 and recognises the urgency and significance of its environmental ambitions, for both the Council and the wider District. As such the Council has published a Climate Emergency Strategy, as part of carbon management and reducing its footprint. Therefore, the Council takes the matter of improving carbon emission schemes seriously and both the Council and Central Government see this as part of ongoing agenda priorities.

The submitted Planning Statement sets out that the proportion of energy supplied from renewable sources is rapidly increasing and since the amount of energy generated from such sources is dependent on weather conditions, renewable technologies are highly intermittent. Typically, peak production times from sources such as solar (mid-day) and wind (at night) do not correspond with times of peak consumption. As such there is a growing demand from network operators for a broad range of services such as energy storage, to balance supply and demand in order to prevent shortages and blackouts, as experienced in the south-east of England and Wales in August 2019.

The Planning Statement sets out that accelerating the supply of clean and affordable domestic energy requires upgrade to the connecting network infrastructure needed to support it. Energy storage is one of the key components of that infrastructure.

The purpose of the proposed development would be to support the flexible operation of the Grid and the decarbonisation of the electricity supply by storing surplus energy for use when it is most needed. A BESS would balance peaks and troughs in energy generation without any greenhouse gas emissions and provide rapid-response electrical back-up, thereby ensuring that the electricity produced can be used efficiently and be provided to consumers at the lowest possible cost. When winds are high at night and demand for electricity is low, instead of that energy going to waste and being lost as currently, it can be transferred to a BESS and be stored and then provide additional electricity supplies to the grid when demands are higher.

The Planning Statement sets out that "A widespread increase in energy generation from renewable sources will have a magnitude of benefits for the UK including economic growth, helping to mitigate and adapt to climate change, reducing energy prices for consumers and increasing energy security. It will be a significant and on-going requirement of the planning system to facilities this growth in renewables moving forward."

This development is anticipated to have a storage capacity of at least 400 Megawatt-hours (MWh) of energy and a power output of up to 360 MWp which could power the equivalent of approx. 150,000 households for 2 hours (assuming 2-hour system and 2.5KW load per household). This would therefore be able to support the provision of renewable generated electricity into the grid when it is required. The developers have confirmed a grid connection contract allows for a connection to the National Grid in 2025, with procurement, construction and commissioning taking place between 2023 and 2025. This would enable new replacement planting along Staythorpe Road to be planted within months of any permission being approved which would have chance to become established before the 12 month construction period would commence. The overall scheme would make an early contribution to the objective of achieving the statutory Net Zero target set for 2050 and to the commitment to reducing emission levels by 2035. As such, the positive contribution that this scheme would make to these objectives and targets attracts significant weight.

Site Selection

In terms of site selection, the submission indicates that the ability to connect to a suitable and viable point of connection is the defining factor in the location of energy storage facilities.

There are around 180, 400kV substations across Britain and there are 6 in Nottinghamshire – West Burton, Cottam, High Marnham, Ratcliffe on Soar, Staythorpe and Stoke Bardolph and the latter two are located within flood zones. Further justification was requested on the need for this site at Staythorpe in a flood zone area, and not elsewhere. The applicant has set out that BESS developments are needed (and planned) at all substations in Nottinghamshire and everywhere in the UK to fulfil the Energy Security Strategy 2022. Four of the other substations have no connection capacity before 2033 as they are already committed to substantial generation and storage projects and furthermore, they have contracted for this particular substation as capacity has been identified here and they have been successful with their grid connection application.

Staythorpe Substation (Grid Supply Point, GSP) features 4 x 400kV transmission circuits and is part of the historic 'megawatt valley' area of electricity generation. Centrally located, Staythorpe substation is connected to four transmission lines and covers a wide geographic area and is therefore strategically important. Decommissioning of coal/gas power stations has created available connection capacity. The ideal geography, meshed configuration and high wider system power flows greatly benefits any flexible storage scheme.

In terms of site selection, the Planning Statement outlines that development has been strategically sited adjacent to the National Grid substation at Staythorpe to be able to respond within the mandated periods (<1 second) to help maintain frequency on the grid and avoid blackouts. It goes on to state that BESS facilities are required to support the grid at most major electrical substations, and there is particularly significant need for energy storage at Staythorpe National Grid substation due to its strategic central location within the electrical transmission network.

In support of this site as opposed to any other site near to the sub-station, the submission states in order to ensure minimal losses and greater efficiency, BESS sites are often located in very close proximity to the substation they connect to which benefits the transmission

operator and Distribution Network Operator networks as it ensures the circuits and infrastructure carrying this capacity do not become congested or constrained, thus optimising of existing generation capacity and allows additional renewable generation to be connected. They also state this site would result in the least disruption caused to public or private infrastructure during construction, operation and maintenance processes. The maximum viable distance from the site to substation connection has been determined to be no more than 1km.

In seeking to further justify the choice of this particular site above any other nearby site, the applicant has applied Sequential Testing both in terms of the quality of agricultural land and flood risk to this application site. A search distance of 1.5km from the existing substation has therefore been applied.

Loss of Agricultural Land

Paragraph 174 of the NPPF states planning decision should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land and of trees and woodland.

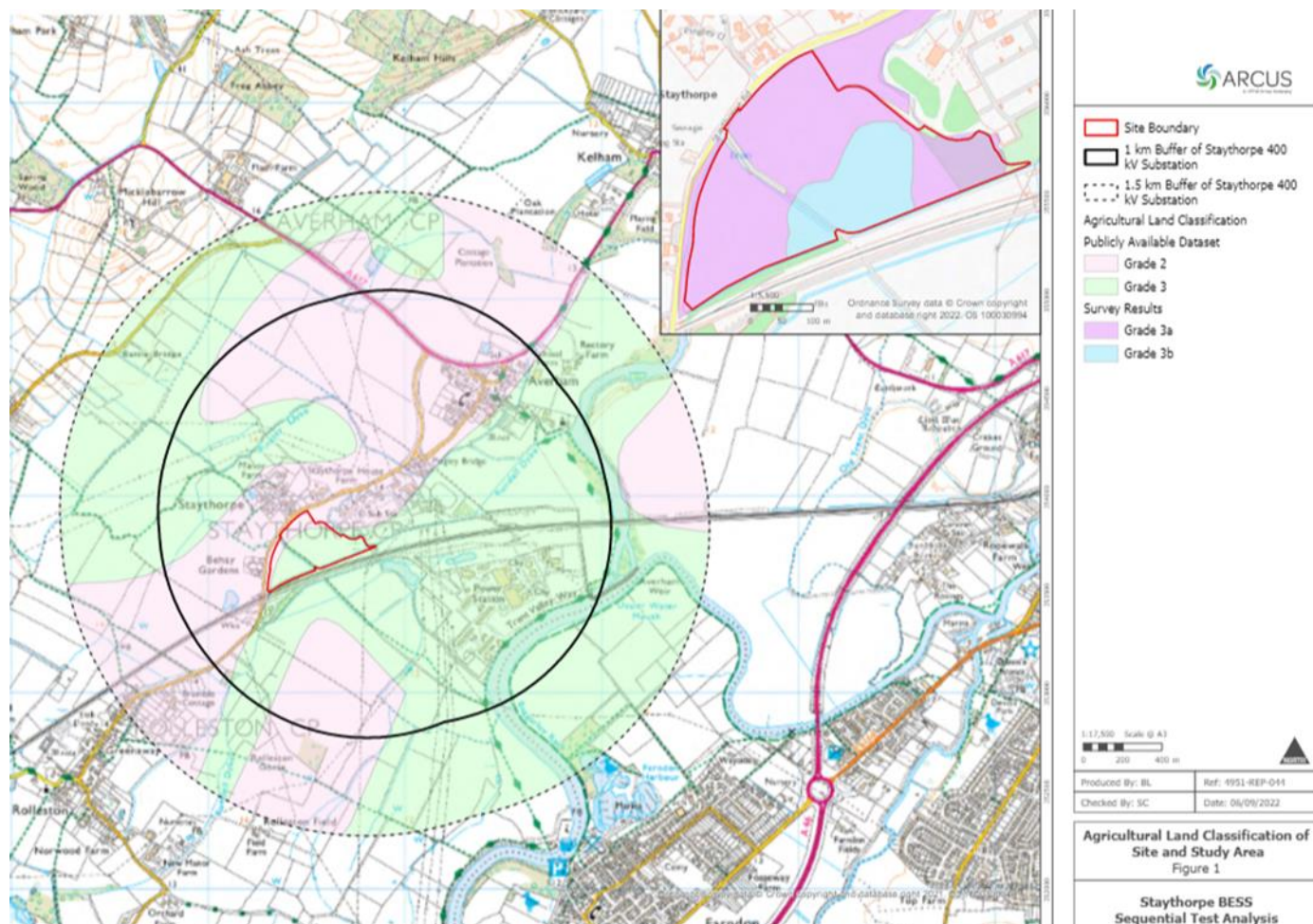
The Planning Practice Guidance outlines a number of factors that local planning authorities will need to consider in the assessment of large-scale ground-mounted solar farms and so would also be of relevance to this proposal. The stance of the Guidance is to encourage the effective use of land by focusing such development on previously developed and non-agricultural land. Paragraph 13 goes on to qualify that where a proposal involves greenfield land, the local planning authority will need to consider whether the proposed use of agricultural land has shown to be necessary and where it has, that poorer quality land has been used in preference to higher quality land, and that the proposal allows for continued agricultural use.

The stance of the NPPG is to encourage the effective use of land by focusing large-scale solar farms on previously developed and non-agricultural land. Paragraph 13 goes on to qualify that ‘where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays’.

The NPPF defines ‘Best and most versatile agricultural land as being land in Grades 1, 2 and 3a of the Agricultural Land Classification’ and at paragraph 174/175 requires that where significant development is demonstrated to be necessary LPAs should seek to use areas of poorer quality land rather than areas of higher quality. Policy DM8 states that ‘proposals resulting in the loss of the most versatile areas of agricultural land, will be required to demonstrate a sequential approach to site selection and demonstrate environmental or community benefits that outweigh the land loss.’

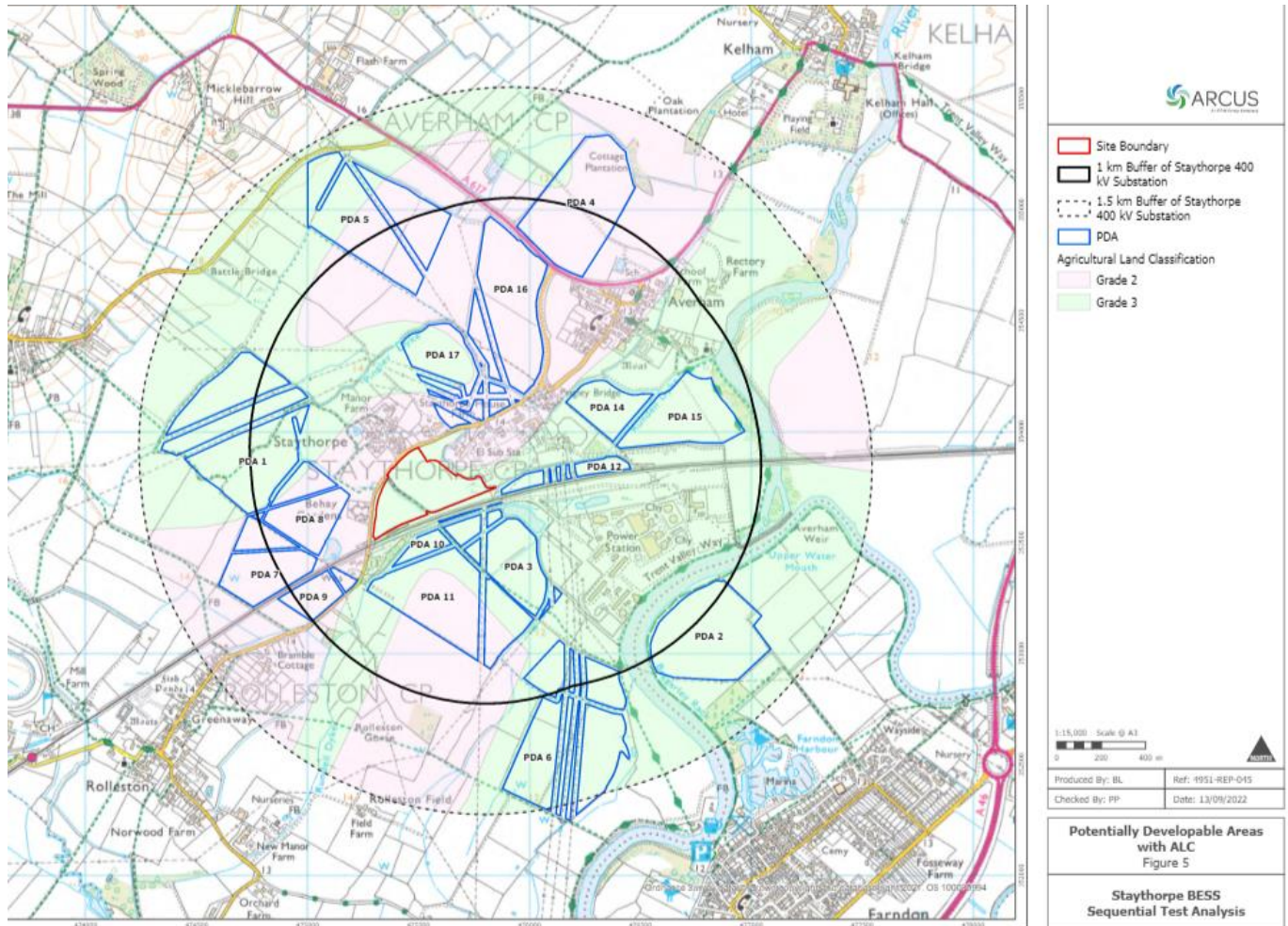
The application has been supported by an Agricultural Land Classification (ALC) report undertaken by qualified experts in this field. Natural England’s ALC Map shows the site to be

located within an area identified as Grade 3 land – is good to moderate quality agricultural land. Whether the site is Grade 3a – good quality or Grade 3b – moderate quality can only be determined by site and soil examination. The submitted report confirms that approximately 70% of the site is classed as Grade 3a (Best and Most Versatile (BMV)) and the rest is within 3b.



A detailed Site Selection Report with Sequential Test for Flood Risk and Agricultural Land has also been submitted. The ALC report seeks to demonstrate that there are no alternative sites available for the development with a lower grade of agricultural land classification and that there are significant parcels of higher Grade 2 agricultural land in the surrounding areas (i.e. better quality). Effective use of land in line with planning practice guidance, encourages the siting of large-scale solar farms (or BESS development in this case) on previously developed and non-agricultural land. The applicant has provided reasons for selecting this site within the submitted Planning Statement. This explains the application site is based on issues around technical suitability, grid connection feasibility and planning constraints. The fundamental reason for selecting this site is because this locality was identified as an area with grid capacity availability. The site “also provides the most cost effective and energy efficient location in terms of connection works required and energy losses incurred, along with the least disruption caused to public or private infrastructure during construction, operation and maintenance processes.” The Planning Statement outlines that in the site selection process all land parcels within close proximity to Staythorpe Substation were considered and the proposed site was identified as the most appropriate location to minimise potential impacts

on the environment and amenity. It states there are no brownfield sites with the same capacity, no suitable alternative sites at lower flood risk with a lower agricultural land classification available within a 1km radius search area. Alternative sites suggested by the pre-application process were not considered suitable due to reasons of size, possible impacts of the development or proximity to the grid connection. Alternative sites that have been considered are set out in detail in Appendix A, appended to this report.



The proposal could lead to the significant long-term loss of agricultural land, as a resource for future generations, albeit it is proposed the BESS would only be in situ for a temporary period of 40 years. It would be expected that the land would be restored to its former agricultural use (Grade 3a and 3b) once the use has ceased and all operational development removed, which would be controlled by condition.

The submission states of the 10 hectare site, 5.2ha would be taken up by the development footprint whilst 4.8ha would be dedicated to ecological enhancements, planting, wildflower meadows and footpaths. The construction of the development would therefore affect just over half the agricultural land on this site, approx. half of which (2.6ha) lies within the Best and Most Versatile category. Whilst this may be the case, it must also be acknowledged that it is not proposed to keep any of the site within agricultural use and therefore the application effectively relates to the loss of 70% Grade 3a BMV agricultural land.

Notwithstanding the above, the owner and farmer of this land has stated that this pocket of land is low grade land and 80% is susceptible to drought due to the sand composition. They

have confirmed that some of it is fallow as it is not commercially viable. These two fields are not core to their farming operation as they cannot use them for animals as they are remote from the rest of the farm and are cut off by the railway on one side, the road on the other and the power station on the third side. It is the least productive part of the farm, according to the farmer who has also confirmed that they would not produce one litre less of milk or employ one less person if this development was to go ahead. There is no indication as to the extent of the yield of arable/cereal achieved by these 2 fields. However, yield data and financial assessment of the farm business are explicitly excluded from the classification methodology. This is because, unlike site and spoil examination, it is not possible to make allowances for variables such as management skill, levels of input and short term weather factors.

To conclude, the proposal would represent the loss of a significant amount (7ha – 70% of the wider application site) of BMV agricultural land which would weigh heavily against the proposal in the overall planning balance, discussed at the end of the report.

Impact on Flood Risk

Core Policy 9 and Policy DM5 require that proposals pro-actively manage surface water and Core Policy 10 and Policy DM5 seek to mitigate the impacts of climate change through ensuring that new development proposals take into account the need to reduce the causes and impacts of climate change and flood risk.

Paragraph 152 of the NPPF states that the planning system should support the transition to a low carbon future, in a changing climate, taking full account of flood risk and that it should support renewable and low carbon energy and associated infrastructure. When determining planning application for renewable and low carbon development, para 158 states, local planning authorities should:

- a) Not require applicants to demonstrate overall need for renewable or low carbon energy, and recognise that even small scale projects provide a valuable contribution to cutting greenhouse gas emissions; and
- b) Approve the application if its impacts are (or can be made) acceptable.

The NPPF, Core Policy 10 and DM5 states 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 as set out in the application of the Sequential and Exception Tests.

Annex 3 (Flood risk vulnerability classification) of the NPPF identifies that essential infrastructure includes “essential utility infrastructure which has to be located in a flood risk area for operational reasons, including infrastructure for electricity supply including generation, storage and distributions systems; including electricity generating power stations, grid and primary substations storage; and water treatment works that need to remain operational in times of flood.”

A Flood Risk Assessment has been submitted with the application which identifies that the site has a negligible risk of flooding from surface water, groundwater, reservoirs, drainage infrastructure or artificial watercourses. An Outline Surface Water Drainage Strategy has

been submitted.

Surface Water Drainage

The development would use unbound free-draining subbase beneath aggregate chippings within the BESS compound, with the welfare area and internal access tracks surfaced with permeable aggregate and would discharge into Staythorpe Sidings Drain through a connection pipe towards the south-eastern corner of the site. The free subbase would be designed utilising cellular storage and in order to restrict surface water flows a restricting device will be placed on the outfall of the pipe. Notwithstanding the Outline Surface Water Drainage Strategy shows suitable attenuation capacity can be achieved during the 1:100-year (+25% climate change) critical event with maximum rates at less than the 3l/s, NCC LLFA are currently insisting that the detailed surface water drainage scheme that would be required to be submitted by condition, should permission be granted, must provide for 1:100-year (+40% climate change).

The report states that due to the limited impermeable extents (access roads and substation compound areas), the surface water run-off and outfall rates would be extremely low and flow rates leaving the system would be negligible, demonstrating the porous nature of the development. Access roads would be served by the proposed drainage network with discharge to an open surface water course along the eastern boundary - Staythorpe Sidings Drain (to be agreed with the Internal Drainage Board) which ultimately discharges into the River Trent. This receiving ditch would be subject to a maintenance schedule to ensure it has suitable conditions for surface water to flow into the ditch for the lifetime of the development.

Having regard to the national drainage hierarchy, the surface water drainage strategy rules out the use of infiltration as a means of disposal as not feasible. This is because the development has a fire risk which must be assessed in relation to the potential contaminants within any fire suppressing water runoff. The firewater runoff from the BESS containers cannot be contained through a bunding mechanism as it is located within Flood Zone 3b in which flood water cannot be redirected in accordance with Environment Agency guidance. As such the subbase to be utilised for attenuation will be underlain by an impermeable membrane to prevent firewater contamination. The impermeable membrane would have a penstock release valve, to be able to contain firewater if required and prevent contamination of underlying soils, ground and surface water and allows the land to be used for agricultural purposes following decommissioning. Following any potential incident, the contaminated water would be removed from the subbase by tankers to a licenced facility and thus prevent risk of contamination.

Being located within Flood Zone 2, the main infrastructure on the substation compound would use bunds to prevent spillage of contaminants and oil into the wider hydrological network, using oil separators with penstock sampling points upstream and downstream of the oil separator. Surface water would feed into the surface water outlet for the development. In a spill event, flows would be isolated via the penstock system and monitored prior to discharge. If contaminant levels exceed suitable levels then contaminated water would be extracted and treated off site by a licensed carrier.

Construction phase drainage would be confirmed prior to development commencing within a Construction Environmental Management Plan to prevent sediment entering surrounding watercourses.

The Lead Local Flood Authority have advised that based on the majority of the strategy submission they raise no objection subject to a condition imposed requiring a detailed scheme to be submitted for approval.

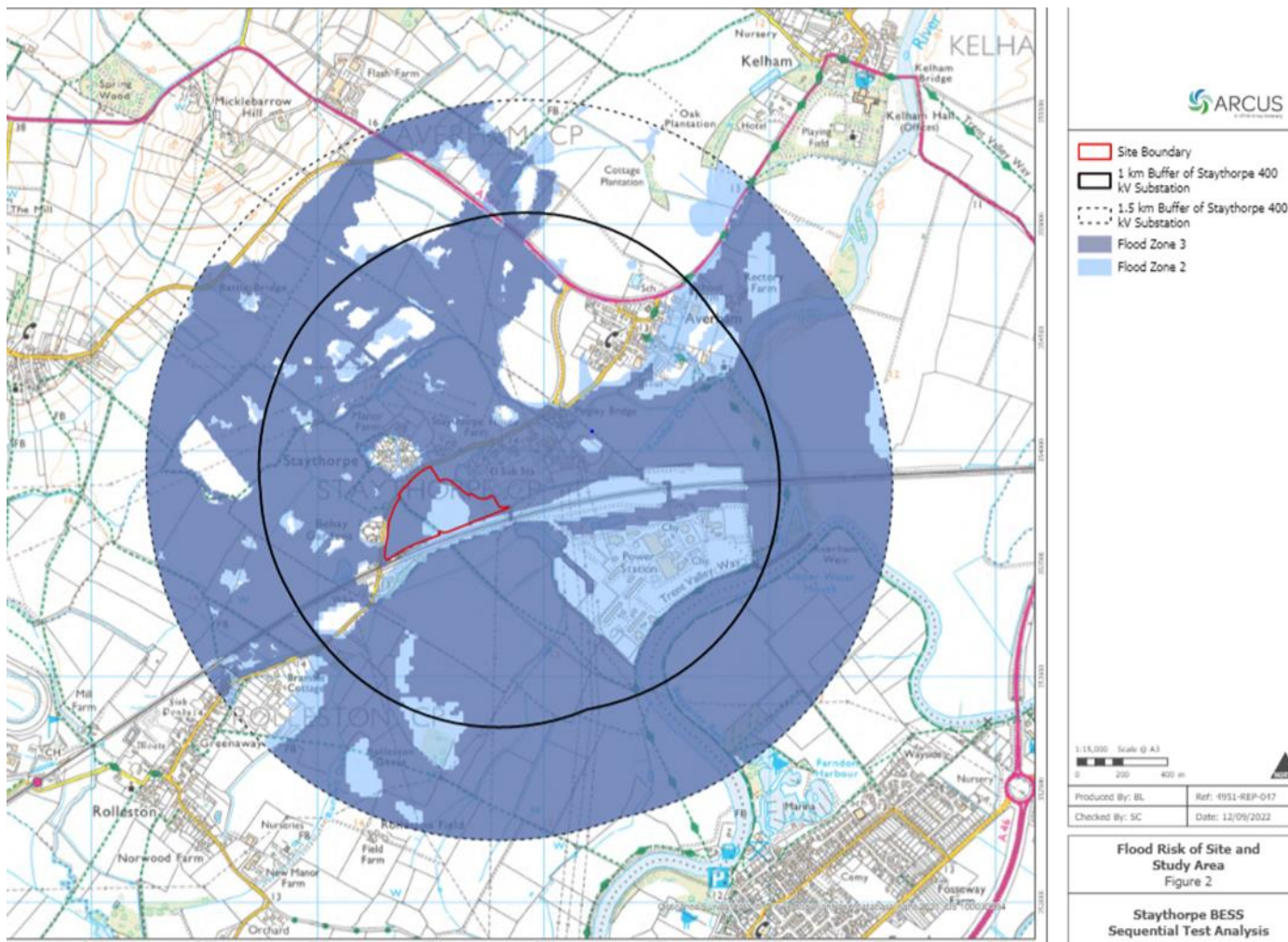
Foul Water Drainage

The national drainage hierarchy in the UK Building Regulations sets out the listed order of priority for discharge in the following order 1) public sewer being top then if this is not reasonably practical 2) to a private sewer communicating with a public sewer, then 3) either a septic tank or another waste treatment system and 4) finally a cesspool. The presumption is always to connect to a public sewer if reasonable to do so as this option represents a much lower risk to the environment than others further down the hierarchy.

There is currently no foul drainage discharged from the site, being agricultural fields. During construction foul water would be disposed of via a 'Port-a-loo' type facilities and disposed of via a licenced waste carrier. During operational phase there will be office and welfare facilities comprising toilets and a kitchen with foul waters emanating from both. Due to the rural setting, the Drainage Strategy states that it is not feasible to discharge to a foul sewer. The development would therefore be served by a cesspit/porta-loo which would either be taken off site or managed through an appropriate permit. Ordinarily this type of solution would not be acceptable, however once constructed, the facility would be controlled remotely with only occasional visits to the site for maintenance and inspections. On this basis, and in the absence of any objection from the Environment Agency, on balance, this is considered to be acceptable.

Fluvial Flooding

In relation to main river flooding, the site is located predominantly within Flood Zone 3b (within the functional flood plain and at highest risk from river/tidal flooding, defined as land where water has to flow or be stored in times of flood in the NSDC Strategic Flood Risk Assessment, representing areas that flood during the 1 in 20 year (5%) event) and Flood Zone 2 (at medium risk of flooding, land having an annual probability of river/tidal flooding of between 1 in 100 year (1%) and 1 in 1000 (0.1%)).

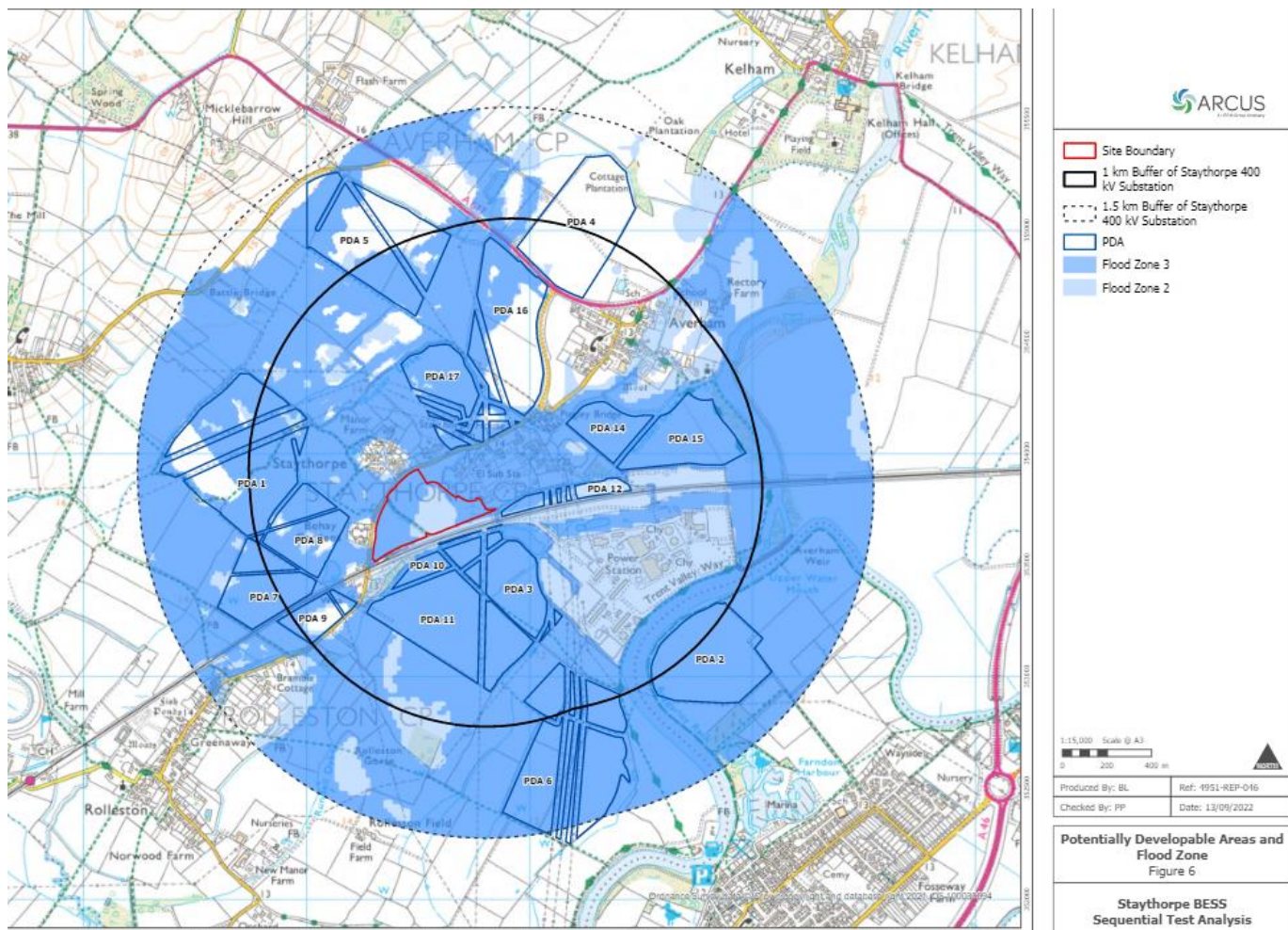


Sequential Test

In accordance with the National Planning Policy Framework (paragraph 162), development in flood risk areas should not be permitted if there are reasonably available alternative sites, appropriate for the proposed development, in areas with a lower risk of flooding. The Sequential Test (ST) establishes if this is the case. Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures such as flood defences, flood warnings and property level resilience.

The FRA states that a site search exercise has been undertaken and there are no other substations within a 50km radius of Staythorpe substation with suitable connection options due to a lack of demand or export headroom availability on the existing transmission network, without wider system reinforcement works. The submitted ST outlines that there are no suitable alternative sites within the vicinity of the site (within a 1.5km area) comprising land that is of lower level of flood risk with enough area to support the development where the site is also at a lower grade of Agricultural Land Classification than the application site.

The PPG states that the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. The maximum viable distance from the site to substation connection has been determined to be no more than 1km and this therefore justifies the limited search area.



For nationally or regionally important infrastructure, the PPG states the area of search to which the Sequential Test could be applied will be wider than the local planning authority boundary. However, whilst this is important infrastructure, acknowledgement must also be had to the very narrow, restrictive siting requirements of such infrastructure and their need to be within 1km of an existing substation, in order to be viable, thus it is not considered that a catchment beyond the District boundary would be appropriate for the development proposed in this case.

Appendix A lists the various other sites considered by the applicant within a 1.5km area and the application of the flood risk Sequential Test. However, there does appear to be a windfall site identified (part of PDA 16 on the maps above) that is also a 10ha area of land approx. 620m (as the crow flies) to the north-east of the application site that is located within Flood Zone 1, which is included within application 23/00317/FULM. The submitted ST identifies this area and acknowledges its lower flood risk but states it is unsuitable on the basis that it is a higher Grade (2) of agricultural land. However, it is not considered an appropriate or reasonable approach to the application of the flood risk ST to dismiss this land at lower flood risk based on a different material consideration. On the basis of the submission of application 23/00317/FULM, it appears that the land is reasonably available. As such, it is considered that the application fails the flood risk Sequential Test. This therefore weighs significantly against the proposal in the overall planning balance.

Exception Test

Paragraph 164 of the NPPF states that to pass the Exception Test, 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.

The NPPF states that both elements of the Exception test should be satisfied for developments to be permitted.

The applicants have set out that the wider sustainability benefits to the community include the increased use and transition to clean, low carbon energy, that will reduce the country's reliance on fossil fuels, reduce carbon dioxide emissions and therefore reduce the impact on climate change, which is accepted.

The substation compound would be sited predominantly on land within Flood Zone 2, with small areas in Flood Zone 3b limited to permeable aggregate ground surfacing and fencing. The construction of the substation compound would require surface levelling which would result in an area shown to be at risk of flooding to be raised above modelled water levels. Transformer units within the compound would be bounded by oil spill bunds to prevent spread of contaminated fluids stored within the containers which are located outside Flood Zone 3b that would not displace flood water volumes or flow routes.

The battery containers, power converters, transformers and welfare, spares parts and control room would be located 300mm above flood depths for the 1 in 100 year (+50%) event and be raised above ground level by 1m or more on concrete stilts to minimise the footprint and displacement of flood waters.

Development Infrastructure	Modelled Flood Depths (1 in 100-Year (+50%) Max Flood Depth
Substation Compound	0.1m
Battery Containers in Eastern Field	0.6m
Battery Containers in Western Field	0.7m
Welfare Buildings	0.6m
Emergency Access Track	0.9m

To comply with the PPG, compensatory flood storage is required to displace flood waters. Development within the latest scheme and in Flood Zone 3b requiring storage compensation include:-

- Aux transformers;

- Battery containers;
- Power Converters; and
- Welfare/spare parts/control room.

The requirement for flood storage compensation was originally calculated based on an initial assumption that there would be a requirement of 500sqm of area supported on concrete stilts being used to raise units 1m above ground level to reflect flood levels. The compensation area is located in the south-east corner of the site, located within Flood Zone 2 with a small overlap into Flood Zone 3b (as storage within Flood Zone 1 is not feasible). The compensation area covers a total area of 414sqm, with a base area of 176sqm and a total depth of 1m. Calculations were established for the original infrastructure which comprised of 343 units on stilts that that would equate to a total displacement volume of 295 cubic metres. The latest layout (Rev I) results in 325.44 sqm of area supported on concrete stilts and comprising a total of 339 units on stilts and so the displacement volume for this new scheme would be slightly less than 295 cubic metres. The agent has indicated that the newly inserted emergency access would equate to a total of 7sqm within Flood Zone 3b, which means that there would be capacity to provide for this additional feature within the proposed flood storage compensation scheme, without resulting in flooding elsewhere, although this has not been provided in writing. Effectively the flood storage capacity has been over-engineered to allow for this level of flexibility within the development. As such, subject to a condition requiring details of the compensation required for the emergency access to be proven which could be conditioned, the proposal has demonstrated that it would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and would thereby accord with part b) of the Exception Test.

In addition to the Exception Test, para 167 e) of the NPPF states that development should only be allowed in areas at risk of flooding where it can be demonstrated that safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

The PPG states that, in determining whether a development is safe, the ability of users to safely access and exit a building during a design flood and to evacuate before an extreme flood needs to be considered. One of the key considerations to ensure that any new development is safe is whether adequate flood warnings would be available to people using the development.

The FRA concludes that without mitigation, fluvial flood risk at the site is High. The adoption of the measures outlined in the FRA would enable the development to remain operational without increasing flood risk elsewhere during fluvial flood events. Therefore, with the mitigation measures outlined, the fluvial flood risk posed to and by the development is Low.

Section 2.2.3 (Site Access and Egress) of the FRA states that any person on the site would seek refuge in the welfare building during a flood event. Although during the 1 in 100 year (+50%) fluvial event, the max flood depths along the proposed access/egress route would be approx. 0.8m, which would be highly dangerous for either a person or vehicle to try to pass through. This management of flood risk is not acceptable because if a worker became trapped in the welfare building for a long period of time and required rescuing, this would put unreasonable additional pressure on already stretched emergency services. Instead, as previously discussed and agreed with the agent, the site operator needs to sign up for the Environment Agency

Flood Warnings Service and if there were any employees on site at the time of a warning, they would have time to evacuate the site **prior** to any flooding occurring at the site and the development could remain operational on a remote basis until the event was over. The Flood Incident Plan set out in Appendix E of the FRA explains that an evacuation of the site shall occur, following flood warnings during the construction phase only. This therefore needs to be extended to include the operational phase, in order to ensure the development is safe for workers. Once operational, the development would not be occupied apart from ad-hoc maintenance and operations staff. Should planning permission be granted, a suitably worded condition would be imposed to deal with the amendments required to means of escape in a flood event as well as flood storage compensation measures to be provided.

No objection has been raised by either the Environment Agency subject to conditions requiring the development to be carried out in accordance with the submitted FRA mitigation measures set out and registering for the EA Flood Warnings Service to enable the site to be evacuated prior to a flood event. NSDC's Emergency Planner agrees with the comments of the EA and the NCC Lead Local Flood Authority. On this basis, it is considered that the proposal passes the Exception Test.

Surface and foul water disposal are also considered to be satisfactory.

Concluding on flood risk matters, it is considered the development fails the Sequential Test in that there is a site of similar size, in close proximity (within a 1.5km of the site) that is within Flood Zone 1, as lowest risk of fluvial flooding. This weighs heavily against the proposal in the overall planning balance discussed at the conclusion of this report.

Landscape and Visual Impacts

Landscape Character

Paragraph 174 of the NPPF indicates that the intrinsic character and beauty of countryside should be recognised but does not seek to protect, for its own sake, all countryside from development; rather it concentrates on the protection of valued landscapes. The site does not form part of any designated landscape and for the purposes of the Framework, the site is not considered to be a valued landscape.

Para 174 also states that 'Planning policies and decisions should contribute to and enhance the natural and local environment by: recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.'

The proposed site is located in Natural England National Character Area 48 Trent and Belvoir Vales. Siting within the Trent Valley the area is generally low-lying and rural in nature with little woodland cover and long, open views and undulating in form. Agriculture is the dominant land use, with much of the pasture converted to arable, although grazing is still significant. There is a regular pattern of medium to large fields enclosed by hawthorn hedgerows and ditches in low-lying areas, these elements dominate the landscape. It is a rural and sparsely settled area with small villages and dispersed farms linked by quiet lanes.

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 and created. In terms of the visual impact of the proposed development, the NPPG advises that in relation to large solar farms, consideration should be given to the 'potential to mitigate landscape and visual impacts through, for example, screening with native hedges'.

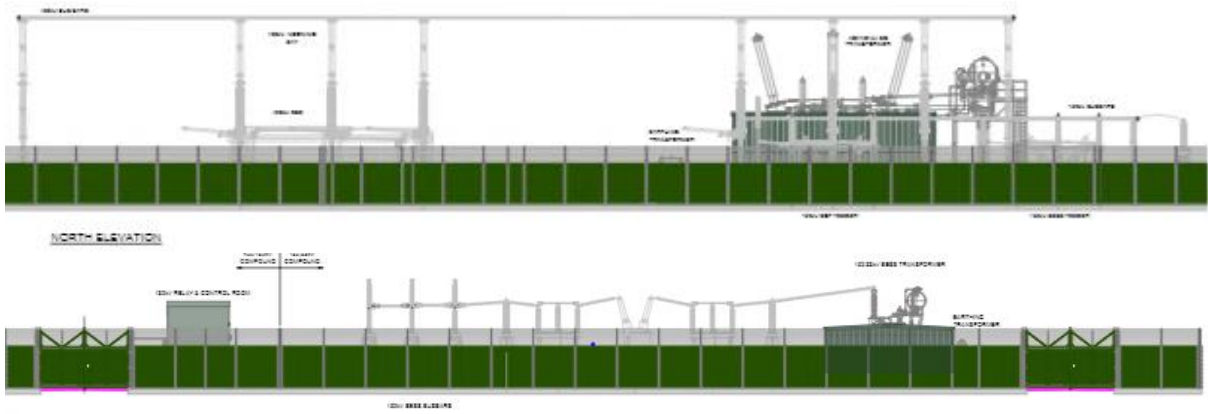
The site is located within the Trent Washlands Regional Character Area in the Newark and Sherwood Landscape Character Assessment SPD (2013). The site falls within the 'Cromwell, North and South Muskham' (TW PZ 11) character area. The landscape generally within the zone is predominantly flat, large scale arable landscape more enclosed along narrow roads with hedgerows and within villages. The landscape condition is described as moderate, fragmented in places by transport routes and distracting features, including the National Grid power station and pylons. The landscape sensitivity is defined as moderate. The policy action for the zone is to 'Conserve' with policy actions to include:-

- maintaining the character and setting of village settlements of Cromwell, North and South Muskham, Averham, Staythorpe and Rolleston;
- conserve the rural character of the landscape by concentrating new development around above existing settlements;
- conserve historic field pattern by containing new development within historic enclosed boundaries;
- restoring hedgerow boundaries, promote sensitive design and siting of new agricultural buildings;
- promote measures for reinforcing the traditional character of farm buildings using vernacular styles; and
- create small scale woodlands/tree planting to soften new development, preferably in advance of development.

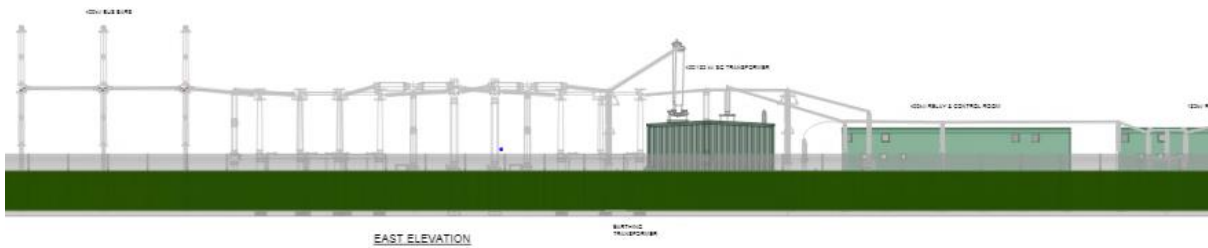
The proposed built form would be set back from the Staythorpe Road frontage behind both existing and newly proposed hedgerow and tree planting and there is a belt of mature trees along the boundary with the railway line. Even so, the proposed containerised units combined with the ancillary infrastructure including substation, security fencing, CCTV cameras on security poles significantly would alter the landscape from its current open, green arable farming fields.

The highest proposed feature on the site would be the substation which would be a max of 13m high. Below are elevation drawings of some of that infrastructure.

Proposed North Elevation of Substation:



Part of proposed East Elevation of Substation:



The higher parts of the development are not solid features but relate to wires/cables and narrow tall structures with limited mass and bulk which would limit the visual impact. The steel containers would be 3.8m high and whilst individually their impact would be small, the proposed rows and rows of 268 such structures would represent a rigid and alien form and layout. A proposed container is shown below:



The 4m high solid acoustic screens running parallel to Staythorpe Road would result in rather harsh stark features in the short term. Their green colour would assist in their assimilation and over time their mitigation would improve with new planting. The impact of other boundary fencing around the site would be new restrictive features but would be largely sensitively located in conjunction with existing hedgerows and new planting and where this is absent, the mesh design and green colour would limit the visual impact.

A Landscape and Visual Assessment (LVA) has been submitted with the application to identify and assess the likely significance of the landscape visual effects of the proposed development on the surrounding area.

The LVA states the landscape value of the site is low overall. There is a high capacity for the landscape of the site to accommodate the Development, which would not detract from the overall existing landscape quality, features and characteristics of the landscape. It assesses that this would result in a low susceptibility to the Development because the landscape would be able to accommodate it without undue adverse effects, taking account of the existing character and quality of the landscape and other manmade features of pylons and Staythorpe Power Station. It concludes that the scheme would not detract from the overall existing local landscape character. Existing mature tree and hedgerows would provide screening and contribute to the capacity to change.

This is an undesignated landscape and the siting of the battery storage units and related infrastructure would change the predominantly rural character to a predominantly industrial one. The effects would be large scale however, the Development would retain key characteristics of the landscape and although there would be a change of land use, the existing flat topography and the proposed infrastructure would not protrude the open skyline due to its low-level nature. All landscape features would seek to be retained, defining field margins and tree lined hedgerows wherever possible and a number of enhancements would improve the landscape and enhance biodiversity value of the Development. Taking into account the Development and mitigation, the magnitude of change is judged to be medium adverse and localised enhancements are judged to be medium beneficial.

The landscape sensitivity on site is considered to be low to medium but the magnitude of change is large due to change from agricultural use to energy storage, the landscape effects would be **moderate- major, adverse** in Year 1.

By year 15, following embedded mitigation and enhancements reinforcing and connecting landscape features becoming matured, the landscape effects would be **minor-moderate to moderate – major and neutral**.

In relation to the impact on the Landscape Character of the area defined by Local Policy Zone TW11 (LPZ), the geographical extent over which physical changes would be experienced would be localised and limited to the site and its immediate setting. At Year 1 the magnitude of change within the site would be high (within the local setting up to 0.5km radius) and small within the study area. At Year 15, the magnitude of change would reduce to small within 0.5km and negligible within the LPZ as a whole.

Site level effects on landscape character during Year 1 and Year 15 would be **Moderate-Major adverse** and by Year 15 would be reduced to Minor-Moderate to Moderate Major and neutral to both direct and indirect within LPZ TW11. Effects on landscape character within the LPZ as a whole, during Year 1 would be **Minor adverse** and in Year 15 would be **negligible** indirect.

Cumulative Landscape Effects

The proximity to Staythorpe Power Station and the presence of transmission lines and towers, the immediate cumulative landscape baseline context is influenced by man-made features, a landscape of power and infrastructure. The cumulative effect of the Development in combination with these features in relation to the landscape's capacity to accommodate further similar development, is considered to be small in magnitude, leading to a **Minor adverse** level of cumulative effect within the Local Policy Zone.

The Assessment has not taken into account the new application site 620m to the north of this site.

Visual Impact

Visual effects are concerned wholly with the effect of the Development on views and the general visual amenity as experienced by people. Visual effects are assessed by considering the sensitivity of the receptor (people) against the proposed magnitude of change to determine a level of visual effect and are assessed in relation to particular viewpoints.

Viewpoint 1a – view from Staythorpe Road at Grange Farm (21m to site)

Year 1

Magnitude of Change -	Medium
Level of visual effect –	Residential – Moderate-Major and adverse Local Road users – Moderate and adverse

Year 15

Magnitude of Change –	Small but neutral
Level of visual effect -	Residential – Minor- Moderate and neutral Local Road users – Minor and neutral

Viewpoint 1b – view from Staythorpe Road at Pingley Lane (20m to site)

Year 1

Magnitude of Change -	Medium
Level of visual effect -	Residential – Moderate-Major and adverse Local Road users – Moderate and adverse

Year 15

Magnitude of Change –	Small but neutral
Level of visual effect -	Residential – Minor- Moderate and neutral Local Road users – Minor and neutral

Viewpoint 2 – view from Public Right of Way within the Site (within site)

Year 1

Magnitude of Change – Large but glimpsed and oblique views
Level of visual effect - Recreational users – Moderate- Major and adverse

Year 15

Magnitude of Change – Large
Level of visual effect - Recreational users – Moderate- Major and neutral

Viewpoint 3 – view from Staythorpe Road at Behay Gardens (21m to site)

Year 1

Magnitude of Change – Small
Level of visual effect - Residential – Minor- Moderate and adverse
Local Road users – Minor and neutral

Year 15

Magnitude of Change – Negligible neutral
Level of visual effect - Residential – Negligible neutral
Local Road users – Negligible neutral

The other 9 viewpoints were considered along with the impacts upon a number of residential, recreational, road receptors. The LVA study goes on to assess the visual impact on some individual properties which draw the same conclusions and effects for nearby residents as stated above. Overall, it confirms that those properties facing the site along Staythorpe Road would be most affected with Year 1 being Moderate-Major and adverse in Year 1 and Minor-Moderate and adverse in Year 15. It also then includes visual effects on settlements, including Staythorpe, Rolleston, Averham, Upton and Farndon, and then from a number of Public Rights of Way and Transport Routes.

Views looking south-west along Staythorpe Road...

Now:



Year 1:



Year 15:



During construction, significant levels of build development, machinery, plant and workers would be present within the site for a period of 9-12 months and the removal of the 4 trees and linear length of hedgerow would be apparent. Although compensated by replacement and additional planting in the next planting season, this construction development would be visible from properties on Staythorpe Road and by users of the local road for the duration of the construction period.

The LVA states that the nature, scale and form of the proposed BESS installation at Staythorpe would result in some limited but adverse effects on the landscape and visual amenity of the site and its surroundings. However, the low-lying nature of the batteries, the preservation and reinforcement of existing field patterns and location within a largely agricultural landscape of hedgerows and trees and wooded areas, would result in relatively limited effects. Whilst it is accepted that there would be no unacceptable visual harm in relation to longer views of the site, even so, it is likely that there would be sensitive residential receptors close to the site that would experience **Moderate to Major** adverse effects in the short term as a result of the proposed development, which include those properties which are located either directly adjacent to or in close proximity to the site.

With maturing landscape mitigation in place, the visual effects from most of these receptors would reduce over time and continue to reduce in the longer term. Any notable effects on landscape character or visual receptors as a result of the proposed development would be confined to surrounding local areas with visual effects reduced by the retention of the existing vegetation, the proposed mitigation and the context of surrounding man-made features. Overall, and despite the industrial nature of the proposed development, the total extent of the landscape and visual effects would be localised and limited in nature.

The Assessment states there would be a good amount of embedded mitigation planting

proposed and the Development would retain, protect and enhance landscape features with minimal losses only to facilitate visibility splays at the site access. This includes allowing existing native mix hedgerows on roadside and field boundaries to be maintained at a height of 3m in order to maximise screening and new hedgerow trees to be planted adjacent to grow as hedgerow trees and additional hedgerows to be planted at site boundaries and to fill gaps in existing hedgerows where necessary.

In conclusion, the LVA outlines that the site has the capacity to accommodate the Development as it forms a complementary use of the land together with existing infrastructure and due to the majority of its relatively low-level nature. The Site is considered to have the capacity to absorb the Development during its operation with beneficial effects from landscape mitigation and any adverse effects would be reversible.

The Assessment states on a number of occasions that the proposal would not break the skyline. Having made their own assessment, the case officer disagrees with this statement and considers that the proposal would indeed be high enough in the compound area to break the skyline and so assessment has been made on this basis. The Assessment also refers to the surrounding context of man-made features. Whilst there is existing electricity infrastructure both in terms of the power station and substation nearby, these structures are not readily visible to the residents of Staythorpe due to the woodland planting to the north-east/east of the site. In terms of visual impact from the sensitive receptors in Staythorpe, the mitigation of existing infrastructure is considered to be reduced compared to that set out in the submitted Assessment.

Both the negative landscape character and visual change is fully acknowledged. Consideration must therefore be given to the existing and proposed planting and how much of the harm would be mitigated. The LVA concludes the site level landscape effects would be Moderate-Major, adverse and direct during Year 1 and by Year 15 would be reduced to Minor-Moderate to Moderate-Major neutral. Effects on landscape character within the LPZ as a whole, during Year 1 would be Minor adverse and in Year 15 would be negligible indirect. Site level visual impacts are stated as Moderate to Major adverse effects in the short term which would then reduce over time as planting matures with no unacceptable visual harm in relation to longer views of the site.

It is clear therefore that the proposal would result in Moderate to Major adverse impacts in the short term, but which would reduce over time. Whilst the proposed planting will provide some mitigation over time, harm is still acknowledged in Year 15. As such it is considered that there would be moderate landscape/visual harm that needs to be considered in the overall planning balance and weighed against the benefits of the proposal.

Impact on Public Rights of Way

The NPPF highlights the important of public rights of way and access, as the effect of a development on a right of way is a material planning consideration. Public Rights of Way (PRoW) are also the minor highway element of the public highway network and are afforded the same level of protection and control as the major highway network.

A Public Right of Way Statement has been submitted with the application. Staythorpe FP1 is

a footpath that runs through the centre of the site. Rather than utilise the PRoW for the main access to the site, the PRoW would be left in its current position, unaffected by the proposed development, but with occasional vehicle movement crossing from one field to the other during operation. The proposal includes a new permissive route along the western boundary of the site which will offer an alternative footpath for users of Staythorpe FP1 during construction, however it would also be retained for use during the operational phase. The permissive route will include extensive planting on either side to create a high quality and pleasant rural path.

The PRoW would be screened from the development by existing hedgerows and any gaps planted up to provide maximum screening. Behind the hedgerows security fencing would stand 2.4m in height.

A new site access would be created to separate and maintain the PRoW access, creating safer access to the site.

The PRoW would remain open for the majority of the construction phase and a gate or alternative access management measures put in place to ensure safety, as set out in the Outline Construction Environmental Management Plan (OCEMP). A full Construction Traffic Management Plan (CTPM) would be produced and agreed prior to commencement.

The Rights of Way officer at NCC raise no objection and has confirmed that an application has been made to NCC to modify the PRoW to a bridleway which is currently pending a decision.

The submitted LVA concludes that at the one most sensitive location along this path (the majority being enclosed on both sides by hedgerow), at year 1 (operational phase), where views would be unobstructed through the gates into the fields, the magnitude of change would be large with the view being dominated by the development within the perimeter fence, with direct views of the storage units to the south and the welfare area to the north. However, these would be glimpsed and oblique views for recreational users of the footpath. At year 1 the visual effect would be Moderate-Major and adverse impact. At year 15, the gapping up of the existing hedgerow and allowing to grow to 3m in height, structures visible at Year 1 would be largely screened, however there would still be glimpsed views through the gated entrances while walking along the footpath. The magnitude of change would remain large and the visual effect is defined as Moderate-Major and neutral.

At construction phase significant levels of built development, machinery, plant and workers and vehicular movements would be present and needing to cross the PRoW which are likely to result in significant harm to users. However, this would be for a limited period and a new permissive footpath would allow users an alternative route to pass through the site. The provision of this new footpath therefore needs to be appropriately conditioned in order to provide acceptable mitigation for the harm to the PRoW identified at the necessary time.

Overall, with a condition to secure the provision of the permissive footpath prior to the commencement of the development on the rest of the site, it is not considered that the routes of the existing or potential future PROW routes would be adversely affected by the proposed development.

Impact on Ecology, Biodiversity and Trees

Core Policy 12 of the Core Strategy seeks to secure development that maximises the opportunities to conserve, enhance and restore biodiversity. Policy DM5 of the DPD states that natural features of importance within or adjacent to development sites should, wherever possible, be protected and enhanced.

DM7 states 'On sites of regional or local importance, including previously developed land of biodiversity value, sites supporting priority habitats or contributing to ecological networks, or sites supporting priority species, planning permission will only be granted where it can be demonstrated that the need for the development outweighs the need to safeguard the nature conservation value of the site.' The impacts of the proposed development on any local wildlife or geodiversity sites also needs to be considered in line with paragraphs 175 and 179 of the NPPF.

An Ecological Impact Assessment Report (EclA), Reptile Survey Report, additional Bat Survey, confidential Badger Annex and Biodiversity Metric Assessment have been submitted with the application.

There are no National Site Network sites within 5km of the site and there is one Statutory Designated site within 2km – Farndon Ponds Local Nature Reserve (1.4km to south-west; includes priority deciduous woodland habitat and large pond supporting kingfisher and common frog). There are 3 other Non-statutory Local Wildlife Sites/Sites of Nature Conservation Interest within 2km of the site (Kelham Hall Shingle Bank – 1.6km to the north-east with opportunities for breeding birds and habitat for invertebrates; River Trent – 1.9km to north-east supporting national scarce water beetle and several other water beetles of high local conservation interest; Spring Wood – 2km to north-west – ancient semi-natural woodland with various significant flora – classified as a priority habitat).

The nearest Site of Special Scientific Interest (SSSI) is located over 6.2 kilometres to the north-west of the site (Mather Wood).

The EclA states that due to the distance between the site and the Local Nature Reserve, the low and spatially restricted impacts of the development, that this Reserve would not be subject to any direct or indirect impacts during construction and operation. Given the distances, these sites would not be directly impacted by the proposed development. The non-statutory designated sites are also sufficiently separated such that no adverse impacts to them are predicted, with an approx. 12m deep buffer applied to the Staythorpe Sidings Drain along the eastern boundary to ensure no runoff during construction, with pollution prevention guidelines followed. The proposed layout plan shows no development within this 12m buffer.

Natural England produced a series of habitat network maps to help address the challenges outlined in the Lawton report 1 and believe they should provide a useful baseline for the development of a Nature Recovery Network (NRN) as required within the 25 Year Environment Plan and Local Nature Recovery Strategies as proposed within the proposed Environment Act 2021. There are four network zones identified. The majority of this site lies within Network Enhancement Zone 1, which is defined as land connecting existing patches of

primary and associated habitats which is likely to be suitable for creation of the primary habitat. Factors affecting suitability include: proximity to primary habitat, land use (urban/rural), soil type, slope and proximity to coast. Action in this zone to expand and join up existing habitat patches and improve the connections between them can be targeted here.

However, there is also an area of priority deciduous woodland to the south of the site boundary separated by a railway line. To the north, is an area of priority traditional orchard within Staythorpe House Farm, separated from the site by Staythorpe Road.

The proposed development has taken account of the effect on biodiversity in the EclA and applied the mitigation hierarchy to avoid, minimise, compensate and offset the effects of hard surfacing and fencing off the two central compound areas of the development and the resulting loss of potential habitat and linkages to cross the site for wildlife. Habitat enhancement and creation proposed within the site provide improved habitat connections and would benefit a range of wildlife. Retained hedgerows along the north eastern boundary and flanking the existing access track would be infilled using native species. Additional woodland planting would also be provided along the north western boundary of the Site in order to provide wildlife corridors connecting to the offsite woodland and watercourses. Furthermore, the area of scrub at the south eastern corner of the site would be maintained and enhanced and meadow would be planted along ditches. The currently arable land would be planted with mixed grassland where it does not interfere with the proposed infrastructure. The Landscape Mitigation Plan (LMP) illustrates the proposed habitat enhancements including linkages.

Survey Results

Bats

Habitats within the site such as scrub, hedgerow and lines of trees have the potential to support foraging and commuting bats. It experiences low levels of light disturbance from Staythorpe Road and security lighting around the substation and, as such, is classed as having low suitability for foraging, commuting and roosting bats. Generally low levels of bat activity were recorded consisting of common and widespread species.

Birds

A selection of widespread bird species were recorded during bird breeding surveys (BBS), typical of the habitats and geographical area. Eleven breeding birds of conservation concern, including seven showing evidence of breeding or holding territory within the site or immediate surrounds were identified, as set out in the table below. (BBS Study Area includes 100m buffer around the application site boundary).

Species*	No of territories	Details	Conservation Status**
Woodpigeon	5	Five territories across the BBS area with birds likely nesting in hedgerows, mature trees and gardens	Amber
Skylark	3	Two singing males located within eastern field, but likely only one pair bred. Another territory identified in the far south-west of the BBS area	Red; S41

Whitethroat	2	Two territories in hedgerows on the site boundary	Amber
Wren	14	Ubiquitous across the BBS area with min of 14 territories identified in hedgerows and gardens. 12 of the territories located were within/partially within the site	Amber
House Sparrow	12	Two colonies located, all associated with houses and gardens outside site boundary	Red; S41
Dunnock	8	Common across the BBS area with eight territories located in hedgerow and garden habitats. Of these, six were within/partially within the site	Amber; S41
Greenfinch	1	A single territory was identified within the BBS area to the north of the site	Red

*Species = follows the British List maintained by the British Ornithologist Union

**Red/Amber = Red or Amber listed Birds of Conservation Concern

**S41 = Species of Principal Importance listed on Section 41 of the Natural Environment and Rural Communities (2006) Act

Badger

This information has been presented in a Confidential Annex, in accordance with advice from Natural England in order to avoid their ill-treatment, which is not outlined here in order to minimise potential risks of persecution to these legally protected animals.

Great Crested Newts

In terms of impact on Amphibians, a total of 5 ponds and 10 ditches were identified within 500m of the site boundary, none of which were considered to be suitable for Great Crested Newts. Two ditches holding running water are present on the site, with no macrophytes to support breeding Great Crested Newts.

Reptiles

Seven reptile surveys identified no evidence of reptiles including their eggs or skins and are therefore considered to be absent from the site. A toolbox talk is recommended prior to commencement of construction to make contractors aware of legislation.

Otter

The majority of ditches throughout the site and wider area are unsuitable for otter resting or breeding due to being dry and choked with dense scrub. The two ditches on the site were surveyed but no otter field signs were recorded. The watercourses are both shallow and slow moving and unlikely to be utilised by otters for anything other than commuting due to limited shelter and food sources.

Water Vole

The two ditches on the site provide suitable habitat for water vole. No records were returned from the desk study. The surveys revealed one potential burrow in one of the ditches during one of the three survey visits, but overall the suitability of water voles habitat is recorded as

low to moderate.

Invertebrates

Although the grassland, scrub and woodland may provide suitable habitat for common species, there was no evidence that the site is of particular importance for any notable invertebrate species and therefore no specific survey was required.

Other Species Identified

Rabbit warrens were located along the southern boundary of the site and along one of the site ditches with signs of activities throughout the site. A single roe deer was also recorded on site. The site is also likely to provide foraging and shelter for hedgehog and harvest mouse.

Evaluation and Mitigation

The EclA states that the development has the potential without a license from Natural England to cause the following broad ecological impacts:

- Habitat loss/change during construction and operation;
- Direct harm to, or disturbance of, individuals of species during construction and operations; and
- Legal offences during construction.

It concludes that it will result in permanent habitat loss within the arable land, and construction works in close proximity to higher value habitats have the potential to cause harm and whilst such impacts would be very limited in extent, they could cause minor adverse impacts.

A Landscape Mitigation Plan (LMP) has been submitted which includes mitigation and enhancements and which aims to increase the development's biodiversity value, as set out below.

Mitigation for Bats

- Appropriate lighting strategy for both construction and operation, minimising light spillage and directing away from high value and boundary habitats, such as woodland;
- Species poor hedgerows enhanced with native species to provide improved flight line potential and connectivity to wider landscape;
- Woodland planting to secure long term roosting opportunities;
- Species rich grassland will improve invertebrate diversity on site and provide enhanced food source;
- 15 large multi chamber bat boxes, placed in clusters of three on mature trees.

Mitigation for Birds

- Vegetation clearance during peak bird nesting season (March to August) must be avoided or subject to pre-construction nest searches by suitably experienced ecologist no more than 48 hours prior to works commencing. If nesting birds are found, an appropriate buffer zone should be implemented within which works are excluded for the duration of nesting until all young have fledged as confirmed by an experienced ecologist;
- Areas where skylarks are known to breed (eastern field), that field is harvested in

season prior to construction and these areas are then maintained with vegetation at a height no greater than 15cm to discourage birds from nesting where works are planned;

- Scrub and tree planting and creation and management of grassland/meadow habitat;
- 12 boxes targeted towards house sparrow placed in two clusters of six;
- Four starling nest boxes installed on existing mature trees within site boundary.

Mitigation for Badgers

- To be provided and conditioned in accordance with the Confidential Annex.

Mitigation for Great Crested Newts

- Precautionary approach to all vegetation clearance will be carried out under a Non-Licensed Method Statement;
- The LMP sets out a range of habitat creation and enhancements to provide improved levels of shelter (log piles) and foraging resource for smooth newts present in nearby waterbodies and improved hedgerows to increase connectivity to wider offsite habitats;
- Sensitive management of grassland/meadow habitat will ensure increased invertebrate diversity and therefore food resource plus shelter during active season.

Mitigation for Reptiles

- Four log piles and additional grassland and wildflower planting are within the proposed landscape design to provide additional foraging, basking, sheltering and hibernating opportunities.

Mitigation for Otter – no evidence of otters – impact of works considered to be negligible.

Mitigation for Water Voles

- Buffer of 8m to be enforced along the banks of the eastern boundary ditch, with no vehicle movements or material storage, in the absence of suitable licence for the works from Natural England;
- Pollution prevention methods shall be in place to reduce any temporary disturbance to potential water vole populations through dust or other chemical pollution;
- Enhancement of bankside vegetation to increase suitable habitat available;
- Cessation of ditch clearing currently evident will reduce disturbance and may allow aquatic vegetation to establish.

Mitigation for Invertebrates

- Strengthened hedgerows, woodland, grassland and wildflower planting providing nectar and larval food plants;
- Management regime allowing plants to flower to provide nectar.

Mitigation for Other Species

- With habitat enhancement measures adverse impact on these species will be negligible and not significant.

A separate Biodiversity Metric Assessment (BMA) has also been submitted and states that through habitat creation and enhancement detailed above and in the Landscape Mitigation

Plan, the development will deliver a 15.8% net gain in biodiversity habitat units overall (exceeding the minimum 10% as stipulated by the Environment Act 2021, with the biodiversity net gain requirement coming into force in November 2023 for certain developments (Regulations are awaited to define which ones)). Until then the NPPF requires measurable net gains without providing a percentage increase, therefore any increase over the existing biodiversity value will comply with national policy. The removal of arable land and creation of additional grassland, scrub and woodland will increase the area-based habitat units on site from 30.84 to 35.71. Hedgerow units will also increase from 9.06 to 15.54 units (a 71.54% increase) due to additional hedgerow planting and enhancement. River units within the site, comprising only arable drainage ditches, will increase from 0.72 to 0.94 units (a 31.2% increase) due to the cessation of agricultural practices and associated run-off into the riparian system, in addition to habitat enhancement and creation directly adjacent the Staythorpe Sidings Drain along the eastern boundary.

An Arboricultural Report has been submitted which includes a tree survey and constraints plan and shows the majority of existing trees and hedgerows are situated around the boundaries of the site and along Staythorpe Footpath 1. The majority of trees and hedgerows have been identified as Class C, with no Class A, 8 Class B and 3 Class U trees on and around the site. The Landscape Visual Assessment states that 100m of hedgerow removal would be required to accommodate the main access track and visibility splays as well as the removal of 4 trees, T11 (Cat U Ash with Ash dieback) T14 and T15 (both Cat C Ash) and T16 (Cat C Horse Chestnut). The proposed emergency access and visibility splays would require the removal of 10 linear metres of existing hedgerow and one tree T22 (Cat C Norway Maple). Apart from creating gaps within the existing hedgerow either side of Footpath 1 to form access points, all other trees/hedgerow are to be retained and would be protected during construction activities to sustain their health and longevity and this can be secured by condition.

The Council's Tree Officer considers that the existing hedgerow along Staythorpe Road is of 'importance' given its age and justifications for the loss and alternative solution should be explored. They also consider the loss of the trees here to also result in harm to the character and appearance of the area. This is fully understood and it would be a regrettable loss that weighs against the proposal. However, it is proposed to totally replace this natural boundary with new planting but set behind its current position. Whilst it is accepted that this would take time to establish and would require significant growth and time to provide the same level of positive contribution to the area, it could ultimately be achieved. The applicants have accepted a condition that this new vegetation should be planted within the first planting season of any grant of permission, so the mitigation planting could commence at its earliest opportunity, to seek to limit the harm that would be caused.

The Tree Officer is also disappointed that the applicant has not been willing to explore additional tree planting within the areas proposed to be occupied by the containerised battery storage units on the site to soften their rigid appearance and contribute to biodiversity and natural features. However, the applicant has stated that it is not appropriate from an electrical safety and fire hazard point of view. Reluctantly this is accepted but officers would consider it absolutely vital that should an approval be granted that there should be significant levels and depths of proposed new planting around the development, (rather than within it), should be conditioned to mitigate the loss and provide adequate soft screening of the development.

Whilst there is a negative impact to be accommodated in terms of the proposed form, layout and appearance of the plant and equipment to be sited on a significant area of hard surfacing, that visual and landscape impact would be felt within a relatively small and locally intimate area due to the context and layout of the site. The scheme also provides opportunities to secure net gains for biodiversity and wider environmental enhancements on other parts of the site over and above the existing scenario and proven gains, as outlined in the NPPF. In terms of Biodiversity Net Gain (BNG), the Ecology Impact Assessment details that a net gain calculation has been undertaken to provide quantified evidence of the change in biodiversity with the implementation of the proposed layout and landscape planting. This calculation considers land take, habitat loss/change and habitat creation that would accompany the proposed development and would be achieved through the proposed landscape planting and habitat enhancements. The long-term management and maintenance of both ecological and landscape mitigations and enhancements is required to be submitted by condition and so would be secured through the lifetime of the development.

Whilst harm is inevitable, subject to conditions requiring development to take place in accordance with the Landscape Mitigation Plan, Ecological Impact Assessment, BMA Appendix 1 and other safeguarding conditions relating to lighting control, overall it is considered that the proposed development could be acceptably mitigated in visual, landscape character and biodiversity terms over time.

Impact on Heritage

By virtue of the scale, form and appearance of the proposed development, it is capable of affecting the historic environment. As the application concerns designated heritage assets of the setting of listed buildings, sections 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 'Act') is particularly relevant. Section 66 outlines the general duty in exercise of planning functions in respect to listed buildings stating that the decision maker "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."

The duty in s.66 of the Listed Buildings Act does not allow a local planning authority to treat the desirability of preserving the settings of listed buildings as a mere material consideration to which it can simply attach such weight as it sees fit. When an authority finds that a proposed development would harm the setting of a listed building, it must give that harm considerable importance and weight. Section 66 places a high duty on the preservation of the settings of listed buildings.

The NPPF defines the setting of a heritage asset as: "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surrounding evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."

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 setting of designated heritage assets, furthermore, is expressed in Section 16 of the NPPF and the accompanying PPG. The NPPF

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 8.c).

Planning Practice Guidance states in relation to large solar farm development (although acknowledging this is a BESS) '...great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of large scale solar farms on such assets. Depending on their scale, design and prominence, a large scale solar farm within the setting of a heritage asset may cause substantial harm to the significance of the asset.'

The proposal is capable of affecting the historic environment. Heritage Assets nearby include:

- The Manor House (Grade II) 175m to north -west;
- Yew Tree Cottage (Grade II) 1.1km to north-east in Averham Conservation Area;
- Rectory Cottage (Grade II) 1.2km to north-east in Averham Conservation Area;
- The Old Rectory (Grade II) 1.2km to north-east in Averham Conservation Area
- Church of St Michael (Grade I) 1.3km to north -east in Averham Conservation Area;
- Averham Moat and Enclosure Schedule Monument 975m to north-east in Conservation Area;
- Averham Conservation Area boundary 850m to the north-east;
- Sunnyside (Grade II) 1km to the south-west in Rolleston;
- Non designated heritage assets:-
 - o Staythorpe House Farm
 - o Grange Farm House
 - o Manor Farm house and outbuildings
 - o House adjacent Manor Farm House
 - o Behay Gardens

All within the built up area on the opposite side of Staythorpe Road.

Behay Gardens represents 13 workers cottages laid out around a central green designed by Architect Thomas Cecil Howitt and constructed in the 1940s in association with the power station.

The proposal would have an engineered appearance and form which would have an impact on the rural landscape character that currently makes a contribution to the setting of many of the surrounding heritage assets. In addition to the containerised units, substation, fencing and CCTV cameras would introduce industrial features which would further erode this rural and agricultural character. From a conservation perspective, the main issues are how this may impact the setting and significance of the surrounding designated and non-designated heritage assets.

A Heritage Impact Assessment (HIA) has been provided with the application which identifies all heritage assets within a 3km and 1km distance of the application site. The setting of 3 Conservation Areas (Averham, Farndon and Upton), 7 Scheduled Monuments, 33 Listed

Buildings and 7 Non-designated heritage assets have been identified for consideration of changes to setting that may affect heritage significance. The LVA has produced a range of visuals of the proposed development (existing, 3 years and 7 years).

The HIA outlines the impact on the setting of Averham Conservation Area and its associated Listed Buildings and the nearest Scheduled Monument (Averham moat and enclosure) 850m – 1.2km to the north-east. It concludes the proposed development would not be within its setting, but within its wider landscape to the south of the heritage asset. Topography limits visibility due to intervening treeline and the modern infrastructure of Staythorpe Power Station which acts as a buffer and already represents a current industrial context (as seen in viewpoint 10 of the LVA). Any visibility would be glimpsed through gaps and so there would be a slight change in setting but significance of the assets and character of the Conservation Area would still be readily appreciable. As such, harm would be less than substantial.

The nearest listed building (175m to the north-west) is The Manor House, a late 17th century domestic building of historic and architectural value and its name indicates its historic connection to the surrounding landscape. Its setting is defined within the rural hamlet of Staythorpe and its surrounding rural fields to the north, south and west. Tall vegetation adds to the insular and private setting of the Manor House and as such there is no visibility between the site and this asset. The Zone of Theoretical visibility map shows that low probability (1-20%) of the proposed development would be visible from The Manor House. The development is not within the setting but it is within its immediate landscape context to the south-east, however it would result in change to its landscape context (although mitigation would be provided through additional planting and screening along the northern boundary) which would minimise this impact to less than substantial harm, according to the HIA.

Upton Conservation Area and its associated Listed Buildings (c.1.2km to the south-east) are set within a well-preserved enclosed landscape, on the brow of a hill and significance is derived from its historic and architectural value which contribute to understanding of medieval villages, their land use and development. The HIA identifies key views towards Upton CA. The proposal is not within the setting of these heritage assets or within key views but located in the wider agricultural landscape, to the south-east of the assets. Topography of surrounding infill development and intervening vegetation limits visibility, which would be limited to gaps in topographical features. Existing modern infrastructure (Staythorpe Power station and substation) are already present in the wider landscape context and would allow the proposal to merge into the background of existing infrastructure within the wider landscape, as seen in Viewpoint 11 of the LVA. Slight change in setting but significance of the assets and character of the Conservation Area would still be readily appreciable. As such, no harm is identified by the submitted HIA.

No change in setting and no harm is predicted in relation to Farndon Conservation Area and its associated Listed Buildings is identified by the HIA.

One Grade I, seven Grade II Listed Buildings and one Schedule Monument (Rolleston Manor; three moats, eight fishponds with sluices, ridge and furrow and a leat) are identified in Rolleston, the closest being Sunnyside (Grade II, 1km to south-west). The HIA states the wider agricultural landscape and surrounding open fields setting is an important contributor to the Listed Buildings' heritage significance. The proposed development is not within the setting of

the Listed Buildings of Rolleston, but it within the wider landscape to the north. Infill development, rural windy lanes and vegetation would screen the development from view thus minimising the impact on their setting. There would be a slight change in setting but significance of the assets would still be readily appreciable. As such, harm would be less than substantial.

In terms of the Non designated heritage assets, some are located immediately opposite the site on Staythorpe Road. It is acknowledged that the significance of these historic farmsteads is derived from its historic value to the development of Staythorpe along with its architectural value that contributes to understanding of form, function and development of post-medieval farmhouses. Screening of hedge and tree belts prevent views of Staythorpe substation c.280m to the south-east. The proposal would result in fields changing from rural to industrial. However, it states visibility would be blocked by hedgerows but the substation poles may be visible due to their height but would be seen in the context of existing National Grid substation to the east and with intermittent visibility of pylons and other industrial components present. Again, the HIA concludes a change in landscape context is acknowledged but with the significance of these assets still appreciable, the harm is less than substantial.

The HIA does not identify Behay Gardens as a Non-designated heritage asset although the Council's Conservation Officer sets out the justification for this assessment in their full comments.

The HIA concludes by stating less than substantial harm has been identified to Averham Conservation Area and associated Listed Buildings, The Manor House (Grade II) and 7 Non-designated heritage assets (Grange Farmhouse, Staythorpe House Farmhouse, House adjacent to the Manor House to the east, Manor Farmhouse, House adjacent Manor House to the north, House north-east of 1,2 & 3 Pingley Close and Outbuildings at Manor Farm (Manor Farm Barns)) due to the change within their settings or landscape surrounding them due to the land use change from agricultural to industrial, but that existing vegetation and windy roads screen the majority of the development from visibility and thus minimises the change in setting. Mitigation is also proposed through enhancement of hedgerows and tree planting around the development. The HIA states the harm is considered less than substantial and should be weighed against the benefits of the proposal.

However, the Council's Conservation Officer is content that, although there would be some erosion of the agricultural and historic landscape, the proposal would have a neutral impact on the setting and special interest of The Manor House (Grade II listed), the Averham Moat and enclosure Schedule Monument the setting of Averham Conservation Area and associated Listed Buildings. They consider the proposal would initially cause harm to the setting of the nearby non-designated heritage assets along Staythorpe Road, including Grange Farm and Behay Gardens due to their proximity overlooking and adjacent to the site and likely visual impact on the landscaped setting of these buildings. However, landscape will soften the visual impact over time and therefore significantly mitigate the impact. Para 203 of the NPPF therefore needs to be taken into account where a balanced judgement should have regard to the direct and indirect scale of harm and significance of non-designated heritage assets.

The Council's Conservation Officer therefore raises no objections to the principle of the

development from a conservation perspective. The harm to the setting and significance of the NDHAs would be a minor level of harm (par.203 of NPPF and policy DM9). The harm would not result in the total loss of the NDHAs or their significance and impacts would reduce over time as new additional planting matures and mitigation levels increase.

In summary, no harm has been identified in relation to impacts on designated heritage assets and minor harm would result to non-designated heritage assets that would be mitigated over time. Therefore, a balanced judgement has been reached and proposal is considered to be in accordance with CP14 and DM9 of the Development Plan and the aims of the NPPF and PPG in heritage terms.

Impact on Archaeology

Core Policy 14 sets out that the Council will seek to secure the continued preservation and enhancement of the character, appearance and setting of the District's heritage assets and historic environment including archaeological sites. Policy DM9 states that development proposals should take account of their effect on sites and their settings with potential for archaeological interest. Where a site on which development is proposed includes, or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and where necessary a field evaluation'.

The application is accompanied by an Archaeological Evaluation Phase 1 Report which sets out trial trenching excavations that have taken place on the site, following a geophysical survey to assess the archaeological impact of the proposed development. This report has identified significant archaeological remains dating to the late Neolithic period in the centre and the south-east of the site. Evidence of post-medieval/modern boundary ditches was also discovered in the north and western parts of the site. A palaeochannel was identified at the northern edge of the site that was potentially a continuation of a river channel, from which a human thigh bone carbon dated to the Mesolithic period was recovered 1.3km to the east of the site.

The results of the work to date show that the site contains significant archaeological remains. The Council's Archaeology Consultant has advised that whilst this may not preclude the proposed development, further evaluation is required to determine the full extent of archaeological remains and provide an accurate basis for a programme of archaeological mitigation work. Mitigation work is likely to include open area excavation or preservation in situ by complete avoidance of the archaeologically sensitive areas. The Council's Archaeology Consultant raises no objection to the application subject to the further work being required by planning condition.

Overall, subject to conditions, the proposal is not considered to result in any adverse impact upon archaeological remains in accordance with Policies CP14 and DM9.

Impact upon Residential Amenity

Policy DM5 of the DPD states that development proposals should ensure no unacceptable reduction in amenity including overbearing impacts and loss of privacy upon neighbouring

development. The NPPF seeks to secure a high standard of amenity for all existing and future occupants of land and buildings.

The nearest residential properties to the site are those on the opposite side of Staythorpe Road. The shortest distance between a containerised unit and a residential dwelling is 77m. There are approx. 7 dwellings that sit directly opposite the site adjacent to Staythorpe Road with additional properties extending beyond, centred on Behay Gardens and Pingley Lane/Close. There are other individual properties to the north (Staythorpe House Farm) and to the north-east (White Cottage and Ash Tree Farm) set back from Staythorpe Road and at the south-western end of the site is Crossing Cottage with Hughes Close beyond situated on the opposite side of the railway line.

An Air Quality Assessment has been submitted with the application. It acknowledges that the development has potential to cause air quality impacts at sensitive locations during the construction phase as a result of fugitive dust emissions from the site. Assuming good practice duct control measures are implemented, which can be conditioned under the Construction Environmental Management Plan, the report concludes the residual significance of air quality impacts from dust generated by construction, earthworks and trackout activities were predicted to be not significant.

A Noise Assessment dated May 2023 by Arcus was submitted during the course of the application. The assessment states the main items of noise generating plant would be the transformers, battery containers and inverters. It states the closest noise-sensitive receptors are located approx. 80m west of the nearest plant items, along Staythorpe Road. The Assessment concluded that provided the mitigation measures outlined within the report are incorporated in the development design, Rating Levels due to noise from the development would not exceed the respective background sound levels at the nearest, and therefore all noise-sensitive receptors, during daytime and night-time periods.

The mitigation measures are the installation of two 4m high acoustic fences between the battery units and the nearest noise-sensitive receptors and the installation of acoustic enclosures to the 400kV and 132kV transformers. The Council's Environmental Health officer notes the conclusion of the report and states that this is subject to the site being laid out as specified in the report, along with acoustic barriers and this should be a condition of any permission. On this basis, no objection is raised.

However, the applicants have at the latter stages, decided to alter the number, nature and layout of the proposed plant equipment on the site. As a result, the existing Noise Impact Assessment, as revised in May 2023, is now no longer applicable. The planning case officer therefore requested that an amended Noise Impact Assessment be submitted to relate to the plant now proposed on the site. A Noise Assessment Addendum by Metrica dated June 2023 has now been submitted that asserts that the proposed development, with the mitigation proposed, would not result in any increase in background noise levels above those currently experienced. The comments of the Council's Environmental Health officer will be reported to the Planning Committee meeting on the Late Items Schedule.

An Outline Lighting Plan (Drawing No: UK008_049_Rev C) has been submitted late in the process which shows proposed external lighting for the operational phase of the

development. This appears excessive given that the original submission stated that the site would not be illuminated during the operational phase, with the exception of security lighting at the main compound. There are a number of concerns relating to the impact on the amenities of local residents, the impact on biodiversity and on the rural character of the countryside. On this basis it is considered that illumination on the site should be kept to the minimum necessary, such as permanent illumination to the access and welfare building only and with lighting on the remainder of the site never being used except in emergencies. Notes included on the plan set out that all lighting would be motion-sensored lights that would be used for emergency, emergency maintenance and security use only and de-activate if no additional movement triggers the sensor. There would be a 1 minute timer set on LED flood lights for all lighting across the site. There are three types of lighting proposed, some fixed to buildings, some to fencing, some along access roads and some supported on lighting poles limited to 3m high. The latter would be fitted with infrared sensors with CAT alley fitted to the top to prevent set-off by bats and birds. Luminance levels are stated at 10W but measures to minimise glare have not been provided, which have been raised in the comments by the Environmental Health officer. On this basis, it is recommended that a condition be imposed to require additional details to be submitted and approved in order to ensure minimised impact on any external lighting.

It is the construction phase of the development (9-12 months) that is likely to have a much greater impact on residential amenity than the operational phase. Although an Outline Construction Environmental Management Plan has been submitted, there are no details relating to noise control and mitigation measures, so this will require the imposition of a condition. It currently states core working hours are proposed to be 07:00 until 19:00 weekdays and 08:00 to 13:00 on Saturdays (not on Sundays or bank holidays). Delivery times also reflect these times. Start up and close down periods for an hour either side is proposed but when no plant or machinery would be used. If work is undertaken outside daylight hours, lighting would be used for the works area only, fitted with hoods to reduce spillage and quieter construction activities undertaken to reduce disturbance.

The Environmental Health officer states that a full plan should be submitted and approved when details are finalised, based on this outline. However, it is noted that currently works are planned on site from 07:00 – 19:00 weekdays and the EHO generally considers 18:00 to be an appropriate finish time for noisy works.

In principle the operational phase would be automatically / remotely controlled so operational traffic will be very limited relating to maintenance and inspections and stated as being on average movements would be a max of 10 per week (i.e. two vehicles on site per weekday) as a conservative estimate.

During the construction phase, the Transport Statement sets out in detail the likely expected traffic movements to and from the site, which would be substantial (approx. 11,000 of two way vehicle movements, over half of which would be HGVs) are expected over the 12 month construction period. Noise and disturbance from additional traffic associated with the construction and decommissioning processes on local residents is therefore likely for up to a 12 month period. It would therefore be important to restrict hours of construction and deliveries and the submission of a full Construction Management Plan are imposed by planning condition, in the event of approval being granted.

The development would result in no emissions during the operational phase and therefore no harm would result in relation to the air quality. Any impacts from the construction phase could be adequately controlled through the details of a detailed Construction Environmental Management Plan that could be conditioned on any approval.

Whilst it is acknowledged that the construction phase of the development has a significantly greater capacity to negatively impact on the amenities of local residents, this could be mitigated by the details of a Construction Management Plan. Once operational, given no impact on air quality would result and that light and noise emissions, could be controlled by conditions, it is not considered that the proposal would have a significant adverse impact on neighbouring land uses in accordance with the aims of the NPPF and Policy DM5 of the DPD.

Impact upon 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 are appropriate for the highway network in terms of the volume and nature of traffic generated, and ensure that the safety, convenience and free flow of traffic using the highway are not adversely affected.

The submitted Planning Statement confirms that the construction period would take 9-12 months and the Transport Statement (TS) confirms that there would be up to 833 two-way HGV movements per month (32 per day) and up to 676 staff cars/vans movements per month (26 per day) – a total of 58 vehicle movements per day at its peak month (month 4).

The TS concludes that the increase in traffic generation due to construction traffic was calculated using baseline traffic data and with regards to HGV movements was found to be significant. However, further assessment of the road showed significant residual capacity when including construction traffic number. Due to this and the temporary nature of the works, the TS concludes the impact on traffic generation due to construction is therefore not significant. It goes on to state that additional traffic management measures as may be deemed necessary would be considered as part of the Construction Management Plan, that would be imposed by condition.

Operational traffic is expected to be minimal, on average the annual movements will be 10 per week (i.e. two small vans/cars on site per weekday) as a conservative estimate for inspections, monitoring and maintenance and therefore this impact is considered to be negligible.

Nottinghamshire County Council as the Highway Authority initially raised objection to the scheme on the basis of inadequate visibility splays provided to make the new access safe. However, following the receipt of amended plans, the Highway Authority raise no objection, subject to conditions relating to provision of access and visibility splays, reinstatement of kerb and verge to existing access to Staythorpe Footpath 1, measures to prevent deposit of debris on public highway. Issues have been raised concerning the requirement to reinstate the kerb and verge leading to Staythorpe Footpath 1 by a third party who state there is currently an application to change this PRow into a bridleway and it also provides vehicle access for maintenance to the railway, as a result this recommendation may not be feasible or practical

and as such, the Highway Authority have confirmed verbally that this condition could be omitted.

It is acknowledged that during the construction period, traffic levels to and from the site would increase considerably and may require additional traffic management measures, but this would be for a temporary period during the construction and de-commissioning periods only. Overall, the proposed access arrangements are considered to be acceptable, subject to appropriate conditions, and there are no highway related objections to the proposed development. It is not considered that any adverse impact upon highway safety or efficiency would result in accordance with Spatial Policy 7 and Policy DM5 of the DPD.

Other Matters

Cumulative Impacts

The applicant has submitted a statement on the cumulative impacts of the proposal in combination with the new application for another BESS development currently pending consideration (application reference 23/00317/FULM) on land 620m to the north of this site, which is summarised below.

Agricultural Land Classification – two sites comprise 30.7ha of 3a (BMV) and 5.1ha of 3b (moderate) land. Cumulative land take for both scheme is negligible in comparison to the amount of similar land available in this area and on balance, appropriate and necessary for the provision of enabling energy security.

Flood Risk – Both schemes provide additional storage for flood water to compensate for flood water storage volume taken up by proposed infrastructure and hence neither would contribute to off-site flooding, so there is no potential for cumulative flooding effects.

Heritage – other site is closer to heritage assets. Effects for both schemes are assessed as being less than substantial harm. Given separation distances and lack of theoretical visibility, cumulative effects are negligible.

Landscape and Visual – Both schemes relate to low-level development that would not result in wider visual impacts on the landscape. Both propose substantial planting that would remove all visibility of the structures from outside the site in a small number of years. Although a distance of 600m between the two sites, and low-level nature of proposed developments in an area of low sensitivity and with few nearby sensitive visual receptors, it is likely there would be no cumulative effects at all. Visually should any isolated locations exist with simultaneous or sequential view of the two sites, any cumulative effects would be highly localised, limited in extent, not affecting sensitive receptors and short term.

Noise – on this site noise levels fall below 30dB(a) within 100m of the battery units in all directions and is typically lower than outdoor background noised levels. On the other scheme noise levels drop to within 5dB of background noise levels within 150m of the site boundary. Given the two sites are 600m apart, there is no potential for

cumulative noise impacts at any receptor location.

Lighting - on this site will be limited to low-level/limited to inward facing security/maintenance lighting which will not give rise to cumulative impacts when assessed alongside the other scheme. Precise details can be controlled by condition.

Air Quality – there are no emissions associated with the operational phase of the facilities. Short term construction traffic would not lead to material decreases in air quality, even if both schemes were to be constructed at the same time. There would not be any cumulative impact on air quality.

Traffic and Transport – Operation traffic would be minimal. Construction traffic has been covered within the Construction Traffic Management Plan for the other scheme and there would not appear to be sufficient traffic /sensitivity to create any cumulative issues, even if constructed together. This is due to both schemes being in close proximity to the trunk road network and traffic measures propose for each scheme.

Ecology – Given the lack of sensitive habitat for either site or the lack of obvious ecological connectivity between the sites, both proposed sites are unlikely to result in any adverse cumulative impact on ecological resources.

Sequential Test – Given the compelling need to provide energy stability and the operational requirements for this supporting storage infrastructure to be located in close proximity to the existing substation which is already located in the flood zone, there is an argument to say that because they have to be located there, that the Flood Risk Sequential Test is passed.

Screening Opinions – screening opinions have been carried out on the development on both these sites and it was considered that neither were not likely to result in any cumulative impacts of more than local importance that could not be dealt with using acceptable methodologies without the need for an Environmental Statement.

It is concluded that the cumulative impacts of both schemes would be minimal.

The majority of the above comments are accepted and although the two schemes would be in relatively close proximity, due to their relationship to one another and intervening features, it is considered that there is unlikely to be any unacceptable cumulative impacts during the operational phase. It is accepted that should both schemes undergo construction at the same time that the traffic and transport cumulative impacts in the local area would be significantly higher. However, based on the fact that this would be for a temporary period of time and could be controlled to some extent through traffic management, it is not considered to be fatal. The comments made in relation to the Sequential Test is considered in the overall planning balance below.

Length of Temporary Consent

The BESS would be a temporary use of the land as the equipment would be removed and the

land returned to its former condition when the development is decommissioned following 40 years from the date of the first export of electricity to the electrical grid. There is no government imposed limit on the lifetime of BESS set out in national guidance. Whilst this in its own right is not necessarily a material planning consideration, the economic and environmental benefits of increasing the length of operation of the BESS and the benefits of renewable energy support could be a benefit for longer as a consequence. Nevertheless, 40 years should not be regarded as an insignificant amount of time. A condition would be imposed on any consent relating to the decommissioning and restoration of the site at the end of the 40 year period.

Connection to Existing National Grid Substation

It became apparent early on in the consideration of this application that the submission did not include any kind of connection from the application site to the existing Staythorpe substation. This was considered, by Officers, to be a significant omission because it effectively meant that there was no demonstration that the development could be used for what was intended and if for some reason, the applicant was not able to secure the connection across third party land in an acceptable manner, either in legal or planning terms, then it would be impossible for Officers to give any weight to the benefits of the scheme in the overall planning balance. The applicant sought to demonstrate that they had a contract that secured the connection, but this did not give much comfort as it would still remain outstanding in planning terms with little level of security. To overcome this concern, the applicant submitted a plan which shows how they would be able to connect to the Staythorpe Substation under permitted development rights set out in the General Permitted Development Order, by making the connection via the public highway rather than across third party land. On this basis officers are now comfortable that the scheme now has the certainty of becoming an operational concern because of the existing fall-back position to secure a connection and as a result the benefits of the scheme can be realised.

Health and Safety

It is clear from the comments received from local residents that there is significant local concern in relation to fire safety. It is acknowledged that this type of development represents a relatively new technology. There is evidence of a fire incident on a BESS development at Carnegie Road in Liverpool a few years ago and other examples from abroad that some local residents have cited within their comments.

The fact is that this technology relies on lithium batteries being used to store electricity. The lithium batteries get very hot and so need to be kept cool constantly to prevent the build-up of excessive heat and risk of fire. In the event that the batteries catch alight, they give off toxic fumes and as they do not respond to water, cannot successfully be put out.

In trying to obtain appropriate safety advice, the case officer consulted with the Health and Safety Executive, however, they confirmed this was outside their remit and so would not provide any comment. The case officer has also consulted with Nottinghamshire Fire Service who have provided helpful comments through-out the process and who in the event of a fire would have to attend the site.

Initially the applicants set out some limited principles on fire safety but wanted any detailed design to be conditioned and agreed post any grant of planning permission. However, given the strong potential for the detailed design to affect the physical layout of the site (i.e. the provision of an emergency vehicular access that would require planning permission in its own right), this was not considered to be a satisfactory solution. Furthermore, a full detailed scheme setting out all the fire risk mitigations in a full and holistic way was considered necessary in order to allow proper consideration and assessment. The case officer therefore insisted that this detail designing be carried out up front to reduce any fire risk to the lowest that it could possibly be before any potential planning permission was granted.

The applicants then sought to engage with the professional guidance of the National Fire Chiefs Council who is advised by the industry's leading expert on Lithium-Ion batteries, Prof P Christiansen on their fire safety approach. A Fire and Safety Management Plan Recommendations report has been submitted (which has been amended several times during the course of the application) which sets out some typical key measures that can be used to minimise and manage the risk of fire. In response to the FSMP (Rev 003) submitted by the applicants, the Professor has described it as an example of Best Practice and stating that the applicants have "gone further than the extra mile to make the proposed installation as safe as possible." Nottinghamshire Fire & Rescue Service (NFRS) also made detailed comments on the FSMP (Rev 003) to which the applicants have sought to address in FSMP (Rev 004). Further comments are awaited from NFRS in relation to this latest version and will be reported on the Late Items Schedule.

In relation to the battery units, safety systems including automatic shut off and temperature monitoring of battery units would be built into the battery storage facility and would be designed to existing electrical safety standards as required by other high voltage electrical equipment. The battery storage facility would include cooling systems and within the compound the individual containerised units have now been suitably reduced in footprint and separated to reduce the risk of fire spread to a minimum. The intention would be to contain any fire and allow it to burn out whilst keeping people at a safe distance, with fire water limited to cool surroundings to prevent spread. An emergency secondary access has also now been provided and smoke plume modelling undertaken.

It is now considered that whilst the applicant cannot demonstrate that a fire will never occur at the site, they have now shown that the development has been designed to make that risk as low as it can possibly be and provided mitigation to reduce the impacts and maximise responses to a fire event. As such, it is considered that provided the current proposal would operate in line with the current FSMP that the risk of harm from fire and its impacts to nearby residents and Nottinghamshire Fire and Rescue Service would be at its lowest optimum level. However, the risk cannot be completely removed and the fear of fire to local residents would still likely be a reality and therefore this remains a negative weighting.

There would be no day to day emissions associated with the operation of the battery storage facility. Public access amongst the substation and battery storage facility would be restricted by security fencing and monitored with security cameras.

8.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

9.0 Planning Balance and Conclusion

The concerns submitted outlining the objections of both local Parish Councils and local residents have been read and understood.

Both national and local planning policy place great emphasis on the creation of energy through renewable schemes where the impacts of the development are (or can be made through appropriately worded conditions) acceptable.

The development supports the Government's policy for the UK's transition to achieving a low carbon economy and assists in meeting the pressing need for deployment of renewable energy generation in the UK to meet legally binding obligations for renewable energy consumption and more challenging targets in 2030 and onwards to net-zero emissions by 2050. Whilst the proposal in itself is not an energy generating development, it seeks to support the greater use of renewable energy through reducing waste of energy from renewable sources and improving the use and efficiency of such energy production, thus increasing domestic energy supplies to the national grid. This in turn has the impact of reducing reliance on fossil fuels and therefore the resulting reduction in harm to climate change. All these factors attract significant positive weight in the determination of this application, which should not be underestimated.

The proposal represents over 10% of Biodiversity Net Gain on the site compared to the existing situation as well as the creation of a new permissive footpath through the site which weighs positively in the planning balance.

Although once in operational phase, the proposal is unlikely to result in significant jobs opportunities, there is no doubt that the construction and decommissioning phases of the development would contribute significantly to employment in the area, even though these economic benefits would be for a limited period of time, which represent a modest positive weighting.

The loss of 70% (7ha) of Best and Most Versatile agricultural land weighs against the proposal, although this is tempered by the fact that this loss would be for a temporary period of 40 years when the land would be returned to crop production. As such significant harm in this case can be reduced to moderate harm.

In flood risk terms, whilst the development has passed the Exception Test, the applicant has stated that because of the operational need to locate storage facilities adjacent to existing substations that the Sequential Test should not be applicable in this case as it is not possible for this development to be practically located anywhere else. There is some sympathy for this view. The flood risk section sets out that if the Sequential Test is applied, there is a sequentially preferable site at lower risk of flooding where such a development could be sited, the proposal fails the strict application of the Sequential Test which would carry significant

weight against the proposal. However, regard has also been given to the fact that this alternative site has a higher grade of Best and Most Versatile Agricultural Land Classification which would reduce the negative weighting of the Sequential Test in the overall balance.

In considering the weighting to be given to the loss of BMV land and concerns of flood risk, it is difficult to give appropriate weighting to the competing resources of farmland to make the country more self sufficient in terms of food production and building within areas of high flood risk in order to make the country more self sufficient in terms of energy production. However, on the basis that the amount of BMV land in the country would far outweigh the operational land resources available for BESS developments, it is considered that energy production should be given more weight. The failure to pass the Sequential Test, in the event that it should be applied, should be reduced to minor harm in this case.

It is acknowledged that the change of use from agriculture to industrial use in this countryside location will result in major landscape and visual harm that would reduce over time to moderate. However, the majority of the proposal would be of limited height the majority of which could be mitigated by existing, enhanced and new planting, the highest elements (max of 13m) would be clearly visible in the skyline. However, because of the lightweight visually permeable physical appearance and limited massing and siting within the site, it would be a reduced visual impact. Harm would be experienced locally by occupiers of the nearby dwellings and road/footpath users rather than from distance. The application submission has sought to mitigate these impacts by the introduction of new tree and hedgerow planting. This would reduce the level of harm but it not considered would remove it altogether and would be experienced for a temporary period of 40 years. The proposal is therefore considered to result in an overall moderate landscape/visual harm that would be higher during the construction period but is likely to reduce to a more moderate harm over time as planting matures. This is considered to represent one of the most significant impacts on the residential amenities of local residents.

In heritage terms, minor harm has been identified to a number of Non-designated heritage assets close to the site, however, this harm would be overcome in time through the maturing of new soft landscaping.

There is a genuine held fear and apprehension that the site cannot be safely operated. This understandably is felt most keenly by those living near to the site. The submitted FSMP and redesigned scheme seeks to demonstrate that the risk of fire is as low as it can possibly be and in the event of a fire provides maximum mitigation to reduce its impact. However, the risk cannot be completely removed and the fear of fire to local residents would still likely be a reality and therefore this remains a negative weighting. The final comments of the Notts Fire and Rescue Service will be reported on the Late Items Schedule.

Neutral impacts include highway safety, archaeology, drainage, biodiversity impacts on protected species subject to mitigation, air quality and lighting which are matters that can be acceptably controlled through the imposition of conditions.

An additional Noise Assessment Addendum has been submitted during the final stages of consideration which seeks to deal with the late alteration to the proposed technical infrastructure to be accommodated on the site. This asserts that the proposed development,

with the mitigation proposed, would not result in any increase in background noise levels above those currently experienced. On this basis, noise levels would be considered to be acceptable, however, the comments of the Council's Environmental Health officer on this latest Addendum will be reported to the Planning Committee meeting on the Late Items Schedule.

To conclude, the full benefits of supporting the national electricity grid with a greater renewal energy supply and the consequential additional benefits arising from that, together with the benefits of BNG, permissive footpath and some job creation is considered to marginally outweigh the harm identified above in terms of loss of BMV land, Sequential Test (if appropriate to apply), landscape/visual impacts and the fire risk/fear of fire identified, in the overall planning balance. However, this balance is predicated on the latest Noise Assessment Addendum being robust and successfully demonstrating predicted noise levels accurately, to the satisfaction of the Council's professional Environmental Health officers.

Subject to conditions, the application has been found to be acceptable with regards to impact on ecology including nearby designated sites and biodiversity impacts on protected species subject to mitigation, passing the Exception Test, heritage assets, highway safety, archaeology, drainage, tree/hedgerow, air quality and lighting.

Overall, based on a balancing exercise of positive benefits against the harm identified, it is considered that the scheme is acceptable and would represent sustainable development in accordance with the NPPF and the Development Plan.

10.0 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 planning permission hereby granted shall be for a temporary period only, to expire 40 years after the date of the first import of electricity to the development. Written confirmation of the first import of electricity date shall be provided to the Local Planning Authority within one month after the event.

Reason: To comply with the requirements of the submitted application.

03

No later than 6 months before the expiration of a period of 40 years months following the date of the first import of electricity to the development, or within 6 months of a cessation of operation of the facility for a period of 12 months (unless otherwise agreed with the Local

Planning Authority) a Scheme of Decommissioning and Restoration shall be submitted to and agreed in writing by the Local Planning Authority. The Scheme shall include:

- (a) The management and timings of any works;
- (b) A Traffic Management Plan to address likely traffic impact issues during the decommissioning period;
- (c) An Environmental Management Plan to include measures to be taken to protect wildlife and habitats during and after the decommissioning period;
- (d) A De-construction Environmental Management Plan to include measures to protect the amenities of neighbouring residents during the decommissioning period as well as site restoration measures.

All equipment and associated works shall be removed within 12 months of the Scheme being approved by the Local Planning Authority, unless alternative timings are agreed within the Scheme.

Reason: In the interests of highway safety, visual and residential amenity, biodiversity and environmental protection.

04

Within 6 months of the date of this planning permission, full details of the soft landscape works for the replacement of the hedgerow and trees to the north of the new main access road and to both sides of the emergency access road shall be submitted to and approved in writing by the Local Planning Authority (as identified on Landscape Mitigation Plan (Drawing No: 4951-DR-LAN-101E). These details shall include full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards, and structural cells. 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 provide screening. The approved scheme shall be implemented as approved during the first planting season following written approval. This soft landscaping does not constitute commencement of the development (as defined by Section 56(4) of the Town and Country Planning Act 1990).

Reason: In the interests of residential and visual amenity.

05

Prior to any obstruction to Staythorpe FP1, the permissive footpath shown on Site Layout Plan (UK008_LYP_ Rev I) shall be installed and made available for public use and retained for the lifetime of the development in accordance with a scheme for its laying out along the route shown on Site Layout Plan (UK008_LYP_ Rev I) together with the arrangements for maintaining the footpath during the life of the development that shall first be submitted to and approved in writing by the Local Planning Authority (the "Permissive Footpath Scheme"). The said scheme shall include the programme of delivery, details of the footpath specification and any arrangements for the temporary restriction of access to the public to Staythorpe FP1.

Reason: To maintain and enhance the recreational use of the site both during the construction period and through the lifetime of the development.

06

Prior to commencement of development a Full Construction Environmental Management Plan (based largely on the submitted outline) shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt that shall include, but not be limited to:

- i. a scheme to control noise and dust/dirt and mitigation measures;
- ii. except for emergency works, construction works on the site shall not take place outside 08:00 to 18:00 hours Mondays to Fridays and 08:00 to 14:00 hours on Saturdays and no time at all on Sundays or Bank Holidays;
- iii. that deliveries shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 to 14:00 on Saturdays and at no time on Sundays or Bank Holidays, unless otherwise agreed for abnormal load deliveries;
- iv. the parking of vehicles of site operatives and visitors;
- v. loading and unloading of plant and materials;
- vi. storage of plant and materials used in constructing the development;
- vii. wheel washing facilities;
- viii. details of the wooden fencing to enclose temporary compound area;
- ix. traffic management signage scheme;
- x. full details of any temporary external lighting;
- xi. measures for the protection of habitats and species within the Site.

The approved Construction Environmental Management Plan shall be fully complied with until the completion of construction on the site.

Reason: In the interests of residential amenity, biodiversity.

07

Prior to commencement of development a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved Management Plan shall be fully complied with until the completion of construction on the site.

Reason: In the interests of highway safety and residential amenity.

08

Notwithstanding Plates 7 and 8 within Section 3.1 of the Outline Surface Water Drainage Strategy dated May 2023, which are not hereby approved, no part of the development hereby approved shall commence until a detailed surface water drainage scheme based on the principles set forward by the Arcus Flood Risk Assessment dated May 2023 (as amended by the Flood Risk and Drainage Strategy Clarification (Rev I Layout received 26 June 2023) and the Outline Surface Water Drainage Strategy dated May 2023 (as amended by Plate 2

received by e-mail on 21 June 2023 and Flood Risk and Drainage Strategy Clarification (Rev I Layout received 26 June 2023), has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development. The scheme to be submitted shall:

- Demonstrate that the development will use Sustainable Drainage Systems throughout the site as a primary means of surface water management and that design is in accordance with CIRIA C753 and NPPF Paragraph 169.
- Limit the discharge generated by all rainfall events up to the 100 year plus 40% (climate change) critical rain storm to QBar rates for the developable area.
- Provide detailed design (plans, network details, calculations and supporting summary documentation) in support of any surface water drainage scheme, including details on any attenuation system, the outfall arrangements and any private drainage assets.
- Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 30 year and 1 in 100 year plus climate change return periods.

No surcharge shown in a 1 in 1 year.

No flooding shown in a 1 in 30 year.

For all exceedance to be contained within the site boundary without flooding properties in a 100 year plus 40% storm.

- Evidence to demonstrate the viability (e.g Condition, Capacity and positive onward connection) of any receiving watercourse to accept and convey all surface water from the site.
- Provide a surface water management plan demonstrating how surface water flows will be managed during construction to ensure no increase in flood risk off site.
- Evidence of how the on-site surface water drainage systems, including Staythorpe Sidings Drain, shall be maintained and managed after completion and for the lifetime of the development to ensure long term effectiveness.

The development shall be implemented in full accordance with the approved detailed surface water drainage scheme.

Reason: A detailed surface water management plan is required to ensure that the development is in accordance with NPPF and local planning policies. It should be ensured that all major developments have sufficient surface water management, are not at increased risk of flooding and do not increase flood risk off-site.

09

Section 2.2.3 (Site Access and Egress) and the Flood Incident Plan set out in Appendix E of the Flood Risk Assessment (FRA) dated May 2023 is not hereby approved. The development shall be comprised of flood resilient infrastructure and elevated as detailed in section 2.2.1.1 of this FRA to ensure the site remains operational to the 1 in 100 year +50%CC flood level.

This mitigation measure above shall be fully implemented prior to the date of the first import of electricity to the development. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Prior to the commencement of development, an amended Section 2.2.3 (Site Access and Egress) and Flood Incident Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include the operators' maintaining registration with the Environment Agency's Flood Warning Service throughout the lifetime of the development and evacuation of the site prior to a flood event. The development shall be operated in full accordance with the approved details for its lifetime.

Reason: To reduce the risk of flooding to the proposed development and site evacuation in a flood event.

010

Prior to commencement of development, in addition to the details already set out within Section 2.2.1.3 of the Flood Risk Assessment (FRA) dated May 2023, details shall be submitted of the additional flood compensatory storage requirement on a level for level basis to mitigate the emergency access road shown on Drawing Nos: 23065-GA-01 Rev B and UK008_LYP_ Rev I for approval in writing by the Local Planning Authority. This compensation shall be shown on scaled site and section plans and shall include measures to prevent wildlife falling into it. The approved mitigation measures shall be fully implemented prior to the date of the first import of electricity to the development. The approved measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reasons: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided, without harm to biodiversity.

011

Prior to the commencement of the development hereby approved (including all preparatory work), a scheme for the protection of the retained trees (together with all planting carried out under the requirements of Condition 04 of this permission), in accordance with BS 5837:2012, including a Tree Protection Plan (TPP) and an Arboricultural Method Statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. Specific issues to be dealt with in the TPP and AMS:

- a) Location and installation of services/ utilities/ drainage.
- b) Details of construction within the RPA or that may impact on the retained trees.
- c) Boundary treatment works within the RPA and a full specification for their installation.
- d) a full specification for the construction of any roads and parking areas, including details of the no-dig specification and extent of the areas of the roads and parking areas to be constructed using a no-dig specification. Details shall include relevant sections through them.

- e) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
- f) A specification for protective fencing to safeguard trees during construction phases and a plan indicating the alignment of the protective fencing.
- g) a specification for scaffolding and ground protection within tree protection zones.
- h) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.
- i) details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires.
- j) Methodology and detailed assessment of root pruning.
- k) Arboricultural supervision and inspection by a suitably qualified tree specialist.
- l) There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees.

Reason: Required prior to commencement of development to satisfy the Local Planning Authority that the trees to be retained will not be damaged during construction and to protect and enhance the appearance and character of the site and locality and pursuant to section 197 of the Town and Country Planning Act 1990.

012

Prior to the first import of electricity to the development hereby approved, details of the treatment of all areas of the site not included within requirements of Condition 4 and not covered by buildings/structures shall be submitted to and approved in writing by the Local Planning Authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first import of electricity to the development, whichever is the sooner. Details shall include:

- 1) a scaled plan showing all existing vegetation and landscape features to be retained and trees and plants to be planted.
- 2) location, type and materials to be used for hard landscaping including specifications, where applicable for:
 - a) permeable paving
 - b) tree pit design
 - c) underground modular systems
 - d) Sustainable urban drainage integration
 - e) use within tree Root Protection Areas (RPAs);
- 3) a schedule detailing sizes and numbers/densities of all proposed trees/plants;

4) specifications for operations associated with plant establishment and maintenance that are compliant with best practise; and

5) types and dimensions of all boundary treatments.

Reason: Required to safeguard and enhance the character and amenity of the area, to provide ecological, environmental and biodiversity benefits and to enhance its setting within the immediate locality.

013

Prior to the first import of electricity to the development, a Woodland Management Plan shall be submitted to, and approved in writing by, the Local Planning Authority. The Management Plan shall be prepared by a qualified and experienced forestry or arboricultural consultant and shall include the following elements:

a) A statement of the overall design vision for the woodland and for individual trees retained as part of the development.

b) Type and frequency of management operations to achieve and sustain canopy, understorey and ground cover, and to provide reinstatement including planting where tree loss or vandalism occurs.

c) Frequency of safety inspections, which should be at least three yearly in areas of high risk, less often in lower risk areas.

d) Confirmation that the tree pruning work shall be carried out by suitably qualified and insured tree contractors to British Standard 3998 (2010).

e) Inspection for pests, vermin and diseases and proposed remedial measures.

f) Confirmation of cyclical management plan assessments and revisions to evaluate the plan's success and identification of any proposed actions.

Reason: Required to ensure that woodland areas are satisfactorily safeguarded, managed and maintained in the interests of nature conservation and the visual amenity of the area.

014

No retained or planted tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the development phase, unless it is diseased or dangerous, and thereafter within 10 years from the date of the first import of electricity to the development, other than in accordance with the approved plans and particulars. Any trees/shrubs which, within a period of ten 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. All tree, shrub and hedge planting shall be carried out in accordance with BS 3936 - 1992 Part 1-Nursery Stock-Specifications for Trees and Shrubs and Part 4 1984-Specifications

for Forestry Trees ; BS4043-1989 Transplanting Root-balled Trees; BS4428-1989 Code of Practice for General Landscape Operations.

Reason: Required to safeguard and enhance the character and amenity of the area, to provide ecological, environmental and biodiversity benefits and to maximise the quality and usability of open spaces within the development, and to enhance its setting within the immediate locality.

015

Prior to the first import of electricity to the development a Landscape and Ecological Management Plan (LEMP) based on the approved Landscape Mitigation Plan (Drawing No: 4951_DR_LAN_101E), which shall include all planting carried out in compliance with Condition 4 and a maintenance schedule of watercourses within the site for surface water disposal, with timescales embedded shall be submitted to and approved in writing by the Local Planning Authority. The LEMP shall include a ten-year maintenance programme for all planting. The approved LEMP shall be fully implemented and maintained for the lifetime of the development.

Reason: In the interests of biodiversity and the landscape character and rural amenities of the area.

016

The development hereby permitted shall be carried out in strict accordance with the pre, post and during construction mitigation and enhancement measures outlined in the Ecological Impact Appraisal (EclA) (Revision 2, dated May 2023), the Biodiversity Metric Assessment (BMA) (Revision 2, dated May 2023) Appendix 1, the Confidential Badger Annex (Revision 1, dated May 2023) and Section 7 (Embedded Mitigation Measures) of the Landscape and Visual Appraisal (Revision 2, dated May 2023) by Arcus. For the avoidance of doubt, this shall include compliance with the following the Ecological Mitigation and Enhancement Measures set out in Section 5 (Evaluation and Mitigation) of the EclA and those set out in Appendix 1 of the BMA as well as the ecological enhancements included to improve biodiversity and mitigate surface water runoff as set out in 3.2 of the submitted Outline Surface Water Drainage Strategy. Save for the installation of the bird boxes (which shall be installed September to November) the measures shall be installed in accordance with the timescales embodied within the Landscape and Ecological Management Plan (LEMP) to be approved by Condition 16, prior to the first import of electricity to the development. The mitigation and enhancement measures shall be implemented and maintained for the lifetime of the development.

Reason: In the interests of landscape character, visual and residential amenities and biodiversity.

017

Archaeology - Part 1

No development shall take place until an archaeological Mitigation Strategy for the protection of archaeological remains is submitted to and approved in writing by the Local Planning Authority. The Mitigation Strategy will include appropriate Written Schemes of Investigation for evaluation trenching, open area excavation and provision for other mitigation work as necessary. These schemes shall include the following:

1. An assessment of significance and proposed mitigation strategy (i.e., preservation by record, preservation in situ or a mix of these elements);
2. A methodology and timetable of site investigation and recording;
3. Provision for site analysis;
4. Provision for publication and dissemination of analysis and records;
5. Provision for archive deposition; and
6. Nomination of a competent person/organisation to undertake the work.

The scheme of archaeological investigation must only be undertaken in accordance with the approved details.

Reason: To ensure the preparation and implementation of an appropriate scheme of archaeological mitigation in accordance with the National Planning Policy Framework.

018

Archaeology - Part 2

The archaeological site work must be undertaken only in full accordance with the approved Written Scheme of Investigation. The developer shall notify the Local Planning Authority of the intention to commence at least fourteen days before the start of archaeological work in order to facilitate adequate monitoring arrangements. No variation to the methods and procedures set out in the approved Written Scheme of Investigation shall take place without prior consent of the Local Planning Authority.

Reason: To ensure satisfactory arrangements are made for the recording of possible archaeological remains in accordance with the National Planning Policy Framework.

019

Archaeology - Part 3

A report of the archaeologist's findings shall be submitted to the Local Planning Authority and the Historic Environment Record Officer at Nottinghamshire County Council within 3 months of the archaeological works hereby approved being completed. The post-investigation assessment must be completed in accordance with the programme set out in the approved Written Scheme of Investigation and shall include provision for analysis, publication and dissemination of results and deposition of the archive being secured.

Reason: In order to ensure that satisfactory arrangements are made for the investigation, retrieval and recording of any possible archaeological remains on the site in accordance with the National Planning Policy Framework.

020

No development (other than the main access and associated visibility splays shown on Drawing No: 4951_DR_P_0001 rev 2) shall be commenced until the main access and associated visibility splays are provided in accordance with the approved details and made available for use. Prior to the date of the first import of electricity to the site the emergency access and visibility splays shall be provided in accordance with the layout shown on Drawing No: 23065/GA/01 Rev B and shall be kept available for use at all times for the life of the development.

Reason: In the interests of highway and fire safety and residential amenity.

021

Prior to the date of the first import of electricity to the site, the development shall be fully implemented in accordance with the approved Fire Safety Management Plan Recommendations (Ref: 70109641.Rep.004) dated June 2023 by WSP and shall be retained and maintained as such for the lifetime of the development.

Reason: In the interests of fire safety and residential amenity.

022

Prior to the first import of electricity to the development, the two 4m high acoustic wooden fencing identified on the Site Layout Plan Drawing No: UK008_LYP_Rev I) and the noise enclosures identified on General Arrangement 400kV Transformer Bund (Drawing No: UKCG-RCL-UG-004 S1 Rev P4); General Arrangement 132kV Transformer Bund (Drawing No: UKCG-RCL-UG-005 S1 Rev P4); Elevations 400kV Transformer Bund (Drawing No: UKGC-RCL-UG-004 S3 Rev P1); Elevations 400kV Transformer Bund (Drawing No: UKGC-RCL-004 S4 Rev P1) and Elevations 132kV Transformer Bund (Drawing No: UKGC-RCL-005 S3 Rev P1) shall be fully installed in accordance with the details submitted. The approved structures shall be retained for the lifetime of the development.

Reason: In the interests of residential amenity.

023

Notwithstanding the Outline Lighting Plan (Drawing No: UK008_049_Rev C) which is not hereby approved, prior to the installation of any permanent external lighting to serve the operational use, full details of all external lighting proposed (to include methods to restrict times of illumination, luminance levels, glare potential) shall be submitted to and approved in writing by the Local Planning Authority. All lighting shall be designed to minimise the use of external lighting on the site, prevent light spillage and be directed away from sensitive receptors and high value and boundary habitats, such as woodland. External lighting for the operational phase shall be installed and thereafter maintained in accordance with the approved details for the lifetime of the development.

Reason: In the interests of residential amenity and biodiversity.

024

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

General

- Site Location Plan (Red Line Boundary) Planning Drawing 1 (Ref: 4951-REP-040)
- Topographic Survey (Drawing No: 8859-1 Sheet 1 and Sheet 2)
- Site Layout Plan (UK008_LYP_ Rev I)
- Temporary Construction Compound Layout Planning Drawing 3 (Ref: 4951_DR_P_0006_P2)
- Landscape and Biodiversity Masterplan Planning Drawing 4 (Ref: 4951_DR_LAN_101E)

Access Drawings

- Site Entrance Junction – Visibility Splays Assessment (Drawing No: 4951_DR_P_0001 Rev 2)
- Emergency Access Junction Design (Drawing No: 23065-GA-01 Rev B)

BESS & Other Components

- BESS Battery Container Elevation Plan (Ref: UK008_31_Rev 05)
- DC Box & Inverter elevation plan (Ref: UK008_032_Rev 04)
- Transformer Station (Ref: UK008_033_Rev 04)
- Auxiliary Transformer Container (Ref: UK008_034_Rev 04)
- Smart Controller Elevation Plan (Ref: UK008_035_Rev 04)
- MV Control Unit (Ref: UK008_54_Rev 01)
- Fence Details (Ref: UK008_036_Rev 02)
- CCTV Elevation (Ref: UK008_037_Rev 02)
- Typical 33 kV Cable Cross Section (Ref: UK008_040_Rev 02)
- Temporary Warehouse/Workshop Elevation Plan (Ref: UK008_41_Rev 02)
- Wooden Acoustic Fence (Ref: UK008_042_Rev 02)
- Wooden Fence (Ref: UK008_043_Rev 01)
- Permanent Welfare Centre and Control Room Elevation Plan (Ref: UK008_44_Rev 02)
- Water Tank (Ref: UK008_046_Rev02)
- Typical 132 kV Cable Cross Section (Ref: UK008_048_Rev 01)

Civil Drawings

- Civils Site Layout (Drawing No: UKGC-RCL-UG-001 Rev P4)
- 400 kV & 132 kV Compound Layout SGT1 & SGT2 Circuit (Drawing No: UKCG-RCL-UG-002 Rev P7)
- 132kV / 33kV Compound Layout GT1 & GT2 Circuit (Drawing No: UKGC-RCL-UG-003 Rev P7)
- General Arrangement 400 kV Transformer Bund (Drawing No: UKCG-RCL-UG-004 S1 Rev P4)
- Sections 400 kV Transformer Bund (Drawing No: UKGC-RCL-UG-004 S2 Rev P3)
- General Arrangement 132 kV Transformer Bund (Drawing No: UKGC-RCL-UG-005 S1 Rev P4)
- Sections 132 kV Transformer Bund (Drawing No: UKGC-RCL-UG-005 S2 Rev P3)
- Sections 33 kV Transformer Bund (Drawing No: UKGC-RCL-UG-006 S1 Rev P3)

- Standard Elevations & Details CAT2 Mesh Fence (Drawing No: UKGC-RCL-UG-007 Rev P2)
- Standard Elevation CAT2 5.5m Wide Mesh Gate (Drawing No: UKGC-RCL-UG-008 S1 Rev P2)
- Standard Elevation CAT3 Mesh Pedestrian Gate (Drawing No: UKGC-RCL-UG-008 S2 Rev P2)
- Oil Interceptor Tank 400/132 kV Circuit (Drawing No: UKGC-RCL-UG-010 Rev P2)
- Oil Draw-off Details 400/132 kV Circuit (Drawing No: UKGC-RCL-UG-011 Rev P2)
- 33 kV Switchroom and Distribution Substation for LV supply to site (Drawing No: UK008_051_Rev 01)
- Primary Compound Elevations 400/132 kV Circuit Sheet 1 of 3 (Drawing No: UKGC-RCL-UG-012 S1 Rev P6)
- Primary Compound Elevations 400/132 kV Circuit Sheet 2 of 3 (Drawing No: UKGC-RCL-UG-012 S1 Rev P5)
- Primary Compound Elevations 400/132 kV Circuit Sheet 3 of 3 (Drawing No: UKGC-RCL-UG-012 S1 Rev P3)

Additional Plans and Drawings

- Elevations 400 kV Transformer Bund (Drawing No: UKGC-RCL-UG-004 S3 Rev P1)
- Elevations 400 kV Transformer Bund (Drawing No: UKGC-RCL-UG-004 S4 Rev P1)
- Elevations 132 kV Transformer Bund (Drawing No: UKGC-RCL-005 S3 Rev P1)
- Standard Elevations Relay and Control Rooms 400/132 kV Circuit (Drawing No: UKGC-RCL-UG-009 S1 Rev P2)
- Standard Elevations Relay and Control Room 132/33 kV Circuit (Drawing No: UKGC-RCL-UG-009 S2 Rev P3)
- Standard Elevations Statcom Building 400/132 kV Circuit (Drawing No: UKGC-RCL-UG-009 S3 Rev P1)
- Emergency Access Gate Elevation (Drawing No: UK008_52_Rev 01)
- Wooden Acoustic Gate Elevation (Drawing No: UK008_53_Rev 01)
- Internal Site Layout Swept path analysis with NFRS Fire Tender (Drawing No: 23065/A/TR/02).

Reason: So as to define this permission.

Informatives

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/cil/

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development hereby approved as the development type proposed is zero rated.

02

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) (England) Order 2015 (as amended).

03

Environmental permit

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with the EA at the earliest opportunity.

04

Should a Temporary Closure of Staythorpe FP1 be needed, this may be granted to facilitate public safety during the construction phase, subject to certain conditions. Further information and costs may be obtained by contacting the Rights of Way section contact countryside.access@notsscc.gov.uk, as least 5 weeks' notice is required to process the closure.

05

In order to carry out the off-site works required, the applicant will be undertaking work in the public highway which is land subject to the provisions of the Highways Act 1980 (as amended) and therefore land over which the applicant has no control. In order to undertake the works, which must comply with the Nottinghamshire County Council's current highway design guidance and specification for roadworks, the applicant will need to enter into an Agreement under Section 278 of the Act. The Agreement can take some time to complete as timescales are dependent on the quality of the submission, as well as how quickly the applicant responds with any necessary alterations. Therefore, it is recommended that the applicant contacts the

Highway Authority as early as possible. Work in the public highway will not be permitted until the Section 278 Agreement is signed by all parties. Furthermore, any details submitted in relation to a reserved matters or discharge of condition planning application, are unlikely to be considered by the Highway Authority until technical approval of the Section 278 Agreement is issued.

06

Planning permission is not permission to work on or from the public highway. In order to ensure all necessary licences and permission are in place you must contact licences@viaem.co.uk

07

Severn Trent Water advise that although their statutory sewer records do not show any public sewers with the area specified, there may be sewers that have been recently adopted under, The Transfer of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building.

08

At no time shall the railway crossing be used during the construction phase of the development unless previously agreed in advance with Network Rail. Should use of machinery or any construction be required within 10m of the railway boundary, the developer should liaise with Network Rail's Asset Team in advance of such work commencing. The developer must ensure that loose materials are properly secured so that they do not blow onto the railway track. (assetprotectioneastern@networkrail.co.uk.)

09

Fail Safe Use of Crane and Plant

All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, must at all times be carried out in a "fail safe" manner such that in the event of mishandling, collapse or failure, no materials or plant are capable of falling within 3.0m of the nearest rail of the adjacent railway line, or where the railway is electrified, within 3.0m of overhead electrical equipment or supports.

With a development of a certain height that may/will require use of a crane, the developer must bear in mind the following. Crane usage adjacent to railway infrastructure is subject to stipulations on size, capacity etc. which needs to be agreed by the Asset Protection Project Manager prior to implementation.

Excavations/Earthworks

All excavations/ earthworks carried out in the vicinity of Network Rail property/ structures must be designed and executed such that no interference with the integrity of that property/ structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network

Rail. Prior to commencement of works, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken. Network Rail will not accept any liability for any settlement, disturbance or damage caused to any development by failure of the railway infrastructure nor for any noise or vibration arising from the normal use and/or maintenance of the operational railway. No right of support is given or can be claimed from Network Rails infrastructure or railway land.

Vibro-impact Machinery

Where vibro-compaction machinery is to be used in development, details of the use of such machinery and a method statement should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker prior to the commencement of works and the works shall only be carried out in accordance with the approved method statement.

Scaffolding

Any scaffold which is to be constructed within 10 metres of the railway boundary fence must be erected in such a manner that at no time will any poles over-sail the railway and protective netting around such scaffold must be installed.

Encroachment

The developer/applicant must ensure that their proposal, both during construction, and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail and its infrastructure or undermine or damage or adversely affect any railway land and structures. There must be no physical encroachment of the proposal onto Network Rail land, no over-sailing into Network Rail airspace and no encroachment of foundations onto Network Rail land and soil. There must be no physical encroachment of any foundations onto Network Rail land. Any future maintenance must be conducted solely within the applicant's land ownership. Should the applicant require access to Network Rail land then must seek approval from the Network Rail Asset Protection Team. Any unauthorised access to Network Rail land or airspace is an act of trespass and we would remind the council that this is a criminal offence (s55 British Transport Commission Act 1949). Should the applicant be granted access to Network Rail land then they will be liable for all costs incurred in facilitating the proposal.

Access to the Railway

All roads, paths or ways providing access to any part of the railway undertaker's land shall be kept open at all times during and after the development.

010

With respect to the attached archaeological conditions, please contact the Historic Places team at Lincolnshire County Council, Lancaster House, 36 Orchard Street, Lincoln, LN1 1XX, 07880420410, email Matthew.Adams@lincolnshire.gov.uk to discuss the requirements and request preparation of a brief for the works.

It is recommended the resulting written schemes of investigation are approved by the LCC Historic Environment Officer prior to formal submission to the Local Planning Authority. Ten days' notice is required before commencement of any archaeological works.

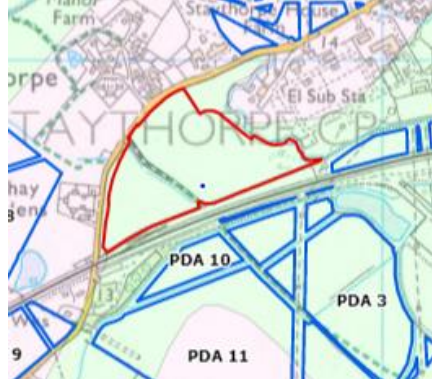

011


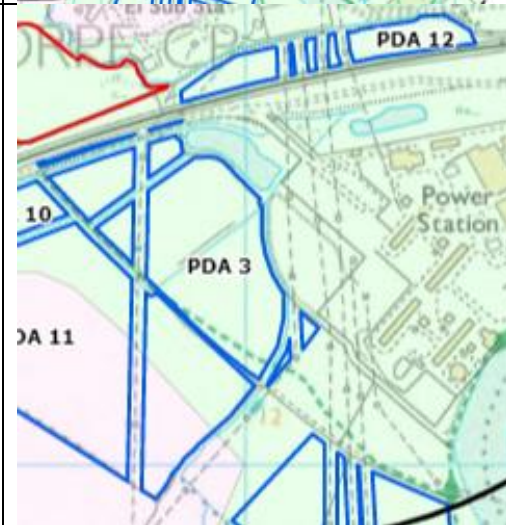
National Highways have requested that that the develop to consult with the A46 Newark By-Pass Team in the event that their detailed plans incorporate new or diverted services with the verges of the A617, to ensure the impacts to the A46 Newark Bypass scheme proposals for the flood compensation area are taken into consideration. Contact details: a46newarkbypass@nationalhighways.co.uk

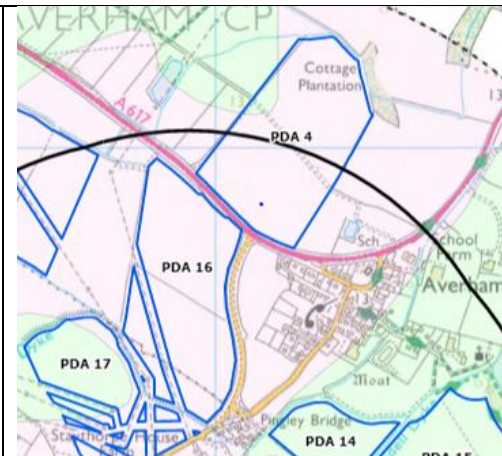
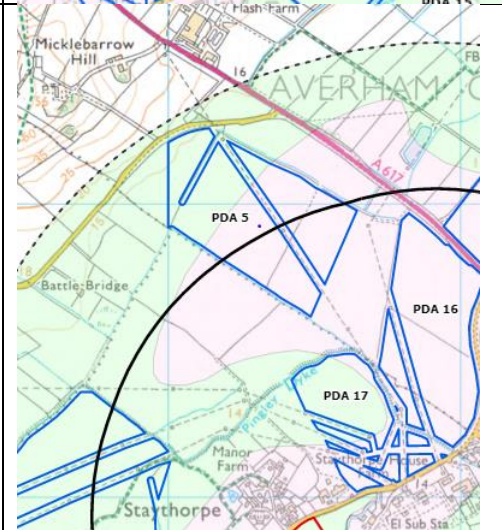
BACKGROUND PAPERS

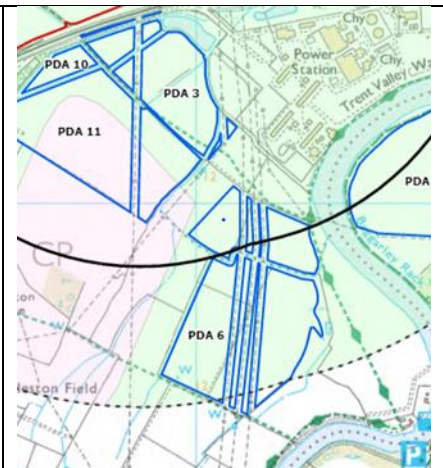
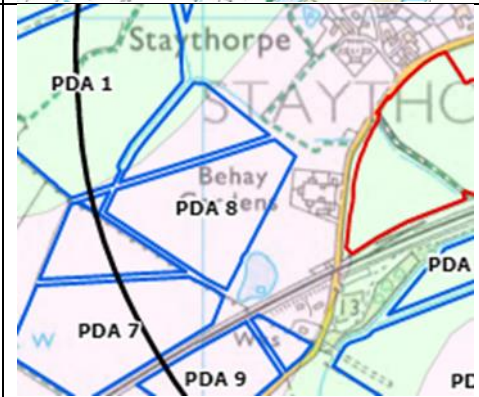
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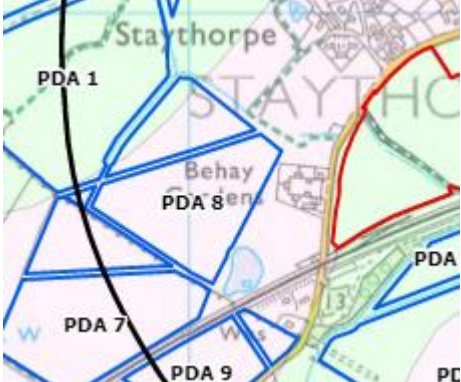
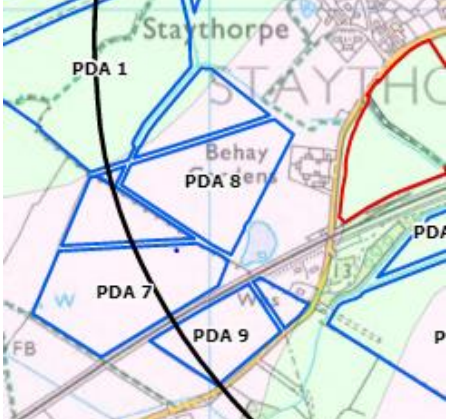
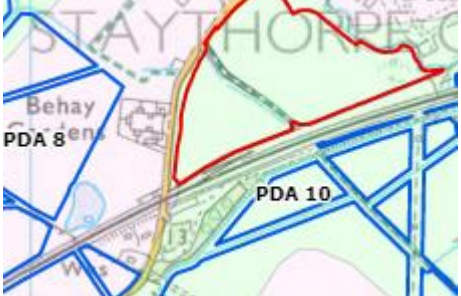
Appendix A – Sites identified within the Sequential Test




Site	Location on Map	Agricultural Land Classification	Flood Zone	Suitability
Application Site		Grades 3a and 3b	FZ2 and 3	See Committee Report
PDA1		Grades 2 and 3	FZ1, 2 and 3	Area in FZ1 not large enough to support scale of development – constraints similar to application site

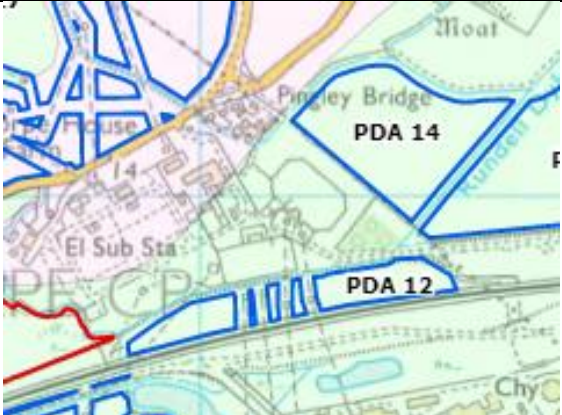
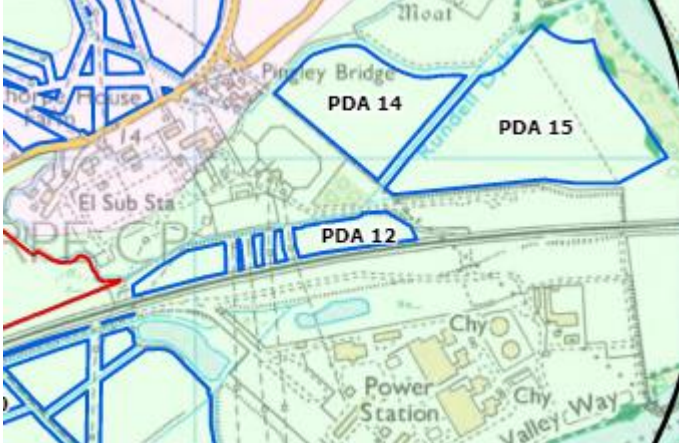
<p>PDA2</p>			<p>Grade 3</p>	<p>FZ3</p>	<p>Whole site in FZ3 - worse than application site in terms of flood risk</p>
<p>PDA3</p>			<p>Grade 3</p>	<p>FZ3</p>	<p>Whole site with FZ3 – worse than application site in terms of flood risk</p>


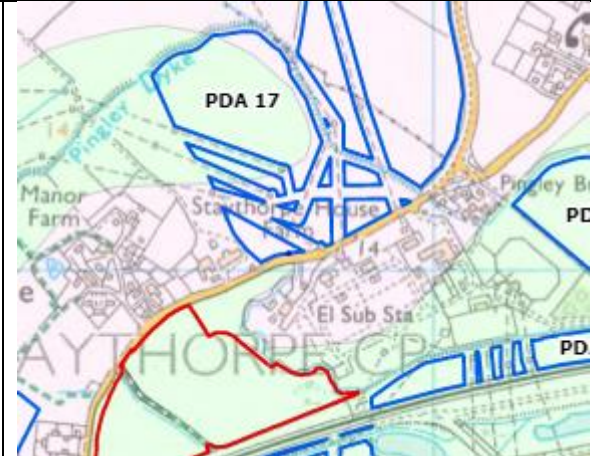
<p>PDA4</p>			<p>Mostly Grade 2; some 3</p>	<p>FZ1</p>	<p>Mostly with Grade 2 – better quality land than application site; better than application site in terms of flood risk</p>
<p>PDA5</p>			<p>Half Grade 2; half grade 3</p>	<p>FZ1, 2 and 3</p>	<p>Better quality of land than application site; better than application site in terms of flood risk</p>

<p>PDA6</p>		<p>Grade 3</p>	<p>FZ3</p>	<p>Maybe equal in terms of land quality; high risk of flooding than application site</p>
<p>PDA7</p>		<p>Grade 2</p>	<p>FZ2, FZ3 (mostly)</p>	<p>Better land quality; worse in terms of flood risk than application site</p>

<p>PDA8</p>			<p>Grade 2, some Grade 3</p>	<p>FZ1, FZ2, FZ3 (mostly)</p>	<p>Better land quality; worse in terms of flood risk than application site</p>
<p>PDA9</p>			<p>Grade 2</p>	<p>FZ1 and FZ3</p>	<p>Better land quality; FZ1 not large enough to support the development</p>
<p>PDA10</p>			<p>Grade 3</p>	<p>FZ3</p>	<p>Maybe same land quality; worse in flood risk terms than application site</p>

<p>PDA11</p>			<p>Equally Grade 2 and Grade 3</p>	<p>FZ3</p>	<p>Better quality land; worse in terms of flood risk than application site</p>
<p>PDA12</p>			<p>Grade 3</p>	<p>FZ2 – 70% FZ3 – 30%</p>	<p>Maybe same land quality; better in terms of flood risk but too small to support BESS development.</p>
<p>PDA13</p>					<p>Constrained land within Power Station; existing infrastructure present and too small for BESS development</p>

<p>PDA14</p>		<p>Grade 3</p>	<p>FZ3</p>	<p>Maybe same land quality but worse in terms of flood risk</p>
<p>PDA15</p>		<p>Grade 3</p>	<p>FZ3</p>	<p>Maybe same land quality but worse in terms of flood risk</p>

<p>PDA16</p>		<p>Grade 2</p>	<p>FZ1</p>	<p>Better quality land; better in flood risk terms than application site (10ha in FZ1 – same size as application site)</p>
<p>PDA17</p>		<p>Grade 2 – third; Grade 3 – two thirds.</p>	<p>FZ1, FZ2, FZ3</p>	<p>Better quality land; better in flood risk terms but not large enough to support BESS development</p>



Report to Planning Committee 6 July 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Honor Whitfield, Planning Officer, 01636 655827

Report Summary			
Application Number	23/00060/FUL		
Proposal	Change of use of paddock to provide 8 no. pitches for permanent residential occupation and 2 no. amenity buildings		
Location	Appleby Lodge, Barnby Road, Newark On Trent, NG24 2NE		
Applicant	Mr Archie Smith	Agent	David Dakin Architects Limited Mr David Dakin
Web Link	23/00060/FUL Change of use of paddock to provide 8 no. pitches for permanent residential occupation and 2 no. amenity buildings. Appleby Lodge Barnby Road Newark On Trent NG24 2NE (newark-sherwooddc.gov.uk)		
Registered	18.01.2023	Target Date	15.03.2023
		Extension To	12.06.2023
Recommendation	That Planning Permission is Approved subject to the Conditions detailed at Section 10.0 and completion of a S106 planning obligation.		

This application is being presented to the Planning Committee at the request of the Business Manager.

1.0 The Site

The application site relates to an approx. 0.51Ha paddock on the northern side of Barnby Road to the east of Newark. The site is adjacent to ‘Appleby Lodge’, a residential property to the east, beyond this are other residential properties. To the west of the site is a disused railway line, which is now the Sustrans footpath and cycle route, beyond which is a public play area. To the north is an open field and the railway line, to the south, across the highway is a large pond that is designated as a Local Wildlife Site (LWS) Biosinc 2/638 Ballast Pit. To the south-west of the site is Barnby Road Academy Primary School. A gas pipeline runs in a broadly E-W direction across the northern

portion of the site. There is an historic gated access onto Barnby Road in the south-west corner of the site, close to the railway bridge. The site is described as paddock land and is currently in a relatively overgrown state. The site does not lie within a Conservation Area or within an area at risk of flooding.

The site has the following constraints:

- To the south, across the highway, is a large pond that is designated as a Local Wildlife Site (LWS) Biosinc 2/638 Ballast Pit.
- A gas pipeline runs in a broadly E-W direction across the northern portion of the site.
- The site is part of an officially recognised migratory route for toads (Froglife Site I.D. 237 SK809532).

2.0 Relevant Planning History

No relevant planning history relating to this specific field (highlighted in red on the image below).

Site to the east (behind Appleby Lodge) – highlighted in blue in the image below:

03/02349/FUL - Change of use from paddock to site for residential caravan for two years – Refused 05.12.2003 due to being contrary to policies FS3 (as the site was not a frontage site and approval would therefore adversely affect the character of the area) and H32 (as the site was not appropriate as a location for permanent dwellings given the conflict with FS3). Appeal Dismissed 19.10.2004

05/01004/OUT - Erection of house – Refused 23.09.2005 due to being contrary to FS3 (as above) and NE8 (Mature Landscape Areas which restricts development in areas identified as MLAs as the site is important in terms of landscape value and nature conservation on the edge of Newark) and insufficient information to assess visibility splays.

05/02371/OUT - Erection of bungalow – Refused 03.02.2006 due to being contrary to FS3 (as above) and due to highways concerns in relation to substandard visibility and width.



Fig. 1 Aerial Image of Site and Adjacent Site with Planning History (Google Maps)

3.0 The Proposal

The application seeks planning permission for the change of use of the land to provide 8 Gypsy and Traveller pitches for permanent occupation. Two amenity buildings are also proposed.

The submitted layout shows space for one static and one tourer caravan to be located on each pitch along with two parking spaces. The pitches range in area from approx. 259m² -778m². There are 4 pitches proposed on each side of the central access road that is proposed in a north-south direction. The pitches are proposed to be made up of permeable brick paving and grass, separated by post and rail fencing.

Communal bin storage is proposed in the SW corner of the site along with a location for a septic tank. A soakaway grate system is annotated on the plans behind each of the proposed amenity buildings. The amenity buildings would be located broadly centrally within the site on either side of the access road and would measure approx. 8.3m x 5.3m, 4.7m to the ridge and 2.7m to the eaves, constructed in brick and pantile. The amenity buildings would comprise a kitchen, bathroom and storeroom and would be constructed in red brick and pantiles with white uPVC windows and doors.

Additional information has been received on the proposed occupiers of the pitches, including names and numbers of children. Confirmation has also been received that some of the intended occupants (for plots 1-4) were included in the most recent Gypsy and Traveller Accommodation Assessment (GTAA) and the organization that carried out that assessment determined that the proposed occupants had Gypsy status during their interview process, which means they have not ceased travelling for economic purposes, they travel for at least 2 months a year and that they have no plans to cease travelling in the future. In respect of Plots 5-8, the applicant outlines that these plots are to be retained to rent out to other recognised gypsy and traveller families.

Documents assessed as part of this application:

- Application Form
- Design and Access Statement (12.01.2023)
- Supporting statement (26.01.2023)
- Environmental Noise Assessment by PDA Acoustic Consultants (28.02.2023)
- Response to Environmental Health Officer Comments by PDA Acoustic Consultants (09.05.2023)
- Response to Highways Comments (06.03.2023)
- Tree Report by Arbtech (deposited 23.03.2023)
- Preliminary Ecological Appraisal by Arbtech Issue 4 dated 15.05.2023
- Plans:
 - Amended Site Location Plan – Rev. D (23.03.2023)
 - Existing and Proposed Plans Option 3 – Ref. L(03)03 Rev. G (23.03.2023)
 - Swept Path Analysis Plan – Ref. F22006/01 (06.03.2023)

4.0 Departure/Public Advertisement Procedure

Occupiers of 15 properties have been individually notified by letter, a site notice has been displayed and an advert has been placed in the local press.

A re-consultation was also undertaken relating to amended plans and documents received during the course of the application.

Site Visit Date: 26.01.2023

5.0 Planning Policy Framework

The Development Plan

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

Spatial Policy 1 – Settlement Hierarchy

Spatial Policy 2 – Spatial Distribution of Growth

Spatial Policy 7 – Sustainable Transport

Core Policy 4 – Gypsies and Travellers – New Pitch Provision

Core Policy 5 - Criteria for Considering Sites for Gypsy & Travellers and Travelling Showpeople

Core Policy 9 – Sustainable Design

Core Policy 12 – Biodiversity and Green Infrastructure

NAP1 – Newark Urban Area

Allocations & Development Management DPD

Policy DM1: Development within Settlements Central to Delivering the Spatial Strategy

Policy DM5: Design

Policy DM12: Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework 2021
- Planning Practice Guidance
- Gypsy and Traveller Accommodation Assessment, Feb 2020
- The Equality Act 2010
- Human Rights Act 1998
- Planning Policy for Traveller Sites (PPTS) – 2015 (summarised below)

When determining planning applications for traveller sites, this policy states that planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community.

Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies within the National Planning Policy Framework (NPPF) and this document (Planning Policy for Traveller Sites).

This document states that the following issues should be considered, amongst other relevant matters:

- Existing level of local provision and need for sites;
- The availability (or lack) of alternative accommodation for the applicants;
- Other personal circumstances of the applicant;
- Locally specific criteria used to guide allocation of sites in plans should be used to assess applications that come forward on unallocated sites;
- Applications should be determined for sites from any travellers and not just those with local connections.

Weight should also be attached to:

- Effective use of previously developed (Brownfield), untidy or derelict land;
- Sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
- Promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;
- Not enclosing a site with so much hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

If a Local Planning Authority (LPA) cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. There is no presumption that a temporary grant of planning permission should be granted permanently.

Annex 1 provides a definition of “gypsies and travellers” and states:-

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds of their own or their family’s or dependents’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organized group of travelling showpeople or circus people travelling together as such.”

6.0 Consultations

NB: Comments below are provided in summary and relate to the latest comments received from consultees. For comments in full please see the online planning file.

(a) Statutory Consultations

NCC Highways – No objection subject to conditions.

(b) Town/Parish Council

Newark Town Council – Object – Concerns raised in relation to:

- The loss of nature and biodiversity.
- The loss of an area of open natural character as observed by a planning inspector in appeal proceedings relating to previous efforts for the site to be allocated for Gypsy & Traveller (G&T) accommodation.
- Traffic surveys carried out in relation to the application site are considered to be insufficient and it is not evident over which period the assessment has been carried out and is of a period that is too short to give an accurate representation of traffic movements along the road.
- The concerns of the Environmental Health Officer (EHO) in relation to noise are noted.
- The traffic survey undertaken is insufficient.
- The Ecology survey fails to consider the cumulative impact of development in the area.
- Voluntary mitigation measures offered by the applicant to address access concerns cannot be enforced.
- NTC recognise that many of the concerns may be addressed and mitigation measures offered.

- School places in the area have not been adequately considered by the education authority.

(c) Representations/Non-Statutory Consultation

NSDC Planning Policy – Support the principle of development – “[...] the application site is located within Newark Urban Area which makes the principle of development acceptable. I also attach significant weight to the outstanding need for pitches and the lack of an adopted policy strategy, and subject to other material considerations (including access and the pipeline) being satisfied, I conclude the principle of development to be acceptable.”

Nottinghamshire Wildlife Trust – Object – “[...] The planning application is contrary to national and local planning policy and fails to provide adequate mitigation to reduce the risk of harm to common toad and grass snake (NERC SPI).”

NSDC Environmental Health Officer – No objection – “According to the noise assessment provided in support of the application, recommended internal and external noise criteria (WHO 1999 & BS 8233) can be achieved at the proposed site. This is subject to caravans being occupied on the site having an [sic] sound insulation performance at least equivalent to that identified in the assessment. The assessment does not identify the make, model or specification of the caravan used to determine the sound insulation provided by the façade of that existing caravan. As a residential site to be occupied all year round we assume that all caravans on the site should comply with BS 3632 Specification for Residential park homes and Residential Lodges.”

NSDC Environmental Health Contaminated Land Officer – No comments received.

CADENT Gas – No objection – “Looking at the amendments to the application [Plan L(03) Option 3 Rev C] which shows the 12m strip of easement demarcated with a post and rail fencing, Cadent will now remove the objection but will be grateful if an informative is raised with the applicant, Cadent must be contacted and liaised with before any work commences as we will need to attend site to mark the position of the Intermediate pressure gas pipeline and issue plant protection restrictions. Cadent will have measures and restrictions concerning the access road crossing the gas pipeline and any utility crossing (electric etc). Cadent will need to attend any work/excavations inside the gas easement and measures may need to be taken to ensure the gas pipeline can withstand the traffic loading crossing the gas pipeline. No work can commence until we have attended site and marked out the gas assets.”

Comments have been received from 41 residents/interested parties that can be summarised as follows:

OBJECT

Character Impact

- The application is contrary to policy FS3 as the site is not a frontage plot.
- The site is a transition zone between Newark and the Open Countryside – developing It would be detrimental to the open nature of the area.
- The layout appears cramped and the amenity buildings do not fit in.
- The proposal will adversely impact the character of the area as caravans are out of character.
- The paddock complements the surrounding area of greenery and nature especially when being located next to the sustrans. The proposal contains Amenity buildings and caravans, and they would be significantly different to the formality, design and the building materials

used for adjacent properties.

- The proposal is unacceptable backland development.

Highways

- Access to the site is on the blind side of the road bridge which would increase the risk of collision.
- The area is busy with school traffic and adding to this would compromise the safety of children.
- Increased traffic would also increase air and noise pollution across the site.
- The land existing for properties off Barnby Road is not of good quality and would be further eroded through increased traffic.
- Concerns over whether the roads/access are suitable to manoeuvre large vehicles.
- Concerns over traffic increases and the impact on school and pre/post school club drop off and collection times.
- Concerns over increased traffic given there are no footways over the bridge and cars that park on Barnby Road.
- Proposal to stop vehicles exiting the site towards Newark could not be enforced as no barrier could be installed.
- The adjacent bridge is only wide enough for one car and is not adequately lit.
- Proximity of the site to the train crossing will increase congestion due to vehicles queuing near the site.
- Concerns over how often caravans would be moved from the site and the risk of collision.
- Travellers tend to have large industrial vehicles which may not be able to access/exit the site safely.

Ecology

- The site forms part of a migration route for amphibians which move between the paddock and the pond to the south. If the proposal is allowed it would significantly impact frog, roach and new populations as their existing hibernation site will be lost and they will have to negotiate a substantial increase in vehicles.
- Barnby Road is a toad patrol site and populations have declined dramatically in recent years. Any development of the site needs to consider adequate toad protection and should offer mitigation such as breeding ponds, leaving a terrestrial corridor for movement between ponds and installation of amphibian tunnels in the road section most often crossed.
- Toads are a biodiversity priority species under the Natural Environment and Rural Communities (NERC) Act (2006).
- The application is not clear in detailing what trees/shrubs may be lost from the site. Any loss will impact bird breeding/nesting.
- The proposal will reduce green space within Newark.

Flood Risk

- An increase in hard surfacing on the site will reduce land drainage/increase surface water run-off.
- Increased rainfall as part of climate change should be a factor when assessing the application.
- The field is liable to flooding.
- A watercourse runs either side of the Sustrans cycle path immediately adjacent to the site.

Amenity

- There will be an increase in noise and light pollution from the site.

Other

- Concerns over the proximity to the gas mains over the site and the potential impact through vehicles moving over the pipeline.
- Grove Cottage along Barnby Road has permission to build 10 houses which will further increase traffic using Barnby Road.
- House prices will drop in the area.
- Loss of green space will adversely effect people's mental health.
- Travellers already have enough sites in Newark. There are pitches available on Tolney Lane where these families could live.
- There are no sewerage facilities on the site.
- The proposal will place strain on local infrastructure.
- There are other brownfield sites in Newark that would be more suitable.
- There was no consultation from NSDC over the proposed site allocation.
- Barnby Road school is full and oversubscribed, children of this proposal would therefore need to travel of other schools.
- Concerns over inaccuracies on the application form.
- Concerns that the site has been used for burning waste in the past.
- The site in question is, presumably, freehold land. If this is the case, how can a proposal for a fluid residential site (i.e. a site which will support the comings and goings of caravans in perpetuity) possibly be granted? What would the legal consequences be if the land was to change ownership? If the proposal is to rent sites, does this also make it a business venture?

Other comments have been received that are not material planning considerations and are considered discriminatory and are therefore not reported.

A copy of a petition signed by 160 people against the proposed development has been received. The petition incorrectly cites the application site as being within the green belt and as an area of open green space.

7.0 Comments of the Business Manager

In the assessment of this application the key issues are:

1. Principle of development
2. Impact upon Character and Appearance of the Area
3. Impact on Ecology
4. Sustainability
5. Highways Impacts
6. Impact on Amenity
7. Impact of Flood Risk
8. Personal Circumstances
9. Other Matters

The National Planning Policy Framework (NPPF) promotes the principle of a presumption in favour of sustainable development and recognises the duty under the Planning Acts for planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The NPPF refers to the presumption in favour of sustainable

development being at the heart of development and sees sustainable development as a golden thread running through both plan making and decision taking. This is confirmed at the development plan level under Policy DM12 of the Allocations and Development Management DPD.

Procedural Matters

A number of the comments received from third parties reference the site being within the Green Belt. In the interest of complete clarity and for the avoidance of doubt, the site is **not** located within the Nottinghamshire-Derby Green Belt (as this broadly covers the south-west side of the District as shown in Figure 2, pg.30 of the Amended Core Strategy). Green Belt policies are therefore not applicable.

Comments also refer to the proposal resulting in the loss of green open space. For the avoidance of doubt, this privately owned paddock is not an area of publicly accessible open space, nor is it an identified Main Open Area within the Development Plan policies map.

Principle of Development

The District Council, as Local Planning Authority, has a duty to provide sites on which Gypsy and Travellers (G&Ts) can live. The Gypsy and Traveller Accommodation Assessment (GTAA) demonstrates a need for 118 pitches to meet the needs of those who were established to meet the planning definition between 2013-33 (this figure rises to 169 to take account of undetermined households and those who do not meet the definition – but who may require a culturally appropriate form of accommodation). Our requirement of 118 pitches forms the basis of the five-year land supply test, as required as part of the Planning Policy for Traveller Sites (PPTS). Helpfully the GTAA splits this need across 5-year tranches – with 77 pitches needing to be delivered or available within the first period (2019-24) for a five-year supply to be achieved. This reflects a heavy skewing towards that first tranche – due to the need to address unauthorised and temporary development, doubling up (i.e., households lacking their own pitch) and some demographic change within that timespan (i.e., individuals who will be capable of representing a household by the time 2024 is reached). For the Council to be able to demonstrate a five-year land supply of deliverable G&T sites, the supply must meet or exceed the five-year need figure of 77 pitches.

This represents a significant unmet need. Provision to help meet this need will be made as part of the production of the Publication Amended Allocations & Development Management Development Plan Document (ADMDDP), which is currently underway which will seek the allocation of specific sites, as well as through the granting of consent for appropriate development. Presently however the Council is unable to identify any other sites that are currently available or deliverable for G&Ts and in addition is unable to demonstrate a five-year land supply, as required through national policy (PPTS). It is therefore accepted that NSDC are not able to demonstrate a five-year land supply for G&T pitches and has a considerable shortfall which needs to be addressed. Both the extent of the pitch requirement and the lack of a five-year land supply represent significant material considerations, which should weigh heavily in the favour of the granting of consent where proposals will contribute towards supply. Importantly, the GTAA assumed a net zero contribution from inward migration into the District - meaning that NSDCs pitch requirements are driven by locally identifiable need.

The emerging policies within the Publication Amended Allocations and Development Management DPD¹ demonstrates a commitment by the Council to meeting the need for pitches in the District and this emerging strategy seeks to allocate the application site for gypsy and traveller pitches (ref. NUA/GRT/15 for 6 pitches). In the absence of an adopted strategy, any need is required to be met through the determination of planning applications on an ad hoc basis with limited direction from adopted planning policies beyond Core Policy 5 (Criteria for Considering Sites for Gypsies & Travellers and Travelling Showpeople). Furthermore, while only limited weight can be given to the proposed allocation as the Plan has yet to be submitted and found sound and the unresolved objections to the broad G&T strategy from the publication stage, the contribution towards supply (as proposed in this application) is also noted to be greater than that proposed through the Plan in any event.

In terms of how this site would contribute to the Council's G&T need - as this site is a new site, it did not form part of the baseline position (August 2019) for the GTAA. However, the supporting information submitted with this application states that proposed Plots 1 to 4 would cater for the needs of individuals who formed a component of the need identified in the GTAA and who currently reside at Green Park (which has a temporary consent) and Sandhill Sconce (an authorised site) on Tolney Lane. Sandhill Sconce is a site identified in the GTAA as having existing need, 5-year need and need arising from new household formation. Therefore, based on the information provided by the Applicant, Officers are satisfied that this proposal would contribute pitches towards local need and would also likely assist in meeting needs identified at Green Park and Sandhill Sconce. This positive contribution towards meeting the need identified through the GTAA and the demonstration of a five-year land supply, is a significant material consideration in favour of the proposal. Information has also been submitted which adequately demonstrates that the proposed occupiers of these pitches would meet the definition of a gypsy or traveller, as provided through the PPTS.

In respect of Plots 5-8, the Applicant outlines that these plots are to be retained to rent out to other recognised gypsy and traveller families. Whilst concerns have been raised by residents about this concept, it is noted that land ownership and any rental agreement would be civil legal matters falling outside the remit of the planning process. Furthermore, it is considered that a planning condition restricting occupation of the site to those meeting the planning definition (as referred to in the recent Spalford appeal decision²) of a gypsy or traveller would ensure these pitches would be available to help meet existing and future locally identified G&T need. This positive contribution towards meeting the need identified through the GTAA and the demonstration of a five-year land supply, is also a significant material consideration in favour of the proposal.

There are currently no other alternative sites available with planning permission, and no allocated sites identified and consequently the Council does not have a five-year supply of sites. These matters carry significant weight in favour of proposals where they would contribute towards supply.

Furthermore, in addition and notwithstanding the proposed site allocation, in principle terms, the application site lies within the defined urban boundary of Newark, the District's 'Sub-Regional Centre' as defined by SP1 of the Core Strategy settlement hierarchy where there are a good range

¹ <https://democracy.newark-sherwooddc.gov.uk/documents/b2647/Newark%20Sherwood%20Plan%20Review%20-%20Amended%20Allocations%20and%20Development%20Management%20Development%20Plan%20Docu.pdf?T=9>

² <https://acp.planninginspectorate.gov.uk/ViewDocument.aspx?fileid=51135051> or 21/02528/FUL

of local facilities including schools, good public transport links and local employment. The function of the sub-regional centre is to be the focus for new housing and employment growth in the District. On this basis, the principle of residential use is acceptable subject to site specific impacts. Furthermore, Core Policy 4 states that future G&T pitch provision will be addressed through all necessary means, including amongst other criteria, the granting of planning permission for pitches on new sites in line with Core Policy 5. Provision will be made in line with the Council's Spatial Strategy with the focus of the Council's efforts to seek to secure additional provision in and around the Newark Urban Area.

Beyond this, Core Policy 5 sets out a range of criteria, which proposals need to satisfy. The overall aims of this policy are identified as reducing the need for long distance travelling and possible environmental damage caused by unauthorised encampments and the contribution that live/work mixed use sites make to achieving sustainable development. Given the site's location within the Newark Urban Area, in accordance with the Council's Settlement Hierarchy the proposal meets the overarching aims of CP4 and CP5 in terms of the location of the site and is therefore acceptable in principle. Furthermore, the PPTS expects LPAs to strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan. Therefore, this location would meet the principles of DM1 and that of the PPTS.

Comments received from residents in relation to previous appeal decision are noted, however they do not relate to this application site. Instead, they relate to an adjacent site (to the north-east) and were refused based on planning policies and land designations within the old local plan which were not carried forward into the current Development Plan when it was updated in 2011 (and subsequently in 2019) (the Core Strategy) and 2013 (the Allocations and Development Management DPD/ADMDDPD) to align with the National Planning Policy Framework (NPPF). These decisions are therefore not considered to be directly comparable to the application at hand, i.e. they are not material, as they were based on superseded planning policies.

In summary, the District has a significant unmet need for Gypsy and Traveller pitches. The proposal would represent a direct and indirect contribution towards the Council's five-year land supply. This positive contribution is a significant benefit, and one which should be afforded significant weight as part of the overall planning balance. The principle of this use in this sustainable location is also acceptable in accordance with the principles of the abovementioned policies subject to an assessment of the remainder of the criteria set out within Core Policy 5, which are more site specific and are set out and considered below in turn.

Impact upon 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. Core Policy 9 states that new development should achieve a high standard of sustainable design 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. The first criteria of Core Policy 5 also states that when considering sites for G&T, sites should not lead to the unacceptable loss, or significant adverse impact on the landscape character and value, important heritage assets and their settings, nature conservation and biodiversity sites (which will be covered in the subsequent section of this appraisal). The fifth criteria of CP5 seeks that the site is capable of being designed to ensure that appropriate landscaping and planting would provide and maintain visual amenity.

Section 11 of the NPPF relates to making effective use of land and paragraph 117 states that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding the environment. Paragraph 122 states that planning decisions should support development that makes efficient use of land, taking into account: a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it and [...] the desirability of maintaining an area's prevailing character and setting (d).

The site comprises a broadly triangular grass paddock devoid of built form between the Sustrans cycle route which spans the western boundary and residential ribbon development along Barnby Road to the east. Past the Sustrans route, is Barnby Road Play area and across the highway to the south-west is Barnby Road Academy. The extent of the application site does not extend as far back as the railway line to the north-east. To the southern boundary of the site is Barnby Road which passes over the Sustrans route via a former railway bridge with a high brick wall.

Given the application site is set at a lower level than the bridge (and road), views into the site when passing along Barnby Road on foot or by car are limited (unless pedestrians were to stand and look down over the bridge) or glimpsed when travelling up onto the bridge. Furthermore, given the boundaries to the site are formed by trees, hedges and shrubs, views into the site from the Sustrans route (or from the railway line) are buffered. Whilst its green surface and absence of built form gives the site a more rural character than would ordinarily be expected within the Newark Urban Area, the site is well enclosed and cut off from the open countryside by the significant transport infrastructure of the railway line. Therefore, whilst the site forms a green wedge between existing residential properties on Barnby Road to the east and the Sustrans to the west, it is not a publicly accessible area of land and overall is not considered to contribute significantly to the landscape character of the area. Whilst the importance of land that offers visual transitional characteristics into the open countryside, or green relief in urban areas is acknowledged, Officers do not consider this site to be of such significant value given it is located within the urban boundary of Newark and is physically constrained by transport infrastructure as well as existing housing development. As such it is not considered that the loss of the paddock would lead to an unacceptable loss, or significant adverse impact on landscape character and value in accordance with CP5.

Officers note the reference has been made in third party comments to a previous reason for refusal of permission on an adjacent site being due to the land being part of a 'Mature landscape Area' under policy NE8. However, as set out in a previous section of this report, these policies are no longer applicable in the assessment of planning applications, and it is noted that the site is not identified as an area of open space afforded protection in the Development Plan.

Turning now to the characteristics of the proposed development it is noted that 4 pitches are proposed on each side of the central access road. The pitches are proposed to be made up of permeable brick paving and grass, separated by post and rail fencing with two amenity blocks positioned broadly centrally either side of the internal access road. Access is proposed to be taken off Barnby Road in the SE corner via the existing access to the dwelling (Appleby Lodge) and to facilitate improved visibility splays four trees are proposed to be removed to the front of Appleby Lodge. As is explored in greater detail in the Ecology section of this report, these trees at the access to the site are not considered to be of high amenity value (to warrant protection by TPO) and their loss would not significantly impact the overall character of the area – the ecological impact (which will be explored further in a subsequent section) could also be adequately mitigated with replacement planting within the site.

Core Policy 5 advises on general guidelines for pitch sizes. A pitch that is a permanent site where there are shared facilities within the overall site (e.g. the storage of waste and sewerage disposal), should be approx. 350m². The size of the pitches presented range between 259m² -778m², whilst some of the pitches proposed would fall below the pitch size guidance, given the site would contribute towards the unmet need of gypsy and traveller pitches, it is considered that it would be difficult to sustain a reason for refusal on this basis and it is noted that the layout of the site has been designed to avoid development over the pipeline easement to the north of the site.

The scheme would represent a single storey scaled development of up to eight caravans and two amenity blocks. The amenity blocks would be set into the site to reduce their prominence, but in any event would be constructed from vernacular materials and would be small scale. Whilst the caravans in themselves would not reflect local built vernacular, they would not be highly prominent or visible in the street scene and overall, Officers do not consider they would have a '*significantly adverse impact*' on the landscape character.

Existing planting to the south and west of the site also assists in reducing the visual prominence of the site and it is noted that the existing access onto the brow of the hill is proposed to be permanently sealed to prevent access. Given the boundary planting to the south contributes positively to the character and the site and assists in some visual mitigation it is considered reasonable to secure some additional planting to the southern boundary in place of the existing access to assist in reducing the visual prominence of the site further.

No designated heritage assets are located near to the site that would be affected by the proposals.

On the basis of the above, whilst comments received from local residents have been duly taken on board, it is not considered that the proposal would lead to an unacceptable loss, or significantly adverse impact on landscape character and value or important heritage assets and their setting, in accordance with the requirements of policies CP5, CP9 and DM5.

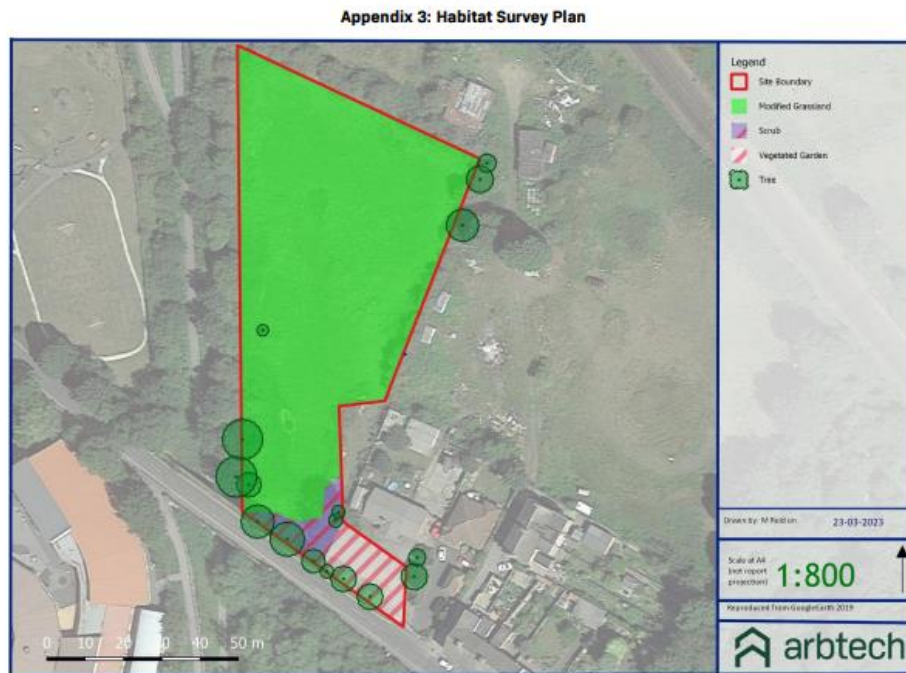
Impact on Ecology

As set out above, the first criteria of Core Policy 5 also states that when considering sites for G&T, sites should not lead to the unacceptable loss, or significant adverse impact on nature conservation and biodiversity sites. Core Policy 12 and Policy DM7 are also relevant and promote the conservation and enhancement of the District's biodiversity assets. The NPPF also seeks to minimise impacts on biodiversity and provide net gains where possible.

Given that the site is an open grassed field/paddock grazed by horses it is unlikely that the site supports any significant levels of biodiversity, however, in relation to designated biodiversity sites it is noted that to the south, across the highway, is a large pond that is designated as a Local Wildlife Site (LWS) Biosinc 2/638 Ballast Pit. The site is also part of a Common Toad Migratory Route and Nottinghamshire Wildlife Trust (NWT) have advised that there are also records of grass snake locally.

A Preliminary Ecology Appraisal (PEA) has been submitted to support this application which assesses the potential impacts of the development on Protected Species. The PEA provides an evaluation of the site and any ecological constraints and concludes that there would be no impact on nearby designated sites of ecological importance due to the separation distance and physical urban barriers (i.e., roads). The proposal would result in the loss of some areas of scrub on the site (see blue and

red hatched area on the Habitat Survey Plan below), however the PEA concludes that this is likely to have a minimal impact on biodiversity due to the scale of the scrub to be lost and the low ecological value of such habitats. To mitigate the low-level loss the PEA recommends habitat creation and enhancement opportunities could be incorporated into the site including new tree and hedgerow planting and creation of wildflower grassland – these measures would align with other soft landscaping/planting mitigation that has been suggested in previous sections of this report and could be secured by condition.



Habitat Survey Plan from Pg. 35 of the PEA

Amphibians and Reptiles

Common toads are recognised as being of principal importance for consideration and biodiversity under the relevant legislation and are listed as a priority species in the UK Biodiversity Action Plan, which is a material consideration. Additionally, Grass snakes are protected from killing/injury under the Wildlife and Countryside Act 1981 (as amended) and are a European Protected Species. How a development might affect protected species on or near a proposed development site is therefore a material consideration.

In respect of Amphibians, the PEA concluded that there is low potential for impact on Great Crested Newts but given the site is located within a Toad migratory route there is potential for terrestrial Toads to be present on site – the PEA explains that the majority of suitable habitat (i.e., hedgerows) would be retained, allowing the site to continue to function within the Toad Migratory Route associated with nearby water bodies and recommends that an Amphibian Mitigation Strategy (AMS) is implemented during construction. The submitted AMS sets out that ground clearance would need to be undertaken at a suitable time of the year (i.e. not between October-March) to decrease the likelihood of amphibians being present on site – a number of precautionary measures are also recommended.

Given the PEA did not identify any Grass Snakes on the application site the precautionary working methods and mitigation strategy (which cover appropriate ground clearance etc.) are considered to be sufficient. The survey has not identified reptiles on the site that would be captured, killed,

disturbed or injured by the development, it has not identified any breeding or resting places on the site that would be damaged or destroyed, nor has it identified any reptile resting or sheltering places that would be obstructed or removed. On this basis it is not considered necessary to assess whether a European Protected Species (EPS) mitigation license would be granted for this development given the results of the PEA. Nevertheless, given the removal of the small area of scrub within the site could reduce the local habitat quality and availability for Grass Snakes it is considered reasonable to require compensatory habitat creation on the site, which could be controlled by a suitably worded condition.

NWT have reviewed the PEA and the submitted AMS and have advised that it is likely that removal of vegetation from the development footprint could kill or injure amphibians and reptiles (Grass Snake) which are known to be present in this locality. However, they noted that the potential adverse impacts on amphibians and reptiles could be minimised if vegetation is removed following certain methods (as described in the AMS) and is carefully timed so as not to coincide with sensitive times in the lifecycle of these animals, such as when they are hibernating. The measures proposed within the AMS could be controlled by a suitably worded condition in addition to a condition requiring compensatory habitat creation. The PEA also recommends provision of an additional rank grassland area to provide mitigation and enhancement measures in the land to the north of the site (owned by the applicant), given the requirement would be for this to be secured in perpetuity it would need to be secured through a S106 agreement to mitigate the impacts of the development.

Nevertheless, NWT explain that development of this site in principle and the introduction of vehicles could have a severe adverse impact on toads using the migration route through increased mortality and additional barriers (i.e., buildings, raised kerbs, gully pots). They therefore have concerns about the long-term impacts of the proposal, as they consider the development would reduce available terrestrial habitat, impact connectivity, and increase risk of killing and injuring common toads through increased traffic on the access road. NWT acknowledge that the PEA proposes an area to the north of the site (that is in the applicant's control) that will be managed specifically for amphibians, which would be a positive action, but given that the development site is currently greenfield they state that the compensation for the loss of that habitat should be provided towards achieving a positive biodiversity outcome. They also raise concerns that the updated PEA, fails to address the long-term impacts of the proposal on toads using this established migration route. The development site currently provides connectivity between land to the north and the toad breeding pond to the south. NWT note that the development features such as raised kerbs and gully pots that are part of traditional drainage systems can present a hazard for toads and therefore conclude that details should be provided as to how the development within the application site will be designed to accommodate toads to reduce the risk of harm to them – they go on to state that designs such as wildlife kerbs provide amphibians with a safe route around gully pots. Sustainable Drainage Systems (SuDS) reduce the risk to migrating amphibians associated with traditional drainage systems. They also provide corridors for movement and areas of additional aquatic and terrestrial habitat. Whilst the level of mitigation currently proposed does not incorporate these noted features, Officers consider a condition could be imposed to develop upon the amphibian mitigation measures proposed to ensure such features are incorporated into the design to minimise, as far as practicable, the impact on migrating toads.

The potential impact on Toads is an important consideration and Officers note the concerns of NWT, and indeed local residents, in this respect. It is also noted that the potential direct impacts of the development could be mitigated through appropriate working methods and habitat creation/enhancement as part of the development. Nevertheless, it is not disputed that the

cumulative development of land within the toad migratory route and the development of this site has the potential to significantly impact toads and reduce available habitats. This impact must be given considerable importance and weight in light of the species being of principal importance and a priority species in the UK Biodiversity Action Plan.

However, it is noted that Policy DM7 states that on sites of local importance, sites supporting priority habitats or contributing to ecological networks, or sites supporting priority species, planning permission will only be granted where it can be demonstrated that the need for the development outweighs the need to safeguard the nature conservation value of the site. In this case it is considered that the wider benefits of the proposal, which would contribute significantly towards the unmet need of gypsy and travellers within the District carries significant positive weight and demonstrates that the need for this development would clearly outweigh the level of identified harm and need to conserve the nature conservation value of the site.

Bats

In respect of other protected species, no evidence of bats were found on the site, however the site could be used by foraging bats and as such mitigation, creation and enhancement measures are recommended such as the installation of bat boxes, planting to increase foraging opportunities and development of a lighting strategy to reduce light spill, all of which could be controlled by condition. In respect of birds, works are recommended to be undertaken outside of the bird nesting season and the installation of bird boxes is recommended as an enhancement opportunity. Precautionary working measures are also recommended more generally during construction to prevent any adverse impacts on protected species, which can also be secured by condition. Subject to conditions the development of this site would not result in any adverse impact on any protected species or ecology and could deliver positive ecological enhancements to benefit local wildlife.

Trees

Turning now to the potential impact on trees, as set out in the previous section, to facilitate improved visibility splays four trees are proposed to be removed to the front of Appleby Lodge. T17 (Common Lilac, Category C.2) and T18 (Lawson Cypress, Category B.2) which are either side of the access onto Barnby Road and T12 (Common Ash, Category U.2) and T13 (Common Hawthorne, Category C.2) which are to the left of Appleby Lodge, adjacent to the proposed access track (shown below).



These trees are not considered to be of high amenity value, particularly T12, 13 and 18, which are small ornamental trees within the properties garden. They are also not protected by TPO and would

not score sufficiently highly to warrant protection. The loss of these trees would not significantly impact the overall character of the area and the ecological impact would also be relatively limited (noting that the site was not identified as supporting breeding/nesting birds of any level above local importance) and could also be adequately mitigated with replacement planting within the site.

Therefore, subject to a number of conditions to safeguard the ecological interest of the site and to secure biodiversity enhancements, the scheme is considered to be acceptable in this regard would comply with the requirements of CP5, CP12 and DM7.

Sustainability

The second criteria of CP5 requires consideration of reasonable access to essential services (mains water, electricity, drainage and sanitation) and basic everyday community services and facilities – including education, health, shopping and transport.

Given the site is located within the Newark Urban Area, future occupiers would have the ability to enjoy a full range of basic everyday services and facilities offered within the Town. Whilst comments in relation to the alleged oversubscription of Barnby Road Academy are noted, they are not supported by any evidence, and are based on the assumption that the children of future occupiers are not already attending local schools. Furthermore, Officers note that there are many schools within Newark that children of this site could attend (and that this application would not trigger the requirement for a consultation with the County Council in relation to education, or an education contribution, given it is not proposing more than 10 residential units). Similarly, whilst comments about pressure on local services is noted, Officers do not consider the scale of development proposed would significantly compromise local services, particularly given it is known that occupiers of 4 out of the 8 proposed plots already reside in Newark (and consequently use the services within it).

Turning now to access to other essential services, the site is adequately served in terms of electricity and water supplies (new metered water connection adjacent to the dwelling to the east and electricity from the road by Western Power). The applicant has also confirmed (and indicated on the proposed site plan) that the site will be served by septic tanks and as such, an informative can be added to any decision notice to advise what is required in this regard outside the planning process. In relation to drainage, it is noted that a grate system soak away for the amenity building and pitches is proposed to the rear of each amenity block, the precise details of which can be controlled by condition.

Overall, the site is considered to be suitably situation with access to essential services and a range of basic and everyday community services and facilities in accordance with the requirements of CP5.

Highways Impacts

Policy DM5 of the DPD requires the provision of safe access to new development and appropriate parking provision echoed by SP7. The third criteria of Core Policy 5 also states that sites should have safe and convenient access to the highway network. Para. 111 of the NPPF states that *“development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*

The site would be accessed via the existing access to Appleby Lodge, off Barnby Road. To support the application detailed swept path analysis plans have been submitted followed by an amended proposed site plan and red line to facilitate alterations to the access to improve visibility (including the removal of some planting to the front boundary). Nottinghamshire County Council as the Highway Authority (HA) have reviewed the submitted plans and confirmed that they now raise no objection to proposed access, which would provide the appropriate visibility to the east and west.

Comments received from local residents in relation to the potential traffic generated by the development and the impact on the highway are noted. However, the HA have advised that it is not considered *“that the traffic associated with the proposed 8 pitches will have a severe or unacceptable impact on capacity or safety respectively in the context of the National Planning Policy Framework. For context, 50 dwellings would be the normal minimum threshold to trigger formal assessment and consideration of the severity of the impact on the adjacent highway. Whilst Gypsy and Traveller sites can exceed the trip rates of conventional dwellings due to multi-generational occupation, even if vehicle trips were doubled this would equate to just 16 conventional dwellings.”* The HA therefore conclude that it is therefore not possible to consider that the capacity impacts of the development would be ‘severe’ for the purposes of the NPPF.

A speed survey has been submitted to accompany the application – the HA have reviewed this and noted that *“whilst the normally required numbers of vehicles were not recorded, the survey took place over 3 hours and the numbers recorded therefore appear to reflect the lightly trafficked road indicated by the AADT. The 85th%ile speeds are recorded as 31mph in both directions. With amendments to the fence and existing planting, the visibility splay to the west measures 58 metres which exceeds that required (of 45m) and is protected by double yellow lines.”* Considering highway safety, the HA therefore advise that *“the measure of “unacceptable” [highway safety impact] is more subjective, however we would note that in the last 3 years there have been no reported injury accidents occurring on Barnby Road to the east (to a point beyond the level crossing) or west (the direction of the school as far as Newton Street) of the site access. Consequently, arguing that there is a highway safety problem in the wider area would prove difficult to uphold.”*

In relation to the use of the proposed site access by caravans, the HA comments explain that *“Towed caravans generated by the proposed development are likely to be relatively infrequent. Consultation responses indicate that that Barnby Road is the access route for such vehicles including tractors with trailers to the sugar beet factory, delivery vans, large lorries and buses. It is therefore not thought that the principle of infrequent towed caravans will create a severe issue in this environment which is currently capable of carrying an average of 50 HGV’s per day.”*

However, it is noted that the submitted documents with this application infer that the Applicant would impose a ‘rule’ that vehicles would not be able to turn in from the west and it is proposed that this restriction could be conditioned. However, it is not considered that a condition to prevent this manoeuvre would be enforceable and the Highway Authority have not considered this to be necessary in any event. The internal layouts and splays from the access have been amended throughout the course of the application to enable acceptable access from both directions. In terms of the access itself the Highway Authority also note that the amended plans received shows an internal layout which allows vehicles towing caravans to turn in from both the left and right. However, in addition to that shown on the drawing, the HA have advised that existing double yellow lines should be extended to discourage parking around the site access which would otherwise stymie the free passage of the vehicles likely to access the site – this would require a

Traffic Regulation Order being granted by the Highway Authority and could be secured through a S106 agreement.

Whilst local comments have raised concerns regarding the suitability of the highway, pedestrian and highway safety (particularly in relation to the proximity of the bridge and school), and the inability of the existing roads to deal with the increased level of traffic, on the basis of the comments received from the Highway Authority, it is considered that the proposal would not result in any highway safety concerns and therefore would accord with Spatial Policy 7 of the Core Strategy and Policy DM5 of the A&DM DPD in this regard.

Impact on Amenity

Core Policy 9 of the Core Strategy and Policy DM5 of the DPD state that development proposals should ensure no unacceptable reduction in amenity including overbearing impacts and loss of privacy upon neighbouring development. The fourth criteria of Core Policy 5 also states that sites should offer a suitable level of residential amenity to any proposed occupiers and not have an unacceptable adverse impact on the amenity of nearby residents particularly in rural and semi-rural settings where development is restricted overall. Paragraph 127(f) of the NPPF also states that planning decisions should create places that promote health and well-being with a high standard of amenity for existing and future users.

In terms of the proposed occupiers of the site, as explored in a previous section, some of the sizes of the pitches presented fall below the recommended standard of 350m² as set out in Core Policy 5. Whilst this shortfall is acknowledged, it is not considered that this needs to be fatal to the scheme. Furthermore, given existing boundary treatments and distance from existing dwellings, the needs of the privacy of proposed occupiers would be met by the proposed boundary treatments between pitches which would ensure a degree of privacy between pitches. Furthermore, acknowledging the size of the proposed pitches and to promote reasonable living conditions, Officers consider the number of caravans allowed to be stationed on the land should be limited by condition to two per pitch, of which no more than one should be a static caravan.

Considering the location of the site close to the East Coast Main Line railway line a noise level survey was undertaken at the site representative of daytime and full night-time hours. The local noise climate was concluded to be a combination of rail traffic including occasional freight on the adjacent railway line, other contributory noise sources included distant industrial humming and noise from the nearby childrens play area. The noise survey undertook measurements of the sound insulation provided by a caravan façade to evaluate internal noise levels and concludes that internal noise level criteria of WHO and BS8233:1999 would be achieved within the caravans and amenity building. The external noise levels to the proposed garden/amenity areas are also predicted to be less than 50dBA which also meets the abovementioned noise criteria guidelines. The Environmental Health Officer (EHO) has reviewed the report and following further clarification from the Noise Consultant they have concluded that they raise no objection to the proposal given internal and external noise levels can be achieved that are appropriate for residential use. This is however subject to caravans being occupied on the site having a sound insulation performance at least equivalent to that identified in the assessment. The assessment does not identify the make, model or specification of the caravan used to determine the sound insulation provided by the façade of that existing caravan. As a residential site to be occupied all year round the EHO has advised that they assume that all caravans on the site should comply with BS 3632 Specification for Residential Park Homes and Residential Lodges. The specifications for appropriate sound proofing could be adequately controlled by a suitably worded condition.

Turning now to existing residents who would live close to the site, directly to the east is Appleby Lodge, which is in the same ownership as the application site. Beyond this is Beacon View which is approx. 30m from the eastern side boundary and has other dwellings beyond it to the east. To the north of the site is a paddock and to the west is the Sustrans route (beyond which is a childrens play park). To the south is the highway and a pond. Given the site is enclosed by vegetation along all of its boundaries the proposed development and caravans would be well contained.

Any new development on this site would have some impact on the amenity of existing properties to the east given the proposal would result in increased vehicular movements causing additional noise and disturbance from associated comings and goings. It is also acknowledged that some level of new external lighting would likely be required which also has the potential for some negative impact, although existing boundary treatment would provide some mitigation in this respect and the precise details of the lighting (to reduce light spill etc) can be controlled by condition. The inclusion of a defined communal bin area within the layout of the site also indicates consideration to matters of refuse disposal.

Given the single storey nature of the caravans and amenity blocks, together with boundary treatments and the separation distance between the site and existing neighbours, in addition to the relative small-scale nature of the proposal for 8 pitches, it is not considered that the relationships would result in any unacceptable degree of harm on the amenities of existing occupiers close to the site which accords with the requirements of CP5, CP9 and DM5.

Impact of Flood Risk/Drainage

Criteria 6 of Core Policy 5 states that in the case of any development proposal which raises the issue of flood risk, regard will be had to advice contained within the Government's PPTS and the findings of the Newark and Sherwood Strategic Flood Risk Assessment. Where flooding is found to be an issue, the District Council will require the completion of a site-specific Flood Risk Assessment, applying both the Sequential and Exceptions Tests, as appropriate, to achieve safety for eventual occupiers.

The NPPF states that local planning authorities should minimise risk by directing development away from high-risk areas to those with the lowest probability of flooding. Core Policy 10 and Policy DM5 also reflect the advice on the location of development on land at risk of flooding and aims to steer new development away from areas at highest risk of flooding. Paragraph 13 (g) of the PPTS sets out a clear objective not to locate gypsy and traveller sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans.

Notwithstanding comments that have been received from third parties in relation to flooding concerns it is noted that the site is within Flood Zone 1 on the Environment Agency flood maps, which means it is at low risk of fluvial flooding. In terms of surface water drainage, all pitches would be served predominantly by areas of permeable ground surfaces and as such, are unlikely to result in any unacceptable impact on the site or neighbouring sites in the regard. The proposed site plan also includes two grate system soakaways for the amenity buildings and pitches which would manage any increase in surface water run off from the site in addition to the permeable hard surfacing proposed to the pitches. This approach is considered to be acceptable and would not result in an increase in flood risk to site users or third parties in accordance with CP5, CP10 and DM5.

Personal Circumstances

It has been confirmed that the proposed occupiers of pitches 1-4, comprise the following:-

- One married couple and their two children, one of which has learning difficulties that would benefit from additional space and proximity to family members;
- One engaged couple;
- One married couple and their two children; and
- One married couple and their two children.

Confirmation has been received that the proposed occupiers of the site fall within the definition set out within Annex 1 of PPTS. Subject to a suitably worded condition this could also be ensured for future occupiers of plots 5-8. The personal needs of the known families above require a settled base to ensure the children can attend school.

Officers are aware of relevant case law regarding the Human Rights of Gypsies and Travellers set out in the Rafferty and Jones V SSCLG and North Somerset Council. A refusal of permission is likely to have significant consequences for the home and family life of the families involved and it is clearly a circumstance where Article 8 Convention Rights are engaged. Article 8 imposes a positive obligation to facilitate the Gypsy way of life and, as a minority group, special consideration should be given to their needs and lifestyle. In that respect, the occupants have a clear preference for living in caravans and the option of living in bricks and mortar accommodation would not facilitate that lifestyle.

In addition, Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of children must be a primary consideration in all actions made by public authorities. The Article 8 rights of the children in that context must be considered. No other consideration can be treated as inherently more important than the best interests of the children.

Significant positive weight therefore needs to be attached to the personal circumstances of the proposed occupiers of the site, particularly the benefits associated with schooling arrangements for the children that a permanent base would provide.

Other Matters

As noted in the description of the site there is an Intermediate pressure gas pipeline towards the northern end of the site which has a total easement of 12m (6m either side of the gas pipeline) in which no development would be permitted by Cadent. Following receipt of amended plans which shows the 12m strip of easement demarcated with a post and rail fencing, Cadent have removed their objection and have requested an informative note to the applicant to engage with them prior to the commencement of works on site. Officers are satisfied that the physical demarcation of the easement with fencing will deter future occupiers from storing items or parking vehicles within the easement which will protect the pipeline asset from encroachment.

In relation to proposed foul drainage, paragraph 020 of the Planning Practice Guidance (Water supply, wastewater and water quality – considerations for planning applications) states that when considering wastewater treatment proposals for any development, the first presumption is to provide a system of foul drainage discharging into a public sewer. Where this is not feasible (in terms of cost and/or practicality) a package sewage treatment plant can be considered, which may be adopted in due course by the sewerage company. Septic tanks should only be considered if it can be demonstrated that discharging into a public sewer to be treated at a public sewage

treatment works or a package sewage treatment plant is not feasible. The agent has explained that providing a connection to the public sewer from the site would be cost prohibitive to the applicant and that the best option in terms of feasibility and practicality is to use a septic tank.

As can be noted from the Consultation of this report, the proposal has received strong local opposition. Matters relating to character, highways safety, ecology, food risk and amenity have been duly taken on board throughout this assessment. Other comments have been received that are not material planning considerations and are considered discriminatory.

With regard to the alleged effect on property values, the Planning Practice Guidance confirms that in general the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property is not a material planning consideration.

Concerns in relation to the '*loss of a green space*' have been considered in the context of the impact this would have on the character of the area, rather than the amenity of local residents (i.e., the potential impact on mental health as cited in some third-party comments), given this site is not publicly accessible and not an area of '*open space*' that is protected by the Development Plan. Furthermore, Officers note that there are other areas of green space (to the west and along the Sustrans) that are publicly accessible and provide visual amenity to local residents.

Comments received have also referenced previous incidents at the site where waste was burnt, however this is not directly related to the proposed development and was understood to be an isolated incident that has not been investigated (or indeed reported) in recent years.

Concerns have also been raised in relation to the number and dominance of caravan development in the Newark area. Cumulative harm of developments on a local area is a material consideration. However, Officers do not consider there to be any cumulative impacts identified with this site that would lead to unacceptable harm either in visual or landscape character grounds that would warrant refusal of this application. It is noted that Newark as a town has a high population of G&Ts which are predominately focussed at Tolney Lane, however this comes with its own set of challenges and constraints, particularly in relation to Flood Risk. As set out in the principle of development section of this report, the LPA has a requirement to provide a 5-year housing supply for G&T and this site is identified as being suitable for potential allocation, along with other sites in Newark and a flood resilience strategy for Tolney Lane. However, this area does have its limits and every application must be assessed on its own merits. In this case the principle of development has been found to be acceptable and the positive contribution of 8 pitches (when the Council has such a significant unmet need) is a significant benefit, and one which should be afforded significant weight as part of the overall planning balance.

In relation to the potential allocation of this site in the amended Allocations and Development Management DPD, Officers note that third parties have raised concerns about a lack of consultation with local residents and reference has been made to this site previously being considered unsuitable for allocation. In this regard it is noted that the Council has been engaged, over a number of years, in preparing a strategy to meet its Gypsy and Traveller needs. This current process began with the Allocations & Development Management Issues Paper in 2019, this detailed the outline of a Gypsy and Traveller strategy which the Council would look to further develop in subsequent stages - but did not contain any site-specific details. There was however a Gypsy and Traveller 'call for sites' which was run alongside the consultation.

Following this the Council prepared and consulted upon its Allocations & Development Management Options Report³ in 2021. This contained a more fleshed out Gypsy and Traveller strategy – with preferred approaches to various issues being set out. It also contained details of those sites which had been submitted for consideration as Traveller allocation s- with those that were considered suitable at the time being categorised as such. The document included details of the land at Appleby Lodge (Site 9 – Land at Barnby Road / Clay Lane, Newark (Ref: 19_0001)), though at this stage it was not considered suitable on account of the proposed access arrangements. However, this position changed moving into the latest stage of the process - the Publication Amended Allocations & Development Management DPD (2022), due to the demonstration of potentially suitable alternative access arrangements.

Alongside the Publication Amended Allocations & Development Management DPD the Council also made publicly available a ‘supporting paper’⁴, which detailed the Council’s proposed Gypsy and Traveller strategy and provided an explanation of the process. The next stage in the process, as currently timetabled, will be submission of the Amended Allocations & Development Management DPD to the Secretary of State. Following this an independent Planning Inspector will be appointed to examine the document, hold an examination in public and reach conclusions over whether the plan is sound and legally compliant. The timescales for this are currently unknown, however the Council anticipates being in a position to adopt the document at some point in 2024.

In terms of public consultation on the Plan Review, Officers note that there was an 8-week consultation period from July-Sept 2021 in which the public were encouraged to review and make comments on the proposed Options Report.

CIL - The site is located within the Medium Zone of the CIL charging schedule where the CIL rate is £45. The proposal would result in 74m² of GIA (in the two amenity blocks). The CIL charge on this application is therefore £3,615.14.

8.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

9.0 Planning Balance and Conclusion

Overall, Officers note that the principle of this development in Newark, a sustainable settlement, is acceptable in accordance with the principles of CP4 and CP5. Furthermore, the GTAA has identified a significant unmet need for gypsy and traveller pitches. It is known that the occupiers of at least four of the eight pitches would contribute (directly and indirectly) to the significant unmet need of the Council’s five-year land supply and all eight pitches would contribute (again, either directly or indirectly) towards the Council’s identified G&T need over the plan period. This pitch contribution carries significant positive weight in favour of the proposal.

The site is also in a highly sustainable location, in close proximity to all the facilities required for

³ [Options-Report-\(26-July-2021\).pdf \(newark-sherwooddc.gov.uk\)](#)

⁴ [GRT2---Supporting-Paper.pdf \(newark-sherwooddc.gov.uk\)](#)

day to day living and the requirements of growing families. An approval would provide a settled base that would facilitate the families access to education and enable the families to continue their gypsy way of life. The human rights of the families mean due regard must also be afforded to the protected characteristics of Gypsies and Travellers in relation to the Public Sector Equality Duty when applying the duties of section 149 of the Equality Act 2010. These factors also attract significant weight in favour of the development.

No harm has been identified in relation to the character and appearance of the area, heritage assets, highways safety, residential amenity or flood risk which are therefore neutral in the overall planning balance.

In respect of ecology, no harm has been identified in relation to bats or trees, however the cumulative development of land within the local toad migratory route and the development of this site has been concluded to have the potential to significantly impact toads and reduce available habitats for species of principal importance in addition to the available habitats for grass snakes which are a protected species. Submitted surveys have concluded that the potential direct impacts of the development on these species could be mitigated through appropriate working methods and habitat creation/enhancement as part of the development. Nevertheless, the potential negative impacts on these species carry significant importance and weight. However, in this case Officers consider that the wider benefits of the proposal, which would contribute significantly towards the unmet need of gypsy and travellers within the District carries significant positive weight and demonstrates that the need for this development would clearly outweigh the level of identified harm and need to conserve the nature conservation value of the site. Additional planting, habitat creation and ecological mitigation, controlled by condition, could also provide some ecological enhancements which could offset some of this harm as a minor ecological benefit.

Weighing all of the above factors in the overall planning balance and considering the limited adverse impacts identified, Officers therefore consider the benefits of the scheme would outweigh any identified harm. It is therefore recommended that planning permission is granted, subject to conditions and signing of a S106 agreement to secure:

- A Traffic Regulation Order to provide yellow lines to control parking on the highway in the vicinity of the access.
- Provision and retention of an area of rank grassland in the field to the north of the site (edged in blue on the Amended Site Location Plan – Rev. D (23.03.2023)) as identified on page 29 of the Preliminary Ecology Appraisal undertaken by Arbtech, dated 15.05.2023.

10.0 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 plan references:

- Amended Site Location Plan – Rev. D (23.03.2023)
- Existing and Proposed Plans Option 3 – Ref. L(03)03 Rev. G (23.03.2023)
- Swept Path Analysis Plan – Ref. F22006/01 (06.03.2023)

Reason: So as to define this permission.

Pre-Occupation Conditions

03

Prior to first occupation of the development hereby approved, details of any external lighting to be used in the development shall be submitted to and 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.

Reason: In the interests of reducing light pollution in this location.

04

Prior to first occupation of the development hereby approved full details of additional soft landscape works and any hard landscaping works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:

- full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards, and structural cells. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species, with particular emphasis along the boundaries of the site;
- means of enclosure;
- car parking layouts and materials;
- other vehicle and pedestrian access and circulation areas;
- hard surfacing materials.

Reason: In the interests of visual amenity and biodiversity.

05

The approved soft landscaping shall be completed during the first planting season following the first occupation/use of the development. 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. All tree, shrub and hedge planting shall be carried out in accordance with BS 3936 -1992 Part 1-Nursery Stock-Specifications for Trees and Shrubs and Part 4 1984-Specifications for Forestry Trees; BS4043-1989 Transplanting Root-balled Trees; BS4428-1989 Code of Practice for General Landscape Operations. The approved hard

landscaping scheme shall be completed during the first planting season. The approved hard landscaping scheme shall be completed prior to first occupation or use.

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

No part of the development shall be brought into use until details of the Communal Bin Area shown on 'Existing and Proposed Plans Option 3' Ref. L(03)03 Rev. G (23.03.2023) have been submitted to and approved in writing by the Local Planning Authority. The approved Bin area shall be installed prior to commencement of the approved use and retained thereafter.

Reason: To ensure that appropriate provision is secured for litter disposal in the interest of amenity.

07

No part of the development shall be brought into use until a detailed Biodiversity Enhancement Scheme (BES), building upon the Biodiversity Enhancement measures detailed in Table 5 (pages 18-25) of the Preliminary Ecological Appraisal undertaken by Arbtech, dated 15.05.2023, has been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, the BES shall include details of:

- Compensatory bat boxes/roost features to be installed on site, including their design, quantum and precise positions including the height and timings of installation
- Creation of reptile refugia and hibernacula using debris and brash from site clearance. The creation of basking areas such as rock piles or areas of cleared ground with shelter nearby.
- Creation of brash piles or installation of hedgehog houses in shady areas. Installation of gaps under boundary fencing to enable hedgehogs to move freely through the site.
- Compensatory bird boxes to be installed on site, including their design, quantum and precise positions including the height and timings of installation
- Details of wildlife kerbs to provide amphibians with safe routes around drainage features within the site
- Details of Sustainable Drainage Systems (SuDS) measures to reduce the risk to migrating amphibians associated with traditional drainage systems

The details approved in the BES shall thereafter be installed within two months of approval in accordance with the agreed details and retained thereafter for the lifetime of the development.

Reason: In the interests of maintaining and enhancing biodiversity.

08

Prior to occupation of the development hereby permitted, the land over which the visibility splays, as identified on Drawing Number 2021/143 L(03) rev G, shall be cleared of all obstruction greater than 0.6m above the level of the carriageway, and kept clear of such obstruction for the lifetime of the development.

Reason: In the interests of highway safety

09

Prior to the development hereby permitted being occupied, the access road as shown on Drawing Number 2021/143 L(03) rev G shall be provided and surfaced in a hard bound material for a minimum distance of 20 metres to the rear of highway, with measures to prevent the egress of surface water to the public highway and maintained such for the lifetime of the development.

Reason: To prevent the transfer of deleterious material (loose gravel/stones etc) to the public highway in the interests of general highway safety.

Compliance Conditions

10

The amenity blocks hereby permitted shall be constructed entirely of the materials details submitted as part of the planning application.

Reason: In the interests of visual amenity.

11

The site shall not be occupied by any persons other than gypsies and travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

Reason: To ensure that the site is retained for use by gypsies and travellers only in order to contribute towards the LPAs 5-year housing supply.

12

No more than 1 static caravan and 1 touring caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on each pitch at any one time.

Reason: In order to define the permission and protect the appearance of the wider area in accordance with the aims of Core Policy 13 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

13

No commercial or industrial activities shall take place on this site, including the storage of materials associated with a business.

Reason: In the interests of the appearance of the surrounding area and the amenities of surrounding land uses in accordance with the aims of Core Policies 5 and 13 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

14

No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.

Reason: In the interests of the appearance of the surrounding area and the amenities of surrounding land uses in accordance with the aims of Core Policies 5 and 13 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

15

The caravans hereby permitted shall have an acoustic performance at least equivalent to that in Table 5 (page 12) of the Environmental Noise Assessment, ref. J004289-6031-LK-01, dated February 2023. All caravans (including touring caravans) on the site should also comply with BS 3632 *Specification for Residential park homes and Residential Lodges*.

Reason: In the interest of residential amenity of future occupiers.

16

The development hereby permitted shall be undertaken in strict accordance with the Recommendations detailed in Table 5 (pages 18-25) of the Preliminary Ecological Appraisal undertaken by Arbtech, dated 15.05.2023 submitted in support of this application which for the avoidance of doubt includes:

- Best practice measures to minimise the possibility of pollution and tree damage during construction.
- Precautionary Working Measures for Reptiles:
 - A toolbox talk to be given to contractors regarding the possible presence of reptiles at the site.
 - Heras fencing to be erected around the working area to prevent encroachment into retained habitats where reptiles could be present.
 - A pre-commencement inspection of the site to be undertaken for reptiles.
 - A staged approach to be adopted for vegetation clearance, whereby the vegetation is be trimmed to 15cm and left overnight to allow any reptiles to disperse. The vegetation can then be cleared to ground level and must be maintained at this level for the duration of construction to deter reptiles from the working area.
 - Any rubble piles to be dismantled by hand and debris and brush to be stored on pallets or removed from the site to prevent reptiles from utilising these areas.
 - Any chemicals or pollutants used or created by the development should be stored and disposed of correctly according to COSHH regulations.
 - If a reptile is identified, works must cease and advice must be sought from a suitably qualified ecologist.
- Precautionary Working Measures for Badgers:
 - A toolbox talk to be given to contractors regarding the possible presence of badgers at the site.
 - A pre-commencement inspection of the site to be undertaken for any new badger activity.
 - Heras fencing to be erected around the working area to prevent encroachment into retained habitats where badger setts could be present.

- Any excavations to be covered overnight, or a ramp to be installed to enable any trapped animals to escape.
- The use of night-time lighting to be avoided, or sensitive lighting design to be implemented to avoid light spill on to retained habitats which badgers could use.
- Any chemicals or pollutants used or created by the development to be stored and disposed of correctly according to COSHH regulations.
- If a badger sett is identified, works must cease and advice must be sought from a suitably qualified ecologist.
- Precautionary Working Measures for Hedgehogs:
 - Site clearance to be undertaken outside of the hedgehog hibernation season (November to March) insofar as is possible.
 - A toolbox talk to be given to contractors regarding the possible presence of hedgehogs at the site.
 - A pre-commencement inspection of the site to be undertaken for hedgehogs.
 - Heras fencing to be erected around the working area to prevent encroachment into retained habitats where hedgehogs could be present.
 - Any excavations to be covered overnight, or a ramp will be installed to enable any trapped animals to escape.
 - The use of night-time lighting to be avoided, or sensitive lighting design to be implemented to avoid light spill on to retained habitats which hedgehogs could use.
 - Any chemicals or pollutants used or created by the development should be stored and disposed of correctly according to COSHH regulations.
 - If a hedgehog is found then this should be moved by gloved hand to an undisturbed and sheltered area of the site or adjacent land.
- Precautionary Working Measures for Birds:
 - Works to be undertaken outside the period 1st March to 31st August. If this timeframe cannot be avoided, a close inspection of the vegetation should be undertaken immediately, by a qualified ecologist, prior to the commencement of work. All active nests will need to be retained until the young have fledged.

Reason: To ensure that wildlife and habitats are retained and protected, in the interests of nature conservation.

17

The development hereby approved shall be undertaken in strict accordance with the Amphibian Mitigation Strategy detailed in Table 6 (pages 26-29) of the Preliminary Ecological Appraisal undertaken by Arbtech, dated 15.05.2023 submitted in support of this application.

Reason: To ensure that wildlife and habitats are retained are protected, in the interests of nature conservation.

18

For the avoidance of doubt, Amenity Building A and B as annotated on the approved Existing and Proposed Plans Option 3, ref. L(03)03 Rev. G shall only be used ancillary to the approved caravan pitches and shall not be occupied as independent dwellinghouses.

Reason: To ensure the buildings are retained for their intended purpose.

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

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/ or from the Planning Portal: www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil

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 accord Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

03

NOTES FROM CADENT GAS:

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

- High or Intermediate pressure (above 2 bar) Gas Pipelines and associated equipment
- Electricity Transmission overhead lines
- Above ground electricity sites and installations

BEFORE carrying out any work you must:

- Ensure that no works are undertaken in the vicinity of our gas pipelines and that no heavy plant, machinery or vehicles cross the route of the pipeline until detailed consultation has taken place.
- 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.

04

The Council must issue licenses for sites to be operated as a recognised caravan, mobile home or park home site. This is to ensure proper health, safety and welfare standards are maintained. A caravan site includes anywhere a caravan (including mobile or 'park' home) is situated and occupied for human habitation including on a permanent, touring or holiday basis. Further information is available by contacting the Environmental Health and Licensing Team at the Council on 01636 650000, or by visiting the Council's website at <https://www.newark-sherwooddc.gov.uk/caravansitelicence/>

05

A septic tank is not the optimum method of dealing with the disposal of foul sewerage waste. Government guidance contained within the national Planning Practice Guidance (Water supply, wastewater and water quality – considerations for planning applications, paragraph 020) sets out a hierarchy of drainage options that must be considered and discounted in the following order:

1. Connection to the public sewer
2. Package sewage treatment plant (adopted in due course by the sewerage company or owned and operated under a new appointment or variation)
3. Septic Tank Foul drainage should be connected to the main sewer.

Where this is not possible, under the Environmental Permitting Regulations 2010 any discharge of sewage or trade effluent made to either surface water or groundwater will need to be registered as an exempt discharge activity or hold a permit issued by the Environment Agency, in addition to planning permission. This applies to any discharge to inland freshwaters, coastal waters or relevant territorial waters. Please note that the granting of planning permission does not guarantee the granting of an Environmental Permit. Upon receipt of a correctly filled in application form we will carry out an assessment. It can take up to 4 months before we are in a position to decide whether to grant a permit or not.

Domestic effluent discharged from a treatment plant/septic tank at 2 cubic metres or less to ground or 5 cubic metres or less to surface water in any 24 hour period must comply with General Binding Rules provided that no public foul sewer is available to serve the development and that the site is not within an inner Groundwater Source Protection Zone.

A soakaway used to serve a non-mains drainage system must be sited no less than 10 metres from the nearest watercourse, not less than 10 metres from any other foul soakaway and not less than 50 metres from the nearest potable water supply.

Where the proposed development involves the connection of foul drainage to an existing non-mains drainage system, the applicant should ensure that it is in a good state of repair, regularly de-sludged and of sufficient capacity to deal with any potential increase in flow and loading which may occur as a result of the development.

Where the existing non-mains drainage system is covered by a permit to discharge then an application to vary the permit will need to be made to reflect the increase in volume being

discharged. It can take up to 13 weeks before we decide whether to vary a permit. Further advice is available at: <https://www.gov.uk/permits-you-need-for-septic-tanks> and <https://www.gov.uk/guidance/general-binding-rules-small-sewage-discharge-to-the-ground>

06

Notes from Nottinghamshire County Council Highways:

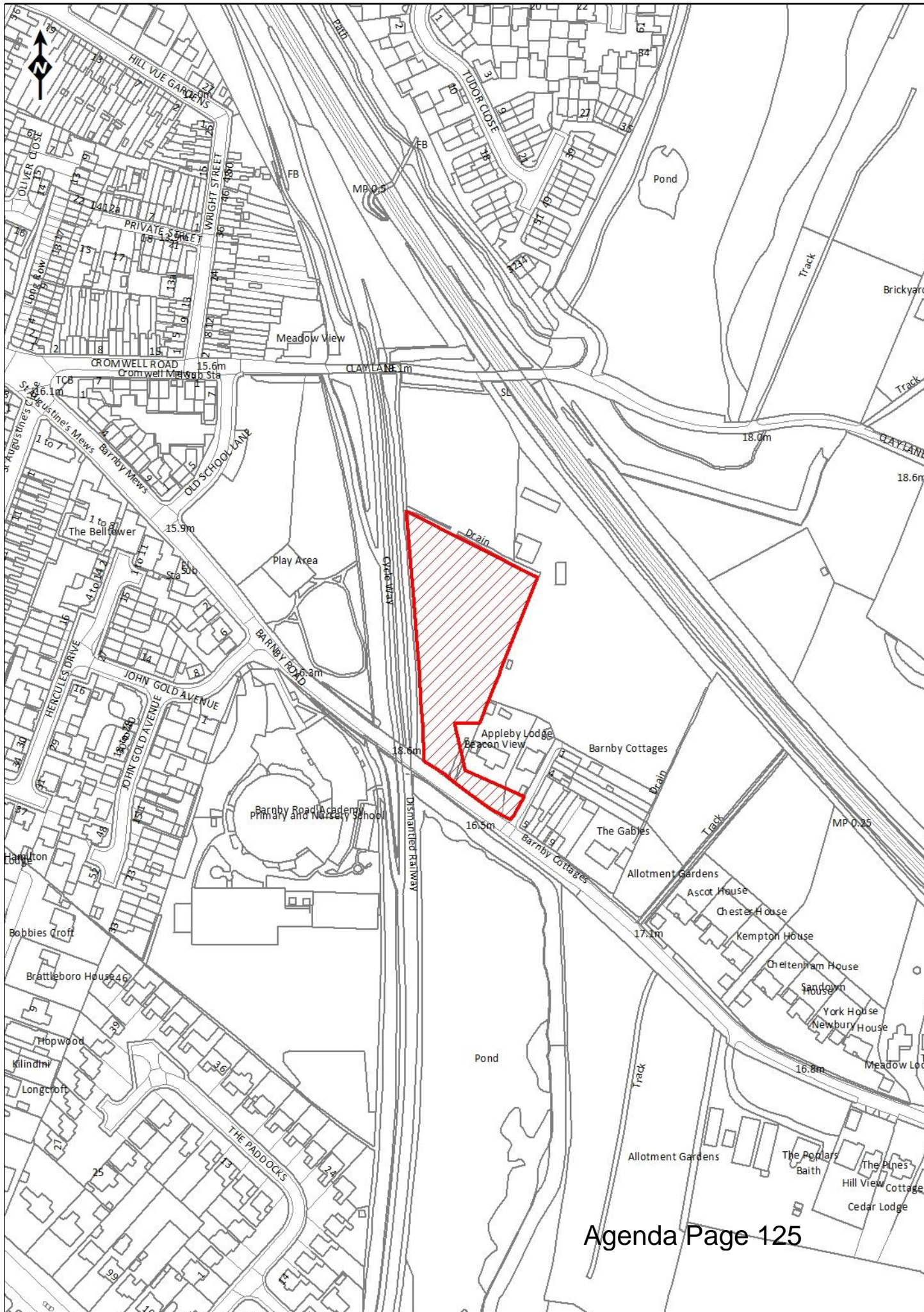
- The permission requires the making of a Traffic Regulation Order. Please contact VIAEM who manage highways on behalf of NCC to commence this process by emailing businessdevelopment@viaem.co.uk or by telephone (0300 500 8080)
- Planning permission is not permission to work on or from the public highway. In order to ensure all necessary licenses and permissions are in place to make the alterations to the access you must contact licences@viaem.co.uk
- It is an offence under S148 and S151 of the Highways Act 1980 to deposit mud on the public highway and as such you should undertake every effort to prevent it occurring.

BACKGROUND PAPERS

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Application case file.

Committee Plan - 23/00060/FUL





Report to Planning Committee 6 July 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Amy Davies, Planner, Ex 5851

Report Summary			
Application Number	22/01298/FUL		
Proposal	Proposed retail unit with parking and amended site entrances		
Location	Tesco Express, Kirklington Road, Rainworth, NG21 0AE		
Applicant	Mr K Nijjar	Agent	Alan McGowan Architects - Mr Alan McGowan
Registered	30 June 2022	Target Date	25 August 2022
		Extension of Time	14 July 2023
Web link	22/01298/FUL Proposed retail unit with parking and amended site entrances Tesco Express Kirklington Road Rainworth Nottinghamshire NG21 0AE		
Recommendation	That planning permission is APPROVED subject to the conditions outlined at the end of this report		

This application is being referred to the Planning Committee for determination by the local ward member, Councillor Claire Penny due to the following concerns and objections:

- **Pedestrian safety within the car park and accessing the store via vehicle entrances, and to those travelling along Kirklington Road and Southwell Road East.**
Pedestrians use this site as a cut through. An additional retail unit with more cars will create more danger for pedestrians due to the rise in cars accessing the car park from either entrance.
- **Lack of space to manoeuvre delivery vehicles**
Delivery vehicles are currently unable to access the existing car park at certain times and end up on the road obstructing the highway. An additional retail unit will exacerbate this issue.
- **The central reservation and size of the pavements**

The central reservation is much smaller than shown on the plans. A high number of pedestrians use this reservation to cross the road at very busy traffic periods. Pavements are also very narrow in this area.

- **Safety of children on Kirklington Road**

There is a children's centre/social hub and park and play area opposite the proposed site entrance. An additional retail unit with more cars will put children at greater risk.

There are currently three supermarkets located close to the site and residents do not want another retail store.

1.0 The Site

The application relates to a fenced off area to the southeast of the former Robin Hood Hotel located on the corner of Kirklington Road and Southwell Road East in the settlement of Rainworth. The ground floor of the former Robin Hood Hotel building is currently in use as a Tesco Express, with its car park sited adjacent to the application site and accessed off Southwell Road East to the west. The application site comprises an unused car park and includes several trees and groups of trees. There is an existing, currently unused, vehicular access off Kirklington Road.

St Simon and St Jude's Church is located to the south of the site and has been identified as Non-Designated Heritage Asset. The site is in Flood Zone 1 where there is a low probability of flooding.

The site has the following constraints:

- Trees;
- Drainage – ground not suitable for infiltration; and
- Adjacent Non-Designated Heritage Asset.

2.0 Relevant Planning History

20/02209/FULM - Conversion of the first floor of the existing building into 4 apartments, comprising 1x3 bed unit, 2x2 bed units and 1x studio, plus the erection of a two storey apartment building to the east side of the existing building to provide a further 8 x 1 bed apartments. The proposed new building would include a hip roof with slightly elevated eaves and would be linked to the existing building by a double height glazed entrance. Application Withdrawn.

19/02237/FUL - Conversion of first floor space into 6 apartment units, 5 x one Beds and 1 x Studio, external entrance and fire exit staircase introduced on the facade facing the existing car park. Refused 30.04.2020.

11/01795/FUL – External alterations to facilitate permitted change of use (A4 to A1). Approved 16.02.2012.

3.0 The Proposal

The application proposes the erection of a 269m² retail unit with associated staff office/store for Heron Foods. The unit would be L-shaped and constructed of bricks, with aluminium glazed windows and a 30-degree pitch profiled zinc/aluminium roof. It would be served by a 12-space car park with additional parking provision for disabled vehicles adjacent to the store (15-spaces in total). Separate customer vehicular and pedestrian accesses would be provided off Kirklington Road, while deliveries

would be directed to use the existing access off Southwell Road East, which is proposed to be widened, and the delivery bay outside the existing Tesco store.

Revised Plans

Revised plans were received during the course of the planning application to address concerns regarding design, highway safety, parking and impacts on trees. For the avoidance of doubt, the assessment outlined below is based on the following plans and supporting information:

- 0003B Location and Block Plans *received 11 May 2023*
- 002 Swept Path Analysis *received 17 April 2023*
- Swept Path Site Plan 1/200 *received 26 June 2023*
- 0013J Amended Site Plan 500 *received 20 June 2023*
- 0014L Proposed Site Plan 200 *received 26 June 2023*
- 0015J Amended Roof Plan *received 20 June 2023*
- 0016J Amended Ground Floor Plan *received 20 June 2023*
- 0017G Amended Proposed Elevations *received 17 April 2023*
- Arboricultural Impact Assessment, Method Statement and Tree Protection Plan prepared by Ramm Sanderson dated November 2022 (Ref: RSE_6574_R1_V1_ARB) *received 29 November 2022*
- RSE_6574_TCP V1 Tree Constraints Plan *received 29 November 2022*
- RSE_6574_TPP V1 Tree Protection Plan *received 29 November 2022*
- NG210AE-03-XX-DR-A 0003 Site Location Plan *received 29 June 2022*
- NG210AE-03-XX-DR-A 0004 Existing Plans *received 29 June 2022*
- NG210AE-03-XX-DR-A 0005 Existing Plans *received 29 June 2022*
- Design and Access Statement prepared by Alan McGowan Architects Ltd dated June 2022

4.0 Departure/Public Advertisement Procedure

Occupiers of 8 properties have been individually notified by letter of the submitted and revised schemes. Site notices have also been displayed near to the site.

Site visits undertaken 28 July 2022 and May 2023.

5.0 Planning Policy Framework

The Development Plan

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

Spatial Policy 1 – Settlement Hierarchy
Spatial Policy 2 – Spatial Distribution of Growth
Spatial Policy 9 – Sustainable Design
Core Policy 8 – Retail & Town Centres
Core Policy 12 – Biodiversity and Green Infrastructure
MFAP1 – Mansfield Fringe Area

Allocations & Development Management DPD

Policy Ra/DC/1 – Rainworth District Centre Boundary
Policy DM1 – Development within Settlements Central to Delivering the Spatial Strategy
Policy DM5 – Design
Policy DM6 – Householder Development
Policy DM7 – Biodiversity and Green Infrastructure
Policy DM10 – Pollution and Hazardous Materials
Policy DM11 – Retail and Town Centre Uses
Policy DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework 2021
- Planning Practice Guidance
- National Design Guide – Planning practice guidance for beautiful, enduring and successful places September 2019
- Nottinghamshire Highway Design Guide –
<https://www.nottinghamshire.gov.uk/transport/roads/highway-design-guide>

6.0 Consultations

NB: Comments below are provided in summary - for comments in full please see the online planning file.

(a) Statutory Consultations

NCC Highways –

The applicant has revised the proposal and some significant changes have been made to satisfy the highway safety concerns listed in our previous reports. These have now been either satisfactorily addressed or the information provided now allows the Highway Authority to make an informative decision and request any outstanding details to be conditioned.

On the basis of the available information, the Highway Authority is content with the proposed development. In coming to this conclusion, the Authority has considered issues of highway access, capacity and safety, parking, servicing and sustainability and we would like to withdraw our previous objection subject to the [recommended] conditions.

(b) Parish Council

Rainworth Parish Council – Object (same response submitted in response to the submitted and revised schemes)

Concerns regarding:

- Pedestrian safety within the car park
- Lack of space to manoeuvre delivery vehicles
- Removal of central reservation to facilitate access
- Safety of children on Kirklington Road

(c) Representations

Environmental Health Officer – No objection

Tree and Landscape Officer –

Landscaping condition including 10 years maintenance

Tree protection condition

No objection provided the above two conditions are added

No representations received from local residents/interested third parties.

7.0 Comments of the Business Manager – Planning Development

The key issues are:

1. Principle of Development
2. Impact on Character
3. Impact on Residential Amenity
4. Highway Safety and Parking
5. Trees and Ecology

The National Planning Policy Framework (NPPF) promotes the principle of a presumption in favour of sustainable development and recognises the duty under the Planning Acts for planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The NPPF refers to the presumption in favour of sustainable development being at the heart of development and sees sustainable development as a golden thread running through both plan making and decision taking. This is confirmed at the development plan level under Policy DM12 of the Allocations and Development Management DPD.

Principle of Development

Spatial Policy 1 ‘Settlement Hierarchy’ of the Amended Core Strategy (Adopted March 2019) identifies Mansfield Fringe Area as a Service Centre and a focus for housing and employment growth in the District. Between 2013 and 2033, 30% of the overall housing growth is expected to be delivered within the Service Centres, including 10% of Service Centre growth within Rainworth (Spatial Policy 2 ‘Spatial Distribution of Growth’). This growth is expected to increase demand for services and facilities to meet the community’s day-to-day needs.

The site lies within the defined built-up area of Rainworth, a Service Centre in the District’s settlement hierarchy. Policy MFAP1 of the Amended Core Strategy DPD outlines that the provision of new housing and employment opportunities and the provision of new community infrastructure appropriate to the size of the settlement will be supported in principle. The site also lies within the District Centre Boundary, which was defined through the Allocations and Development Management DPD to promote the strength of Rainworth as a Service Centre. Both Core Policy 8 of the Amended Core Strategy DPD and Policy DM11 of the Allocations and Development Management support new and enhanced retail provision within existing centres, which promote the ‘town centre first’ approach reflecting national retail policy.

Retail impacts only need to be considered where sites are located outside of defined local centers and so a retail impact assessment is not required for this proposal in line with Policies CP8 and DM11 of the development plan.

Councillor Penny's comments regarding over provision of supermarkets in the area have been noted, however, despite several rounds of public consultation no representations were received from residents citing such concerns.

Impact on Character

Core Policy 9 'Sustainable Design' of the Amended Core Strategy (Adopted March 2019) requires new development proposals to, amongst other things, "*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*". In accordance with Core Policy 9, all proposals for new development are assessed with reference to the design criteria outlined in Policy DM5 'Design' of the Allocation and Development Management DPD.

The site used to form part of the Robin Hood Hotel car park but has been fenced off and left undeveloped since the ground floor of the building changed to a Tesco Express over ten years ago. Sections of the fence are now missing, and the former car park has been left unkempt. The site also attracts littering and, overall, has a negative impact on the visual amenity of the area.

The design of the proposed retail unit has been negotiated and amended during the application process to ensure it complements the site in terms of its position, form, and scale and would include materials and architectural features to complement adjacent buildings including the Former Robin Hood Hotel and St Simon and St Jude's Church. The amended proposed Site Plan also incorporates a dedicated pedestrian access, leading from Kirklington Road to the store entrance, and tree planting to compensate for tree loss and provide appropriate landscaping. Notwithstanding the submitted details, it is considered appropriate, should permission be granted, to impose conditions requiring details of materials and architectural features to be submitted to and agreed in writing by the Local Planning Authority prior to being used in the development to ensure the building takes the form and quality envisaged. Subject to such conditions, the proposed development would be successfully assimilated with the site and surrounding area, and sensitively redevelop a vacant and prominent site with the village.

Overall, the proposed development would accord with the relevant provisions of Core Policy 9 and Policy DM5 of the DPD and be acceptable in this regard.

Impact on Residential Amenity

Policy DM5 of the Allocations & Development Management DPD requires development proposals to have regard to their impact on the amenity or operation of surrounding land uses and where necessary mitigate for any detrimental impact.

There are no residential properties adjoining the application site. The proposed opening hours of the retail unit are noted as 8am to 8pm Monday to Saturday and 8am to 4pm on Sunday/Bank Holiday, which fall comfortably within the existing opening hours of the adjacent Tesco Express store, which is open from 6am to 11pm, 7 days a week. The Council's Environmental Health Officer has raised no objections to the proposal.

Rainworth Parish Council's concerns regarding the safety of young children have been noted and the scheme amended to secure safe access and egress and pedestrian priority. Further details are outlined in the 'Highway Safety and Parking' section below.

Highway Safety and Parking

Spatial Policy 7 'Sustainable Transport' of the Amended Core Strategy DPD requires development proposals to ensure that vehicular traffic generated does not create new, or exacerbate existing on street parking problems, nor materially increase other traffic problems. Opportunities to enhance the pedestrian environment should also be explored. Policy DM5 'Design' of the Allocations & Development Management DPD requires parking provision for vehicles and cycles to be based on the scale and specific location of the development.

Access and parking arrangements have been the subject of lengthy discussions and negotiations during the planning application process. Rainworth Parish Council's concerns regarding access and pedestrian safety have been noted and addressed through revisions to the scheme, as outlined within Nottinghamshire County Council Highway Authority's comments received on 15 May 2023. These comments are copied in *italics* under relevant sub-headings below followed by a summary of amendments and details provided and/or required where relevant.

Amended red line boundary and layout

Highways - Proposed layout confusion has been clarified and only one layout has now been submitted.

The red line boundary has been amended to include the existing Tesco Express car park and entrance, to enable the existing and proposed units to share the Southwell Road East access and Tesco delivery bay for deliveries. This is possible as the site is in single ownership with the units leased to operators on a medium to long term basis.

The decision to utilise the existing Southwell Road East access for deliveries has enabled the proposed Kirklington Road site entrance to become a dedicated customer entrance, with a separate pedestrian access leading up to the store front. Nottinghamshire County Council has raised no objections to this revised layout (see **Delivery vehicle swept path analysis etc.** commentary below for further comments regarding delivery arrangements).

Kirklington Road access

Highways - The proposed access, however, is still presented in such way that it could be read as both a dropped kerb access and a radii access to the site. A dropped kerb access would be preferred in this location as it would prioritise pedestrian movements on the footway in accordance with NPPF and would be more suitable for the size of the proposed unit, especially as delivery vehicles will not be permitted to use this access. If a radii kerb access is to be installed, this would result in changes to the existing TRO on Kirklington Road outside the access and any additional cost of changing the existing TRO will have to be covered by the applicant.

This comment concerns the specific design of the proposed vehicular access off Kirklington Road and potential changes to the 'Traffic Regulation Order' on Kirklington Road i.e., the existing double yellow lines along this section of the highway. This is somewhat out of the applicant's control and would be the subject of a Section 278 Agreement with the Highway Authority¹. The Highway Authority has therefore recommended a condition to secure further details before the development can begin but has, in principle, accepted a vehicular access can be provided in this location to serve the proposed development.

¹ A section 278 agreement is a section of the Highways Act 1990 that allows developers to enter into a legal agreement with Nottinghamshire County Council, in their capacity as Highway Authority, to make permanent alterations or improvements to a public highway, as part of a planning approval.

Kirklington Road pedestrian central refuge

Highways - Pedestrian central refuge on Kirklington Road near the access is now shown on all the newly submitted plans. This refuge is to remain as existing and, for clarification, it is not proposed to be removed.

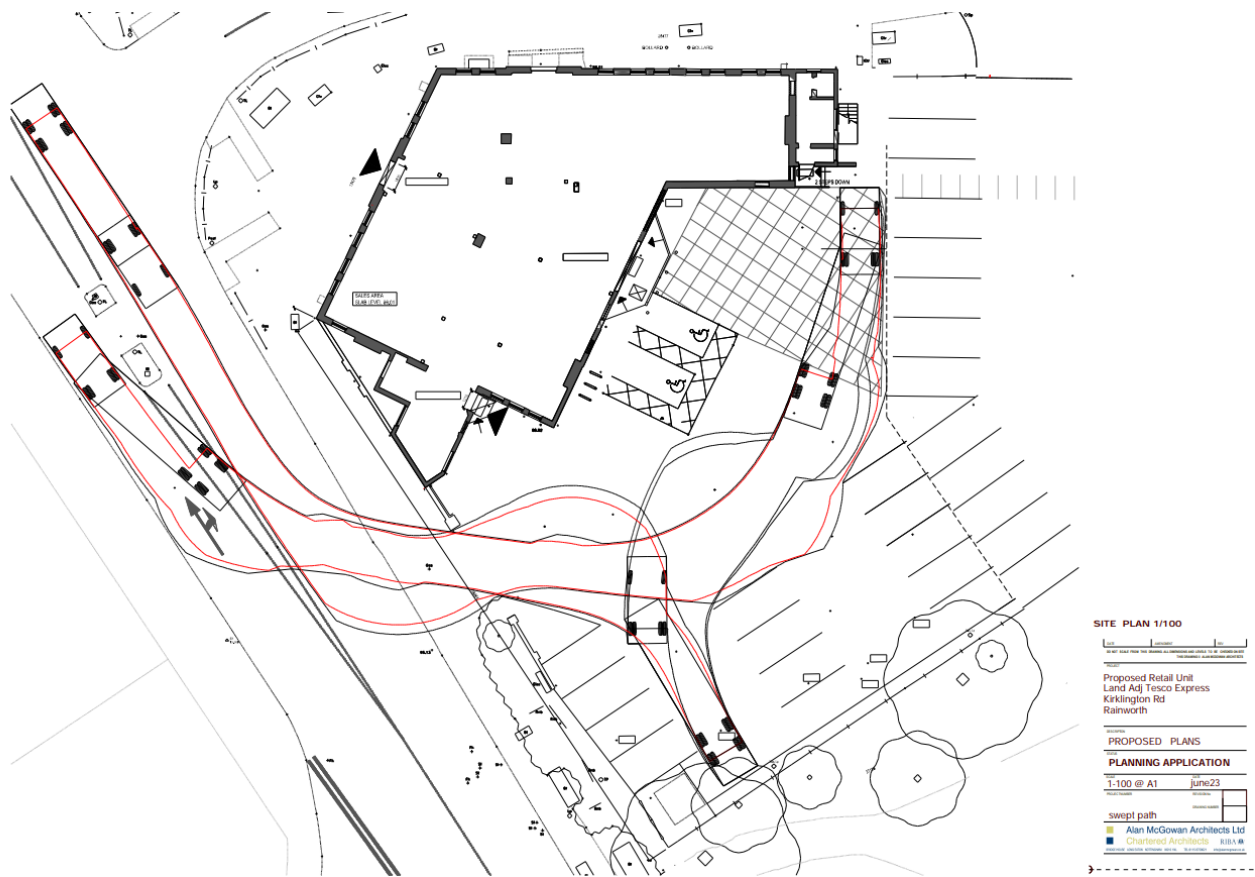
Despite being consulted on revisions, Rainworth Parish Council still believe the pedestrian central refuge will be removed to facilitate access, however, this is not the case, and the scheme has been amended accordingly to clarify. Before the scheme was amended to enable the existing and proposed retail units to share the Southwell Road East access for deliveries, the Highway Authority was concerned that delivery lorries would cut across part of the pedestrian central refuge when turning right out of the Kirklington Road access (see comments regarding swept path analysis below). To confirm, it was never proposed to remove this element of the highway, which is out of the applicant's control.

Delivery vehicle swept path analysis etc.

Highways - As the previously submitted swept path analysis revealed the lack of space for a delivery vehicle to manoeuvre within the site to enter and exit the highway in forward gear, the applicant has put forward a proposal to use an existing access and delivery bay for current Tesco Extra store on the adjacent site. The red-line location plan was amended in order to accommodate this proposal, and this seems a reasonable solution for the size of the proposed unit. Please note that signs should be erected at the access to the new store prohibiting HGVs to enter the site via the access off Kirklington Road once the store becomes operational. All deliveries must be carried out from the delivery bay adjacent to current Tesco Extra. A delivery method statement should be provided by the applicant, which should secure this arrangement. This can be conditioned.

Concerns regarding lack of space to manoeuvre delivery vehicles in front of the current Tesco Express have been noted, however, the Highway Authority considers the revised layout reasonable for the size of the existing and proposed units and has highlighted no concerns regarding delivery vehicle manoeuvrability.

The 002 Swept Path Analysis *received 17 April 2023* illustrates there is sufficient space for delivery vehicles to enter and leave the site via the widened Southwell Road East access. Unfortunately, this does not illustrate how delivery vehicles would manoeuvre within the site, however, the applicant has confirmed that tracking would mirror that which enabled the Tesco store to be approved and has provided a updated swept path drawing to reflect this (see image below).



Swept Path Analysis for Delivery Vehicles

Highways has confirmed this is acceptable.

The end user, Heron Foods, has confirmed the store would receive one delivery a week from Head Office along with about three, third party fresh deliveries, e.g., milk and bread, that would come on smaller vehicles throughout the week. Regarding the transfer of goods to the store from delivery vehicles once on site, this would be by foot with products pushed across in roll cages. The delineated roll cage route is shown on revised plans received 20 & 22 June and would result in one parking bay being unavailable at the time of delivery. In view of this, it is considered appropriate, should permission be granted, to impose a condition requiring deliveries to take place outside of opening hours of the proposed store, when the car park should theoretically be empty. It is also considered appropriate, should permission be granted, to restrict delivery times further to fall *inside* of the opening hours of the existing Tesco store (i.e., 6am to 11pm), to ensure deliveries etc. take place during existing active hours. The proposed store opening hours are 8am to 8pm Monday to Saturday and 8am to 4pm on Sundays, Public or Bank Holiday. Consequently, it is considered reasonable to restrict store deliveries and collections to between the hours of 6am- 8am and 8pm- 11pm, which Heron Foods has confirmed would be workable. Any future occupier of the store, i.e., not Heron Foods, would have to adhere to the agreed restrictions or apply to change them, at which point the Local Planning Authority would consider the impacts of such proposed changes.

Parking provision

Highways - The applicant has submitted further details regarding current off-street parking use for similar sites with comparable off-street provision and requirements previously approved by neighbouring Local Planning Authorities to justify their level of proposed off-street parking for this site. The information provided is helpful and clarifies the proposal. Therefore, on the basis of the submitted details, and after thorough consideration of the submitted details and the proposed site,

the Highway Authority is now content with the justification of the number of the off-street parking bays for this site. The amended red line plan also allows for the current Tesco Extra car park, with access off Southwell Road East, to be used for the proposed store, which secures additional parking if required.

The submitted scheme proposed 14 parking bays, which falls short of the numbers recommended in Nottinghamshire County Council's Highway Design Guide i.e., 24 off-street parking spaces for food retail or 17 spaces for non-food retail. Following confirmation of the end user, Heron Foods, Highways requested parking surveys of existing nearby Heron Foods stores to demonstrate parking provision would meet demand over the course of a typical day, however, the applicant was unable to meet this specific request. Instead, details of existing provision at nearby Heron Foods were confirmed as follows:

Newark = 13 spaces, Aspley (Nottingham) = 6 spaces, Mansfield = 11 spaces

Google Maps shows all of the above stores are similar in size to the proposed, if not slightly larger, and sited adjacent to other commercial businesses and/or local convenience stores. Consequently, the existing stores appear to share parking provision with other stores, similar to what is proposed for this site.

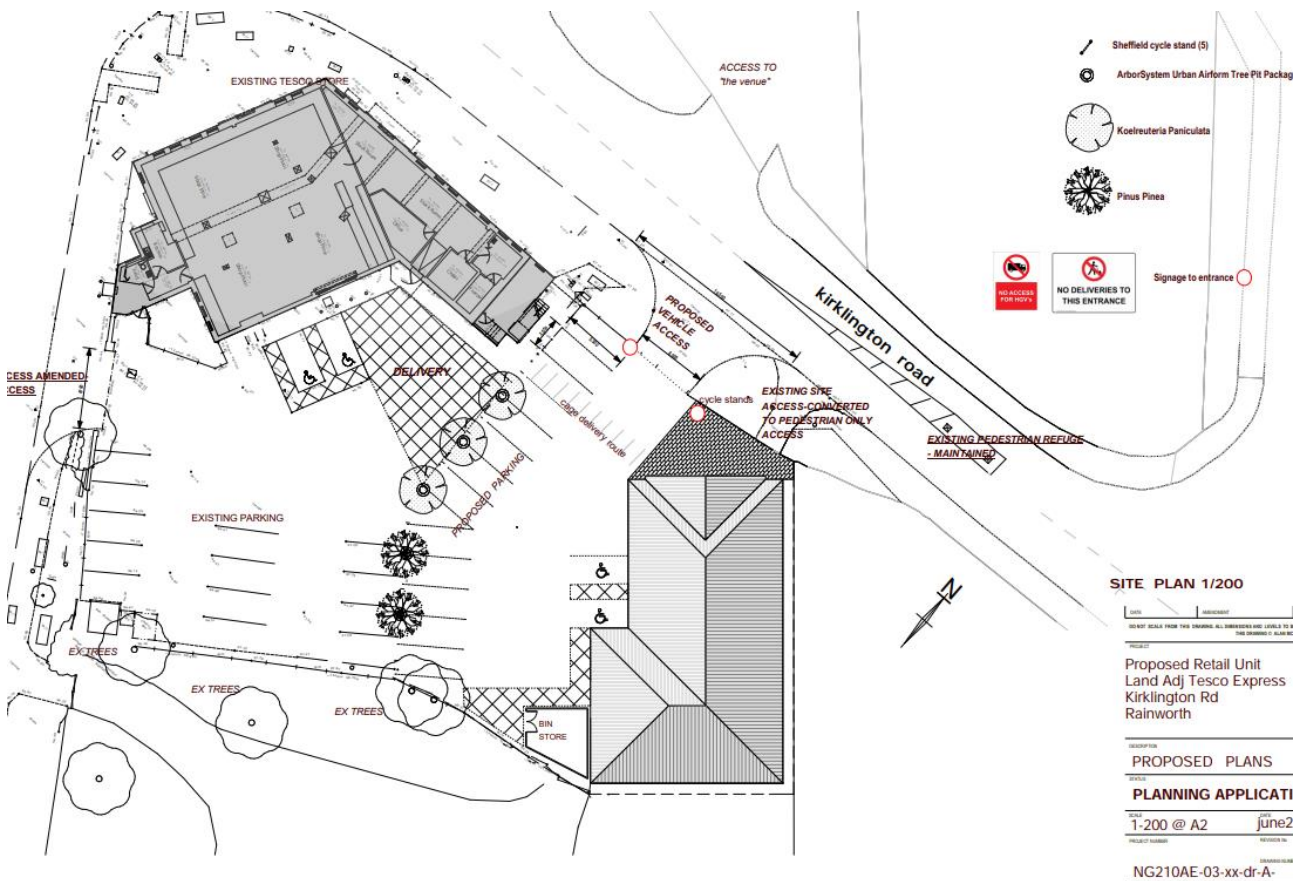
Following revisions, the scheme would provide 15 spaces which, when added to the existing Tesco spaces, would provide 31 spaces overall to serve the two stores (which is 17 spaces short of the recommended amount for two new food retail stores). Notwithstanding the shortfall, the Highway Authority is satisfied with the proposed parking provision and has withdrawn their previous objection. It is noted that opening hours of the stores would overlap, although the existing Tesco Express store would be open earlier and later than the proposed Heron Foods store (see 'Impact on Residential Amenity' for details of opening hours). It is also anticipated that some customers would make one visit to shop at both stores, given their proximity and open pedestrian access between the two sites. Indeed, it is not uncommon for retail stores such as this to be sited close together to enhance customer convenience. Given the proposed provision would exceed the number provided at other stores in similar locations in Nottinghamshire, and Highways no longer object to the scheme, the proposed parking provision is considered acceptable. There is no evidence to suggest that the demand for spaces at any time of day would exceed overall provision across the two sites and lead to unacceptable levels of on-street parking in the vicinity.

Pedestrian access to store

Highways - The location of the store front has also been amended to face the highway and thus, better accommodates pedestrian movements and encourage trips to the store on foot. The new pedestrian access will be directly off the footway along Kirklington Road and is shown as "delineated" access on the submitted plan. It should be noted that the access should be level with the footway to comply with current accessibility regulations. The existing vehicular access will require reinstating to a footway with a full height kerb. This can be conditioned.

The new pedestrian access off Kirklington Road would be formed by repurposing the old vehicular access to the Former Robin Hood Car Park. Following revisions, this would be sited directly in front of the store entrance to ease pedestrian access and reduce the potential for pedestrian-vehicular collisions within the car park. Concerns regarding pedestrian safety have been noted, and consideration was given to incorporating a dedicated pedestrian route across the wider site (broadly where trees are proposed to be planted). However, this arrangement had to be discounted as it would have left insufficient space for delivery and customer vehicles to manoeuvre into their

respective bays. Overall, it is considered that the proposed car park would be no more unsafe than any other retail car park where pedestrians and vehicles mix. Furthermore, proposed landscaping would obscure the pedestrian desire line across the current car park and prevent drivers from using the site as a “rat run” between Kirklington Road and Southwell Road East (see Site Plan 1/200 (Rev L) including Landscaping details enclosed below).



Works to reinstate the existing vehicular access to a footway with a full height kerb can be secured by condition on an approved application in accordance with Highways advice.

Amended Southwell Road East access

Highways - There are no exact details of the amendments to the existing access off Southwell Road East. However, any design changes of the existing access can be conditioned as any works to both accesses will require a Section 278 Agreement with the Highway Authority to carry out off-site works; therefore, a separate technical approval for both accesses will be carried out at a later date. This is a separate process to planning.

The revised plans indicate the existing access off Southwell Road East would be widened as part of the proposed development. This is welcomed as it would improve the useability of this access and reduce instances of vehicles having to wait on the highway while others exit the site before entering. This would also be the subject of a Section 278 Agreement with the Highway Authority and noted to the applicant as part of an approved application.

Car park layout and landscaping

Highways - It is noted that there is no form of physical separation proposed between the two car parks i.e., the proposed site and existing Tesco Extra site except for the projected tree planting

scheme. Although this is not a highway safety concern, the applicant may want to consider a knee-high fence, or similar, between the two car parks, with only gaps left large enough to accommodate pedestrians and deliveries, in order to prevent this retail site to become a “rat-run” or a “shortcut” from Kirklington Road and Southwell Road East for other motorists in the interest of the safety of the users of the car-park / retail units.

The proposed tree planting has been discussed and agreed with the Council’s Tree Officer as noted under the ‘Trees and Ecology’ section below. Indeed, the Tree Officer has recommended conditions to secure the planting and maintenance of the trees, which would address the above concerns.

Taking all of the above into account, and subject to the recommended conditions, it is considered the proposed development accords with the relevant provisions of Spatial Policy 7 and Policy DM5 of the DPD and is therefore acceptable in this regard.

Trees and Ecology

Core Policy 12 of the Amended Core Strategy DPD seeks to secure development that maximises the opportunities to conserve, enhance and restore biodiversity. Policy DM5 of the Allocations & Development Management DPD states that natural features of importance within or adjacent to development sites should, wherever possible, be protected and enhanced. The NPPF also requires planning decisions to minimise impacts and provide net gains for biodiversity.

The application is supported by an Arboricultural Impact Assessment, Method Statement and Tree Protection Plan prepared by Ramm Sanderson dated November 2022 (Ref: RSE_6574_R1_V1_ARB) that identifies a number of trees for removal. Indicative landscaping is shown on the Amended Proposed Site Plans (drawing nos. 0013J & 0014L) to compensate for this loss, comprising of one tree every two parking spaces along the boundary between the existing and proposed car parks. The Council’s Tree Officer has considered the submitted and revised details and raised no objection subject to conditions to secure tree protection, full details of tree planting, and landscape maintenance. It is also considered appropriate to impose a condition requiring details of other site enhancement measures, such as the provision of suitably sited bat and bird boxes, to be submitted to and agreed in writing by the Local Planning Authority. Subject to the recommended conditions, the proposed development would meet the relevant aims of Core Policy 12 and Policy DM5 of the DPD and the NPPF and is therefore acceptable in this regard.

Flood Risk and Drainage

The application site is located within Flood Zone 1, as shown on the Environment Agency’s Flood Map for Planning and is therefore at low risk of fluvial flooding.

The proposal involves the erection of a building on an existing area of hardstanding and would result in no significant increase in surface water run-off. The application form indicates wastewater would be appropriately disposed of via the existing drainage system, which is considered an acceptable drainage solution for this site.

8.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made

reference to these implications and added suitable expert comment where appropriate.

9.0 Conclusion

The proposed development is acceptable and would enhance retail provision within the centre of Rainworth to serve its growing population. The proposed new building has been appropriately sited and designed and overall, the proposed development would have no adverse impact on visual amenity nor the amenities of existing or future residents in accordance with Policy DM5 'Design' of the Allocations & Development Management DPD.

Subject to appropriately worded conditions, whilst there is an overall parking shortfall, the proposed development, NCC Highways does not consider the development would result in harm to highway safety, not creating new, or exacerbating existing on street parking problems, nor materially increase other traffic problems in accordance with Spatial Policy 7 'Sustainable Transport' of the Amended Core Strategy DPD and Policy DM5 'Design' of the Allocations & Development Management DPD.

It is therefore recommended that this application is approved subject to the conditions outlined below.

10.0 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:

- 0003B Location and Block Plans *received 11 May 2023* (red line boundary)
- 002 Swept Path Analysis *received 17 April 2023*
- Swept Path Site Plan 1/200 *received 26 June 2023*
- 0013J Amended Site Plan 500 *received 20 June 2023*
- 0014L Proposed Site Plan 200 *received 26 June 2023*
- 0015J Amended Roof Plan *received 20 June 2023*
- 0016J Amended Ground Floor Plan *received 20 June 2023*
- 0017G Amended Proposed Elevations *received 17 April 2023*
- RSE_6574_TPP V1 Tree Protection Plan *received 29 November 2022*

Reason: So as to define this permission and ensure adequate protection of trees.

03

Notwithstanding the submitted plans, no part of the development hereby approved shall commence until details of works to install the new vehicular access off Kirklington Road and reinstate the existing redundant access as footway, as indicatively shown on the submitted plans, have been first submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved details prior to the development being brought into use and retained for the lifetime of the development.

Reason: To enable vehicles to enter and leave the public highway in a slow and controlled manner, in the interests of general highway safety, and to ensure that the vehicular and pedestrian accesses are provided at an appropriate point in the development.

04

No development above damp-proof course shall take place until samples or specifications of materials set out 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.

- (a) Bricks
- (b) Brickwork specification
- (c) Roof covering

Reason: In the interests of visual amenity

05

No development shall be commenced in respect of the features identified below, until details of the design, specification, fixing and finish and/or scaled drawings and sections at a scale of not less than 1:10 have been submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be undertaken in accordance with the approved details.

- (a) External windows, doors, and their immediate surroundings, including details of glazing and glazing bars
- (b) Treatment of window and door heads and cills
- (c) Ridges, verges, and eaves
- (d) Rainwater goods

Reason: In the interests of visual amenity.

06

Notwithstanding the submitted plans, no part of the development hereby approved shall be brought into use until the existing access off Southwell Road East is widened and upgraded in accordance with the details to be first submitted and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety and to ensure that the vehicular and pedestrian accesses are provided at an appropriate point in the development.

07

No part of the development hereby permitted shall be brought into use until the new access off Kirklington Road and widened access off Southwell Road East, parking, and turning areas are:

- a) surfaced in a hard bound material (not loose gravel) in accordance with the details on the approved plans; and
- b) constructed with provision to prevent the discharge of surface water to the public highway in accordance with the details to be first submitted and approved in writing by the Local Planning Authority.

The surfaced accesses, parking, and turning areas shall thereafter be maintained in such hard bound material and provision to prevent the discharge of surface water to the public highway retained for the lifetime of the development.

Reason: To reduce the possibility of deleterious material being deposited on the public highway (loose stones etc.) and to ensure surface water from the site is not deposited on the public highway causing dangers to road users

08

Once the retail store hereby approved becomes operational, there shall be no HGV access between the Application Site and Kirklington Road. All deliveries and general HGV access shall take place only off Southwell Road East via the delivery access as shown on the approved plans reference:

- Swept Path Site Plan 1/200 *received 26 June 2023*; and
- 0014L Proposed Site Plan 200 dated June 2022 (incl. no HGV access signage)

The signage shall remain in place for the lifetime of the development.

Reason: In the interest of highway safety

09

Prior to first occupation of the retail unit hereby approved, full details of all proposed tree planting shall be submitted to and approved in writing by the Local Planning Authority. This will include planting and maintenance specifications, including cross-section drawings, use of guards or other protective measures and confirmation of location, species and sizes, nursery stock type, supplier, and defect period. All tree planting shall be carried out in accordance with those details and at those times.

Any trees that are found to be dead, dying, severely damaged or diseased within ten years of the completion of the building works OR ten years of the carrying out of the landscaping scheme (whichever is later), shall be replaced in the next planting season by specimens of similar size and species in the first suitable planting season.

Reason: To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990 to safeguard and enhance the amenity of the area, to maximise the quality and usability of open spaces within the development, and to enhance its setting within the immediate locality.

10

The retail unit hereby approved shall not be open to members of the public outside the following hours: -

8am to 8pm Monday to Saturday
8am to 4pm on Sundays, Public or Bank Holiday

Reason: In the interests of residential amenity.

11

In relation to Condition 09, delivery and collection vehicles to the retail unit hereby approved shall only arrive and leave the site between the hours of 6am- 8am and 8pm- 11pm.

Reason: To ensure deliveries take place outside of store opening hours and in the interests of residential amenity.

12

No gates shall be erected at the access to the development from the public highway.

Reason: To protect the free and safe passage of traffic, including pedestrians, in the public highway.

Informatives

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

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/ or from the Planning Portal: www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil

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 accord

Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

03

Access requirements and access Re-instatement Works

In order to carry out the off-site works required you will be undertaking work in the public highway which is land subject to the provisions of the Highways Act 1980 (as amended) and therefore land over which you have no control. In order to undertake the works you will need to enter into an agreement under Section 278 of the Act. Please contact the Highway Authority on hdc.north@nottscc.gov.uk or please call 0300 500 80 80 and ask for Highways Development Control Team for Newark and Sherwood for further details.

04

Building Works shall not project over the highway

No part of the proposed building/wall or its foundations, fixtures and fittings shall project forward of the highway boundary.

05

Prevention of Mud on the Highway

It is an offence under S148 and S151 of the Highways Act 1980 to deposit mud on the public highway and as such you should undertake every effort to prevent it occurring.

06

Signs

Non-statutory signs are not permitted within the limits of the public highway.

07

Traffic Regulation Orders

Depending on the final design of the access, the application may affect the existing TRO on Kirtlington Road. Any required amendments to the existing Traffic Regulation Order shall be completed before the development is brought to use to provide safe access/off-site mitigating works. The developer should note that the Order can be made on behalf of the developer by Nottinghamshire County Council at the expense of the developer. This is a separate legal process, and the Applicant should contact the Highway Authority's Customer Services on 0300 500 8080 for further information and guidance.

08

Nesting birds are protected by the Wildlife and Countryside Act 1981 (as amended). It is an offence to intentionally or recklessly kill, injure or take any wild bird; take, damage or destroy its nest whilst in use or being built; and/or take or destroy its eggs. Normally it is good practice to avoid work potentially affecting nesting birds during the period 1st March to 31st August in any year, although birds can nest either side of this period.

In relation to Condition 11, the following British Standards should be referred to:

- a) BS: 3882:2015 Specification for topsoil
- b) BS: 3998:2010 Tree work – Recommendations
- c) BS: 3936-1:1992 Nursery Stock - Part 1: Specification for trees and shrubs
- d) BS: 4428:1989 Code of practice for general landscaping operations (excluding hard surfaces)
- e) BS: 4043:1989 Recommendations for Transplanting root-balled trees
- f) BS: 5837 (2012) Trees in relation to demolition, design and construction – Recommendations
- g) BS: 7370-4:1993 Grounds maintenance part 4. Recommendations for maintenance of soft landscape (other than amenity turf).
- h) BS: 8545:2014 Trees: from nursery to independence in the landscape – Recommendations
- i) BS: 8601:2013 Specification for subsoil and requirements for use

BACKGROUND PAPERS

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Application case file.

Committee Plan - 22/01298/FUL



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Report to Planning Committee 6 July 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Laura Gardner, Senior Planner, ext. 5907

Report Summary			
Application Number	22/00424/OUTM		
Proposal	Creation of flexible commercial/industrial units (Use Class E(g)(iii), B2, B8) and provision of allotments		
Location	Bilsthorpe Business Park, Eakring Road, Bilsthorpe, NG22 8ST		
Applicant	The Impact Branch Limited	Agent	Mr Richard Irving - ID Planning
Web Link	22/00424/OUTM Creation of flexible commercial/industrial units (Use Class E(g), B2, B8) and provision of allotments Bilsthorpe Business Park Eakring Road Bilsthorpe Nottinghamshire NG22 8ST (newark-sherwooddc.gov.uk)		
Registered	07.03.2022	Target Date / Extension of Time	06.06.2022 / 13.07.2023
Recommendation	Refuse, for the reason set out in Section 11.0		

This application is being presented to the Planning Committee in line with the Council’s Scheme of Delegation as the recommendation of refusal is contrary to the support of the Parish Council [although no reason for the support is given] and it is a major application. Also, the proposal represents a departure from the Local Plan.

1.0 The Site

The site relates to several separate but connected parcels of land, in total amounting to approximately 11.8 hectares in land take. The site is located north and east of existing industrial units and operations at Bilsthorpe Business Park which is positioned to the north of the village outside of the village envelope. There is an existing highways depot operated by Via East Midlands adjacent to the site.

There are extensive tree belts in the vicinity of the site including to the west of the existing highways depot. Part of the site is recognized as being of local importance as a site of nature interest for wading birds. There is an existing pond which also forms part of this designation, but this is not within the application site itself.

The site was partly the former Bilsthorpe Colliery, which closed in 1997. An old railway line (which has been dismantled) lies to the south of the site, and now appears to be informally used as a footpath/track forming the northern extent of the village. The site is within Flood Zone 1 according to the Environment Agency maps. The site is within the 5km buffer zone of the indicative core area for the potential proposed Special Protection Area (ppSPA) for a substantial population of nightjar and woodlark in the Sherwood Forest area.

Land to the south west within the village envelope is currently being developed for a residential scheme of 103 dwellings following approval of permission at appeal (20/00873/FULM). There is a large scale solar farm to the south east of the site, as well as a wind farm to the east which utilize the existing vehicular access from Eakring Road. There are also other industrial land uses in the vicinity including a methane extraction plant.

2.0 Relevant Planning History

The development falls outside of Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA) but does represent a site of over 0.5 hectares and an industrial project and therefore has been assessed under Schedule 2 of the Regulations under separate reference **22/SCR/00004**. The decision was that an EIA is not required to consider the application.

The application has also been through a screening process in line with the Habitat Regulations noting that it is within the 5km buffer zone of the indicative core area for the potential proposed Special Protection Area (ppSPA) for a substantial population of nightjar and woodlark in the Sherwood Forest area. This is discussed in further detail within the ecology section of Section 8.0 below.

There is an extensive planning history relating to elements of the site and the immediately surrounding area including (but not limited to) the following:

20/00190/FUL - Install a new modular building to act as a new training facility for both VIA staff and external businesses in a variety of areas relating to our core business, being highways.

Application relating to the adjacent highways depot, approved 16.04.2020.

18/01745/FUL - Build 2No. Small Industrial Units.

Application relating to existing units outside of the application site, approved 08.11.2018.

14/00976/CMA - Remove and temporary storage 75,000cu.m of colliery spoil from lagoon 4, prior to the removal off site of approximately 40,000cu.m of coal material; and any red shale rising from the works to be either used on site or exported

Application affecting part of site, (roughly where Plot 4 would be positioned and marked on the indicative masterplan as the area of aftercare habitat management area), approved by Nottinghamshire County Council (NCC) 09.11.2015.

13/01767/CMW - Proposed development of the Bilsthorpe Energy Centre (BEC) to manage unprocessed and pre-treated waste materials through the construction and operation of a Plasma Gasification Facility, Materials Recovery facility and Energy Generation Infrastructure together with supporting infrastructure.

Application relating to land adjacent to the highways depot site but outside of the application site, approved by NCC/SoS under reference 3/13/01767/CMW 14.06.2016. It is understood that this permission has been implemented through the creation of an attenuation basin and is therefore extant. NCC have confirmed that a lawful commencement has been made.

08/00709/FULR3N – Highways Depot

Application approved by NCC 30.07.2010.

06/00535/FULM - Erection of industrial unit (Phase 3) on former colliery site

Application affecting part of site, site (roughly where Plots 1 and 2 would be positioned), approved 05.07.2006.

05/00860/RMAM - Re-development of former colliery site to general industrial use

Application outside of the application site, approved 05.08.2005.

04/02627/RMAM - Redevelopment of former colliery to general industrial use

Application outside of the application site, approved 14.04.2005.

02/01392/OUTM - Redevelopment of the former colliery site to class B2 (General Industrial) and B8 (Storage and Distribution)

Application affecting part of the application site (roughly where Plots 1; 2 and 5 would be positioned), approved 24.03.2004.

3.0 The Proposal

The proposal seeks outline planning permission for a number of flexible commercial / industrial plots.

The indicative masterplan divides the site into 6/7 plots (albeit numbered 1-6 due to the inclusion of plot 2a). Some of the plots have been subject to discussion with potential occupiers (as detailed by the submitted planning statement) such that the indicative plan has been developed with the input of likely end users. Nevertheless, outline permission is sought for the entire site.

Additional land is included within the red line site boundary in order to accommodate ecological enhancement works. There is also an area of the site to the north of Eakring Road which has been marked as providing land for allotments for community use.

The only matter for consideration is access which is shown as existing from Eakring Road. Within the site, individual accesses to each plot will be provided from the existing and extended access road.

The quantum of development has been reduced throughout the application in an attempt to address highways concerns. Initially the overall development quantum was circa 12,000m² but it is now suggested that the development quantum would be 9,000m² (albeit the exact footprint is not for consideration at this stage):

Table 2.1 Revised Development Summary – 9,000 sqm GFA

Revised Development Mix				
Total	B2		B8	
Sqm	Sqm	%	Sqm	%
9,000	4,099	46%	4,901	54%

The application has been considered on the basis of the following plans and documents:

- Location Plan – 00 001;
- Proposed Masterplan – 20 002 Rev. C;
- Footpath Regularisation – 20 003;
- Planning Policy Statement – ID Planning dated February 2022;
- Design & Access Statement – Enjoy Design dated October 2021;
- Flood Risk Assessment – BWB BIL BWB ZZ XX RP YE 0001_FRA;
- Sustainable Drainage Statement –BIL BWB ZZ XX RP CD 0001 SDS S2 P03;
- Existing Surface Water Drainage Layout - BIL BWB ZZ XX DR CD 0003 REV P2;
- Outline Surface Water Drainage Strategy - BIL BWB ZZ XX DR CD 0004 REV P1;
- Phase 1 and 2 Geo-Environmental Assessment - BIL BWB ZZ XX RP YE 0001 PH1&2_P1;
- Coal Mining Risk Assessment – 51002294833001 dated 14th August 2020;
- Shaft Filling Specification dated September 1997;
- Preliminary Ecological Assessment – Applied Ecological Services Ltd – dated 17/12/2021;
- Transport Assessment Optima Highways and Transportation Consultancy Ltd. Dated October 2021 (Rev 1);
- Framework Travel Plan – Optima Highways and Transportation Consultancy Ltd. Dated October 2021 (Rev 1);
- Marketing Report by In-site dated 6th April 2022 (including associated enquiry schedule);
- Further information on possible potential Special Protection Areas - Applied Ecological Services Ltd;
- Arboriculture Report – JCA Ref: 18303 LW;
- Appendix 6: Tree Constraints Plan JCA Ref: 18303 LW;
- Letter by Fisher German – BF/128810 dated 10th June 2022;
- Transport Assessment Addendum by Optima dated 20th October 2022;
- Junction Report received by email dated 21st February 2023;
- Highways Technical Note 1 dated 21st April 2023;
- Futures Biodiversity Impact Assessment (BIA) – FE252/BIA01 dated April 2023.

4.0 Departure/Public Advertisement Procedure

Occupiers of 33 properties have been individually notified by letter. Site Notices have also been displayed near to the site and an advert has been placed in the local press. The proposal has been advertised as a departure.

Site visit undertaken on 24th March 2022.

5.0 Planning Policy Framework

The Development Plan

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

Spatial Policy 1 - Settlement Hierarchy

Spatial Policy 3 – Rural Areas

Spatial Policy 6 – Infrastructure for Growth

Spatial Policy 7 - Sustainable Transport

Spatial Policy 8 – Protecting and Promoting Leisure and Community Facilities

Core Policy 6 – Shaping our Employment Profile

Core Policy 9 -Sustainable Design

Core Policy 12 – Biodiversity and Green Infrastructure

Core Policy 13 – Landscape Character

Allocations & Development Management DPD

DM3 – Developer Contributions and Planning Obligations

DM5 – Design

DM7 – Biodiversity and Green Infrastructure

DM8 – Development in the Open Countryside

DM10 – Pollution and Hazardous Substances

DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework (NPPF) 2021
- Planning Practice Guidance (online resource)

6.0 Consultations

(a) Consultations

NCC Flood – No objection subject to condition.

Natural England – No comments specific to this application, refer to standing advice.

Environment Agency – No comments received.

NCC Highways Authority – No objections subject to conditions.

(b) Parish Councils

Bilsthorpe Parish Council – Support (noting a non-pecuniary interest due to the allotments proposed to be operated by the Parish Council on behalf of the village with no monetary gain).

Eakring Parish Council – No comments received.

Rufford Parish Council - No comments received.

(c) Representations

NCC Planning Policy –

Minerals – No concerns in terms of mineral safeguarding.

Waste - Future uses of adjacent industrial / commercial space, to Bilsthorpe Energy Centre, require careful consideration, so as to avoid the potential for an unacceptable receptor

Transport and Travel Services - £33,650 request to provide improvements to the two bus stops on Eakring Road denoted NS0909 and NS0084.

Further response received to clarify that the Bilsthorpe Energy Centre (BEC) has not yet been built out but that permission has been lawfully implemented.

NSDC Environmental Health (contaminated land) – The geo-environmental assessment appears to have been prepared as a pre-acquisition condition and does not fully consider the proposed development. Expectation for further sampling and gas monitoring which can be secured by the full phased contamination land condition.

NSDC Environmental Health (noise) – No information is provided for the industrial units or usage (specific industry), each business/industrial unit may require a BS4142 assessment before planning permission could be granted, furthermore each unit may require a significantly different specification re insulation/acoustic ventilation etc dependent on the proposed industry.

Suggested condition for a construction management plan to limit noise emissions from the site and from plant machinery, hours of operation, deliveries, dust suppression during construction.

NSDC Economic Development – The development would be an important asset to the District.

Nottinghamshire Wildlife Trust - No comments received.

NSDC Tree Officer – Mitigation in the form of a detailed landscaping scheme is needed, large areas of open tarmac are not acceptable.

No letters of representation have been received.

7.0 Application Process

The application has been submitted as an outline application with only means of access for consideration. Outline applications are essentially a two stage application process whereby the

applicant seeks outline permission first and then if such approval is granted, the applicant would still need to apply for a separate reserved matters application to secure the detail of the scheme.

The matters which can be considered or withheld under outline planning permission include:

- Appearance – aspects of a building or place which affect the way it looks, including the exterior of the development;
- Means of access - covers accessibility for all routes to and within the site, as well as the way they link up to other roads and pathways outside the site;
- Landscaping - the improvement or protection of the amenities of the site and the area and the surrounding area, this could include planting trees or hedges as a screen;
- Layout - includes buildings, routes and open spaces within the development and the way they are laid out in relations to buildings and spaces outside the development;
- Scale - includes information on the size of the development, including the height, width and length of each proposed building

The applicant may decide to submit details of one or more of the above considerations or none at all. In the case of this application the applicant is seeking to agree means of access meaning that appearance; landscaping; layout and scale would all be for agreement at reserved matters stage if outline permission were to be granted.

8.0 Comments of the Business Manager – Planning Development

The key issues are:

1. Principle of development
 - a. *Is the development a small-scale employment use which requires a rural location?*
 - b. *Does the development represent a proportionate expansion?*
 - c. *Employment Benefits*
 - d. *Community benefits*
2. Landscape / Visual Impacts
3. Impact on Trees and Ecology
4. Impact on Highways and Public Rights of Way
5. Impact on Residential Amenity
6. Impact on Flooding and Drainage
7. Contamination

Principle of Development

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 material considerations indicate otherwise.

The Adopted Development Plan for the District is the Core Strategy DPD (2019) and the Allocations and Development Management Policies DPD (2013). 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 development to the Sub-regional Centre, Service Centres and Principal Villages, which are well served in terms of infrastructure and services. Spatial Policy 1 (Settlement Hierarchy) of the Council's Core Strategy sets out the settlements where the Council will focus growth throughout the District. Applications for new development beyond

Principal Villages as specified within Spatial Policy 2 will be considered against the 5 criteria within Spatial Policy 3. However, Spatial Policy 3 also confirms that, development not in villages or settlements, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting. Direction is then given to the relevant Development Management policies in the Allocations and Development Management DPD.

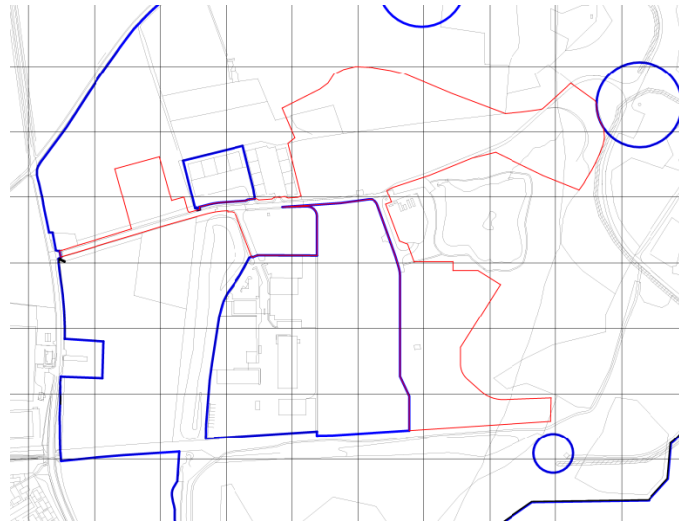
The application site is outside of the defined village envelope of Bilsthorpe and therefore falls within the open countryside. However, it is material to the current application that parts of the site are subject to extensive planning history (as detailed above) which in some parts represents a fallback position.

The general thrust of national planning policy is for an encouragement to use as much previously developed land as possible. Paragraph 85 of the NPPF specifically states that the use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist:

'sites to meet local business and community needs in rural areas may have to be found beyond existing settlements in locations not necessarily well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist'.

Whilst the site is not allocated for development, the former colliery site can be considered as 'available land in a designated employment area' with the extent of this defined by the original outline permission (02/01392/OUTM) as per the first plan, compared to the site location plan for this application below (the blue circles on the site location plan excluded from the applicant's ownership are the position of wind turbines):





Whilst 'available land in a designated employment area' does not constitute an employment allocation as such, it is counted as land which is available to help satisfy the Council's employment land requirements (albeit not as a significant aspect). Therefore, whilst being located within the open countryside there is potential support in principle for appropriate employment development taking place within the extent of the original outline application referred to above.

The most up-to-date figure the Council has for the remaining land not previously developed through the outline application is 2.08ha, with the area having been previously rationalized to remove areas which are clearly not developable (tree belts, the access road and old rail line to the south etc.). It is estimated that if non-developable areas for this application (i.e. landscaping; allotments and the access road) were to be discounted, then this proposal relates to approximately 4.58 hectares of employment land. There is therefore a significant proportion of the site which falls beyond the scope of the residual land from the outline consent. In this context there is a requirement to assess the proposal against Policy DM8.

Policy DM8 of the Allocations and Development Management Document, in reference to employment uses, 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. Proposals for the proportionate expansion of existing businesses will be supported where they can demonstrate an ongoing contribution to local employment. Such proposals will not require justification through a sequential test*'. This approach is supported by Core Policy 6 which seeks to retain and safeguard existing employment areas.

The wording of the policy shows a logical division into two separate areas of assessment; can the proposal be considered as a small-scale employment use with a need to be in the countryside or can it be accepted as a proportionate expansion which would continue to support local employment? Each matter is taken separately below.

Is the development a small-scale employment use which requires a rural location?

Neither the policy wording nor the supporting text for DM8 defines what it meant by small scale. Given the outline nature of the proposal, scale cannot be fully assessed in the context of the height / floor space of buildings or the level of employments generated.

However, the fact that the application forms a major scheme with a site area of almost 12 hectares (notwithstanding as above this wouldn't all be used for employment uses) would lead to any reasonable observer to conclude that the proposal is not small scale. Moreover, in the absence of the exact types of employment being proposed here (notwithstanding some advanced discussions / contracts with potential occupiers) there is no compelling evidence as to why the proposal needs a rural location. The proposal would therefore not comply with this element of Policy DM8.

Does the development represent a proportionate expansion?

The supporting documents for the application detail the level of end occupier interest which has already been advanced. In the case of Plot 1, the terms have been agreed with Freeland UK Limited who are already operating 'nearby' and for Plot 5 the terms have been agreed with Vanstyle who are already operating to the north of the access road. These could potentially be advanced as proportionate expansions on the assumption that the expanded sites would contribute to local employment but, again, given the outline nature of the proposal, the exact employment benefits are not advanced and therefore the policy tests would not be fully met. It has been confirmed that the prospective tenants are still being advanced even in the context of the revised masterplan.

In any case, these plots only relate to a small proportion of the overall proposal and there would be no guarantee from a planning perspective that these end users would materialize.

When taken as a whole, the development would fail to satisfy the policy requirements of Policy DM8 in relation to employment uses and therefore is not accepted in principle. The proposal has been advertised as a departure on this basis.

However, it clearly remains necessary to assess the application against the entirety of the Development Plan in order to be able to undertake an appropriate balancing exercise. The site forms a broad location where there is an existing concentration of employment uses thus there could be a case to be made that the benefits of the proposal (particularly significant levels of job creation) would outweigh the conflict with Policy DM8.

Employment Benefits

The NPPF sets a clear economic objective in order to help build a strong, responsive and competitive economy as part of achieving sustainable development (paragraph 8). At a local level, Core Policy 6 seeks to support the economies of rural communities. Clearly this is given in the context of an overarching aim to provide most employment growth in the more sustainable settlements of the District and therefore to accept an employment site of this scale in the open countryside, there would need to be a level of confidence that the proposal would not undermine the development of allocation and/or permitted employment land elsewhere, particularly within the Sherwood sub-area. This links to the supporting text for Policy DM8 which requires new businesses to investigate the availability of existing sites, new build development in the countryside will only be supported where no alternative sites are available or there is a justification specific to the particular proposal (para. 7.54).

Spatial Policy 2 quantifies the employment land requirements for the District and provides a strategy for distributing growth. It sets a *minimum* employment land requirement of 83.1ha with 51.9ha of the total to be provided within the Newark Area and 16.2 hectares in the Sherwood Area

(the 2nd highest after Newark). As per the Employment Land Availability Study 2019 there was 14.32 hectares of land with extant planning permission for employment uses in the Sherwood Area and therefore if the 'developable' land for this application were to be factored in, there would be an exceedance of the *minimum* level of employment land to be provided in the Sherwood Area.

As already inferred, it is difficult to understand the exact level of employment benefits which would be attributed to the proposal given its outline nature. Homes England has produced an Employment Density Guide (3rd Edition) which could be used to give an indication of likely levels of employment but this document is some 7 years old and clearly based on nominal figures.

As referenced in the description of the proposal above, the application has been amended since it was originally submitted to reduce the overall quantum of development proposed. The original Transport Assessment submitted to support the application predicted that based on the proposed end users (referencing the aforementioned Homes England document), the total predicted level of full time employees would be 193. This figure would be reduced by around 25% based purely on the footprint reduction. Nevertheless, despite the exact figure not being known at this stage, there will clearly be a significant level of employment created which is a notable benefit to the scheme to be appropriately weighed in the overall planning balance.

It is stated within the application submission that the jobs will be created quickly given the advanced stage of negotiations with interested parties and the desire to occupy the units as soon as possible. It is presented that one occupier in particular will be providing direct links to a major local employer. Overall, the case is made that this application is not for a speculative development and instead is a response to significant market demand in the area.

Further evidence of marketing has been provided outlining that the level of enquiries and interest in the site is outstripping availability. It is set out that the strength and demand for industrial and warehouse space over the past 12 to 24 months has meant that availability has now "*reached critically low levels in the district of Newark and Sherwood*". This demand has subsequently pushed rents up commanding premium land values. It is presented that this site would allow local companies to expand and grow their businesses at an affordable rate in a climate where developers are not prepared to sell plots to local businesses who simply cannot afford the inflated land values elsewhere.

As per the comments of colleagues in Economic Development, there is potential that part of the proposal would link into the proposed development of the Smart Innovation Supply Chain and Logistics Enterprise Zone (SiSCLoG) proposed to be located at the Newark Gateway site, subject to planning approval.

None of the additional information provided is disputed in principle. It is accepted that this application site is likely to be in demand given that it is relatively unconstrained (notwithstanding ecology and highways issues discussed in further detail below). However, the overriding concern is that this is an argument which could be presented on numerous open countryside / brownfield sites which would weaken the plan-led system in which development management decision making operates. There is a distinct lack of evidence from secured potential occupiers as to why this site is preferable to other more sustainable sites that are allocated for employment uses.

Community benefits

One element of the development which has not yet been referred to is the proposed area of allotments close to the access point off Eakring Road. The indicative plan shows that there would be space for 15 allotment spaces with associated parking for use by local residents.

Spatial Policy 8 of the Core Strategy outlines an overall support for enhanced community facilities and Policy DM8 is potentially supportive of community and recreational uses requiring land in the countryside where they are on sites in close proximity to settlements and where they meet the needs of communities and, in particular, deficiencies in current provision. It is presented that the provision of the allotments has come about through the community engagement exercises undertaken prior to the application submission. This is further validated through the support of the Parish Council.

Whilst the inclusion of allotments may be a benefit to the community, they are not needed to mitigate the development or make it acceptable. Given that they are not necessary, it would not be reasonable to secure their delivery through a planning obligation. The provision of allotments can therefore only be attributed very limited positive weight in the overall planning balance.

The application has also been accompanied by a 'Permissive footpath' plan which shows a loop to the west of Plot 4 which runs to the south of the existing Via East Midlands site and up northwards through the existing woodland. The majority of the path would be outside of the red line site but it would all be within land owned by the applicant (as per the blue line on the site location plan). Again, it is inferred that the inclusion of the footpath has stemmed from community discussions in order to 'regularise the use of several footpaths through the site' which are at present used without the permission of the landowner. Subject to the approval of this application, there is an intention to establish the path under Section 31(6) of the Highways Act 1980. However, it should be noted that the path does not fall within the red line site boundary and therefore does not form part of the formal planning application.

Landscape / Visual Impacts

Core Policy 9 requires a high standard of sustainable design that protects and enhances the natural environment and contributes to the distinctiveness of the locality and requires development that is appropriate in form and scale to the context. Policy DM5 requires the local distinctiveness of 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. The NPPF states that good design is a key aspect of sustainable development and new development should be visually attractive. Core Policy 13 requires the landscape character of the surrounding area to be conserved and created. The NPPF requires planning decisions to recognise the intrinsic character and beauty of the countryside.

Core Policy 13 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 (LCA) 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.

The site is within the Mid-Nottinghamshire Estates Farmlands with Plantations specifically Policy Zone MN24 Rufford Park Estate Farmlands with Plantations. The landscape condition within this Policy Zone is defined by the guidance as poor. It has an incoherent pattern composed of industrial and agricultural elements which give an overall visually interrupted area. The landscape sensitivity is defined as very low.

Even with the lack of detail required at outline stage, it cannot be ignored that the proposal would amount to a significant level of floor space (estimated at circa 9,000m²) with building heights of up to 8m (a condition to limit heights could be attached to an outline approval if permission were to be otherwise forthcoming). In assessing the visual impact of the proposal, consideration needs to be given to the likely scale and layout of the proposal and the settlement edge location of the site. Clearly, a development of this scale would alter the character of the current site.

The application has not been supported by a formal landscape and visual impact assessment. However, the landscape implications have been referenced elsewhere in the supporting documentation. The Design and Access Statement, in particular, includes aerial views and photographs of the site which demonstrate that, whilst the site itself is relatively flat, there are topographical changes to both the north and the south effectively meaning that the site itself sits in a 'bowl' and is therefore largely screened by existing topographical features and dense tree belts.

Having visited the site I would agree that the visual impacts of the development are likely to be limited and in any case read alongside the existing industrial uses adjacent. The indicative photomontages included within the Design and Access Statement demonstrate the likely form of developments which would come forwards. Overall, noting the partly industrial context surrounding the site but moreover the topographical and landscape features which contain it, it is not considered that the form of the development proposed would impose landscape or visual harm worthy of concern at outline stage.

Impact on Trees and Ecology

Core Policy 12 of the Core Strategy seeks to secure development that maximises the opportunities to conserve, enhance and restore biodiversity. Policy DM5 of the DPD states that natural features of importance within or adjacent to development sites should, wherever possible, be protected and enhanced. Policy DM7 states that new development should protect, promote and enhance green infrastructure to deliver multi-functional benefits and contribute to the ecological network. It goes on to state that:

On sites of regional or local importance, including previously developed land of biodiversity value, sites supporting priority habitats or contributing to ecological networks, or sites supporting priority species, planning permission will only be granted where it can be demonstrated that the need for the development outweighs the need to safeguard the nature conservation value of the site.

The NPPF outlines a number of principles towards the contribution and enhancements of the natural and local environment. It advises that development should seek to contribute a net gain in biodiversity with an emphasis on improving ecological networks and linkages where possible.

The application has been accompanied by a Preliminary Ecological Appraisal which recognises the presence of one statutory site of national nature conservation interest within 2km (Southwell Trail LNR) and 12 non-statutory sites of local nature conservation interest within 2km (including Bilsthorpe Colliery which affects part of the site). It is also acknowledged that part of the site (around the area where Plots 4 and 6 are proposed) forms part of the previously consented aftercare habitat management area from the former colliery use.

The original supporting report failed to recognise the presence of the site within the 5km buffer zone of the indicative core area for the potential Special Protection Area (pSPA) for a substantial population of nightjar and woodlark in the Sherwood Forest area. However, an additional report has been received which deals with this matter. The Council must pay due attention to potential adverse effects on birds protected under Annex 1 of the Birds' Directive and undertake a "risk-based" assessment of any development, as advised by Natural England in their guidance note dated March 2014.

It remains for the Council, as Competent Authority, to satisfy ourselves that the planning application contains sufficient objective information to ensure that all potential impacts on the breeding Nightjar and Woodlark populations have been adequately avoided or minimised as far as is possible using appropriate measures and safeguards. The first stage of any Habitat Regulations Assessment (HRA) is to identify the likely significant effects via the screening process. This is essentially a high-level assessment enabling the assessor to decide whether the next stage of the HRA, known as the appropriate assessment, is required.

It is stated that there are no habitats within the application site that would support the interest features of the potential proposed site and therefore there is no feasible way the interest features or areas potentially proposed to be designated for them could be directly affected. In terms of indirect impacts, the greatest potential impacts would be through air pollution / emissions to the air. The report states that any impacts are not considered to be significant given there are no habitats within the application site that would support the interest features of the ppSPA.

Officers agree with the overall conclusions that there will be no likely significant effects arising from the development and therefore it is not necessary in this case to proceed to an appropriate assessment stage.

The survey concludes that there is some potential for protected/priority species to be present namely foraging/commuting bats; little-ringer plover; nesting birds; common lizard and terrestrial invertebrates. Mitigation is suggested such as a sensitive lighting regime and avoidance of any vegetation clearance in bird breeding season which could be secured by condition if permission were to be forthcoming.

Of particular note is the identification that the proposed development would result in the loss of 4.99 hectares of land within Bilsthorpe Colliery Local Wildlife Site (LWS) which noting the overall area of 19.03 hectares would equate to a loss of 26.2% of the LWS. There is also a potential negative impact on dingy skipper, an ecological interest feature of the LWS along with other grassland butterflies and moths.

The ecologist who prepared the Preliminary Ecological Appraisal for this application has recommended that native species of local provenance are incorporated into a landscape scheme to provide a 10% net biodiversity gain and that a Risk Assessment Method Statement (RAMS) will be required which should include the relocation of common lizard and the relocation of any

grassland turf containing dingy skipper. It is implied that this will be done in conjunction with the translocation of more species rich swards within the previously consented (2015) aftercare habitat management area into the proposed habitat management zone.

There is a clear indication within both the ecological survey and the indicative masterplan that in order to be acceptable in ecological terms, there would need to be a robust habitat management plan to compensate for the direct loss of the LWS and to mitigate the potential loss of species elsewhere in the site. The Planning Statement contends that the mechanism to support this should be through a condition but equally there is a suggestion that it may include land within the applicant's ownership that could be outside of the red line boundary.

Legislation securing a 10% biodiversity net gain is yet to come into force. However, in this case it is clear that without mitigation the ecological impacts of the scheme would not be acceptable. It appears that the proposed habitat management zone indicated within the red line site location plan would be less than the lost area of the LWS leading to a potential net loss rather than the 10% net gain suggested by the ecologist. The potential ecological implications have also been raised as a concern from NCC in discussions on the wider Bilsthorpe Energy Centre (BEC) 2013 application:

The BEC planning permission includes a section 106 agreement containing a wader mitigation scheme and which requires land to the north of the site for off-site habitat enhancement works to benefit multiple species including breeding waders by improving grassland biodiversity and habitat quality for dingy skipper (and other invertebrates), reptiles, amphibians and skylark by undertaking a series of deeper scrapes, shingle areas and refugia to compensate for loss of habitat (a Local Wildlife Site- noted for breeding Little Ringed Plover and Lapwing) as a result of the BEC development.

It is noted the proposed business park development would result in a further loss of the same LWS. The business park applicants appear to propose that, for the purposes of providing their off-site ecology mitigation areas, to use the very same mitigation area already secured and implemented for the BEC development. See 'Proposed Masterplan'- north of plots 1, 2 and 3. This may be needed for breeding birds and for dingy skipper (the latter is a specific recommendation in the Preliminary ecology report). It is not clear if the use of this area for their own ecological mitigation purposes would be appropriate (to offset the further loss of the LWS) or compatible with the BEC mitigation requirements and this may raise further questions regarding overlapping responsibility for its ongoing management. (The BEC land is actually is separate ownership and is a separate developer as confirmed in the DAS (fig 3), but the s106 requirement applies to the off site area).

Prior to this scheme being amended, not only would the development have created a net loss in ecological habitat but the proposed mitigation would essentially double count areas of mitigation already secured through the extant BEC application. The agent was therefore asked to better quantify the extent of biodiversity gain which could be achieved noting that the applicant owns large areas of land adjacent to the site.

A Biodiversity Impact Assessment has been submitted which acknowledges that the habitat enhancement area is covered by the previous S106 but that this land has been included in the baseline for the site as it will be affected by the proposed development. The assessment therefore goes on to include off site areas of land which are outside of the red line development boundary but within the applicant's ownership (c.26.48hectares).

The ecological impacts presented within the assessment are summarised in the following table:

Unit Type	Development Impact		With proposed mitigation (including off-site)
	Unit No.	% change	% change
Biodiversity Habitat	-68.99	-99.40	10.51
Hedgerow	+2.57	+39.95	39.95
River	-1.39	-100	10.69

Clearly, in order to achieve the level of biodiversity gain set out in the mitigation proposals would require management and monitoring to reach the target conditions which would need to be outlined within a Landscape Environment Management Plan and associated legal agreement noting that the enhancement would be provided on land outside of the red line site location.

As part of the original validation checks for the application, a Tree Survey was requested. However, it was stated by the applicant that this is not necessary as there is a specific intention to avoid tree loss. The wider submission documents outline that whilst there are a number of trees located within the wider site, there are not any worthy of retention within the development plots themselves and that an ecological enhancement plan would incorporate additional trees and planting. Whilst the application was subsequently validated without a tree survey the matter was again raised as an issue during the life of the application noting that the broad positioning of Plot 4a in particular appears to potentially affect a notable level of tree cover referencing the area photography.

A tree survey has since been submitted acknowledging a total of four groups of vegetation, one of category B and the rest category C. The report recommended minor remedial works to one of the groups of trees of category C level positioned to the north of the existing access road. The covering email to the report states that an impact assessment could be provided at reserved matters stage once the layouts are fixed.

The Council's Tree Officer has commented on the proposals raising issues with the lack of landscaping proposed when there is an expectation that the proposal should be integrated into the wider landscape. Concern has also been raised in respect to the indicative areas of landscaping. However, I am conscious that the proposal is in outline form and therefore matters of landscaping are not for consideration. If approved any reserved matters would be expected to include areas of landscaping which could include soft landscaping within car parks to break up the areas of hardstanding.

Based on the additional information provided during the application, and the ability to secure further ecological enhancements through a legal agreement if the application were to be otherwise acceptable, no ecological harm worthy of refusal has been identified against Core Policy 12 and Policy DM7.

Impact on Highways and Public Rights of Way

Spatial Policy 7 indicates that development proposals should be appropriate for the highway network in terms of the volume and nature of traffic generated and ensure the safety, convenience and free flow of traffic using the highway are not adversely affected; and that appropriate parking provision is provided. Policy DM5 of the DPD requires the provision of safe access to new development and appropriate parking provision.

The only matter for consideration at this stage is the proposed vehicular access which would rely on an existing access at the western edge of the site from Eakring Road. This access already serves the existing industrial sites in the area as well as the servicing of the nearby turbines and solar farm. Visibility splays of 2.4m x 127m to the north-east and 2.4m x 101m to the south can be achieved along Eakring Road for drivers exiting Business Park.

There are no definitive Public Rights of Way within or abutting the Site. However, an informal circular route has been established by local walkers within the Business Park which as above will be retained.

The original application was accompanied by a Transport Assessment (TA) and Travel Plan (TP). However, the applicant has attempted to overcome initial concerns from NCC Highways through the submission of Transport Assessment Addendums (TAA) and a further technical note received in April 2023.

The latest highways note has shown a reduction in the overall development quantum proposed (from 12,208m² to 9,000m²) as well as an amendment to the B2/B8 development mix. Junction modelling has been updated to reflect the lower quantum of development with results showing that the development would lead to an additional delay of 34 seconds during the AM peak and 19 seconds during the PM peak at the Deerdale Lane junction (one of the key areas of concern from NCC Highways). It is stated that this level of delay is unlikely to be noticed by drivers in the context of the average commute.

NCC Highways in their latest comments have removed their initial objection and suggested that the development could be appropriate subject to conditions. Their comments do make reference to the indicative masterplan contradicting the transport note (TN) in terms of the split of development but this has since been corrected. Specifically, the suggested conditions would control the level of B8 and B2 uses to come forwards (54/46% respectively) to accord with the data presented in the latest TN. A separate condition is also suggested seeking specific details including swept path analysis, layout of car parking and cycle parking etc.

Notwithstanding the removal of an objection, the content of their comments is worthy of repetition in part:

The TN suggests that the Ratio of Flow to Capacity (RFC) and queue levels have been demonstrated as negligible. We do not agree with this statement as the TN demonstrates that the traffic generated by the assessed development realises an RFC of 0.74 at the junction of Deerdale Lane with the A614. This is 0.01 short of the trigger of 0.75 requiring junction improvements here and whilst the queues are not significant, the increase in delays at the junction are a concern.

In the AM the delay goes up from 92 to 125 seconds (33 seconds or 36% increase) and in the PM it goes from 40 to 59 seconds (19 seconds or 48% increase). The added delay will result in more frustration on the side road, more pressure from vehicles behind the first one at the give-way line and an increased potential for drivers to choose an inappropriate gap in the A614 traffic to make their turn through. There is therefore a concern with regard to this significant increase in delay on Deerdale Lane and its potential impact on road safety.

However, given the capacity assessment demonstrating the junction, whilst extremely close, is below the capacity threshold (0.74RFC with the threshold being 0.75RFC) it is thought that a recommendation of refusal on this basis may be difficult to defend at appeal.

It is noted that the masterplan indicates car parking spaces and turning areas. This information has not been reviewed and a full justification of parking provision and assessment of turning areas should be submitted with any reserved matters applications.

It should be noted that there is a S106 in place limiting the amount of development which can take place prior to improvements to the A614/Deerdale Lane junction being made. It is thought that any further development than that assessed will exceed the trigger in the S106 and/or the capacity threshold at the junction. It is known that the improvements to the junction have recently been costed and would be likely to make any further development unviable.

The content of the comments essentially acknowledges that the applicant has successfully demonstrated that the revised quantum of development would be acceptable in highways safety terms albeit very close to the 'threshold' of being unacceptable. Officers appreciate the stance taken from NCC Highways that in the absence of technical demonstrable harm, they would not be able to maintain their objection and ultimately defend it at appeal. However, the concerns originally raised remain; the proposed development, even in its lesser form would still lead to additional delays at the A614 Deerdale Lane junction.

Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Whilst technical data shows that the proposal could be acceptable in highways safety terms (and therefore does not meet the threshold for refusal set by the NPPF), it remains the case that the proposal is likely to lead to local driver frustration. In my view even in the context that the proposal is not contrary to Spatial Policy 7, this must weigh negatively in the overall planning balance.

NCC have sought a contribution towards bus stop infrastructure evidencing that enhancements are needed to the existing bus network to provide the resources and capacity to meet the demand generated by employees and the public. This assessment is based on the existing services which serve the local area. If the scheme were to be otherwise acceptable then this could be secured by an associated legal agreement.

Impact on Residential Amenity

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. The NPPF promotes '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'.

Being within the open countryside the site is not immediately adjacent to any residential neighbours and sits within an industrial context. It is noted that permission has been recently granted on land off Eaking Road at the top of the village envelope for Bilsthorpe but these properties would still be over 350m from the site boundary and intervened by significant areas of landscaping. The comings and goings to the site are not likely to be discernible from the usual

traffic on Eakring Road (notwithstanding that the associated junction delays discussed above are likely to cause a frustration to residents of the village).

It would be reasonable at reserved matters stage to request site specific noise surveys once the end users are known but there is nothing to imply at outline stage that there would be any adverse noise impacts which could not be suitably mitigated.

Impact on Flooding and Drainage

Policy DM5 and Core Policy 9 require that proposals pro-actively manage surface water and Core Policy 10 seeks to mitigate the impacts of climate change through ensuring that new development proposals taking into account the need to reduce the causes and impacts of climate change and flood risk.

The site is within Flood Zone 1 according to the Environment Agency maps and is therefore at a low risk of flooding from rivers. Parts of the site would be at risk from surface water flooding, primarily close to the large pond which existing to the east of the site boundary.

The application has been accompanied by a Flood Risk Assessment (owing to the site area) and a Sustainable Drainage Statement albeit the level of detail is commensurate to the outline nature of the proposal and it is envisaged that the final drainage strategy will be determined during the detailed design stage once the layout is finalized.

The scheme has been assessed by NCC as the Lead Local Flood Authority. They have raised no objections subject to the inclusion of a condition seeking more specific drainage details.

Contamination

Policy DM10 of the DPD states that where a site is highly likely to have been contaminated by a previous use, investigation of this and proposals for any necessary mitigation should form part of the proposal for re-development.

The application has been accompanied by a Phase 2 Ground Investigation. The Report concludes that the site has previously been used for underground coal mining but that there are no environmental constraints preventing the development of the site for commercial/industrial purposes that cannot be controlled through appropriate mitigation measures such as ground gas protection, removal of high calorific value ground specific foundation design. It is suggested that a remediation strategy can be secured by condition.

Colleagues in Environmental Health have assessed the report and commented that limited intrusive sampling has been carried out and given that an indicative layout is available it is expected that there would be some sampling of the proposed allotment area amongst other areas. These comments have been passed to the agent during the life of the application for review but in any case the comments of the EHO do state that the proposal could be accepted provided a full phased contaminated land condition were to be imposed.

Other Matters

The proposal does not include any end users which would be a main town centre use and therefore there is no requirement to apply a sequential test in retail terms.

There are no designated heritage assets within the site boundary or close by. The boundary of the Conservation area is over 850m away to the south and intervened by belts of woodland such that the proposed would have no adverse impacts on heritage.

9.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

10.0 Conclusion

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 material considerations indicate otherwise.

The site falls outside of the defined village envelope of Bilsthorpe as defined in the DPD thus it falls for the proposal to be assessed under Policy DM8 (Development in the Open Countryside) of the DPD. The proposed development is not considered to be small in scale nor does it represent a proportionate expansion of an existing business and therefore does not meet the exception for employment development under the criteria of this policy. The proposed development therefore represents a departure from the Development Plan. As such, if approved the development could undermine the strategic objectives and targets for sustainable growth set out in the development plan. This carries significant negative weight in the planning balance of the application.

Despite discussions throughout the application, Officers remain to be convinced that there are overarching commercial reasons as to why this site needs to come forwards contrary to the Spatial Hierarchy of the Development Plan.

In relation to impact on visual amenity, the proposal would alter the open character of the existing site. However, the development would be read alongside existing industrial development in the area and noting the topographical characteristics of the surrounding area the overall landscape impacts are likely to be limited. The development would not result in harm to the setting of heritage assets (including the character or appearance of the nearest Conservation Area or any listed buildings). This is subject to further consideration of design (including materials and finishes) and landscaping (including mitigation planting) at reserved matters stage. No specific harm has been identified in respect to residential amenity; flooding; drainage or contamination subject to mitigation which could be secured by conditions. All of these elements would hold a neutral weight in the planning balance.

Matters of ecology and highways safety have been subject to lengthy discussions throughout the application. In respect to ecology, Officers are now satisfied that the on site loss of ecological value could be compensated for by off site enhancements which would need to be secured by a legal agreement. Subject to such mitigation being secured, the impacts on ecology would have a neutral impact in the planning balance.

In terms of the impact on the highways network, whilst not amounting to an unacceptable impact on highway safety, the revised proposal would still increase delays at peak times for vehicles using

the nearby Deerdale Lane junction which is likely to create driver frustration and in my view continues to weigh negatively in the overall planning balance.

The economic and community benefits of the scheme are not disputed namely a significant level of job creation and the creation of community allotments. It is fully appreciated that the NPPF states that significant weight should be placed on the need to support economic growth. The delivery of this site could meet an immediate demand for additional employment land within the District and there is no dispute that discussions with end occupiers are advanced. On this basis, the employment benefits of the proposal would carry meaningful positive weight in the overall balance of the scheme. As discussed in the appraisal, the community benefits in the form of the allotments can only be attributed very limited positive weight given that they are not necessary to make the development acceptable and therefore it would not be reasonable to specifically secure their delivery.

The employment benefits alone are not enough to outweigh the fact that the development is unacceptable as a matter of principle and does not justify non-policy compliant development in the open countryside. The benefits of the scheme therefore do not warrant a deviance away from the plan led system and the recommendation of Officers is that the application is refused for the reason outlined below.

11.0 Reasons for Refusal

01

The site falls outside of the defined village envelope of Bilsthorpe as defined in the Allocations and Development Management Development Plan Document (DPD). Notwithstanding that parts of the site are subject to an extant permission for industrial uses, it falls for the proposal as a whole to be assessed under Policy DM8 (Development in the Open Countryside) of the DPD. The proposed development is not considered to be small in scale nor does it represent a proportionate expansion of an existing business and therefore does not meet the exception for employment development under the criteria of this policy. The proposed development therefore represents a departure from the Development Plan. If approved the development could undermine the strategic objectives and targets for sustainable growth set out in the development plan.

Although the proposal would bring meaningful economic benefits to the District, these are not considered sufficient to outweigh the harm identified or to justify a departure from the development plan. The proposal is contrary to Spatial Policy 3 (Rural Areas) and Core Policy 9 (Sustainable Design) of the Amended Core Strategy (Adopted March 2019) and Policies DM5 (Design) and Policy DM8 (Development in the Open Countryside) of the Allocations and Development Management Development Plan Document (Adopted July 2013).

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/cil/ The proposed development has been assessed and it is the Council's view that CIL is not payable on the development hereby approved as the development type proposed is zero rated in this location.

02

This application has been the subject of discussions during the application process, notwithstanding this, the proposal is contrary to the Development Plan and other material planning considerations as detailed in the above reason for refusal. Whilst having worked positively and proactively throughout the process, the decision is that it hasn't been possible to overcome these problems to enable a positive decision to be made.

03

The application has been refused on the basis of the following plans and documents:

- Location Plan – 00 001;
- Proposed Masterplan – 20 002 Rev. C;
- Footpath Regularisation – 20 003;
- Planning Policy Statement – ID Planning dated February 2022;
- Design & Access Statement – Enjoy Design dated October 2021;
- Flood Risk Assessment – BWB BIL BWB ZZ XX RP YE 0001_FRA;
- Sustainable Drainage Statement –BIL BWB ZZ XX RP CD 0001 SDS S2 P03;
- Existing Surface Water Drainage Layout - BIL BWB ZZ XX DR CD 0003 REV P2;
- Outline Surface Water Drainage Strategy - BIL BWB ZZ XX DR CD 0004 REV P1;
- Phase 1 and 2 Geo-Environmental Assessment - BIL BWB ZZ XX RP YE 0001 PH1&2_P1;
- Coal Mining Risk Assessment – 51002294833001 dated 14th August 2020;
- Shaft Filling Specification dated September 1997;
- Preliminary Ecological Assessment – Applied Ecological Services Ltd – dated 17/12/2021;
- Transport Assessment Optima Highways and Transportation Consultancy Ltd. Dated October 2021 (Rev 1);
- Framework Travel Plan – Optima Highways and Transportation Consultancy Ltd. Dated October 2021 (Rev 1);
- Marketing Report by In-site dated 6th April 2022 (including associated enquiry schedule);
- Further information on possible potential Special Protection Areas - Applied Ecological Services Ltd;
- Arboriculture Report – JCA Ref: 18303 LW;
- Appendix 6: Tree Constraints Plan JCA Ref: 18303 LW;
- Letter by Fisher German – BF/128810 dated 10th June 2022;
- Transport Assessment Addendum by Optima dated 20th October 2022;
- Junction Report received by email dated 21st February 2023;
- Highways Technical Note 1 dated 21st April 2023;
- Futures Biodiversity Impact Assessment (BIA) – FE252/BIA01 dated April 2023.

BACKGROUND PAPERS

Application case file.



Report to Planning Committee 6 July 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Clare Walker, Senior Planner, Ext. 5834

Report Summary			
Application Number	23/00890/OUT		
Proposal	Outline application for residential development to erect 1 dwelling with all matters reserved		
Location	Willow Hall Farm, Mansfield Road, Edingley, NG22 8BQ		
Applicant	Anthony Tyler	Agent	Jigsaw Planning & Development Ltd
Web Link	23/00890/OUT outline application for residential development to erect 1 dwelling with all matter reserved Willow Hall Farm Mansfield Road Edingley NG22 8BQ (newark-sherwooddc.gov.uk)		
Registered	06.06.2023	Target Date	26.07.2023
Recommendation	That planning permission be Refused for the reasons detailed at Section 10.0		

This application has been referred to the Planning Committee for determination by the local ward member, Councillor P Rainbow on the grounds of a need for bungalows and the applicant’s personal need for a single storey dwelling.

1.0 The Site

The site comprises 0.19ha of land and forms part of a field located in the open countryside located towards the south-west of the main built-up area of Edingley village. It is accessed via an access track (approximately 180 metre long) from Mansfield Road (classified) which also serves Willow Hall Farmhouse to the west of the site. Access into the field is via a metal field gate.

The site is occupied by a number of sheds and structures. A touring caravan is also present /stored on this land. The wider field is surrounded by relatively matures trees/hedgerow. Agricultural fields are located immediately to the north, east and south of the site.

It should be noted that part of the field (the south-western corner) falls within flood zone 2 (medium risk) whereas the remainder of the site falls within zone 1, at low risk of fluvial flooding.

The site is immediately adjacent to two Local Wildlife Sites (LWS), namely 'Edingley Grassland LWS' and 'Mansfield Road, Pasture LWS' which are located to the east. A small watercourse is located along the southern boundary of the site. Edingley FP16 runs parallel with and beyond the northern boundary of the application site.

2.0 Relevant Planning History

22/01743/OUT - Outline application for residential development to erect 1 no. dwelling house with all matters reserved. Refused 13.03.2023 for the following reason:

In the opinion of the Local Planning Authority, the site lies in the open countryside where there is a presumption against new development as set out by Spatial Policy 3 and Policy DM8 of the Development Plan, unless it meets one of the exceptions set out. The proposal does not meet any of the exceptions set out in that it is not for a rural workers dwelling nor (as an outline application with all matters reserved) does it advance a dwelling of exceptional quality or innovative design. A proposed dwelling in this location, as a matter of principle, would likely result in an incongruous feature and would constitute encroachment into the countryside, that would adversely impact upon the setting of the surrounding rural landscape. Development of this site would result in an unsustainable form of development and undermine strategic objectives contrary to Spatial Policy 3 (Rural Areas) and Core Policies 9 (Sustainable Development) and 13 (Landscape Character) of the Amended Core Strategy and Policy DM8 (Development in the Open Countryside) of the Allocations and Development Management Development Plan Document (DPD) which together form the relevant parts of the development plan as well as the NPPF, a material planning consideration. There are no material considerations that outweigh the harm identified.

14/01848/FUL – A full application for a prefabricated self build two bedroom bungalow was refused on 8th January 2015 by the Planning Committee in accordance with the recommendation on the basis that; 1) it was unjustified development in the open countryside and 2) due to a lack of ecological information. The application site related to the whole field.

02/02416/OUT – Outline planning permission for a bungalow was refused on the grounds of the sites location outside the village envelope, refused 22.01.2003.

3782525 – Extend and renovate cottage 6 outbuildings, approved 08.09.1982.

37870815 – Site residential caravan, approved 06.10.1987.

3.0 The Proposal

This is a resubmission of a previously refused application (22/01743/OUT) on a slightly enlarged application site (now 0.19ha compared to previous 0.15ha according to the SLP)

extending further west towards the host property.

Outline planning permission is sought for a new dwelling. For clarity, an outline application allows for a decision on the general principles of how a site can be development and if granted, requires a subsequent application called 'reserved matters' to be submitted on one or more of those matters. Reserved matters are defined in secondary legislation as 'access', 'appearance', 'landscaping', 'layout' and 'scale'.

Whilst in this case all matters are reserved, access would however need to be taken off Mansfield Road, and is shown on the submitted site location plan to be within the red line. Notwithstanding the fact that all matters are reserved for later consideration, indicative site plans have been submitted to demonstrate how a dwelling could be sited within the plot.

The application is advanced citing a change in circumstances since the refusal which will be explored in the principle section of this report.

The Submission

JPD/MSE/4091-5 (Site Plan) Context only (as confirmed by agent 20.06.2023)

JPD/MSE/4091-1B (Site Location Plan)

JPD/MSE/4091-4B Outline proposal

JPD/MSE/4091-3C Outline proposal

JPD/MSE.4091-2 Site Plan (existing)

Planning Design and Access Statement, 23.05.2023

Ecological Appraisal by CBE Consulting, January 2022

Flood Risk Assessment (map)

4.0 Departure/Public Advertisement Procedure

Occupiers of two properties have been individually notified by letter. A site visit was undertaken on 2nd March 2023 and on 21st June 2023.

5.0 Planning Policy Framework

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

Spatial Policy 1 - Settlement Hierarchy

Spatial Policy 2 - Spatial Distribution of Growth

Spatial Policy 3 – Rural Areas

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

DM5 – Design

DM7 – Biodiversity and Green Infrastructure

DM8 – Development in the Open Countryside

DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

National Planning Policy Framework 2021

Planning Practice Guidance (online resource)

Residential Cycle and Car Parking Standards & Design Guide SPD June 2021

6.0 Consultations

(a) Statutory Consultations

NCC Highways Authority – No response received to date

NCC Public Rights of Way – No response to date.

(b) Parish Councils

Edingely Parish Council – Support - ‘The planned development will replace agricultural buildings/nissen huts which have a deteriorated. This will improve the look of the area, particularly from the footpath.’

(c) Representations/Non-Statutory Consultation

NSDC Environmental Health – Indicate that given the potential for agricultural land contamination the application should have a contingency plan should the construction phase reveal any contamination and request notification of such.

One letter of support has been received stating that the development would not be detrimental to anyone or anything and would replace the agricultural buildings that have fallen into disrepair.

7.0 Comments of the Business Manager – Planning Development

The key considerations are:

1. The Principle of Development;
2. Impact on Visual Amenity;
3. Ecology & Trees;
4. Highways and Parking;
5. Impact on Residential Amenity;
6. Flood Risk; and
7. Other Issues such as Local Need.

These issues will now be discussed in turn with a conclusion that follows.

Preliminary Matters

Like the last application, this is also presented as being part of a well defined extensive residential curtilage. The site location plan has been amended to show additional land within the applicant's control, including Willow Hall Farm and its domestic curtilage as well as the field between it and the highway. At the officer site visit it was noted the application site is distinctly separate from the farmhouse, was grassed and bounded by hedgerows and accessed via a field gate. My view is that the site is likely to have operated in the same way that a paddock/small holding would and that the residential curtilage is likely to be confined to the west, extending north and south of the farmhouse and defined by established mature trees and vegetation. I am not satisfied that this forms part of the residential curtilage. No certificate of lawful development has been issued to establish or clarify the extent of the curtilage.

This application is a resubmission of a previously refused scheme and is also outline with all matters reserved. The agent indicates there has been changes in circumstance since the previous refusal which warrant consideration. The assessment that follows remains as previously set out with consideration of the new assessment added in where appropriate.

Principle of Development

The National Planning Policy Framework (NPPF) promotes the principle of a presumption in favour of sustainable development and recognises the duty under the Planning Acts for planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The NPPF refers to the presumption in favour of sustainable development being at the heart of development and sees sustainable development as a golden thread running through both plan making and decision taking. This is confirmed at the development plan level under Policy DM12 of the Allocations and Development Management DPD.

The site lies within the parish of Edingley and therefore development needs to be considered against Spatial Policy 3 (Rural Areas). This states that beyond principle villages, new development will be assessed against the 5 criteria of location, scale, need, impact and character. It also provides that 'development not in villages or settlements, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting...'

The settlement of Edingley does not have a settlement boundary and therefore it is necessary in the first instance to consider, as a matter of judgement, whether the site falls within the village or outside of it. It is noted that the applicant advances a case that the site is not open countryside.

2016 aerial image showing the site in context



The 'Location' criteria of Spatial Policy 3 states that 'new development should be **in** villages, which have sustainable access to Newark Urban Area, Service Centres or Principal Villages....'[my emphasis added]. Paragraph 4.25 of the Amended Core Strategy (the reasoned justification) states that '*In decision making terms this means locations within the existing extent of the village, which includes dwellings and their gardens, commercial premises, farm yards and community facilities. It would not normally include undeveloped land, fields, paddocks or open space which form the edge of built form*'.

The form of development along Main Street/Mansfield Road is predominantly ribbon development whereas this site is set away from the built form, in the countryside adjacent to Willow Hall Farm(house). I therefore concur with the previous assessment (noting the 2014 refusal and that from earlier this year) that the site does not form part of the built up part of Edinley and is located in the open countryside. I have already concluded (in my preliminary matters section) that it appears the site is agricultural in nature, rather than residential. Indeed I note that the 2014 amended application form described the land as 'numerous storage of buildings'.

The agent advances a case that because an agricultural barn at Elmtree Barn has received approval for conversion to residential use through the prior approval route (22/00273/CPRIOR), this readjusts the village footprint placing the current application in an altered context which is well related to the village form and facilities. The barn in question lies to the north-west of the site (highlighted in yellow on the image below) and does not appear to have been converted to date.

I note the agent has once again advanced an argument that a dwelling would assist in tidying up the site and removal existing buildings. However the existing buildings are very modest in scale, dilapidated (have no formal consent – albeit I expect have been in situ for a period of more than 10 years) and could be removed without requiring a new dwelling to facilitate this.

As such, the erection of a new dwelling in this location is considered to be an unsustainable location for a new dwelling, contrary to the aims of the NPPF and the Development Plan. Furthermore, noting the previous applications (14/01848/FUL refused by the Planning Committee in 2014 and 22/01743/OUT refused under delegated powers in March 2023) the latter of which was determined under the current Development Plan which concluded that the site was considered to lie in the open countryside and given that there are no new material factors, it would be considered perverse to conclude anything otherwise.

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 and created.

The site is located within the Mid Nottinghamshire Farmlands Landscape Character Area in the Newark and Sherwood Landscape Character Assessment (2010). The site falls within Hockerton Village Farmlands (MZ PZ 34) which is described as a gently rolling and undulating topographical area, dominated by arable farming with few detracting features. The landscape sensitivity is defined as ‘moderate’ and condition is defined as ‘good’ and the proposed action for the area is to ‘conserve and reinforce’ including conserving the rural character of the landscape by limiting any new development around the settlement of Edingley.

A public footpath crosses the access to the site and runs immediately along the north side of the field on which the proposed dwelling would be situated. The footpath is unlikely to be unaffected physically by the proposed development.

No details of the dwelling’s design or appearance have been submitted given these are reserved. However a proposed dwelling by its very nature would likely be incongruous in an open countryside setting. It would be positioned beyond the residential curtilage of Willow Hall Farm and create an additional domestic curtilage with its associated paraphernalia including parking which would all impact on the open character of the countryside. Whilst only intermittent views of the proposed dwelling would be likely to be achievable from both the public footpath and other public vantage points such as a the highway due to the existing levels of landscape screening provided by the existing trees/hedgerow which bound the site, encroachment into the open countryside would still result. It is not considered that the benefits of removing the small number of existing sheds/storage buildings which are more agricultural in appearance and temporary in nature from the land would outweigh the harm identified. Overall, the proposed development as a matter of principle would likely have an adverse impact on the rural character of the landscape through encroachment contrary to Spatial Policy 3 and Core Policies 9 and 13 of the Core Strategy and Policy DM8 of the Allocations and Development Management Development Plan Document (DPD).

Ecology and Trees

Core Policy 12 and Policy DM7 of the development plan, seek to secure development that maximises the opportunities to conserve, enhance and restore biodiversity.

As an outline application, it is not known where the proposed dwelling is proposed to be sited or whether any trees and or hedgerows would be affected. However access would utilise an existing field gate and the majority of the natural features form the site boundaries.

An Ecological Appraisal by CBE Consulting has been undertaken which does not identify any barriers to development. Reasonable avoidance measures are recommended to protect species such as reptiles, nesting birds etc which could be controlled by condition in the event of an approval. Subject to suitable controls the proposal would be acceptable and in line with the relevant policies.

Highways and Parking

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.

Details of the means of access have been 'reserved' albeit the access would need to be taken from Mansfield Road. At the time of writing, neither NCC Highways Authority nor the Public Rights of Way team have responded to the consultation request. However I am satisfied that a suitable access could be advanced for this site noting that no objections were raised in principle on the previous refused applications.

Impact on Residential Amenity

Given the position of the site away from the built up area and its physical separation from Willow Hall Farm(house), I am satisfied that a scheme could be designed to avoid adverse impacts on the residential amenity of existing dwellings in accordance with CP9 and DM5.

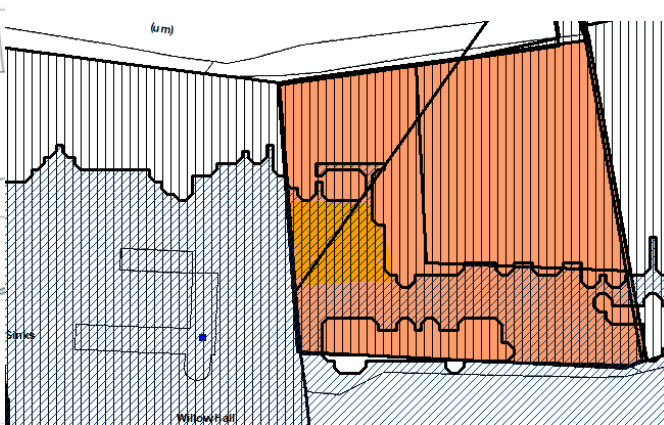
Flood Risk

The majority of the site lies within flood zone 1 which is at lowest flood risk. The south-western corner of the field annotated in yellow highlight on the right hand image below) falls within flood zone 2, at medium fluvial risk.

Site Location Plan



Extent of Flood Zone 2



Core Policy 9 requires new development proposals to pro-actively manage surface water. Core Policy 10 of the Core Strategy and Policy DM5 of the Allocations and Development Management DPD along with the NPPF set out a sequential approach to flood risk which is reflected in Policy DM5.

The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

No site specific flood risk assessment was submitted with this application. However taking a pragmatic approach, I am satisfied that in the event outline consent was granted for a dwelling, the site is large enough to place a dwelling and the majority of its garden within zone 1 (as has been suggested on the indicative layout) such that the flood risk would not warrant further consideration.

Other Issues – Local Need

As previously stated, the ‘need’ criterion cited within Spatial Policy 3 of the Core Strategy is not relevant in the assessment of new housing in open countryside locations. Even if it were, *Spatial Policy 3 is intended to serve the public interest rather than that of individuals and consequently the proven local need to which its refers must be that of the community rather than the applicant.* Although it is accepted that these may be interlinked it should not be solely reliant on the needs of the applicant.

I have taken into consideration the position advanced by the applicants; in that they have lived in Edingley for many decades, take an active part in the community and that Willow Hall Farm is too large and a maintenance burden. I understand they wish to move to a more manageable, energy efficient dwelling and stay in the community and that they say releasing the larger dwelling will contribute to the overall housing supply and needs of Edingley.

Whilst I appreciate the case advanced, the circumstances of the applicant does not justify the principle of building a new house in the open countryside and I am unable to attach any material weight to ‘need’ in this instance.

I note the suggestion from the local ward Member that the scheme could contribute to

housing need by providing a bungalow. However the application is advanced as a dwelling (with no mention of its scale) which does not necessarily mean a single storey unit, albeit it would be open to Members to condition this in the event the recommendation is overturned. There is no up to date parish survey of housing need for Edingley; the last one was published in 2016 and is now unreliable. At that time it identified a market preference for 7 open market dwellings comprising 3x2 bed house, 2x4 bed house, 1x2 bed bungalow and 1x3 bed bungalow. Planning records suggest that permissions granted since that time may have at least met that need in part. For example 2 x two bedroom bungalows have been approved (22/00626/FUL a conversion at Redfields and 21/02206/FUL land at The Mill, 2 bed dormer bungalow) as have 3 x three bedroom bungalows (20/00985/FUL – Manor Close, and two conversions under the prior notification process: 19/00516/CPRIOR and 22/00273/CPRIOR).

The most up to date housing need evidence available is contained within the District wide Housing Needs Survey by Arc4 in 2020. It indicates that in the Southwell Sub Area the need is for 3 bedroom dwellings (33.3%), 4 or more bedroom dwellings (24%) only then followed by 3 bed bungalows (15.2%) and 2 bedroom bungalows (14.8%) etc. It should also be remembered that this need is expected to be focused primarily in the more sustainable settlements within the sub area including Southwell and within villages.

Overall, I do not consider this perceived need to outweigh the harm that would result from the proposed development by virtue of its unsustainable open countryside location and its likely adverse impact upon the setting of the surrounding rural landscape.

8.0 Planning Balance and Conclusion

It has been concluded that the site lies within the open countryside where there is a policy presumption against development unless it meets a specific exception, which it does not in this case. The erection of a new dwelling is not considered to be acceptable in this open countryside location and no special justification has been demonstrated. An assessment of 'local need' should not be applied in open countryside locations and in any event does not outweigh the environmental harm. Neither do the minor economic benefits of the proposal.

A proposed dwelling in this location would result in an incongruous feature and encroachment into the countryside, and is likely to adversely impact the setting of the surrounding rural landscape. It is therefore considered that development of this site would result in an unsustainable form of development contrary to the Development Plan.

9.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

10.0 Recommendation of refusal for the following reason:

01

In the opinion of the Local Planning Authority, the site lies in the open countryside where there is a presumption against new development as set out by Spatial Policy 3 (Rural Areas) and Policy DM8 (Development in the Open Countryside) of the Development Plan, unless it meets one of the exceptions set out. The proposal does not meet any of the exceptions set out in that it is not for a rural workers dwelling nor (as an outline application with all matters reserved) does it advance a dwelling of exceptional quality or innovative design. A proposed dwelling in this location, as a matter of principle, would likely result in an incongruous feature and would constitute encroachment into the countryside, that would adversely impact upon the setting of the surrounding rural landscape. Development of this site would result in an unsustainable form of development and undermine strategic objectives contrary to Spatial Policy 3 and Core Policies 9 (Sustainable Development) and 13 (Landscape Character) of the adopted Newark and Sherwood Amended Core Strategy 2019 and Policy DM8 (Development in the Open Countryside) of the Allocations and Development Management Development Plan Document (DPD) 2013 which together form the relevant parts of the Development Plan as well as the National Planning Policy Framework, a material planning consideration. There are no material considerations that outweigh the harm identified.

Notes to Applicant

01

The application is refused on the basis of the following documents and plans:

JPD/MSE/4091-5 (Site Plan) Context only (as confirmed by agent 20.06.2023)
JPD/MSE/4091-1B (Site Location Plan)
JPD/MSE/4091-4B Outline proposal
JPD/MSE/4091-3C Outline proposal
JPD/MSE.4091-2 Site Plan (existing)
Planning Design and Access Statement, 23.05.2023
Ecological Appraisal by CBE Consulting, January 2022
Flood Risk Assessment (map)

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.

03

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

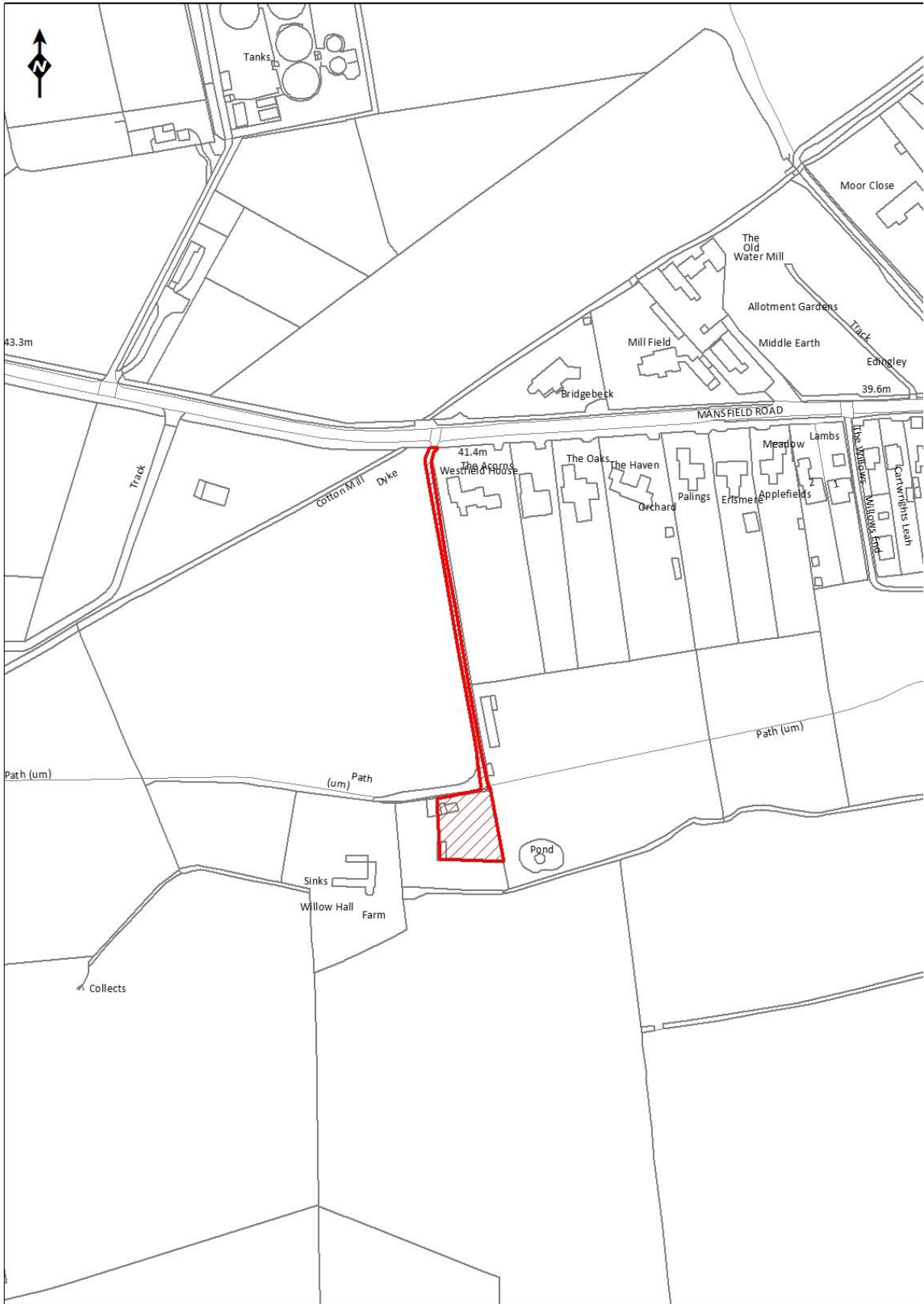
been refused by the Local Planning Authority you are advised that CIL applies to all planning permissions granted on or after this date. Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website www.newark-sherwooddc.gov.uk/cil/

BACKGROUND PAPERS

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Application case file.

Committee Plan - 23/00890/OUT



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Report to Planning Committee 6 July 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Lynsey Preston, Planner, ext. 5329

Report Summary			
Application Number	23/00107/FUL		
Proposal	Replacement dwelling and office (including stores) with associated works including demolition of existing dwelling.		
Location	Forest Farm House, Mansfield Road, Farnsfield, NG22 8JB		
Applicant	Mr and Mrs Frank and Tania Taylor	Agent	Alex McIntyre Architects - K Taylor
Web Link	https://publicaccess.newark-sherwooddc.gov.uk/online-applications/simpleSearchResults.do?action=firstPage		
Registered	26.01.2023	Target Date	23.03.2023
		Extension of time	TBA
Recommendation	Approval subject to conditions within Section 10.0 of this report		

This application is presented to Planning Committee in line with the Council’s Scheme of Delegation as the proposal represents a departure from the Development Plan due to the scale of the replacement dwelling.

1.0 The Site

The site is located outside of the built-up area of any settlement and therefore within the open countryside. The site is situated within a larger working farm (c.150 hectares) and comprises of cows (20 head), crops (wheat, barley, oilseed rape, maize), fodder beet and root vegetables, and has been established since 1998. It is located to the north of Mansfield Road, to the west of Farnsfield and to the east of White Post Farm and the A614.

The site contains an existing traditional two storey cottage with an attached brick barn which is used as residential accommodation.

The site is accessed from Mansfield Road along a driveway which also serves the farm and is approximately 200m in length. Existing modern farm buildings are located to the west of the site.

The site is surrounded by existing open fields and is fairly flat in topography.

2.0 Relevant Planning History

11/00968/FUL Change of use from barn to ancillary residential accommodation to existing farmhouse Approved 03.11.2011

11/00421/FUL Erection of a single storey extension to barn to provide office and canteen to be used in connection with Forest Farm Approved 31.05.2011

09/00055/FUL Demolish existing dwelling and construct new dwelling Approved 23.06.2009 (Not implemented)

04/00828/FUL Convert part of barn to accommodation and kitchen/bedroom extension Approved 01.06.2004

3.0 The Proposal

The proposal comprises of the demolition of the existing dwelling and attached barn and the construction of a replacement dwelling and farm offices with covered parking.

Approximate dimensions of the proposed dwelling are:

16.3m (width) (30.4m inc. single storey) x 15.1m (depth) (32.7m inc. single storey rear) x 11.2m (ridge) x 6.8m (eaves)

Approximate dimensions of the existing dwelling are:

30.0m (width at 2 storey) x 21.0m (depth including single storey) x 7.0m (ridge) x 5.0m (eaves)

Information submitted with the application

DRWG no. 50 Rev A OS Plan and block plan;
DRWG no. 51 Existing site plan and Site sections;
DRWG no. 52 Existing floor plans;
DRWG no. 53 Elevations – Existing;
DRWG no. 54 Rev A Proposed site plan and site sections;
DRWG no. 55 Rev A Ground floor plan – Proposed;
DRWG no. 56 Rev A First floor plan – Proposed;
DRWG no. 57 Rev A Second floor plan – Proposed;
DRWG no. 58 Rev A Roof plan – Proposed;
DRWG no. 59 Rev A Elevations – Proposed Sheet 1 of 3;
DRWG no. 60 Rev A Elevations – Proposed Sheet 2 of 3;
DRWG no. 61 Rev B Elevations – Proposed Sheet 3 of 3;
Bat Survey report (ref: JME_1858_BR_01_V1) January 2023;
Design and Access Statement January 2023;
Heritage Statement October 2022;
Landscape and Visual Assessment January 2023 (INF_N1006_R01);
Planning Statement;
Structural Inspection and report ref:6158;

4.0 Departure/Public Advertisement Procedure

Occupiers of 7 properties have been individually notified by letter, a notice has been displayed at the site and a notice has been advertised in the press (expiry 05.07.2023).

Site visit undertaken 15.03.2023

5.0 Planning Policy Framework

The Development Plan

Farnsfield Neighbourhood Plan (adopted 2017)

FNP4: Local employment opportunities

FNP7: The quality of development

FNP8: Landscape

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

Spatial Policy 1- Settlement Hierarchy

Spatial Policy 2 – Spatial Distribution of Growth;

Spatial Policy 3 – Rural Areas

Spatial Policy 7 – Sustainable Transport

Core Policy 6 – Shaping our Employment Profile

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)

DM5 – Design

DM7 – Biodiversity and Green Infrastructure

DM8 – Development in the Open Countryside

DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework 2021
- Planning Practice Guidance (online resource)
- Residential Cycle and Car Parking Standards & Design Guide SPD June 2021
- Landscape Character Assessment SPD 2013

6.0 Consultations

NB: Comments below are provided in summary - for comments in full please see the online planning file.

(a) Statutory Consultations

Nottinghamshire County Council Highways: The Highway Authority offer no objections to the proposal; the access arrangements will remain as present and remain suitable. It is evident that there is ample space available on site for parking and manoeuvring.

Consideration should be given to cycle storage, as well as the means to charge electric vehicles as per the LPA's own parking guidance.

(b) Town/Parish Council

Farnsfield Parish Council: No comments received

(c) Representations/Non-Statutory Consultation

NSDC Environmental Health: Advice Note - This application includes the demolition of a dwelling and construction of a new replacement dwelling. Whilst the development site is in residential use presently, it is adjacent to an industrial/agricultural site. There is the potential for contamination to be present from this adjacent use and I would therefore issue the following advice:

The applicant/developer will need to have a contingency plan should the demolition/construction phase reveal any contamination, which must be notified to the Pollution Team in Public Protection at Newark and Sherwood District Council on (01636) 650000

NSDC Conservation: The conservation team have reviewed the submitted heritage impact assessment and have undertaken a desk-based of the farmhouse and buildings. It has been concluded that the buildings do not meet the districts non-designated heritage assets criteria.

No representations have been received from third/interested parties.

7.0 Comments of the Business Manager – Planning Development/ Appraisal

The key issues are:

1. Principle of the Development
2. Impact on Design and Landscape Character
3. Impact on Highway Safety
4. Impact on residential amenity

The National Planning Policy Framework (NPPF) promotes the principle of a presumption in favour of sustainable development and recognises the duty under the Planning Acts for planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The NPPF refers to the presumption in favour of sustainable development being at the heart of development and sees sustainable development as a golden thread running through both plan making and decision taking. This is confirmed at the development plan level under Policy DM12 of the Allocations and Development Management DPD.

Principle of Development

Replacement dwelling

The site is located outside of any defined settlement as stated within the Development Plan and therefore Spatial Policy 3 (Rural Area) of the Amended Core Strategy (ACS) applies. This states that *'Development not in villages or settlements, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting.'* The NPPF (2021) states that planning decisions should ensure developments (amongst other matters):

- (a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- (c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities). (para 130)

In relation to replacement dwellings, Policy DM8 of the Allocations and Development Management DPD (ADMDPD) states that *'Planning permission will be granted were it can be demonstrated that the existing dwelling is in lawful residential use and is not of architectural or historical merit. In the interests of minimising visual impact on the countryside and maintaining a balanced rural housing stock, replacement dwellings should normally be of a similar size, scale and siting to that being replaced.'*

I am satisfied having visited the property and reviewed the planning history, that the dwelling is in lawful residential use. Conservation officers have comments on the proposal and have carried out an assessment of the building against the Non-Designated Heritage Asset document March 2022, to which it is concluded that the building would fail. Therefore, it is not considered to be a non-designated heritage asset. The existing dwelling and barn are in a habitable condition, however a structural survey has been submitted which confirms that a significant amount of works are required to the original farmhouse and the converted barn in order to improve its condition. It is therefore concluded within the report that due to the significant amount of works required to repair the identified issues [in chapter 4 of the Structural Survey], the economical approach has been to demolish the structures and rebuild. As the buildings are not considered to be of architectural or historical merit, and as the works required to repair the building are uneconomical, the principle of demolition is considered acceptable.

Farm office building

Paragraph 84 of the NPPF (2021) states that:

Planning decisions should enable:

- (a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;
- (b) the development and diversification of agricultural and other land-based rural businesses;

Core Policy 6 of the Amended Core Strategy (ACS) states the economy of the District will be strengthened and broadened by providing a diverse range of employment opportunities and complement new appropriate agriculture and forestry development. Sustaining and providing rural employment should meet local needs and be small scale in nature to ensure acceptable scale and impact.

Spatial Policy 3 states uses in the open countryside will be strictly controlled and restricted to uses which require a rural setting.

Point 8 of Policy DM8 of the Allocations and Development Management DPD (ADMDDP) states small scale employment development will only be supported where it can demonstrate the need and a contribution to providing or sustaining rural employment. Proportionate expansion of existing businesses will be supported where there is an ongoing contribution to local employment.

An office use is defined within Annex 2 (Glossary) of the NPPF as a main town centre use. Paragraph 87 of the NPPF states that the sequential test should be applied to main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Such uses should be located in town centres, then in edge of centre locations then out of centre. Paragraph 89 of the NPPF states that the sequential test should not be applied to applications for small scale rural offices or other small scale rural development, which this is. The proposal is for an office to facilitate the existing farm business on site, which is well established and expanding through the construction of further agricultural buildings. The proposal does not result in a direct contribution to additional employment, however there is likely to be an indirect impact due to the further expansion of the business.

Therefore, the principle of a replacement dwelling within the open countryside and the erection of a farm office is considered acceptable subject to the assessment of other material considerations which are explored below.

Impact on Design and the Visual Amenities of the Area

The NPPF (2021) states *'decisions should ensure developments are sympathetic to local character and history, including the surrounding built environment and landscape setting'* (para 130). Core Policy 9 (Sustainable Design) of the ACS states *'new development should be of an appropriate form and scale to its context complementing the existing built and landscape environments'*. Policy DM5 the *'rich local distinctiveness of the District's landscape and character of built form should be reflected in the scale, form, mass, layout, design, materials and detailing of proposals for new development.'*

Core Policy 13 (Landscape Character) of the ACS states new development should positively address the implications of relevant landscape Policy Zone, that is consistent with the landscape conservation and enhancement aims for the area ensuring that landscapes, including valued landscapes, have been protected and enhanced.

The site is located within the Oxton Village Farmlands (S PZ 7) landscape character area as defined within the Council's Landscape Character Assessment SPD. This states the landscape condition is moderate and that the landform is apparent with intermittent areas of woodland

and hedgerow providing a moderate visibility of features in and out of the policy zone, giving generally moderate visibility value. Therefore, the policy action is one of 'conserve and create'. Policy FNP8 (Landscape) within the Farnsfield Neighbourhood Plan (which forms part of the Council's Development Plan), states proposals should ensure they have considered and appropriately responded to the implications of the Landscape policy zone.

The main consideration in the assessment of this proposal is the impact upon the wider open countryside and landscape setting. The scale of the buildings would be the main influence in this decision making process. The tables below set out the difference in scale of the existing and proposed buildings. The office buildings have been segregated from the residential element as these form a separate building and there is currently no provision of formal offices for the running of the farm, such as meeting rooms etc.

External Footprint :

Existing footprint	Proposed footprint (inc office)	Difference (not including office)	% Difference
282m ²	Dwelling - 482m ² Office - 260m ²	200m ²	71%

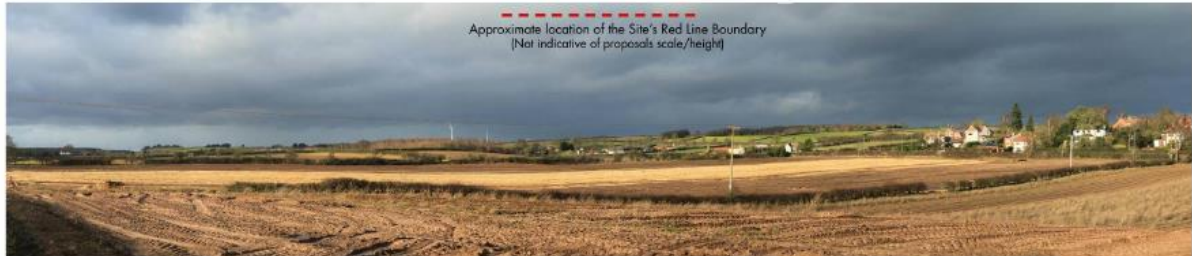
Volume:

Existing volume	Proposed volume (inc office)	Difference (not including office)	% Difference
1,160m ³	Dwelling - 2575m ³ Office - 1,000m ³	1415m ³	121%

The NPPF is clear that proposals should be sympathetic to local character and the surrounding landscape setting. Although the proposal is larger than the existing dwelling in terms of footprint and volume, the site is not isolated and is located within an existing heavily developed working farm with large modern agricultural buildings located adjacent to the building. The main frame and bulk of the dwelling is three storey which is larger in scale than the existing dwelling. However, this would be viewed in the context of the large buildings already on the site on a relatively flat topography. The separation of the buildings within the site i.e. the farm buildings from the residential buildings, would ensure there is a visual division and break in the built form but this is to the benefit of the landscape setting. The original scheme as submitted included an under-croft arrangement between the farm use and residential use, linking the two. This has been removed creating the visual break. The range of single storey 'extensions' to the main dwelling has also ensured that the visual impact of the built form has been minimalised. The use of sympathetic traditional materials also ensures the building would blend into the rural landscape.

The Landscape and Visual Statement which has been submitted with the application provides an indication of the areas where the building would be most visible. Although this does not provide a visual impression of the scale of the building in the landscape within the photomontages, it does provide an indication of the wider landscape setting which is helpful. An extract of those viewpoints are shown below.

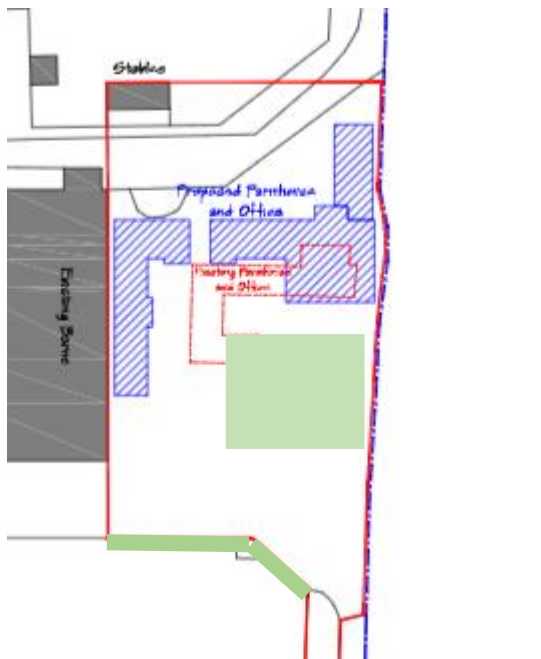
Views from Mansfield Road



View from the north along the right of way

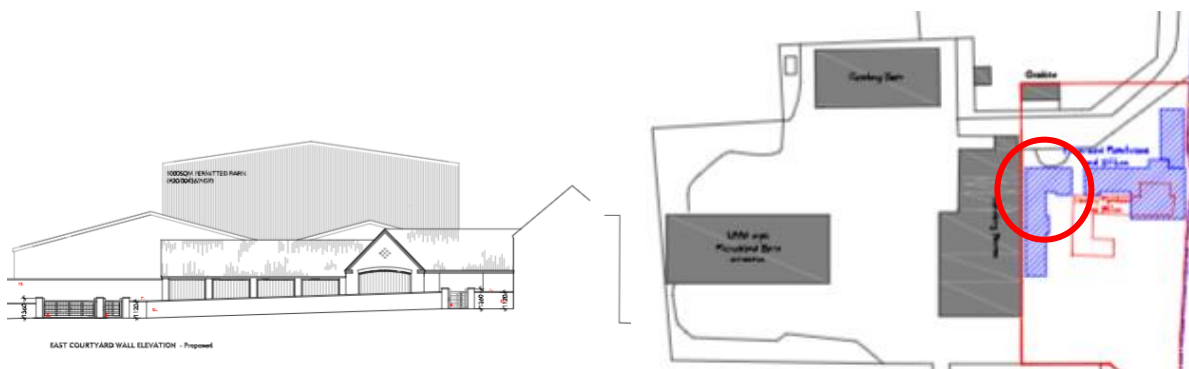


However, the main impact would be from the south of the site where it is generally open to the highway, Mansfield Road, which has a mature hedgerow which is unaffected by the development. Trees line the driveway to the farm and subsequently the site, which shields the views from the east however it is considered that additional landscaping in the form of trees and hedgerows would be required to the southern boundary and to the south of the dwelling (indicated in green on the plan below), to both increase the biodiversity within the site and instil its setting within the landscape. A mature hedge located along the eastern and to the northern boundaries are to be retained and this can be controlled by a planning condition.



The layout of the site still retains the same alignment across the site and the range of buildings are akin to that associated with a working farm. The design of the residential building is considered, although large in scale, complementary to the character, which in itself is varied and pepper potted with individual developments.

The detached office building would be located close to the existing large agricultural buildings (see circled area indicating the office building below). This is a one and half storey (room in the roof) building which contains formal office, meeting and sundry spaces for the general arrangement and workings of the farm.



The scale and siting of the building would be read in context to the larger buildings in the surroundings and would not result in harm to the surrounding landscape setting. The design of it would also be in keeping with the traditional rural character, although the building features dormers, these are sited to the rear (north) and would not be dominating to the façade of the building.

Further development to the dwelling which would normally be permitted under the Town and Country Planning (General Permitted Development) Order (England) 2015 (as amended), such as additional extensions to the roof and at single and two storey, have been recommended to be removed to ensure any further developments to the dwelling in this way are adequately managed by the local planning authority to ensure the impact upon the open

countryside is given due consideration, given the increase in size of the dwelling in this proposal.

As such the proposal is accords with the Farnsfield Neighbourhood Plan policies, Core Policy 9 and 13 of the Amended Core Strategy and policy DM5 and DM8 of the Allocations and Development Management DPD as well as the Landscape Character Assessment SPD and the NPPF which is a material planning consideration.

Impact on Ecology

Core Policy 12 states that the Council will seek to conserve and enhance the biodiversity of the District and that proposals will be expected to take into account the need for the continued protection of the District's ecological and biological assets. Policy DM7 supports the requirements of Core Policy 12 and states that development proposals affecting sites of ecological importance should be supported by an up-to-date ecological assessment. Policy DM5 seeks to avoid adverse impacts upon ecological interest and protected species.

A bat survey has been submitted and it was concluded that the buildings provide negligible potential for roosting bats. Some immature trees are due to be removed to the south of the building, but these are not suitable for bat roosting potential. No nesting bird activity was identified in the building but their presence within the hedges, it is stated, cannot be ruled out. Therefore, these should be protected both during construction and demolition. No other protected species were evidenced on the site.

Chapter 6 of the ecology report states the mitigation and compensation measures required for the development. These include ensuring lighting around the site is suitable for foraging bats and follow the Bats and Artificial Lighting in the UK (2018) best practice guidelines and the garden clearance takes place outside of breeding bird season (March to August inclusive). If works is to commence within this period then a suitably worded condition can be imposed to ensure an ecologist first surveys the site to ensure chicks have fledged any nests.

Chapter 7 of the ecology report suggests enhancements to the site which include opportunities for roosting bats on the buildings or attached to mature trees. This should be in the form of 4 bat boxes affixed to the south and south-west elevations. 2 bird boxes should also be installed on the north and east elevations.

It is therefore considered that subject to the mitigation measures, there would be negligible harm caused as a result of the development and as such I consider the proposal accords with the aims of Core Policy 12 and Policy DM7 and the NPPF.

Impact of highways and parking provision

The proposal would not result in changes to the existing highway access as a result of the development. Within the Council's Parking SPD, dwellings which result in a greater number than 4 bedrooms, require 3 parking spaces should be provided and cycle storage provision is required for 3 bikes.

The proposal includes a carport range providing 4 parking spaces. Each space has an internal dimension of approximately 3m x 5.7m. Although this falls slightly short of those stated within the Council's Residential Cycle and Car Parking Standards SPD which is 3.3m x 6m, this is marginal and it is considered that can be counted towards parking provision within the site. However, there is sufficient space to the south of the dwelling to accommodate additional vehicles with the carport providing space for the cycle provision.

Regarding EV charging points, it is a requirement through Building Regulations for new dwellings to be constructed with such a point. There is therefore no requirement to include this as a condition. Therefore, the proposal is considered acceptable with regards to the impact upon parking and highway safety.

Impact upon Residential Amenity

The NPPF seeks to create places which have a high standard of amenity for existing and future users.

There are no immediate neighbours which would be impacted by the development from loss of light, privacy or overbearing impacts. I consider that the proposal is acceptable in this respect and would not result in harm to neighbour amenity.

Flood Risk

The site lies within Flood Zone 1 therefore at lowest risk from flooding.

Therefore, the impact from the proposal is unlikely to result in harm to flooding risk to surrounding properties or existing occupiers either from main river flooding or surface water flooding and is acceptable.

8.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

9.0 Planning Balance and Conclusion

Given the above report, although the replacement dwelling is considered larger than the existing, given the surroundings and the presence of large modern agricultural buildings and mature landscape to the east and north of the site, the proposal would not result in demonstrable harm to the landscape value or the character to such degree that it would warrant a refusal of permission. The application includes formal farm office space which, although increases the built form on the site, is appropriate for the site given its current commercial use and the subsequent large scale buildings within the locale. The offices would also result in a proportionate expansion of the existing commercial use on site and ensure the continued provision to local employment in line with policy DM8 of the ADMDPD.

The sympathetic traditional rural design and use of such materials, along with the retention of the mature eastern landscape boundary and additional landscaping (secured by condition), would ensure the building would be acceptable within the landscape. Additional landscaping, as stated above, would be required to increase the biodiversity within the site in line with existing and emerging national and local policy, which has been identified within this report, and additional measures to support bats and birds are also proposed which can be suitably controlled by condition.

Matters of highway safety, parking, residential amenity and flood risk are considered acceptable.

The proposal is therefore considered to accord with the Farnsfield Neighbourhood Plan, Spatial Policy 3 and 7, Core Policy 9, 12 and 13 of the Amended Core Strategy, Policy DM5, 7 and 8 of the Allocations and Development Management DPD as well as the Landscape Character Assessment SPD, and the NPPF and PPG which are material planning considerations.

10.0 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 be carried out only in accordance with the details and specifications included on the submitted application form and shown on the submitted drawings as listed below:

DRWG no. 50 Rev A OS Plan and block plan;
DRWG no. 54 Rev A Proposed site plan and site sections;
DRWG no. 55 Rev A Ground floor plan – Proposed;
DRWG no. 56 Rev A First floor plan – Proposed;
DRWG no. 57 Rev A Second floor plan – Proposed;
DRWG no. 58 Rev A Roof plan – Proposed;
DRWG no. 59 Rev A Elevations – Proposed Sheet 1 of 3;
DRWG no. 60 Rev A Elevations – Proposed Sheet 2 of 3;
DRWG no. 61 Rev B Elevations – Proposed Sheet 3 of 3.

Reason: To ensure that the development takes the agreed form envisaged by the Local Planning Authority when determining the application.

03

No development above damp-proof course shall take place until manufacturers details (and samples upon request) of the external facing materials (including colour/finish) 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.

Reason: In the interests of visual amenity.

04

Prior to first occupation of the development hereby approved full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:

full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting). The scheme shall be designed so as to enhance the nature conservation and biodiversity value of the site, including the use of locally native plant species;

hard surfacing materials;

Reason: In the interests of visual amenity and biodiversity.

05

The approved soft landscaping shall be completed during the first planting season following the first use 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 next planting season with others of similar size and species. All tree, shrub and hedge planting shall be carried out in accordance with BS 3936 -1992 Part 1-Nursery Stock-Specifications for Trees and Shrubs and Part 4 1984-Specifications for Forestry Trees; BS4043-1989 Transplanting Root-balled Trees; BS4428-1989 Code of Practice for General Landscape Operations. The approved hard landscaping scheme shall be completed prior to first use.

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

No development shall take place until a scheme for protection of the retained trees and hedgerows have been submitted to and agreed in writing by the Local Planning Authority. This scheme shall include:

- a. Details and position of protection barriers for the hedgerow on the eastern boundary.

- b. Details of working methods to be employed with the demolition of buildings, structures and surfacing within or adjacent to the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
- c. Details of timing for the development in the context of the tree/hedgerow protection measures.
- d. Siting of existing trees and hedgerows which are to be retained;

Development shall be carried out in full accordance with the approved protection scheme. The protection measures shall be retained during the development of the site (including demolition) and in accordance with the timing schedule, submitted as part of this condition.

Reason: To ensure that existing trees and hedges to be retained are protected, in the interests of visual amenity and nature conservation.

07

No building on site shall be occupied until details of at least 4 bat and 2 bird nest boxes and / or bricks have been submitted to and approved in writing by the Local Planning Authority. The nest boxes/bricks shall then be installed, first prior to occupation of the development, in accordance with the approved details and retained thereafter for the lifetime of the development.

Reason: In the interests of maintain and enhancing biodiversity.

08

No site clearance or demolition shall take place during the bird nesting period (beginning of March to end of August inclusive) unless the site has first been inspected by a suitably qualified ecologist in accordance with paragraph 6.4 of the Bat Survey Report (ref:JME_1858_BR_01_V1).

Reason: To ensure that adequate provision is made for the protection of nesting birds on site.

09

Notwithstanding the provisions of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (as amended), (or any order revoking or re-enacting that Order), and the Town and Country Planning (General Permitted development) (England) Order 2015 (as amended) Schedule 2 Part 3, the use of the building for farm offices/meeting rooms/farm store/staff room as stated on drawing no. 55 Rev A and 56 Rev A, shall be used for the purpose of the existing farm only that exists on the site known as Forest Farm (or such subsequent name), and for no other purpose, including any other purpose within Class E of the Order.

Reason: The development is located within the countryside where new commercial development listed within Class E and the GPDO would not normally be permitted.

10

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and any order revoking, re-enacting or modifying that Order), 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: The enlargement, improvement or other alteration of a dwellinghouse.

Class B: The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

Reason : To ensure that the local planning authority retains control over the specified classes of development normally permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 or any amending legislation) and to ensure that any proposed further alterations or extensions do not adversely impact upon the openness of the countryside.

Informatives

01

This application includes the demolition of a dwelling and construction of a new replacement dwelling. Whilst the development site is in residential use presently, it is adjacent to an industrial/agricultural site. There is the potential for contamination to be present from this adjacent use and I would therefore issue the following advice:

The applicant/developer will need to have a contingency plan should the demolition/construction phase reveal any contamination, which must be notified to the Pollution Team in Public Protection at Newark and Sherwood District Council on (01636) 650000

02

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) (England) Order 2015 (as amended).

03

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

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/ or from the Planning Portal: www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil

BACKGROUND PAPERS

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Application case file.



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Report to Planning Committee 6 July 2023

Director Lead: Matt Lamb, Planning & Growth

Lead Officer: Richard Marshall, Planning Development, 5801

Report Summary	
Report Title	Update to Planning Enforcement Plan (PEP) to outline the approach to the enforcement of advertisements
Purpose of Report	Set out how planning enforcement will proactively approach the display and enforcement of illegal advertisements within the District.
Recommendations	<p>The report seeks</p> <ul style="list-style-type: none"> (a) endorsement from Planning Committee for the proposed updates to the Planning Enforcement Plan relating to advertisements; (b) for this and any amendments recommended to be forwarded to the Portfolio Holder for Economic Development and Visitors for adoption. <p>The PEP contributes toward assisting with:</p> <ul style="list-style-type: none"> • Continuing to maintain the high standard of cleanliness and appearance of the local environment; • Enhancing and protecting the district’s natural environment

1.0 Background

Following national guidance, a [Planning Enforcement Plan](#) (PEP) was produced and adopted in September 2020.

The PEP aims to give Members and the general public clearer understanding of how the Council will undertake the role of enforcing planning control and details how we manage enforcement proactively and in a way that is appropriate within the District. The plan sets out how we:

- monitor the implementation of planning permissions
- investigate alleged cases of unauthorised development
- prioritise alleged breaches of planning control
- take action where appropriate

The plan also briefly sets out the approach taken to the display of advertisements within the District. The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). There are 3 categories of advertisement consent:

1. Those permitted to be displayed without either deemed consent or express consent from the local planning authority;
2. Those which have deemed consent (granted by the Regulations); and
3. Those which require the express consent of the local planning authority (upon submission of an application for consent).

The Advertisement Regulations are complex and seek to control, amongst other things, the height, size and illumination of advertisements (although not the content).

From the perspective of enforcing planning control, critically the legislation is clear that anyone who displays an advertisement, without the consent required for it, is acting illegally. It is therefore open to the local planning authority to take immediate action against the display of an advertisement without consent, either by removing the illegal advert and/or by prosecution under the relevant legislation. The legislation not only covers the control of 'traditional' advertisements such as displayed on a business premises but also fly-posting including the display of posters, bills or stickers, usually advertising events, that are displayed without the property owner's permission, often on highway structures. Any form of fly-posting is an offence, which is open to prosecution or to removal or obliteration if the Council (as Local Planning Authority) decide to take such action.

At present the PEP outlines a generic approach to the enforcement of illegal advertisements, including setting out that action will be taken where signs, adverts or fly-posting are unauthorised and are damaging the character and appearance of the local area. The PEP goes on to explain that in these instances, Officers will give the advertisers, where possible, 2 days notice that the advert should be removed. Where the advert is then not removed, Officers may then remove the advert.

2.0 Proposal/Options Considered and Reasons for Recommendation

Generally, the advertisements that are subject to the greatest number of complaints are those displayed on highway furniture which fall to Nottinghamshire County Council (NCC) to enforce. Action in relation to these, for whatever reason, can be slow in being resolved. In terms of the Regulations, there is nothing in law to prevent the District Council from taking action against these. For this reason, and notwithstanding the ability of NSDC to take enforcement action, engagement will be undertaken with colleagues at NCC to establish if an agreement/strategy can be formed, if Members agree this is the approach to take.

In addition, following the adoption of the PEP, some minor amendments are deemed would benefit the approach to advertisements. The updates that have been written to the PEP, therefore, outline in more detail the way in which the Council will enforce against unauthorised advertisements within the District.

The updates detail that the Planning Enforcement team will undertake proactive monitoring and enforcement work to identify key sites and locations where signs, adverts or fly-posting are unauthorised and are damaging the character and appearance of the District, or are having a detrimental impact upon public safety. As is set out in the Town and Country Planning Act 1990, considerations of expediency in advertising controls relate only to matters of amenity and public safety and therefore complaints relating to matters such as competition

will not proceed beyond an initial assessment as to the impact upon the aforementioned aspects.

In all cases the PEP outlines that Officers will attempt to work positively and pragmatically with all businesses that are identified to be advertising without consent. As part of any initial contact, Officers will attempt to resolve any breaches by working with the businesses to provide guidance and advice about how they may continue to advertise their business within the scope of legislation, and along with the need to preserve the amenity and safety of the environment for the public. This advice will include initial advice on possible alternative forms of advertisement along with guidance on the submission of applications for express consent.

However, where an unauthorised advertisement is identified, and has been assessed to detrimentally impact upon amenity and/ or public safety, Officers will serve advance written notice to anyone who can be identified as the person responsible, that in the Council's opinion, has displayed the advert or sign illegally. They will be advised:

- The advert must be removed.
- The Council intends to remove the advert after the expiry of a period [specified in the notice] if the business has not already been done so.
- The cost to reclaim the advert if it is removed by Officers (a fee will be charged for each day the advert is stored by the Council).
- The timescale in which they have to claim the advert.

The update outlines that where an advertiser has been given notice that an advert should be removed and has failed to remove the advert within the time frame as advised, Officers will seek to, where possible, remove unauthorised advertisements. In the case of illegal placards and posters, the Council may, if it is not possible to remove the advert, obliterate placards and posters with the use of measures such as tape with the wording 'advert cancelled'.

In the event that Officers remove an unlawful advert, the advert will be stored (when appropriate) by the Council for a period of up to 10 working days after which time officers will destroy the advert. An advert will only be released back to the advertiser upon the Council recovering the costs incurred by removing the advert. This cost has been calculated at £20 (for 2023/24) per day per advertisement that the Council is required to store the advert prior to its recovery or disposal. The advert will be stored for up to 20 days. These costs will also be sought for those advertisements not reclaimed, due to the costs incurred by the Council for their storage.

This approach will improve the character and cleanliness of the District in accordance with one of the aims of the Community Plan. However, it will be used pragmatically, for example in instances where there is a proliferation of placards and posters in a prominent location, or where numerous and unsightly advertisements have been displayed throughout the District by a particular advertiser. It is not proposed to immediately take enforcement action in instances where the adverts relate to community or charity events and will be displayed for a relatively short period in the run up to an event and in a safe manor.

Additionally, when advertisement consent is granted, the Regulations only permit the sign to be displayed for 5-years, prior to which if there is a desire to continue to display the sign, consent should once again be sought. Legally therefore, it would be possible to enforce against any advertisement that was being displayed beyond this time period. However, whilst a proactive enforcement service will be delivered, there will also be pragmatism in this regard too. Only where a sign is considered to be damaging to the character and appearance of the

District will we look to enforce. However, as appropriate, we will highlight to the relevant party, the requirements of the Regulations for their awareness.

The PEP with the suggested amendments, set out in red text, is attached to this agenda.

3. Implications

In writing this report and in putting forward recommendations, officers have considered the following implications:

Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability, and where appropriate they have made reference to these implications and added suitable expert comment below where appropriate.

Financial Implications (FIN23-24/8261)

The 2023/24 fees and charges agreed by Full Council on 9th March, 2023 include a charge of £20 per day for advertisement storage. The PEP suggests that storage should be for up to 20 days or until the advert is collected and paid for. The storage charge will be applicable even if the advert is not collected. Therefore, for each advert, up to £400 will be receivable.

To date, proactive enforcement of illegally posted advertisements has not been undertaken by NSDC. It is therefore not known at this stage what the workload or revenue implications might be.

In terms of staff time at this stage any additional duties will be absorbed within the Planning Development Business Unit. Any additional costs such as court costs would be covered by existing budget and any additional income received. Anything over and above will need to be dealt with on a case-by-case basis until it is understood what costs are involved, at which time future budgets can be updated.

Legal Implications

The legal framework for the powers are set out extensively in the report and the annex hereto. Attention is drawn to the requirement for Officers to include a link to the 'Guide for Advertisers' in correspondence, including notices, when dealing with advertising control breaches. No further comment from Legal.

Whilst costs are recoverable, if they require a court order, in rewarding these the Court has discretion so the amount and scope is not guaranteed.



NEWARK &
SHERWOOD
DISTRICT COUNCIL

Planning Enforcement Plan (PEP)

Adopted September 2020

Version control	Adopted
v.1	8th September 2020
v.2 Amendment – PART FOUR (Introduction) Addition – 5.1.11 and Annex	

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PART ONE – GENERAL PRINCIPLES

1. Introduction

This Plan has been the subject of a public consultation exercise carried out between 22nd June and 31st July 2020. The Plan was considered by the Economic Development Committee and approved on the 9th September 2020.

This Plan sets out the general principles that form the standard operating procedures and function of the Planning Enforcement Service, within the Planning Development Business Unit of Newark and Sherwood District Council. This policy/ plan should be

1.1 Why is a planning enforcement plan important?

The National Planning Policy Framework states that the Council should act in a proportionate way when tackling breaches of planning control and formal enforcement action should be used as a last resort. In addition, it is not a criminal offence to carry out unauthorised development (unless, for example, the development relates to a listed building, advertisement or is in breach of an enforcement notice), and there are many different ways that the Council can tackle unauthorised development and other breaches of planning control. This means the Council cannot normally justify taking formal enforcement action against minor breaches of planning control and may decide not to take formal action against some cases.

Therefore, in some cases, the Council may seek a retrospective planning application to resolve a breach of planning control instead of taking action whilst in others the Council might determine not to take any further action because the works that have been carried out do not cause any harm. However, in other cases the Council may take formal enforcement action to resolve a breach of planning control and it is important that we can show how we decide when we will take formal enforcement action.

The Council also has to prioritise cases to ensure there are sufficient resources to make sure serious breaches of planning control are dealt with urgently and to ensure other cases are dealt with effectively and efficiently. This means that whilst we will take a consistent approach to planning enforcement: different cases may well be dealt with differently depending on the individual circumstances of the case. In these respects, it is important that we can show how we decide to deal with some issues urgently and how long we will normally need to deal with less urgent cases.

Therefore, the preparation and adoption of a local enforcement plan is important because it:

- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- provides greater transparency and accountability about how the Local Planning Authority will decide if it is expedient to exercise its discretionary powers; and,
- provides greater certainty for all parties engaged in the development process.

1.2 Aims of the Policy

In order to provide the best possible service, it is essential that the Council gives clear information on what it is able to do and how the service is prioritised, given the available resources.

This document is written with due consideration to relevant Government Policy, Legislation and Guidance, to provide a clear statement of the decision-making framework that will enable the effective provision of a Planning Enforcement Service through the implementation of sound procedures and working practices.

1.3 General Statement

The Council's primary objective is to achieve regulatory compliance and to protect the amenity, privacy and overall well-being and prosperity of the residents and businesses of Newark and Sherwood district.

Where it becomes necessary to take formal action in respect of breaches of planning control, the Council ensures such action is taken, where it can be shown to be expedient and in the public interest to do so in accordance with the principles contained within this policy.

There is a wide range of enforcement tools available to the Council to remedy breaches of planning control, with prosecution and direct action being the most serious. The Council will always choose an enforcement sanction that is commensurate with the breach of planning control to which it relates. This policy is built around a process of escalation. In most circumstances the Council will only issue a formal notice where a breach of planning control has caused, or is likely to cause, material loss or harm to amenity, and where informal negotiations have been or are expected to be unsuccessful. Where there is a 'technical breach of planning control', but that breach is not considered to be causing 'harm', the Council may decide that further enforcement action is not expedient.

1.4 Relationship with the Council's Corporate Enforcement Policy and Corporate Targets and Objectives

The District Council adopted its Corporate Enforcement Policy on 4th June 2015. This policy provides operational guidance to authorised officers and information to Elected Members and the public in relation to breaches of planning control.

The Corporate Policy, which deals with general enforcement matters common to all service areas, is applicable to all Council employees working in enforcement roles and those from other service areas who support the delivery of those functions. It is also applicable to agency/contract staff working on behalf of the Council.

The purpose of this policy is to set out the steps Newark & Sherwood District Council will use to secure compliance with the law whilst minimising the burden on individuals, businesses and the Council.

The District Council has identified the following as its priority objectives within the Corporate Plan:

- Improve the cleanliness and appearance of the local environment;
- Reduce crime and anti-social behaviour, and increase feelings of safety in our communities;
- Improve transport infrastructure to reduce congestion and facilitate growth;
- Build more homes and provide an excellent housing management service;
- Increase visits to the District and the use of visitor attractions by local residents;
- Protect, promote and enhance the district's natural environment and deliver the Council's environmental ambitions;
- Enhance and sustain the town centres;
- Improve the quality of life and social mobility in target areas;
- Improve the health and wellbeing of local residents;
- Increase participation with the Council and with local communities; and
- Continue to modernise working practices and embed a stronger commercial culture to improve value for money, generate more income and increase residents' satisfaction.

The Planning Enforcement Team contributes to the achievement of a number of the Council's priority objectives by:

- Protecting the amenity of those who live and work in the district from the harmful effects of unauthorised development and the neglect of land and buildings through negotiation but where necessary by taking appropriate formal enforcement against perpetrators.
- Protecting both the natural and built historic environment
- Ensuring that environmental, economic and social benefits negotiated through planning applications are achieved
- Enabling businesses to operate in such a way that maintains economic competitiveness without this being achieved at the expense of the environment and/or public amenity.

PART TWO - KEY PRINCIPLES OF PLANNING ENFORCEMENT

2.1 Why is effective planning enforcement important?

Effective planning enforcement is important to:

- tackle breaches of planning control that have an unacceptable adverse impact on the character and appearance of the local area, or have an unacceptable adverse impact on the living conditions of local residents;
- maintain the integrity of the decision-making process by tackling unauthorised development that would not normally be granted planning approval; and
- maintain public confidence in the Council's decision-making processes by ensuring planning conditions and planning obligations needed to make development acceptable in planning terms are complied with.

2.2 Investigation

The Council's planning enforcement function is responsible for the investigation and enforcement of 'breaches of planning control'. Breaches of planning control are restricted to matters falling within the scope of 'development'.

Development is defined as:

*"Except where the context otherwise requires... the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land"*¹

s.55 Town and Country Planning Act 1990 (as amended).

2.3 What is a Breach of Planning Control?

The Town and Country Planning Act 1990 (the act) defines a breach of planning control as "the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted."²

A breach of planning control can include the following:

- Building work and/or a material change of use undertaken without planning permission being granted;
- Development not being carried out in accordance with the approved plans of a planning permission;
- Non-compliance with conditions attached to a planning permission: and
- non-compliance with a planning obligation contained in a s.106 legal agreement attached to a planning permission; and

¹ S55 (Meaning of "development" and "new development") The Town and Country Planning Act 1990

² S171A (Expressions used in connection with enforcement) The Town and Country Planning Act 1990

There are also other legislative codes which fall within the remit of the enforcement function. Breaches of this legislation can include the following:

- Works being carried out to a Listed Building which affect its character without listed building consent being granted;
- Non-compliance with conditions attached to a listed building consent;
- The display of advertisements for which express consent is required but not granted;
- The removal of protected trees and/or trees situated within a Conservation Area for which notification or consent is required but not given: and
- unauthorised removal of important hedgerows.

Not all development or change of use requires planning permission from the local planning authority.

The Town and Country Planning (Use Classes) Order 1987 (as amended) allows for certain changes of use without the need for planning permission. For example, the change of use from a dry cleaners to a travel agents does not require permission.

The Town and County Planning (General Permitted Development) (England) Order 2015 (as amended) grants permission for some developments without the need to apply for consent from the Council. Development granted by virtue of the Order is considered to be 'permitted development'. Permitted development cannot be subject to enforcement action even in instances where development is considered to cause harm. Further information on permitted development is available from the Planning Portal website.

The Enforcement Team are not able to assist in matters which are covered by other legislation, for example, complaints in relation to public health matters, high hedges or the improper use of the highway. Any complaints with regard to these issues will be passed onto the relevant department.

The Council is required to operate its enforcement function within government guidelines and in accordance with Council policy and therefore must determine whether or not a breach of planning control is a breach of policy and then whether the breach unacceptably affects, amenity or the general quality of life, such that enforcement action is warranted and justifiable.

2.4 Duties of the Enforcement Function

The Enforcement Team plays a key role in helping the Council to deliver an effective Development Management service. The team forms part of the development management activity to deliver good community outcomes in line with the adopted Development Plan.

The planning enforcement process is not an isolated activity simply limited to reacting to complaints about breaches of planning control. The Council does not have sufficient resources to monitor every planning permission that is implemented across the

District. The team therefore, receives support from Town and Parish Councils, as well as some ad-hoc monitoring of development by planning case officers. However, we need to rely on reports of suspected breaches of planning conditions by neighbours and other interested parties to be able to identify problems.

Investigation of suspected breaches of planning control is a statutory function. Investigation will determine whether a breach has taken place and also to determine whether enforcement action is necessary. However the Council does not have a duty to take enforcement action.

To carry out work or change the use of land or buildings without first obtaining planning permission is not a criminal offence. It is unauthorised, but not illegal, and in the majority of cases the Council is likely to provide the opportunity to submit an application for retrospective planning permission, in accordance with Section 73A of the Town and Country Planning Act 1990 (as amended) and guidance issued by [Government](#). Occasions where the Council is not likely to encourage a retrospective application would be when an unauthorised development is so harmful (for example to highway safety) that it would be highly unlikely to gain permission.

2.5 Expediency

For all investigations where a breach of planning control has been identified, the Council must assess any actual and/or potential harm caused by the breach. This assessment of 'expediency' ensures that the Council fully considers the implications of each breach of planning control before determining the most appropriate course of action. Therefore, the breach of control is not in itself sufficient to merit enforcement action.

National planning policy, namely 'National Planning Policy Framework (NPPF)', states that:

"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."

Newark and Sherwood District Council promotes this approach. Planning enforcement should not be used as a punitive system. Where a breach of planning control is acceptable based on planning merits, it should not become the subject of enforcement action. In short, planning enforcement action will not be taken solely to regularise development that is otherwise acceptable.

An assessment of 'expediency' will be required in all cases where a breach of planning control has been identified. An 'expediency' test involves the Council assessing the planning merits of the unauthorised development and the impact of the Council's enforcement powers, to determine whether action is required to control the unauthorised development or require its cessation/removal. The Council has a statutory duty to assess the expediency of enforcement action to ensure consistency

and quality of decision-making. The assessment of expediency is based on a variety of factors.

2.6 Decision Making

All planning enforcement decisions must be made with regard to the interests of the public as a whole. It is not the role of the planning system or planning enforcement to protect the interests of one party against those of another. As such, breaches of planning control are not subject to public consultation. The following factors cannot be taken into account when assessing expediency:

- Breaches of restrictive covenants;
- Private disputes;
- Competition between businesses;
- Damage to property;
- Boundary or other land disputes; or
- Reduction in value of land or property.

Where necessary the views of various partner agencies and statutory consultees such as Nottinghamshire County Council, the Environment Agency, Natural England and Historic England may be sought in order that the Council makes an informed decision. The views of other agencies will be of particular importance where their technical or specialist knowledge is required.

However, harmful unauthorised development should be pursued to ensure it is either made acceptable by the imposition of additional requirements or limitations by way of conditions. If it is not possible to alter development to make it acceptable then action will be considered to require the unauthorised use/development to cease or be removed. Formal action will not be taken solely because development has started without the benefit of planning permission without first examining whether there are sound and valid reasons for doing so. The Council is not automatically required or committed to take action on breaches of planning control. The particular circumstances of every case must always be considered. It is not usual for formal action to be taken against a minor breach of control that causes no real harm. Enforcement action will be taken urgently where it is considered commensurate with the seriousness of the breach of planning control and expedient and in the public interest to do so.

All of the Council's decisions will have regard to the following current statutory guidance and codes of practice:

- [Planning Practice Guidance](#)
- [The Statutory Code of Practice for Regulators](#)
- [The Code for Crown Prosecutors](#)
- [The Human Rights Act 1998](#)
- [National Planning Policy Framework \(NPPF\)](#)
- [Police and Criminal Evidence Act 1984 \(PACE\)](#)

Emerging or replacement statutory guidance and codes of practice will be given regard alongside this plan as appropriate.

The UK planning system has generated a significant amount of case law. When it is derived from the High Court and above, this sets a legal precedent that dictates how the law should be interpreted by decision makers and investigators. Legal precedent is subject to continual change as new cases are put before the Courts, and it is in the best interests of the Council to be well informed on this subject as such changes can significantly enhance or impair the actions of the Council when dealing with breaches of planning control.

Given the high number of applications which are received each year, it is not possible to monitor all developments. Priority will be given to key identified sites which will undergo direct monitoring to ensure the development is being carried out in accordance with the approved plans.

In adopting a proactive enforcement approach, this will assist in a move towards an effective development management service enhancing the traditional reactive approach of enforcing contraventions.

The Council is responsible for the investigation of all breaches of planning control that are 'District matters'. District matters comprise all breaches of planning control, with the exception of mining and mineral extraction, and waste deposit and disposal. These are 'County Matters' that are investigated and enforced by Nottinghamshire County Council. Often District and County matters will overlap, and in these circumstances should enforcement action be required then the most appropriate form of enforcement action will be agreed after consultation with Nottinghamshire County Council, bearing in mind the nature of the breach and enforcement 'tools' available.

PART THREE – ENFORCEMENT CASE PRIORITY SYSTEM

3.1 Prioritisation Overview

It is acknowledged that some alleged breaches need to be given a higher priority than others. Priority will be given to cases where there is the possibility of the greatest harm being caused. Accordingly, the priority performance standards for the delivery of the service have been designed to reflect this.

The following priority system will apply to each case received. On receipt of a complaint, it will be prioritised according to the following categories. The category of each case may change following the initial site visit and depending on the level of harm being caused. The Council also recognises that not all alleged breaches of planning control require an immediate site visit, as such the system of prioritisation reflects the urgency that some form of 'action' is required. This may be a site inspection, however it could also be less 'direct', such as a phone call to a developer/ property owner or an initial piece of correspondence.

3.2 What is a high priority case?

High priority cases are cases where there is an immediate and serious risk of harm or irreparable damage resulting from the unauthorised works that might be taking place. We will aim to investigate these cases on the same day that they are reported to the Council where this is a business working day, or the next day the Council offices are open. We will then decide what further action to take, if any, within 24 hours. Examples of high priority cases are as follows:

- Demolition in a Conservation Area;
- Destruction of an important hedgerow;
- Hazardous substances;
- Unauthorised works to protected trees; and
- Unauthorised works to listed buildings.

3.3 What is a medium priority case?

Medium priority cases will not normally require immediate action to prevent serious harm. They will include suspected breaches of planning control that would not normally get planning permission because they are contrary to local planning policies and/or have a harmful impact on the amenity of the area. We will aim to start starting investigation within 14 days of receiving a complaint. If a complaint is received on a non-working day, the timescales start from the first working day after. We will then decide what further action to take, if any, within four weeks of the site visit. Examples of medium priority cases are as follows:

- Unauthorised development that contravenes local planning policy;
- Unauthorised development that significantly impacts on local amenity and public safety;
- Unauthorised development that results in harm to the setting of a listed building.

- Unauthorised development that results in harm to the character of a Conservation Area;
- Unauthorised development in Green Belt;
- Operational building works;
- Unauthorised changes of use;
- Erection of unauthorised advertisements that have a detrimental impact on highway safety or within Newark/ Southwell town centre locations; and
- Breaches of 'conditions precedent' attached to planning permissions

3.4 What is a low priority case?

Low priority cases will be minor breaches of planning control. We will aim to start investigating cases that are likely to be a low priority by visiting the site within four weeks of receiving a complaint. If a complaint is received on a non-working day, the timescales start from the first working day after. We will then decide what further action to take, if any, within six weeks of the site visit. Examples of low priority cases are as follows:

- Running a small business from a residential property;
- Unauthorised advertisements;
- Unauthorised fences and walls;
- Other breaches of planning conditions
- Unauthorised householder developments; and
- Untidy land and buildings.

3.5 Performance Standards

We will seek to acknowledge all complaints within 5 working days. In most cases this is by the same method through which the complaint was received. Complaints should be received in writing or logged through the Council's website reporting form and provide a minimum level of information in order for the alleged breach to be properly investigated. Where insufficient information has been provided, we will not always be able to investigate.

The timescale for completing an investigation varies depending on the complexity of the case, workloads of officers and the need to regularise the alleged breach of planning control. We will try to notify the complainant at significant points in the investigation. However the statutory process we have to follow means that, quite often, extended periods of time will pass without any apparent progress. For example where the Council has to allow time for a planning application to be prepared and submitted, and then determined, a period of four months may be typical. Serious cases that result in the service of formal notices, a resultant appeal and possible challenges through the courts can, and do, take many years to resolve.

It is important to emphasise that statutory notices can only be issued in relation to confirmed breaches of planning and listed building control. It is not possible to issue Notices where it is suspected that a breach of planning might occur at some point in the future.

PART FOUR - PLANNING ENFORCEMENT INVESTIGATION PROCESS

Following the receipt of the complaint, an investigation will be carried out according to the priority system as set out above, which most often will also necessitate in a site visit being undertaken. **On occasions, a survey of land will be undertaken using a drone. In the majority of cases, this will be undertaken overtly (i.e. the occupier/owner of the land will be notified prior to the flyover).** From the evidence collected during the site inspection, an assessment will be made as to whether there is a breach of planning control and if so, whether planning permission is required for the works.

4.1 Powers of Entry

In all but the most straightforward cases, officers will undertake a site visit to try to establish whether a breach of planning control has taken place. The majority of site visits are made without prior arrangement, and officers are required to identify themselves as enforcement officers as soon as they enter the site.

The Council's planning enforcement officers have powers of entry, for the purpose of investigating alleged breaches of planning control, under the following provisions:

- Town and Country Planning Act 1990 (as amended);
- Town and Country Planning (Listed Building and Conservation Areas) Act 1990 (as amended);
- Planning (Hazardous Substances) Act 1990 (as amended);
- Planning (Hedgerow Regulations) Act 1997;
- Local Government (Miscellaneous Provisions) Act 1976, 1982; and
- Planning (Consequential Provisions) Act 1990 (as amended)

Where site visits are made and no occupier can be found at the time of visit, officers have powers to inspect the land in their absence. Officers do not have powers to force entry into any dwellinghouse. Where appropriate, officers will leave a business card requesting the occupier of the land to contact the Council. If during a site visit officers are refused entry onto land or buildings, the Council has the right to apply to the Magistrates' Court for a warrant to enter the property. This course of action will only be taken in cases where it is considered both necessary and proportionate to the alleged breach under investigation.

4.2 Gathering Evidence

Whilst on site, officers may ask questions of any occupiers present, and may take measurements and where appropriate photographs. Any information gathered will be used to ascertain whether a breach of planning control has taken place. If a breach has occurred, this information will be used to assess the most appropriate course of action to resolve the matter.

Where a complaint relates to an alleged unauthorised use of land, officers will make a reasonable attempt to determine whether a breach has taken place. In most cases a 'reasonable attempt' will consist of undertaking site visits at days and/or times

deemed most suitable for the allegation. This approach ensures that the Council's resources are used efficiently. Where officers can find no evidence of a breach of planning control the investigation will be closed and no further action taken. Such cases will not be reinvestigated unless the complainant is able to provide more substantive evidence of the alleged breach of planning control.

Officers may also make use of the 'planning contravention notice' if they have reasonable suspicion that a breach of planning control is likely to have occurred. This tool will be used in accordance with [Government guidance and best practice](#).

Officers may use a variety of other methods to determine whether or not a breach of planning control has taken place, including obtaining information from witnesses to an alleged breach, and consultation with the Council's Planning Development Team. The Council may also seek clarification from case law or obtain legal advice where the subject of an investigation is complicated or contentious.

4.3 No Breach of Control

In most cases, the initial site visit/ investigation will reveal that the matter does not constitute a breach of planning control. This can be because the matter does not constitute development or benefits from permitted development rights. In such instances, the case officer will undertake to contact the complainant to explain that the Council is unable to take any action through its planning enforcement powers in line with the performance standards set out in paragraph 3.5.

4.4 Potential Breach of Control

Due to the complex nature of the planning regime, in many cases it is not possible to come to an immediate determination as to whether or not a breach of planning control has occurred. This is particularly relevant in relation to complaints regarding a material change of use. In these cases, it is often necessary to carry out additional observations over a period of time before a determination can be made as to whether there has been a breach of planning control.

In instances such as this, it may be necessary for the investigating officer to contact the complainant to request further information or observations.

4.5 Breach of Control Identified

When it is determined that planning permission is required, we will contact those believed to be responsible and set out the appropriate course of action so that the breach can be resolved.

In many cases a retrospective application will be invited in order to resolve the breach. This is in accordance with national policy and allows for a full formal assessment to be carried out on the development with statutory consultation with consultees and neighbours.

If the Council has not been successful in securing the submission of a valid planning application or remedial actions have not been carried out, a Section 330³ or Planning Contravention Notice (PCN)⁴ may be issued. These notices can be used in order to gain additional information to further investigate a breach of planning control and/or to enable the service of a formal notice. The owner will be advised that it is in their best interests to resolve the breach, as any outstanding notice served will appear on any land search which may affect any future sale of the property.

In cases where it is considered that permission is unlikely to be granted, we will ask for the use to cease or the unauthorised development to be removed voluntarily. A suitable period of time is usually given depending on what needs to be done.

Harm can be caused through a number of factors including:

- Adverse impact on visual amenity due to poor design or inappropriate materials;
- Loss of protected trees or damage to listed buildings;
- Adverse impact on residential amenity;
- Noise, nuisance or disturbance from the operation of a business; and
- Untidy land and run down or derelict buildings that result in a poor quality environment.

It is usually considered inappropriate to take formal enforcement action against a trivial or technical breach of planning control which causes no harm to amenity in the locality of the site.

³ S330 (Power to require information as to interests in land) Town and Country Planning Act 1990

⁴ S171C (Power to require information about activities on land) Town and Country Planning Act 1990

PART FIVE - FORMAL ENFORCEMENT ACTION

Formal enforcement action is only instigated when it is considered expedient and all other avenues to resolve the problem have failed. Any action taken must meet the tests as set out in government guidance and be proportionate to the breach of planning control to which it relates.

Under the adopted scheme of delegation, the decision to take formal enforcement action or to instigate prosecution proceedings, is taken under delegated powers. Enforcement Notices⁵ and Notices under Section 215⁶ of the act relating to untidy land may be served by an Authorised Officer and the matter pursued through to prosecution at Magistrates' Court.

5.1 What types of formal enforcement action can the Council take?

There is a range of ways of tackling breaches of planning control available to the Council through formal enforcement action. In each case officers not only have to determine which of the options would be the most effective way of dealing with the breach but also which would be the most proportionate way of securing a resolution.

In these terms, in most medium and in some high priority cases, issuing an enforcement notice will normally be the right approach for officers to take when it appears to them that there has been a breach of planning control and it is expedient to take formal enforcement action when taking into account the provisions of the development plan and any other material considerations (including the guidance in this document).

5.1.1 Enforcement Notices

An enforcement notice should enable every person who receives a copy to know:

- exactly what, in the Local Planning Authority's view, constitutes the breach of planning control; and
- what steps the Local Planning Authority require to be taken, or what activities are required to cease to remedy the breach of planning control.

There is a right of appeal against an enforcement notice, however it is an offence not to comply with an enforcement notice once the period for compliance has lapsed.

Therefore, it is important that the recipient of an enforcement notice takes immediate action to lodge an appeal against the notice if they think there are good grounds to do so or take immediate steps to comply with the notice.

⁵ S172 (Issue of Enforcement Notice) Town and Country Planning Act 1990

⁶ S215 (Power to Require Proper Maintenance of Land) Town and Country Planning Act 1990

5.1.2 Stop Notices

A stop notice⁷ can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in a related enforcement notice, ahead of the deadline for compliance in that enforcement notice. Therefore, a stop notice might be issued alongside an enforcement notice because it is important to prevent a development from continuing before the enforcement notice comes into effect.

There are very strict limitations on the use of a stop notice including potential compensation to be paid by the Council if a successful appeal is made against the serving of stop notice. The compensation would be for any loss or damage directly attributable to the prohibition effected by the notice. It is therefore unlikely that officers will consider issuing a stop notice unless there are very serious risks of irreparable harm from on-going development. For example, a stop notice may be considered where an unauthorised development involves the demolition of an unlisted building in a designated Conservation Area and an agreement to stop demolition with immediate effect has not been reached. A stop notice cannot prohibit the use of any building as a dwellinghouse.

5.1.3 Temporary Stop Notices

A temporary stop notice⁸ requires that an activity which is a breach of planning control should stop immediately. A temporary stop notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening it may be prosecuted for an offence.

The Council does not need to have served an enforcement notice before it issues a temporary stop notice and officers may consider issuing a temporary stop notices in some high and medium priority cases when it is essential to take immediate action to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

A temporary stop notice expires after 28 days, so officers will consider what further action is required within this period if an alternative way of dealing with the breach which would overcome the objections to it in an environmentally and legally acceptable way cannot be agreed with the recipient of the temporary stop notice.

5.1.4 Breach of Condition Notice

A breach of condition notice⁹ is mainly intended as an alternative to an enforcement notice for remedying a breach of condition. Officers will consider issuing a breach of condition in addition to an enforcement notice, as an alternative to a stop notice, where officers consider it is expedient to stop the breach of conditions quickly and before any appeal against the enforcement notice is determined.

⁷ S183 (Stop Notices) Town and Country Planning Act 1990.

⁸ S171E (Temporary Stop Notice) Town and Country Planning Act 1990

⁹ S187A (Enforcement of Conditions) Town and Country Planning Act 1990

A breach of condition notice is therefore most likely to be used in some high or medium priority cases when immediate action is required to stop a continuing breach of conditions in the interests of safeguarding amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. There is no right of appeal to the Planning Inspectorate against a breach of condition notice.

5.1.5 Injunction

The Council can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control. However, starting proceedings for an injunction is one of the most serious types of enforcement action that the Council can take because if a person fails to comply with an injunction (once it has been granted) they may be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made.

Therefore, officers will only consider applying for an injunction if there have been persistent breaches of planning control such as failure to comply with the requirements of an enforcement notice over a long period and/or other enforcement options have been, or would be, ineffective in the event of a serious breach of planning control that would cause substantial and/or immediate harm to the local area.

5.1.6 Prosecution

When officers are dealing with high priority cases, many of the breaches of planning control may constitute a criminal offence subject to prosecution including unauthorised works to protected trees, removal of important hedgerows and unauthorised works to listed buildings.

Officers will take further legal advice in these cases with a view to pursuing a prosecution in the event of a serious breach of planning control that has resulted in substantial harm to the local area. It is therefore important that a person that is contacted by officers about a high priority case makes every effort to stop any unauthorised works or activities on site immediately.

Officers will also take further legal advice with a view to pursuing a prosecution in the event of non-compliance with the requirements of an enforcement notice, breach of conditions notice, stop notice, temporary stop notice, listed building enforcement notice, community protection notice or a section 215 notice.

5.1.7 Listed Building Enforcement Notice

Although broadly similar, there are a number of important differences between planning enforcement notices and listed building enforcement notices including the fact that there are no time-limits for issuing listed building enforcement notices.

Officers will consider issuing a listed building enforcement notice in medium and high priority cases where works have been carried out without the necessary listed building

consent, or a condition attached to that consent has not been complied when such works materially detract from the historic or architectural significance of the building and there is no agreement to put those works right in any other way.

5.1.8 Community Protection Notices

Officers have the power to issue a Community Protection Notice under the Anti-Social Behaviour, Crime and Policing Act 2014 and these Notices can be used to tackle a wide range of issues including:

- untidy land / buildings;
- unauthorised use of land; and
- unauthorised buildings / structures.

Where any of the above problems are causing ongoing detrimental effects to the living conditions of the local community, a Community Protection Notice can contain reasonable requirements:

- to stop doing specified things;
- to do specified things; or,
- to take reasonable steps to achieve specified results.

Officers will consider issuing a Community Protection Notice if an earlier written warning that a Notice may be issued has been ignored and may be used as an alternative to a section 215 Notice.

5.1.9 Section 215 Notices (Requiring proper maintenance of land)

Section 215 of the 1990 Act provides the Council with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears to officers that the public amenity of part of the District is being adversely affected by the condition of neighbouring land and buildings, they may consider serving a section 215 notice on the owner requiring that the situation be remedied.

These notices will set out the steps that need to be taken, and the time within which they must be carried out. The Council also have powers under s219 of the 1990 Act to undertake the clean-up works itself and to recover the costs from the landowner.

5.1.10 Other default powers

The Council can prosecute for a failure to comply with an enforcement notice but it can also consider using its default powers under s.178 of the 1990 Act to enter enforcement notice land and carry out the requirements of the notice itself.

It is an offence to willfully obstruct anyone who is exercising those powers on the Council's behalf and Council can recover from the person who is then the owner of the land any expenses reasonably incurred by them in undertaking this work.

Officers will only consider using these default powers when all other methods to persuade the owner or occupier of land to carry out any steps required by an enforcement notice have failed

5.1.11 Advertisements and fly-posting

Section 220 of the Act provides for control of advertisements to be governed by regulations discrete from the Act. Advertisement control in the hands of planning authorities extends to restricting or regulating the display of advertisements, as appears expedient, in the interests of amenity or public safety (Section 220(1) of the Act).

An “Advertisement” is a defined term within the Act at Section 336(1):

“any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous) includes any hoarding or similar structure used, or adapted for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly.”

Planning permission is not required for advertisements which comply with the relevant Regulations (Section 222 of the Act).

Various classes of advertisements are excluded from operation of the Regulations. These are defined at Schedule 1 to the 2007 Regulations¹⁰ (Classes A to I).

A variety of forms of advertisements benefit from deemed consent, i.e. there is no need to obtain an express grant of consent. This essentially grants advert consent similar to ‘permitted development rights’ for operational developments. The Classes of advertisement, which benefit from deemed consent (and any conditions or limitations applied to the same) are set out at Schedule 6 to the 2007 Regs (Classes 1 to 17). It should be noted that the Council may not consider the content or subject-matter of an advertisement, nor whether an advertisement would offend public decency, or moral values. These factors are controlled by a voluntary ‘code of conduct’ supervised by the Advertising Standards Authority. Further details of which adverts may benefit from ‘deemed’ consent can be found within [‘Outdoor advertisements and signs: a guide for advertisers’](#).

Advertisements which are neither excluded from the operation of the Regulations, nor which benefit from deemed consent, require an express grant of consent through an advertisement application to the Council. An express grant of consent is ordinarily for a period of five years unless some other period is specified in the grant. Express consent may also be made subject to conditions by the planning authority.

¹⁰ The Town and Country Planning (Control of Advertisements) (England) Regulations 2007

Full details of the Council's approach to the enforcement of advertisements are contained within the [Annex](#).

5.2 Appeal against an Enforcement Notice

There is a right to appeal to the Planning Inspectorate (who act on behalf of the Secretary of State) against an Enforcement Notice¹¹. If an appeal is lodged, the Notice does not come into effect and the requirements to comply with the Notice are suspended until the outcome of the appeal is decided.

If the appeal is allowed, no further action can be taken. If the appeal is dismissed, the requirements of the Enforcement Notice come into effect from the date of the decision letter from the Planning Inspectorate. The Inspector has the ability to vary an Enforcement Notice provided that he or she is satisfied that it does not cause injustice to either party.

Failure to comply with an Enforcement Notice constitutes a criminal offence and the Council may instigate prosecution proceedings against the parties concerned in the Magistrates' Court. Accordingly, formal enforcement action is in many cases, not straightforward and can be a lengthy and time consuming process.

5.3 Other forms of Enforcement Action

The Council can also carry out other formal enforcement proceedings including:

- Service of a Breach of Condition Notice where development has taken place without compliance with a condition(s) of a planning permission;
- Service of a notice requiring the proper maintenance of land or building;
- Prosecution in connection with unauthorised advertisements;
- Prosecution for unauthorised works to a listed building;
- Prosecution for unauthorised works to a protected tree; and
- Completion of a Section 106 Planning Obligation.

5.4 Immunity from Enforcement Action

When investigating breaches of planning control, officers must identify whether or not a breach is immune from enforcement action. Where a breach of planning control continues undetected and therefore without any intervention by way of formal enforcement action it will become lawful by the passage of time. In such circumstances the breach becomes immune from enforcement action, which means the Council is unable to remove or mitigate the development.

Immunity timescales are as follows:

¹¹ S174 (Appeal Against Enforcement Notice) Town and Country Planning Act 1990.

- Four years where the breach consists of the carrying out of building, mining, engineering or other operations without planning permission.
- Four years for a change of use of any building to use as a single dwelling house.
- Ten years in any other case.

However, deliberate concealment of a breach of planning control in order to gain immunity from enforcement action does not necessarily benefit from the statutory immunity timescales. New powers inserted into the Town and Country Planning Act 1990 (as amended) by the Localism Act 2011 allow the Council to apply to the Magistrates' Court for a Planning Enforcement Order, where a deliberate concealment of a breach of planning control becomes evident. Where such a breach of planning control is discovered, consideration will be given to the expediency and anticipated success of using such powers. The application can be made at any time within six months of the date on which there was sufficient evidence to justify the application.

5.5 What types of complaints cannot be dealt with by planning enforcement?

Before reporting a suspected breach of planning control, it is important to check that the matter is for the Council's Planning Department to deal with so we can avoid any unnecessary work or delay in taking the most appropriate action. The most common issues that are incorrectly reported to the Council's Planning Enforcement Team are listed below.

5.5.1 Approved development or works

In some cases, we receive reports of suspected breaches of planning control about development or works that have been granted planning permission. We publish details of most planning applications on the Council's website including details of approved plans, planning conditions and planning obligations.

If it is found that works or a development has already got consent and is being carried out in accordance with the permission, then we will not take planning enforcement action. However, a complaint can still be made to the Council's Complaints Department about the way we dealt with an application for planning permission but not about the decision itself.

5.5.2 Boundary disputes

The planning department cannot deal with boundary disputes. These types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter. We may be able to provide extracts from plans or details of application site boundaries on request but these details will also normally be available on the Council's website.

5.5.3 Damage to private property

Similar to the above, the planning department cannot deal with reports about damage to private property. These types of problems should normally be dealt with as a private

matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter or the matter may need to be reported to the police.

5.5.4 Dangerous Structures

The Planning Department cannot deal with reports of dangerous structures, which should be reported to East Midlands Building Control Partnership who can be contacted on 0333 003 8132 or by email at info@eastmidlandsbc.com.

5.5.5 Empty Properties

The Planning Department cannot deal with empty properties, these issues should be reported to Council's Public Protection Business Unit by telephoning 01636 650000 or by emailing Environmental.Health@nsdc.info.

5.5.6 Fly-tipping

The planning department cannot deal with reports of fly-tipping, which should be reported to the Council's Environmental Health Department by telephoning 01636 650000 or by emailing Environmental.Health@nsdc.info.

5.5.7 Highways Land

The planning department will generally not deal with complaints about any structures or any other operations that have taken place on land within the boundaries of a highway, which will normally include grass verges, footpaths and pavements and other highway infrastructure like barriers, lampposts and bridges, as well as the road itself.

Complaints about activities taking place on highways land that is connected to the local road network should be reported to the Highways Department at Nottinghamshire County Council (VIA East Midlands) by telephoning 0115 8042100. Complaints about activities taking place on highways land connected to the strategic road network should be reported to Highways England by telephoning 0300 123 5000.

5.5.8 Invasive non-native plants and harmful weeds

Unless a breach of a planning condition has been identified, complaints about non-native invasive species or harmful weeds cannot be dealt with by the Planning Department and should be reported to the Environment Agency and more information can be found on their website at www.gov.uk/government/organisations/environment-agency

5.5.9 Light Pollution

Unless a breach of a planning control has been identified, complaints about light pollution cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01636 650000 or by emailing Environmental.Health@nsdc.info

5.5.10 Noise Nuisance

Unless a breach of a planning control has been identified, complaints about noise nuisance cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01636 650000 or by emailing Environmental.Health@nsdc.info

5.5.11 Odour Nuisance

Unless a breach of a planning control has been identified, complaints about odour nuisance cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01636 650000 or by emailing Environmental.Health@nsdc.info

5.5.12 Parking Restrictions & On-Street Parking

The Council's Civil Enforcement Officers (CEO) or Nottinghamshire County Council Civil Parking Enforcement (CPE) are responsible for the enforcement of parking restrictions in Nottinghamshire. CEOs have replaced traditional traffic wardens and enforce a range of restrictions. Further information can be found on the Council's website via <https://www.newark-sherwooddc.gov.uk/parkingfines/> or Nottingham County Council's website via the following link - https://www.derbyshire.gov.uk/transport_roads/roads_traffic/parking/parking_enforcement/default.asp or can be reported to Newark & Sherwood District Council on 01636 650000 or Nottinghamshire County Council on 00345 5201357. For police related offences, please call 101 or 999 in an emergency.

5.5.13 Quarry Sites and Active Mineral Extraction

All issues relating to quarrying or mineral extraction should be discussed with Nottinghamshire County Council who can be contacted by telephone at 0300 500 8080 or by emailing enquiries@nottsc.gov.uk

5.5.14 Trespass

Reports about private individuals trespassing cannot be dealt with by the planning department and these types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter or reporting the matter to the police.

5.5.15 Vermin

The planning department cannot deal with reports of vermin or other types of infestation, which should be reported to the Council's Environmental Health Department by telephoning the Council's Environmental Health Department by telephoning 01636 650000 or by emailing Environmental.Health@nsdc.info

5.5.16 Waste sites

Any complaints about the operation of a waste transfer site including public amenity waste disposal sites and scrapyards should be directed to Nottinghamshire County Council who can be contacted by telephone at 0300 500 8080 or by emailing enquiries@nottscc.gov.uk

PART SIX - REPORTING A BREACH OF PLANNING CONTROL

6.1 Reporting

The majority of investigations into breaches of planning control result from complaints from members of the public and local councillors. The assistance of the public is therefore important to the success of an effective enforcement function.

Complaints can be made in person via our Customer Service Centre, in writing or by email at planning.enforcement@neward-sherwooddc.gov.uk

Any information provided by members of the public is treated in confidence unless it is necessary to disclose this information at an appeal or in court when it may be made public. In such cases, the individual's consent will be sought prior to this information being made public. Such occasions are rare and involvement is on a voluntary basis.

Given that the complainant's details are entirely confidential, we do not usually investigate anonymous complaints. If complainants feel uncomfortable in providing their contact details they are advised to contact a ward councillor or Parish/ Town Council to make the complaint on their behalf. In this scenario an officer will be able to advise on the best course of action and provide an update of the outcome of the enforcement investigation.

PART SEVEN - MANAGEMENT SYSTEMS

7.1 Equalities and Human Rights

Equality issues have been considered when drawing up this policy. The application of this Enforcement Policy will be objective and equality will be achieved by ensuring decisions are not influenced by a person's age, disability, race, religion or belief, sex, sexual orientation, gender re-assignment, marriage and civil partnership, pregnancy or maternity status. Officers will comply with the Human Rights Act and only depart from those requirements in exceptional circumstances. Officers will ensure that all enforcement action is justified, auditable, proportionate, authorised, and necessary having regard to the circumstances of the individual case.

7.2 How will human rights be taken into account in planning enforcement?

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action should be taken, officers, where relevant, will have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

When considering commencing formal enforcement action, officers must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped within the time limits set for compliance or by action to be taken through the courts in the wider public interest. In compliance with Article 6 of the Human Rights Act 1998, a recipient of a formal enforcement notice will also have the right of appeal or the right to a fair trial in the event of non-compliance with a formal enforcement notice or on receipt of a summons.

7.3 Data Protection

The Council needs to hold and process personal information so that it may properly perform its statutory functions. The Data Protection Act 2018 requires that the Council looks after personal information it holds, keep only what is needed and dispose of it in accordance with the Council's Data Retention Schedule. The Council may share personal information held where legislation allows and will have information sharing protocols in place where required. Prior to sharing information, the Council will consider the proposed use of the information, the secure transfer of information and measures that are in place to keep the information secure once it has left the Council's control. For further details please see the Council's Data Privacy Policy <https://www.newark-sherwooddc.gov.uk/yourcouncil/privacy/>.

Information received, including personal data, will be treated in confidence where this is possible and where an overriding public interest does not require its processing. However, should an investigation proceed to legal proceedings then the Council may be required to reveal information such as an individual's identity.

7.4 Officer Conduct

In addition to the principles set out in this Policy, officers will always present themselves professionally and courteously. Officers will introduce themselves and in what capacity they are acting. However, there may be occasions when officers legitimately delay identifying themselves until a later stage of an investigation, particularly where they are engaged in authorised covert operations. Officers will carry and show their identify card or authorisation as appropriate.

7.5 The Regulators Compliance Code

The Council has been required by the Legislative and Regulatory Reform Act 2006 (“the Act”) to have regard to the Regulators Code when developing this policy and the operational procedures sitting beneath it, taking into consideration the six core objectives. In so far as it relates to the enforcement sanctions, this enforcement policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement.

7.6 Contact Details

You may contact a member of the Enforcement Team in several ways:

- **Email:** planning.enforcement@newark-sherwooddc.gov.uk
- **Phone:** 01636 650000
- **In person:** Our Customer Services Centre is open between 09:00am until 17:00pm Monday to Friday
- **By Submitting the online form** <https://selfservice.newark-sherwooddc.gov.uk/renderform.aspx?t=39&k=074017AC7D5786E768612C8AF926B6F99E9C15D9>
- <https://www.newark-sherwooddc.gov.uk/planningenforcement/>
- **In writing:** Planning Enforcement Team, Newark and Sherwood District Council, Castle House, Great North Road, Newark, NG24 1BY

7.7 Implementation and Monitoring

7.7.1 Who will be responsible for implementing the Planning Enforcement Plan?

The Director – Growth and Regeneration, the Business Manager – Planning Development and the Senior Enforcement Officer will be responsible for implementing the plan and ensuring the guidelines in this document are followed by officers.

The Director – Growth and Regeneration, the Business Manager – Planning Development and the Senior Enforcement Officer will assist, where appropriate, with deciding what action should be taken when an investigation into a suspected breach of planning control has been completed.

The Council's solicitors will be consulted before any legal action is commenced and the Council's solicitors will assist with any legal proceedings including instructing a QC to represent the Council in any court proceedings.

The Enforcement Officer(s) will normally be expected to prepare a statement of case and/or represent the Council at an informal hearing or public inquiry in the event of an appeal to the Planning Inspectorate where an enforcement notice has been served in particularly complex or high profile enforcement cases.

The Business Manager – Planning Development and/or the Senior Enforcement Officer will assist the Enforcement Officer or Planning Officers, where appropriate, to prepare a statement of case in other more straightforward cases.

7.8 How will District Councillors be involved?

Ward Councillors will normally be informed before officers take formal action in respects of any suspected breach of planning control in their local area where the case is sensitive or contentious.

On a quarterly basis, District Councillors will also receive a report of actions taken on breaches of planning control, together with updates regarding any appeals and further legal action taken.

7.9 What service standards will be monitored?

- The nature of planning enforcement means that it is not possible to target a timescale in which to close a case. For example, if an enforcement notice is served, officers have no control over how long the Planning Inspectorate will take to deal with any subsequent appeal against that enforcement notice and cannot guarantee the outcome of that appeal
- It is also not possible for officers to meaningfully control how many complaints the Planning Department receive about suspected breaches of planning control or how many breaches occur within the District at any particular time, although it is hoped this document will help reduce both.
- However, as previously highlighted, this document sets out the service standards that officers consider are specific, measurable, achievable and realistic. We will monitor our performance against these standards and publish the results on a half-yearly basis. These results will be assessed to see whether this Plan is working or needs to be reviewed. Achieving a culture of compliance would be one key measure of whether the Plan has been successful.
- The Planning Enforcement Plan will also be reviewed if there are any substantial changes to relevant legislation, national policy or national guidance or within three years after publication depending on whichever is the sooner.

Annex

Background

The Advertisement Regulations are complex and thus understanding when consent is required or when it **might** be required is set out below to expand on the information provided earlier in this document.

The Advertisement Regulations provide consent (i.e. an application is not required to be submitted) for certain types of advertisement subject to meeting a variety of defined criteria. This consent is 'deemed consent'. When an advertisement does not fall within the criteria, then express consent is required. This is obtained through submitting an application for advertisement consent for the local planning authority's consideration. This consent, if granted, will be subject to a number of conditions.

However, unlike permitted development rights for development, a local planning authority may withdraw deemed consent if it is considered necessary to remedy a substantial injury to the amenity of the locality, or if the advertisement poses a danger to members of the public. In such cases, a discontinuance notice will be issued.

Any advertisement being displayed without 'deemed' or 'express' consent, is an offence against which the Council may take action to remove any such advert or discontinue the use of a site for the display of adverts¹².

Enforcement approach to advertisements

The Planning Enforcement team will undertake proactive monitoring and enforcement work to identify key sites and locations where signs, adverts or fly-posting are unauthorised and are damaging the character and appearance of the District, or are having a detrimental impact upon public safety.

As is set out in the Act, considerations of expediency in advertising controls relate solely to matters of amenity and public safety and therefore complaints relating to matters such as competition will not proceed beyond an initial assessment as to impact upon the aforementioned aspects.

In addition, it should be noted that express consents for the display of an advertisement usually lasts for 5 years, after which consent for the ongoing display of an advertisement may become deemed unless the display of the advertisement would contravene a condition subject to which the consent was granted. However, it will only be considered expedient to approach those businesses to remove an advert whose express consents are/have expired when the ongoing display of the advert would be in contravention of a condition specifically imposed upon the express consent to protect either the amenity of the area or reasons of public safety. In addition, Officers will write to those businesses whose consent to display an advertisement have expired or are due to expire, to advise that whilst the continuation of displaying an advert without consent is an offence, that due to the advert (at that time) not causing harm to the amenity of the area or public safety, no action will be

¹² 224 (Enforcement of control as to advertisements) Town and Country Planning Act 1990.

taken. However, businesses will be encouraged to apply to regularise the ongoing display of an advert through a new application.

Enforcement action

Officers will attempt to work positively and pragmatically with all businesses that are identified to be advertising without consent. As part of any initial contact, Officers will attempt to resolve any breach by providing guidance and advice about how they may continue to advertise their business within the scope of legislation, whilst preserving the amenity and safety of the environment for the public. Advice given will likely include possible alternative forms (e.g. size, illumination etc.) of advertisement along with guidance on the submission of applications for express consent.

Where an unauthorised advertisement is identified, and has been assessed to detrimentally impact upon amenity and/ or public safety, Officers will normally serve advance written notice to anyone who can be identified as the person responsible:

- That, in the Council’s opinion, they have displayed the advert or sign illegally.
- That the advert must be removed.
- That the Council intends to remove the advert after the expiry of a period specified in the notice, if the business has not already been done so.
- The cost to reclaim the advert if it is removed by Officers (a fee will be charged for each day the advert is stored by the Council).
- The timescale in which they have to claim the advert.

If an advert is not voluntarily removed when requested, Officers will consider enforcement action including issuing of fixed penalty notices, prosecution and/or direct action. The Council may also recharge our costs for removing any posters from any party gaining benefit from the advert.

Planning authorities also have powers to obliterate or remove placards or posters which are displayed in contravention of Section 225 of the Act¹³. Direct action powers are an efficient, effective, and highly visible tool. These powers give the planning enforcement process the legitimacy and credibility it may sometimes appear to lack.

Such powers may not be exercised without giving notice in writing to any person who displayed the advertisement or who caused it to be displayed. There is potential liability in compensation to persons suffering damage from the authority exercising their powers to enter land.

However, the Council need not give any notice to remove fly-posters where a placard or poster does not give the address of the person displaying it and Officers do not know that address and are unable to ascertain the relevant address after making reasonable enquiries.

Where an advertiser has been given notice that an advert should be removed and has failed to remove the advert within the time frame as advised, Officers will seek to,

¹³ S225 (Power to Remove or Obliterate Placards and Posters) Town and Country Planning Act 1990.

where possible, remove the unauthorised advertisement. In the case of illegal placards and posters, the Council may, if it is not possible to remove the advert, obliterate them with the use of measures such as tape with the wording 'advert cancelled'.

In the event that Officers remove an unlawful advert, the advert will be stored by the Council for a period of up to 20 working days after which time officers will seek to destroy the advert. The advertiser(s), where possible, will be notified of the removal of the advert and given the opportunity to recover the advert. However, the advert will only be released back to the advertiser upon the Council recovering the costs incurred in removing the advert. This cost will be calculated per day per advertisement that the Council is required to store the advert prior to its recovery or disposal. The cost is set out within the Council's fees and charges and will be reviewed each year. The cost will also be sought for those advertisements not reclaimed, due to the resource impacts incurred by the Council for their removal and storage.

Advertisements that the Council will not normally enforce against

Highways

The planning enforcement team will work pro-actively with colleagues at Nottinghamshire County Council to remove illegal adverts and their structures that are displayed illegally on land within the boundaries of a highway, which will normally include grass verges, footpaths and pavements and other highway infrastructure like barriers, lampposts and bridges, as well as the road itself

Charitable/community events

A charitable event may be for religious, educational, cultural, political, social or recreational purposes. Any event must be for purely charitable purposes and cannot be for any commercial purpose.

Although the organisers of some charitable or community events choose to advertise on the public highway, this is contrary to the Highways Act 1980. Adverts on the public highway, be they on lamp columns, traffic signs or signals, trees or pedestrian barriers, highway verges, can pose a danger to both pedestrians and motorists, and they also make an area look untidy and create an eyesore.

Officers will request that all adverts comply with the following criteria:

- Adverts should only be affixed to lamp columns, and not to traffic signs, traffic signals, trees or pedestrian barriers. They should not be on telegraph poles, bus stops or utilities boxes.
- Adverts should not be placed within 5m of a traffic junction.
- The method of affixing the advert must not damage the lamp column in any way.
- Adverts should not be affixed earlier than seven days before the event and must be removed within 24 hours after the event.
- All fixings must be removed when the advert is removed.
- Thought should be given to the size, design and number of adverts. Large banners will not be acceptable. Typically, no more than A4 in size and a minimal number sited locally to the event.

- The adverts should state the name of the charity that is benefiting from the event. The charity registration number should be included, when available.
- The event must be purely for charitable reasons and not have a commercial element or be solely commercial.

However, the Council will not generally take any action to remove charitable or community event 'fly posting' prior to the event, or prosecute the organisers, unless the advertisements are causing harm to public safety and a prior request for the advert to be removed has not been followed.

Please note that we may remove and confiscate any adverts that do not observe these conditions, or pose a danger, are deemed to be offensive or too numerous.

The Council request that all adverts comply with the following criteria:

- Adverts should only be affixed to lamp columns, and not to traffic signs, traffic signals, trees or pedestrian barriers. They should not be on telegraph poles, bus stops or utilities boxes.
- Adverts should not be placed within 5m of a traffic junction.
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- Thought should be given to the size, design and number of adverts. Large banners will not be acceptable. Typically, no more than A4 in size and a minimal number sited locally to the event.
- The adverts should state the name of the charity that is benefiting from the event. The charity registration number should be included, when available.
- The event must be purely for charitable reasons and not have a commercial element or be solely commercial.

Please note that we may remove and confiscate any adverts that do not observe these conditions, or pose a danger, are deemed to be offensive or too numerous.

PLANNING COMMITTEE – 6 JULY 2023.

Appeals Lodged

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 Development without delay.

2.0 Recommendation

2.1 That the report be noted.

Background papers

Application case files.

Further information regarding the relevant planning application and appeal can be viewed on our website at <https://publicaccess.newark-sherwooddc.gov.uk/online-applications/search.do?action=simple&searchType=Application> or please contact our Planning Development Business Unit on 01636 650000 or email planning@nsdc.info quoting the relevant application number.

Lisa Hughes
Business Manager – Planning Development

Appendix A: Appeals Lodged (received between 22 May 23 and 19 June 23)

Appeal reference	Application number	Address	Proposal	Procedure	Appeal against
APP/B3030/W/23/3317340	22/01085/FUL	Land to the Rear of 57 to 59 Jubilee Street Newark On Trent	Removal of existing garages and workshop and erection of 3 bungalows	Written Representation	Refusal of a planning application
APP/B3030/C/23/3321562	22/00390/ENFB	Field Reference Number 9710 Lindhurst Lane Lindhurst	Without planning permission, operational development on "the Land" comprising of the construction of a stable block (marked "X" on the attached Location Plan and identified within plan 1)	Written Representation	Service of Enforcement Notice
APP/B3030/D/23/3322394	23/00342/HOUSE	48 Westbrook Drive Rainworth NG21 0FB	Proposed attached side garage	Fast Track Appeal	Refusal of a planning application

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Appendix B: Appeals Determined (between 22 May 23 and 19 June 23)

App No.	Address	Proposal	Application decision by	Decision in line with recommendation	Appeal decision	Appeal decision date
22/01491/PIP	Blacks Farm 27 Newark Road Coddington Newark On Trent NG24 2QF	Application for permission in principle for erection of single storey dwelling.	Delegated Officer	Not Applicable	Appeal Allowed	14 June 2023

Recommendation

That the report be noted.

Background papers

Application case files.

Further information regarding the relevant planning application and appeal can be viewed on our website at <https://publicaccess.newark-sherwooddc.gov.uk/online-applications/search.do?action=simple&searchType=Application> or please contact our Planning Development Business Unit on 01636 650000 or email planning@nsdc.info quoting the relevant application number.

Lisa Hughes
Business Manager – Planning Development