

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.

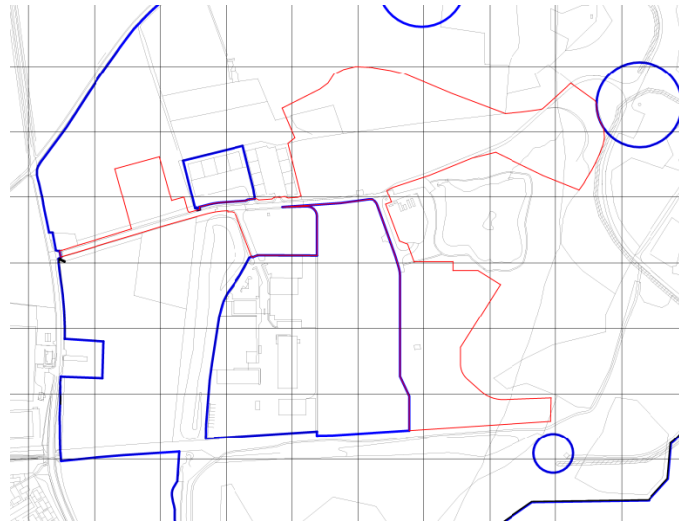
The application site is outside of the defined village envelope of Bilsthorpe and therefore falls within the open countryside. However, it is material to the current application that parts of the site are subject to extensive planning history (as detailed above) which in some parts represents a fallback 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 Eakring 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.

Committee Plan - 22/00424/OUTM

